

CAMBODIA LAW AND POLICY JOURNAL

ISSUE 2, JULY 2014

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"The Missing Picture"

—*Written and directed by Rithy Panh*

Excerpt from "A Judge in Front of The Khmer Rouge"

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—*Thierry Cruvellier*

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THE CAMBODIA LAW AND POLICY JOURNAL

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LEGAL AND GENDER ISSUES OF MARRIAGE AND DIVORCE IN CAMBODIA

DORINE VAN DER KEUR¹

Although the provisions governing marriage and divorce in the Cambodian Civil Code of 2007 are in general formally sufficient, there are serious practical barriers limiting women’s access to the benefits of the statutory regime, resulting in substandard protection of their rights. As a consequence, women’s circumstances in both marriage and divorce situations are frequently precarious, necessitating regulatory improvements.

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I. INTRODUCTION

In Cambodia, marriage is a highly valued institution, and the norm in society. Statistics from 2004 show that 81% of women between 25-29 were married and only about 5% of the population remained unmarried throughout their lives.² Divorce is socially unaccepted and its incidence remains low.

Although marriage is common, the rights and obligations of spouses during and after marriage are not well known to the Cambodian public. The Cambodian Civil Code of 2007 adequately regulates most aspects of marriage, including the age of marriageability, registration, marital property, and household expenses. Cambodian law additionally protects married women from domestic violence, bigamy and desertion.³ Nevertheless, in practice the implementation of these provisions can have gender implications reducing the effectiveness of their protection for women. The law also adequately regulates the consequences of a judicial termination of a registered marriage; however, it does not regulate the rights and the obligations of a couple who fails to legally register their marriage at the civil registry, or the rights of a separated couple who fails to obtain a legal

2 National Institute of Statistics — Ministry of Planning, 2004 Inter-Censal Population Survey, available at <http://nada.nis.gov.kh/index.php/catalog/6> & <http://marriage-statistics.findthebest.com/1/1084/Cambodia-2004-Women-Single>.

3 See Civil Code of Cambodia (2007), available at <http://cambodianbusinesscorner.wordpress.com/2013/01/05/civil-code-2007/>, art. 978(1)(a).

divorce through the court. The consequences of the failure to register a marriage or obtain a divorce from the courts can be far reaching, in particular for women. These gendered aspects of marriage and divorce in Cambodia are discussed below.⁴

2. MARRIAGE

Cambodian law regulates the institution of marriage properly and in line with international standards; however, its implementation—or lack thereof—can have a disproportionate impact on women due to societal traditions.

2.1. Limitations on Who Can Marry

In Cambodian law, the rules regulating those who can marry fail to protect both women and men as intended. Cambodian law forbids child marriages, setting the minimum age for marriage at 18.⁵ Exceptionally, a person can marry at the age of 16.⁶ However, in conformity with cultural and indigenous traditions, Cambodian girls marry young. According to 2014 UNICEF statistics, 2% of girls are married by the age of 15, and 18% by the age of 18.⁷ It therefore seems clear that the law is not properly enforced.

The law also prohibits women from remarrying until 120 days after the day of divorce or annulment of their previous marriage.⁸ This Code article has the aim of protecting the paternity rights of the first husband. The Committee monitoring the Convention on the Elimination of Discrimination against Women (CEDAW) has expressed concern that this provision is discriminatory and unduly restrictive on the right of women to remarry because today paternity can easily be established by a simple medical test.⁹ However, this is not entirely applicable in the context of Cambodia. First, DNA tests are not widely accessible in Cambodia and are still too expensive for 99% of the population. Second, when a mother-to-be remarries, her new husband is by law presumed to be the father of the child.¹⁰ If the former husband is in fact the father, he cannot claim his right to paternity.

Nevertheless, this provision does seem to unnecessarily invade the private life and civil rights of women. First, the period of 120 days seems arbitrary, as it does

4 This article does not address the inheritance implications of the legal regime for marriage and divorce.

5 Civil Code, art. 948.

6 *Id.* art. 948 (allowing this only with the consent of the parental power holder or guardian of the minor).

7 See Child Marriage Around the World: Cambodia, at www.girlsnotbrides.org/country/cambodia/.

8 Civil Code, art. 950.

9 See Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Cambodia, CEDAW Comm., 56th Session, U.N. Doc. CEDAW/C/KHM/CO/4-5 at 9 (2013).

10 See Civil Code, art. 988.

not eliminate the possibility that a new husband will become the legal father of a child conceived by the former husband at some point following the 120 days. The 120-day period is apparently based on the term to conclusively establish a pregnancy in Cambodia, but pregnancy lasts on average 280 days. Second, it could be argued that the mother is in the best position to determine whether or not her new husband should be granted paternity rights through marriage, as she is in the best position to assess who is the actual father. Perhaps—a more emancipatory idea—she may even be in the best position to choose between her two sexual partners and decide who deserves to be the legal father, taking into consideration the best interest of her child. If the new husband rejects paternity of the child, he can file a request to deny his paternity rights.¹¹

2.2. Marriage Registration

In Cambodia, marriage can only be legally recognized if it is registered by the commune council with the civil registry.¹² A couple who intends to marry must apply for a marriage authorization with the commune council at the woman's place of residence. The civil registration officer of the commune council will inspect the application and, if approved, post a copy at the commune council's office at the place of residence of both the bride and groom for a minimum ten-day public objection period. After the objection period has passed, the couple must agree to marry in front of the civil registrar at the woman's place of residence. This agreement will be recorded in the marriage registry. In most provinces, the duty of marriage registration costs 400 Riels.¹³

2.3. Marital Property

2.3.1. Joint Property Defined.

The Cambodian Civil Code provides a fair statutory system for marital property. Unless the married couple concludes a (pre)nuptial agreement, their assets will be categorized in accordance with the statutory system. The system provides that joint property includes all property earned by one or both spouses during the marriage, but excludes the property of either spouses obtained before the marriage, as well as property obtained by one spouse during the marriage

11 See *id.* art. 989.

12 This interpretation is based on the wording of Civil Code art. 955 in conjunction with Ministry of Interior Sub-Degree 103 on Civil Status (Civil Registration) (2002), available at www.skpcambodia.com/Laws%20&%20Regulations%20of%20the%20Kingdom%20of%20Cambodia/Nationality_Immigration_Civil%20Registration/Sub-dree%20No103%20on%20Civil%20Registration-Eng.pdf.

13 Sub-Decree No 62 on the Fee of Civil Registration Paper and Stamp (2002).

through gift or succession—including proceeds from the disposal of these private properties.¹⁴

Although the law provides a fair initial basis, it leaves some room for ambiguity. For example, the law does not say whether the fruits of excluded private property fall within the marital property.

For example, a wife inherits USD 10,000 and places it in the ACLEDA bank for a yearly interest of 2%.

Does the interest fall within the marital property? Based on the law it must be concluded that it does. However, due to inflation, the principal sum of USD 10,000 will lose its value over the years. Thus the result does not seem entirely fair.

For example, if land inherited by the wife is leased, will the rent proceeds be marital property or considered her private property?

In the current legal system it must be concluded that the rental income is joint property since all property acquired during marriage is considered marital, with the exception of gifts or assets obtained through succession. However, any increase in the value of the land during the marriage would benefit the wife. When the land is sold, the full proceeds of the sale are her private property.

It can be difficult to make an artificial distinction between income produced by property and increased property value. For example, if a wife inherits the majority shares in a private limited company, what part of the yearly profits can be considered joint marital income, bearing in mind that the majority shareholder can decide the amount of the dividends?

In the next example, one of the spouses contributes to the increased value of the private property, but appears to have no claim to it as marital property.

For example, a wife works her whole life in a private limited company whose shares are owned by the husband. Is she entitled to the value increase of the shares?

The salary of the wife would be considered joint marital property, but the increase in the value of the company's shares is the husband's private

14 See Civil Code, arts. 972-973.

property.

This could potentially lead to unfair situations if for example the wife worked hard at the company, received little or no salary, and helped to increase the company's value. Such unfairness could be mitigated through an appeal from the wife to apply Civil Code art. 980, allowing a court to deviate from the general rule of dividing marital property strictly in half. This possibility is discussed in section 3.3., *infra*.

2.3.2. *Protection from Unilateral Disposal*

Importantly, marital property is protected against unilateral legal acts of one spouse. The law states that joint property may not be sold or otherwise disposed of without the consent of both spouses.¹⁵ However, this is expressed as a very broad prohibition that if strictly interpreted could complicate everyday life unnecessarily.

For example a wife sells her Scoopy scooter via the Internet for USD 325.

The scooter was joint marital property. The husband who heard about the sale only the next day disagrees and goes to the court to nullify the agreement with the buyer.

Should the husband's consent have been required for the sale of ordinary moveable property? Based on common sense the answer should be no. It seems that in these circumstances the buyer could not be expected to ask the seller if she is married and if so, if her husband agrees with the sale. Otherwise, everyday life transactions might become too cumbersome with too much legal uncertainty.

The same example: a wife sells her Scoopy scooter via the internet for USD 325.

The scooter was joint marital property. The wife regrets the sale the next day and asks her husband to go to the court to nullify the agreement with the buyer.

Courts providing reasonable interpretations of this article could prevent legal uncertainty and abuse from complicating everyday transactions.

15 See *id.* art. 976(1).

On the other hand, sometimes it is appropriate to grant protection to the non-consenting spouse, in particular for sales of immovable property.

For example, the husband gambles away land that is part of the marital property.

The wife has joint ownership of the land through the statutory marital system, even if the land is only registered in the husband's name. Civil Code art. 976(I) grants protection to the wife.

In this case the law should protect the wife by giving her the right to nullify the disposal. The spouse must request nullification through the courts within two years of the date he or she became aware of the disposal of immovable property, and within one year of notice in the case of movable property.¹⁶

The law is not explicit if grants of mortgages, leases, concessions and other rights burdening the marital property fall within the definition of prohibited unilateral sales and other disposals.

For example, the husband agrees to let an apartment to a lessee for two years for USD 400 per month. The apartment is part of the marital property.

This transaction should be considered a type of unilateral “disposal” that requires consent of both spouses.

Civil Code art. 976 should be interpreted to protect both spouses from any alienation of (part of) valuable or unmovable marital property.

2.3.3. Protection for Use of the Matrimonial Residence.

The law provides extra spousal protection for the right to use the matrimonial residence. Even if the matrimonial residence is separate property, the non-owning spouse must be asked for permission to sell or dispose of the property. If the non-owning spouse does not grant permission, he or she may continue to live in the house.¹⁷

For this reason a third party to a sale, lease, or mortgage has the obligation to check whether the seller, lessor, mortgagor is married and, if so, obtain permission from both spouses for the transaction.

¹⁶ *Id.* art. 976(3).

¹⁷ *Id.* art. 977.

When a (pre)nuptial agreement between the spouses varies their property rights from this statutory system, the contract cannot be held against third parties unless it is registered.¹⁸

For example, the husband obtained the ownership of land in the village before his marriage and the land is registered in his name. A third party buys the land from the husband without permission of the wife. Later the wife objects on the ground that their prenuptial agreement defined this piece of property as joint marital property. The agreement was not registered.

The wife cannot nullify the agreement on the basis that she did not consent to the agreement, even though she was owner of the joint marital property. However, she can claim half of the proceeds of the sale as joint marital property.

2.4. Household Expenses

The Civil Code also regulates how household expenses should be borne: expenses are to be shared by the spouses, “taking into account their property, income and all other circumstances.”¹⁹ However, this article is not precise. It may be assumed that household expenses should be paid from joint income first. However, what if this income is exhausted? Should expenses then be paid from joint marital property, and if this is insufficient, proportionally from private property income?²⁰

2.5. Domestic Violence and Marital Rape

The issues related to and scope of domestic violence in Cambodia is too vast to be discussed in depth in this article, and is the topic of numerous other research projects and publications. However, two relevant issues should be mentioned. First, research shows that women stay in abusive marriages for economic reasons, including “[m]en’s predominant income-earning. . . especially in rural sites.”²¹ This suggests that with a growing middle class, including a rise in women’s financial independence, the Cambodian divorce rate can be expected to rise.

Second, there is existing legal protection against marital rape, which occurs

18 *Id.* art. 970(2).

19 *Id.* art. 971.

20 As discussed previously, there can be no private income from private property.

21 See Katherine Brickell, Baureaksmeay Prak & Bunnak Poch, *Domestic Violence Law: The Gap Between Legislation and Practice in Cambodia and What Can Be Done About It* (2014), at 18, available at www.katherinebrickell.com/katherinebrickell/wp-content/uploads/2014/01/DV-Law-Prelim-Report-2014.pdf.

frequently in Cambodia. A survey from 2005 indicates that 14% of respondents know a woman whose husband has forced her to have sex against her will.²² There is a misconception in Cambodia that rape within a marriage is not a crime. According to the 2005 survey, 45% of Cambodians²³ believe it is the right of the husband to force his wife to have sex with him. Although the Law on the Prevention of Domestic Violence and the Protection of Victims only speaks in general of sexual aggression and does not explicitly mention (marital) rape, it should be considered applicable to marital rape.²⁴ Read in conjunction with the Criminal Code, Cambodian law makes marital rape punishable by imprisonment from five to ten years.²⁵ Nevertheless, many officials in the Cambodian justice sector lack this understanding and fail to properly prosecute marital rape. A recent regional study conducted by the United Nations found that the vast majority of men who had perpetrated rape (72%-97%) did not suffer any legal consequences, with the highest impunity for intimate partner rape.²⁶

2.6. Bigamy & Desertion

Bigamy and desertion by men is common in Cambodia, in part due to the imbalanced gender ratio caused by the higher mortality rate of men during the Khmer Rouge,²⁷ and in part due to gender power imbalances. In a case of bigamy, the husband marries another woman without having previously divorced his first wife. In the case of desertion, the husband starts a new life, possibly with another woman without marrying her, while still married to his first wife. Bigamy is a prohibited criminal act²⁸; however, it must be assumed that the prohibition applies only to legally registered marriages, whereas as discussed *infra* there are many unreg-

22 Catherine Cecil et al., *Violence Against Women — A Baseline Survey (2005)*, at 57, available at www.unwomen-eseasia.org/projects/Cedaw/docs/2006/Baseline%20VAW-2005Engl.pdf.

23 *Id.*

24 See The Cambodian Committee of Women (Cambow), *Violence Against Women: How Cambodian Laws Discriminate Against Women* (Nov. 2007), at 9, available at www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf.

25 See Law on the Prevention of Domestic Violence and the Protection of Victims (2005), art. 7, available at www.wcwoonline.org/pdf/lawcompilation/Cambodia_dv_victims2005.pdf; Cambodian Criminal Code (2009), art. 239, available at www.unodc.org/res/cld/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf.

26 Emma Fulu et al., *Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific* (2013), available at http://unwomen-asiapacific.org/docs/WhyDoSomeMenUseViolenceAgainstWomen_P4P_Report.pdf.

27 See generally Patrick Heuveline & Bunnak Poch, *Do Marriages Forget Their Past? Marital Stability in Post-Khmer Rouge Cambodia*, 43:1 *DEMOGRAPHY* 99 (Feb. 2006), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC3930764/.

28 Prohibited in Civil Code art. 949, and punishable with a fine up to 2,000,000 Riels in the Cambodian Criminal Code, art. 353.

istered marriages. Desertion is not a criminal act. Bigamy and desertion are both grounds for a wife to pursue a divorce and claim her matrimonial rights.²⁹

3. DIVORCE

3.1. Introduction

There are no reliable and up-to-date statistics in Cambodia on the rate of divorce. Based on the General Population Census of 2008, the incidence of separation (0.1%) and divorce (2%) is very low.³⁰ As pointed out by Brickell, the emphasis in Cambodian culture is on harmony and reconciliation.³¹ This is also demonstrated by the stated purpose of the Law on the Prevention of Domestic Violence and the Protection of Victims being: "... to establish a legal mechanism to prevent domestic violence, protect the victims and preserve the harmony within the households in line with the Nation's good custom and tradition[.]"³² In this way the cultural tendency is to mediate and reconcile marital differences.

Nevertheless, the low divorce rate measured in the 2008 census does not reflect reality, and it must be assumed that the separation and divorce rate is much higher. The statistical distortion is probably due to the limits of self-reported surveys, the lack of proper databases and updated civil registries, and the lack of formal divorces discussed *infra*. In 2003, Hirschman and Teerawichitchainan estimated the divorce rate at 7%.³³ This number seems more in line with reality given the fact that commune councils report that divorce and domestic violence is the most common type of conflict they handle.³⁴ Nevertheless, divorce rates will certainly remain much lower than in the West due to the cultural stigma on women who are divorced and their economic dependence on men. As emphasized even by the Ministry of Women's Affairs, divorce is only a last resort.³⁵

Reasons for divorce are numerous and similar to any other culture and country, but unique to Cambodia is marital unhappiness caused by mental health issues that are the result of first and second generation Khmer Rouge survivors, alongside a high incidence of domestic violence; gambling, alcohol and drugs abuse; and

29 Civil Code art. 978(I)(a). Bigamy can be assumed to be an act of infidelity.

30 NIS, General Population Census of Cambodia (2008), at www.nis.gov.kh/nis/census2008/Census.pdf.

31 See Katherine Brickell, 'Plates in a Basket Will Rattle': Marital Dissolution and Home 'Unmaking' in *Contemporary Cambodia*, 51 GEOFORUM 262, 265 (2013).

32 Law on the Prevention of Domestic Violence and the Protection of Victims, art. I.

33 See generally Charles Hirschman & Bussarawan Teerawichitchainan, *Cultural and Socioeconomic Influences on Divorce During Modernization: Southeast Asia, 1940s to 1960s*, 29:2 POPULATION & DEV. REV. 215 (June 2003).

34 UNDP, *Pathways to Justice* (2005), at 115.

35 Remarks at Legal Aid of Cambodia Workshop, *Access to Divorce for Women in Cambodia* (Mar. 17, 2010) (on file with author).

desertion and bigamy.³⁶

Although the legal grounds for divorce are limited, they are quite broadly formulated, giving ample possibilities for filing for divorce if one spouse wishes to do so. Grounds include infidelity, desertion, separation (i.e. living apart) for more than one year, and breakdown of the relationship.³⁷ The law does include room for judicial discretion to reject the grounds of separation and breakdown if he or she feels the petitioner has seriously neglected to cooperate and assist the other spouse. This limitation on the right to divorce shows the value that Cambodian culture attaches to the institution of marriage and is somewhat in contradiction to the right of self-determination. The law is surprisingly modern by allowing for a joint petition without the need to specify the grounds for divorce.³⁸ This shows that the state respects the private right of a couple to decide to divorce without having to explain their reasons to the state.

3.2. Procedure

A legal marriage, i.e. one that is duly registered at the civil registry, can only be terminated by a legal divorce order issued by a court. A request for divorce can either be submitted directly to the court or submitted to the commune council. If the request is submitted to the commune council, the council has 15 days to attempt reconciliation. If the commune council's attempts have been unsuccessful, it should forward the divorce application to the court.³⁹

After receiving a request for divorce, the court will ask both parties to come to the court. Most judges will lobby with the complainant to withdraw the divorce request. If the complainant persists, the court can make provisional arrangements as described in section 3.6. *infra*. At this stage, the court will usually attempt three mediation rounds to see if the couple can be reconciled. If the plaintiff(s) persist, the court will then make a decision on the requested divorce, division of marital property, partner alimony, child custody, child visitation rights, and child support, as described in the following sections.

In Cambodia there are only courts at the provincial level, often necessitating the rural population to travel far to reach its provincial capital. As discussed below, divorce proceedings usually require three to five visits to the court. This in itself is almost an impossible burden for poor families. Lack of access to divorce is discussed further in section 4.2, *infra*.

36 See, e.g., UNDP, *supra* note 34, at 79.

37 See Civil Code, art. 978(1).

38 *Id.* art. 979.

39 *Id.* art. 982(2).

3.3. Division of Marital Property

The Civil Code regulates the division of marital property in the case of a divorce. Art. 980 states that the marital property shall be divided in accordance with the agreement of the spouses. Although not specifically mentioned, it must be assumed that this includes any prior (pre)nuptial agreement between the parties. If the parties cannot agree, the judge must follow the statutory system of marital property. According to articles 972-973, the property should be divided in half. The right of divorced spouses to half the marital property seems to be well known in Cambodia, and further public awareness was raised in 2008 when an estranged husband decided to saw the marital residence in half and take it away with him.⁴⁰

In dividing the marital property, judges have explicit discretion — on request of one of the parties — to deviate from the statutory system:

[W]here there are special circumstances and also an application is filed by one of the parties, the court may divide the common property [otherwise] taking into account all the circumstances, including, without limitation, the contribution of each spouse to the acquisition, maintenance and increase of property, the period of the marriage, the living standard during the marriage, the age, mental and physical condition of each spouse, their occupations, income and earning capacity, the welfare of any children, etc.⁴¹

The same article further notes—in support of women—that housework is as valuable as work outside the house. This is also recorded in the Constitution.⁴² This is a fair, progressive and gender sensitive clause given the fact that most Cambodian women are not in the position to earn as much as their husbands due to the burden of housework that traditionally befalls them and a lack of education and opportunity.

Specific issues that commonly arise in the division of property are land and pension rights.

3.3.1. Land

Land is a critical resource for Cambodians, especially poorer and rural

40 See *Cambodian Couple Saw House in Half in Divorce*, HUFFINGTON POST, Oct. 10, 2008, at www.huffingtonpost.com/2008/10/13/cambodian-couple-saw-hous_n_134098.html.

41 Civil Code, art. 980.

42 CAMBODIAN CONSTITUTION (1993), art. 36.

families. An estimated 80% of the population lives in rural areas.⁴³ and around 36% of the economy consists of agriculture.⁴⁴ Land titling is done through the cadastre. Under the Khmer Rouge, all cadastre records were destroyed and during the past ten years the government has made efforts to register land ownership in a newly set up cadastral system.

Several NGOs and international organizations have placed emphasis on the importance of joint land titling for married couples to protect women's rights.⁴⁵ Although likely protective of women's rights in practice, joint titling of land is irrelevant from a strictly legal point of view: as discussed above, marital property includes any land obtained during the marriage, except land obtained through gift or succession or bought with private property.⁴⁶ There seems to be a misconception that if land is registered in the name of one spouse only, the other spouse has no ownership. This is untrue if the land can be defined as marital property. The other spouse is legally a joint owner through the statutory system of marital property.

For example a couple titles land obtained with joint savings during the marriage in only the husband's name.

The wife is nevertheless the joint owner of the land through the statutory system of marital property.

However, what about the reverse situation? For example, a couple has land obtained by the wife through succession, but titled in the name of both the husband and wife. The land should have been registered in the name of the wife only, in line with the statutory system of marital property. However, now both parties have deviated from the statutory system. Should the husband be considered joint owner of the property? And if so, does the wife have a claim to unjust enrichment of her husband?⁴⁷ Or could the husband state that the joint registration in the cadastre is an agreement to deviate from the statutory system of marital property?⁴⁸ There is no clear answer.

43 General Population Census, *supra* note 30.

44 World Bank 2012 figures, as published by Trading Economics at www.tradingeconomics.com/cambodia/agriculture-value-added-percent-of-gdp-wb-data.html.

45 For example, this practice is emphasized in the Land Management and Registration (LMAP) of the World Bank at web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIA/PACIFICEXT/CAMBODIAEXTN/O,,contentMDK:21434075~menuPK:293874~pagePK:2865066~piPK:2865079~theSitePK:293856,00.html.

46 Civil Code, arts. 972, 973.

47 *See id.* art. 736.

48 *See id.* art. 969.

The principle rule is that land titles obtained during the marriage will be owned jointly by the spouses unless they are obtained through gift or succession or bought with private property of one spouse. After a legal divorce, the couple can either agree on who will become the owner of the land or—if they cannot agree—ask the court to divide the land. The court can order the couple to sell the land and split proceeds or award the land to one spouse under the obligation to pay half of the value to the other spouse. Or perhaps the land could be literally split into two land titles. The court judgment could then be used to change the registration of the land at the cadastre.

3.3.2. *Pension Rights.*

The law is not clear if pension rights are part of the marital property. Pension rights can consist of rights built by civil servants or other employees, e.g. claims on a provident fund with the employer. It can be argued that pension rights built up during marriage should be considered marital property and equally divided. How this division would take place is not clear. It is only the employee who can—in compliance with the pension regulations—demand payment of the pension funds. The spouse can likely only claim his or her rights once the employee-spouse has become entitled to receive the payments. This issue is most important for the female spouse, as it is more likely that the husband has pension rights, and wives should not be entitled to less property upon divorce as a consequence of their generally lower salaries and cultural expectations that women perform housework.

3.4. *Alimony*

The Civil Code 2007 does not have a legal basis for the provision of partner alimony after divorce. There is only a legal obligation to provide support for cohabiting relatives, blood-related lineal relatives and siblings.⁴⁹ The reasoning behind this omission is unclear. The Law on the Implementation of the Civil Code addressed this omission, stating that articles 76 and 77 of the Law on Marriage and Family governing alimony remain valid.⁵⁰ Art. 76 reads in part: “[W]here a party is not at fault and is in need, he may request the other party to provide alimony.”

In light of the gender inequities in Cambodia it seems unfortunate that the right to partner alimony only exists where the party is not at fault. The danger is

49 *Id.* art. 1140.

50 Law on the Implementation of the Civil Code (2011), art. 78, available at www.cambodiainvestment.gov.kh/content/uploads/2012/03/Law-on-Implementation-of-CC_Eng-FINAL_110531.pdf.

that women escaping an abusive marriage will be considered at fault, as for example 75% of Cambodians think that wives should remain silent about domestic violence to keep the family together.⁵¹

Even if the court grants the right to alimony, in practice it is difficult to enforce such decisions in Cambodia's poor rule-of-law climate. If there is marital property such as land, it might thus be advisable to request the judge for more than half of the marital property in lieu of alimony. As discussed previously, Civil Code art. 980(2) creates the explicit possibility for the spouse to request the court to receive more than half of the marital property based on the income and earning capacity of the spouses. On the basis of this article, the wife could for example claim the land owned as joint marital property so that she can become self-sufficient without the need to depend on partner alimony.

3.5. Child Custody & Visiting Rights & Child Support

The law states that in case of divorce the spouses can agree on who will have custody over the child(ren). If the spouses cannot agree, the court will decide.⁵² There is no option for joint custody after divorce in Cambodia, unlike in other civil law countries. This is particularly important for the father who in most cases is not the care-taker. In this rare instance, Cambodian lawmakers seem to have chosen the side of women. To soften the blow to an extent, the law gives the parent who loses custody the right to regular reports as well as the right to be consulted on matters of the child(ren)'s education, changes of residency, occupation or business, medical treatment affecting their life, disposition of property, and other important matters.⁵³

The law also grants visiting rights and child support rights. In principle the court will follow the agreement of the parents on these issues; however, it does have discretion to deviate from an agreement.⁵⁴ This discretion can only be used if the judge deems it necessary for the best interest of the child(ren).

3.6. Provisional Arrangements

Divorce proceedings can take a long time, on average between six months to a year to complete.⁵⁵ In order to safeguard the rights of the spouses during this period, the court can make provisional arrangements on the request of the parties or at its own discretion. The arrangements can include provisional measures regarding the separation (i.e. who lives where?), custody of the children, maintenance or

51 *The Gap Between Legislation and Practice in Cambodia*, *supra* note 21, at 40.

52 Civil Code, art. 1037.

53 *Id.* art. 1042.

54 *See id.* art. 1040.

55 The divorce procedure will generally take longer if there is property to divide.

management of property, partner alimony, household expenses, expenses of child education, etc.⁵⁶ The article is explicitly non-exhaustive and the judge can also make decisions on the right to use the marital house by one party only, visiting rights of the spouse to meet his/her children on a regular basis, and monthly child support owed by one spouse to the other. Although the law does not state this explicitly, these provisional arrangements can only be deemed valid when the judge makes a final decision on the issues, most likely in the divorce judgment.

4. PSEUDO-MARRIAGE AND PSEUDO-DIVORCE

4.I. Pseudo-Marriage

In Cambodia many couples do not register their marriage at the civil registry because they find the registration procedure too cumbersome. Couples usually only go through the first stages of the registration procedure — the application for permission and the public announcement — but do not bother to actually register the marriage at their commune council.⁵⁷ Many Cambodians, especially in the countryside, do not understand the value of registration, and attach more value to the traditional Buddhist marriage ceremony. For most Cambodians the religious ceremony, and not legal registration, constitutes the act of joining in marriage. In addition to a lack of legal awareness of the importance of registration, there is reluctance to register due to the costs involved. Although the official fee to register a marriage at the commune council is only 400 Riels (less than USD 0.10) maximum, instances are reported of couples being charged up to 40,000 Riels (approximately 10 USD).⁵⁸

The omission of marriage registration results in many couples not being legally married. There are no statistics on the number of these “*pseudo-marriages*.” Although it is believed that a majority of couples register their marriage,⁵⁹ there is a large group of unregistered couples. Some lawyers say that only 20% of their clients in the countryside have registered their marriages.

This omission primarily endangers the rights of women, especially those who later seek a divorce. Women’s rights to marital property and partner alimony are not assured since they are not considered legally married and therefore are not legally entitled to property in the name of their *pseudo-husband*. They may also have no right to child support, because their husband is not legally the father of their

56 Civil Code, art. 983.

57 See UNDP, *supra* note 34, at 80.

58 Notes from Legal Aid of Cambodia Workshop, *Access to Divorce for Women in Cambodia* (Mar. 17, 2010) (on file with author).

59 Remarks by Mr. Chan Sovanna of the Ministry of Interior at the Legal Aid of Cambodia Workshop, *Access to Divorce for Women in Cambodia* (Mar. 17, 2010) (on file with author).

children. Some examples demonstrate the seriousness of this problem.

For example a couple does not register their marriage at the commune council and the husband buys land during their marriage from income saved during the marriage. The husband registers the land in his name only.

The *pseudo-wife* is not entitled to the land, unlike if the couple had registered their marriage.

For example a couple does not register their marriage at the commune council and they have two children.

The children are not the legal children of the husband. He will have responsibility for them only if he acknowledges the children as his own⁶⁰ or the children file a suit of acknowledgment.⁶¹

As demonstrated by these examples, the legal consequences of non-registration is causing serious problems for couples who likely did intend to have a legally recognized marriage, but failed to go to the commune council for the registration.

As these difficulties arise daily in the courts, the Cambodian justice sector and other government officials have tried to address these legal issues in practical ways. Some judges are willing to accept *pseudo-marriages* as legal marriages and render a legal divorce judgment in accordance with the statutory system⁶² if it is substantiated that a Buddhist marriage ceremony took place. Their reasoning may perhaps be based on Civil Code art. 958, which states that a slight procedural defect, shall not preclude the validity of a marriage. Although it is doubtful that a lack of registration can be seen as a “*slight procedural defect*,” it does seem a practical and humane solution to a difficult legal vacuum. Other judges have taken the formal standpoint that there is no legal marriage and thus a legal divorce decision cannot be rendered.

The CEDAW Committee identified and addressed this issue in 2013:

The Committee also recommends that the State party [Cambodia] take measures to facilitate the formalisation of marriages contracted under customary law by ensuring that registration is affordable and not cumbersome.⁶³

60 Civil Code, art. 993.

61 *Id.* art. 1001.

62 See UNDP, *supra* note 34, at 121 n.181.

63 CEDAW Comm. Concluding Observations on Cambodia, *supra* note 9.

4.2. Pseudo-Divorce

The converse of “*pseudo-marriages*” are “*pseudo-divorces*.” *Pseudo-divorces* are also common, and also lead to a legal vacuum. They occur when legally married couples do not obtain a legal divorce through the courts. In general, litigation in the courts of Cambodia is cumbersome and often avoided. In 2014, Cambodia was ranked a poor 97 out of 99 countries on access to civil justice.⁶⁴ This by itself is a grave obstacle for access to divorce.

In addition to this immense hurdle, divorce law reflects the Cambodian social culture and the stigma on divorce by including additional obstacles to obtain a divorce judgment. First, the procedure is unnecessary long and complicated.⁶⁵ In practice, couples have to visit the courts three to five times before a divorce order is rendered.

Second, the procedure includes multiple mediation rounds by both the commune council and the court.⁶⁶ The law even allows the court to insist on mediation, including when one of the spouses is “*strongly demanding divorce*.”⁶⁷ This practice is opposed to international mediation principles, which provide that both parties must be willing to commit to the mediation procedure. It is usually the wife who initiates divorce proceedings, and it is difficult for a Cambodian woman to ignore the pressures of court mediation conducted at a court, usually by a male judge who is likely generally opposed to divorce.⁶⁸

Third, the need for legal representation by a lawyer seems unavoidable due to the complicated procedure, further hampering economic access to divorce. Although the law states that parties can represent themselves, it would be nearly impossible for someone lacking legal expertise to submit a divorce request. Currently there are approximately 720 practicing lawyers in Cambodia, thus a ratio of one lawyer for 19,000 people, as compared to one for 1,000 people in The Netherlands⁶⁹ or one for 265 people in the US.⁷⁰ Not only are lawyers rare in Cambodia, they are also expensive, with only 119 lawyers working with NGOs to provide *pro*

64 World Justice Project Rule of Law Index (2014), at 80, available at <http://worldjusticeproject.org/rule-of-law-index>.

65 See generally the Code of Civil Procedure of Cambodia, Book Two: Proceedings at the Court of First Instance (2006), available at <http://cambodianbusinesscorner.wordpress.com/2013/01/05/civil-code-2007/>.

66 See Civil Code, arts. 982(2), 984.

67 *Id.* art. 984.

68 See Cambow, *supra* note 24, at 15.

69 S.L. Peters, et al., Raad voor Rechtsbijstand: Monitor Gesubsidieerde Rechtsbijstand (2011), available at <http://rvr.turnpages.nl/DS/public/slot00008/pdf/compleet.pdf>.

70 See http://wiki.answers.com/Q/What_country_in_the_world_has_most_lawyers_per_capita.

bono services as of 2010.⁷¹ Further, most lawyers work in Phnom Penh or the bigger cities, not in the more remote provincial towns. If a woman seeking a divorce cannot find a pro bono lawyer, she will have to retain a lawyer and pay for his or her expenses including 55,000 Riels (approximately USD 13.75) for the court fee, 5,000 Riels (approximately USD 1.25) for the stamp tax and a further 5,000 Riels for any additional court motions. Additionally there are travel costs to appear before the court as requested — on average 3-5 times for a divorce case.

Another hurdle for women seeking divorce is the fact that most commune council members are male (82%),⁷² as are the majority of judges (91.5%).⁷³ Cambodian culture does not encourage women to speak out, let alone in public or a court setting. There are few role models for Cambodian women who publicly dare to stand up for their rights because it goes directly against the Cambodian cultural model of “appropriate” female behavior. It is thus not surprising to see that many women seeking a divorce do not pursue a legal (official) divorce through the courts. The commune council is usually the first and last stop for a spouse seeking divorce.

Consequences of these *pseudo-divorces* can be far reaching.

For example, a couple is legally married (registered marriage) for two years when the husband abandons the wife. They do not seek a divorce order through the court. Twenty years later, the husband comes back after he found out that his wife has become a successful business woman. He then seeks a divorce and claims half of her property.

Assuming the couple did not deviate from the statutory marital property system with an (pre)nuptial agreement, the man has a good chance of winning in court. However, the wife could ask the court to reduce her husband’s share to less than half, taking into account all the circumstances.⁷⁴

71 Christoph Sperfeldt et al., *Legal Aid Services in Cambodia: Report of a Survey Among Legal Aid Providers* Cambodian Human Rights Action Committee (CHRAC) (Nov. 2010), at 8, available at http://cambodia.ohchr.org/WebDOCs/DocProgrammes/CHRAC_Legal_aid_survey_Nov_2010_Eng.pdf.

72 Cambodian Center for Human Rights, Joint Press Release on Results of the Commune/Sangkat Council Elections 2012: Further Efforts Required to Achieve Quantitative and Qualitative Female Representation in Politics in Cambodia (July 11, 2012), available at <http://iknowpolitics.org/en/2012/07/joint-press-release-result-commune-council-election-2012-further-effortss-required-achieve> (visited May 14, 2014).

73 Gender and Development for Cambodia (GAD/C), et al., CSO Report on Cambodian Gender Issues (Apr. 8, 2009), at 3, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/JS4_KHM_UPR_S06_2009_JointSubmission4.pdf (visited May 14, 2014).

74 See Civil Code, art. 980(2).

For example, a couple is legally married (registered marriage) for two years when the husband abandons the wife. The wife seeks a pseudo-divorce through the commune council and later remarries her old school friend. They register their marriage at the commune council.

The first husband can accuse his wife of bigamy and file a complaint with the prosecutor on the grounds that they were never legally divorced as there was no divorce court order.

For example, a couple is legally married (registered marriage) for two years when the husband abandons the wife. The wife seeks a pseudo-divorce through the commune council and later remarries her old school friend. They do not register their marriage and they have four children.

The first husband will be considered the legal father of the four children.⁷⁵

As they have with *pseudo-marriages*, justice sector and government officials have sought to find ways on how to deal with the legal consequences of *pseudo-divorces*. Commune councils have come up with a practical solution through the issuance of a “*separation certificate*.”⁷⁶ These certificates have no legal meaning, as they are not based on the law. Nevertheless, in practice commune councils will allow people to remarry after they obtain a separation certificate.

Land titling officials have also agreed in part to this practical approach. According to the 2004 Land Adjudication Guideline, a *pseudo-divorce* is recognized in a systematic land registration process when the commune council’s separation certificate specifies a division of property. Thus the cadastre is willing to register land in the name of only one spouse if he or she has a separation certificate. Importantly however, it recognizes this *pseudo-divorce* only for couples who were not legally married. For such couples who were legally married, a legal divorce by the court is still required by the cadastre.⁷⁷

4.3. Disparity Between Law and Reality

The root cause of the problem of *pseudo-marriages* and *pseudo-divorces* are laws that are not congruent to capacity on the ground. Due to poverty, lack of good governance, and lack of access to justice, there are too many obstacles for couples

75 See *id.* art. 988.

76 See UNDP, *supra* note 34, at 80.

77 See Mehrak Mehrvar et al., *Women’s Perspectives: A Case Study of Systematic Land Registration in Cambodia* (July 2008), at 12, available at www.kh.boell.org/downloads/CambodianWomensPerspectives_EN.pdf.

to register their marriages at the commune councils and to seek divorces through the courts. It might be possible with proper legal awareness raising campaigns to have all marriages registered, as has been done by UNICEF in Cambodia for the registration of births. But even if all marriages were registered in Cambodia, Cambodia's legal court system is not ready to handle an influx of thousands of divorce requests. The functioning of the Cambodian court system is hampered by an overload of cases, a lack of capacity, and corruption issues, and this situation is likely to continue for the next few decades.

5. CONCLUSIONS AND RECOMMENDATIONS

Specific gender issues arising from the statutory regime for marriage in Cambodia includes the continuing marriage of minors, which despite regulation is occurring on a broad scale, especially in the more rural areas. It is recommended that the Ministry of Women's Affairs actively discourage the marriage of girls younger than 18 years old through outreach programs. Another gender issue is the legal prohibition on women remarrying within 120 days of their divorce, which seems to unnecessarily invade the private life of the mother with little or no legal benefit to the father, whether he is the first or second husband. This Civil Code article mandate should therefore be reviewed.

Cambodian law has a clear system in place for marriage registration and a sound statutory system for marital property. There are some ambiguities in the law regarding the consent of a spouse to dispose joint marital property and who bears the burden of household expenses. The courts should clarify these ambiguities through developing case law and making it publically accessible. Moreover, it is advisable that Ministry of Women's Affairs and the Ministry of Justice take action to increase public awareness and understanding of the statutory system for marital property, as there seems to be a lack of knowledge, especially regarding rules governing the ownership of land.

It is recommended that the Ministry of Women's Affairs further raise the awareness of the public about marital rape and its legal consequences and provide women with logistical support in seeking help. Legal aid should be accessible to women who require access to the justice system, and police, prosecutors and judges should be specifically trained about this issue to combat the current impunity.

Cambodian law grants sufficient rights to women (and men) in the case of legal divorce, including division of marital property, child custody, child visitation rights and child support. However, to further protect women's rights it should be made clear that wives who escape abusive marriages by filing for divorce cannot be held at fault, and have the right to partner alimony if they need it and their hus-

band has the means to provide it. Although the law is not explicit, it seems that pension rights should be considered part of the marital property. How and when pension rights should be divided should be worked out through jurisprudence and published.

The areas of greatest concern are associated with the marriage registration and court divorce procedures. Both procedures are seriously flawed, inaccessible and too costly. It would be advisable for the Ministry of Interior to raise public awareness of the official cost of marriage registration to prevent further corruption. The Ministry of Justice should also review the divorce procedure in order to simplify divorce procedures or create a simpler alternative for a legally valid divorce order. Other avenues could be explored by organizing a conference on this topic at which the diverse practices of other (Asian) countries are reviewed. Alternative procedures could altogether avoid the courts, which are not currently able to provide sufficient access to justice for the poor and women. In order to improve access to justice through the courts for women, more women should be appointed judges. This should help lessen the burden on women who request divorce by improving their treatment by the courts. It is further recommended that judges receive guidelines about when they should and when they should not attempt mediation. For example, mediation is not appropriate if the wife claims that there has been domestic violence.

These recommendations would increase access to legal marriage and to legal divorce in Cambodia. The Ministry of Women's Affairs should raise the awareness of the Cambodian Government and lawmakers that these innovations would not lead to more *de facto* divorces, but would lead to a higher level of protection of the rights of women during divorce.

TRANSITIONAL JUSTICE THROUGH THE CAMBODIAN WOMEN’S HEARINGS

BEINI YE¹

International and hybrid courts are now well established as transitional justice mechanisms. In Cambodia, a hybrid national/international judicial body set up and run by the Government and the United Nations is the only formal mechanism existing to address the crimes committed during the Khmer Rouge regime. Due to its limited mandate and fragile funding it will not examine all of the harms suffered by victims during the Khmer Rouge era. This article explores the value of non-judicial transitional justice mechanisms as a complementary approach, using the example of the Women’s Hearings on sexual and gender-based violence in conflict that were held in Cambodia by the Cambodian Defenders Project (CDP) in 2011, 2012, and 2013.

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I. INTRODUCTION

From 17 April 1975 to 6 January 1979, the Communist Party of Kampuchea (CPK), commonly known as the Khmer Rouge, ruled Cambodia and renamed the country Democratic Kampuchea. Under the leadership of the CPK, the entire country was transformed into a vast labor camp accompanied by detention centers, in order to achieve a “socialist revolution.” The population was forced to perform hard labor under inhumane conditions. This resulted in the deaths of thousands due to starvation, disease, and harsh living conditions. At the same time, the CPK relentlessly pursued the elimination of individuals it perceived to be enemies of the regime. During the nearly four years of CPK rule, detention, torture and mass executions of innocent people were commonplace. An estimated two million people perished during this time.

Unknown to many, various forms of sexual and gender-based violence (SGBV) against women² were committed alongside the killings and other crimes. Studies conducted in 2008 and 2011 examined the characteristics of this violence and concluded that a wide range of SGBV crimes took place during this period.³ These included: individual rape, gang rape by multiple perpetrators, mass rape of multiple victims, rape with a foreign object, forced nudity, sexual exploitation, and a state practice of forced marriage.

To prosecute the crimes committed under the rule of the CPK, a hybrid national/international court was established by the Cambodian Government and the United Nations in 2003. The Extraordinary Chambers in the Courts of Cambodia (ECCC) has a mandate to try the senior Khmer Rouge leaders and those who were most responsible for acts perpetrated between 17 April 1975 and 6 January 1979. Currently, this Court is the only institution vested with the authority to prosecute crimes from that time period.

In the four on-going cases at the ECCC, SGBV has received very limited at-

2 This article focuses on the experience of female SGBV victims. Male experience of SGBV has been reported but has not yet been researched sufficiently.

3 See generally Nakagawa Kasumi, *Gender-Based Violence During the Khmer Rouge Regime – Stories of Survivors from the Democratic Kampuchea* (Mar. 2008), at <http://gbvkr.org/wp-content/uploads/2013/02/Kasumi-GBV-Study-2007.pdf>; Katrina Natale, *I Could Feel My Soul Flying Away From My Body — A Study on Gender-Based Violence During Democratic Kampuchea in Battambang and Svay Rieng Provinces* (Nov. 2011), at http://gbvkr.org/wp-content/uploads/2013/01/Natale_K_Research_GBV_KR_ENG-web.pdf.

tention thus far. One mid-level accused has been found guilty of one incident of rape as torture (Case 001).⁴ The remaining accused — two former senior Khmer Rouge leaders — have been charged with forced marriage, including rape within this context, as a crime against humanity⁵ but have not yet been tried on these counts (Case 002).⁶ No other forms of SGBV were included in the countrywide indictment against these accused despite the fact that investigators found incidents of rape committed at a number of crime sites.⁷ The Office of the Co-Investigating Judges, the ECCC judicial body that issues indictments, determined that “the official CPK policy regarding rape was to prevent its occurrence and to punish the perpetrators. Despite the fact that this policy did not manage to prevent rape, it cannot be considered that rape was one of the crimes used by the CPK leaders to implement the common purpose.”⁸ Recently, the Trial Chamber denied a request made by the civil parties before the start of Case 002 proceedings⁹ to include charges of rape outside of forced marriage.¹⁰

Due to the confidential nature of the Court’s remaining two cases (Cases 003 and 004), which have been under judicial investigation since 2009, it has not been made public to what extent SGBV is being examined. However, in April 2014, the international co-prosecutor requested that allegations against three zone-level suspects be expanded to include not only forced marriage, but also sexual violence outside of that context.¹¹ Although an extremely welcome development, due to

4 See Judgment, Case 001/18-07-2007/ECCC/TC, ¶¶ 240, 366 (July 26, 2010).

5 See Closing Order, Case No. 002/19-09-2007-ECCC-OCIJ, ¶¶ 858-60, 1430-33, 1545 (Sept. 15, 2010). Forced marriage charges were added to the indictment after an investigative request by civil parties to the case. See generally Co-Lawyers for the Civil Parties’ Fourth Investigative Request Concerning Forced Marriages and Sexually Related Crimes, Case No. 002/19-9-2007-ECCC/OCIJ (Dec. 4, 2009); Order on Request for Investigative Action Concerning Forced Marriages and Forced Sexual Relations, Case No. 002/19-9-2007-ECCC/OCIJ (Dec. 18, 2009).

6 Two of the original four octogenarian accused in the Court’s second case (Case 002) have been removed from the proceedings: one due to advanced dementia, and the other due to his death in March 2013 during trial proceedings. Because of the advanced age of the accused and fears that they would not live until judgment, before trial began, the Trial Chamber severed the indictment in Case 002 with the aim of holding sequential trials related to different parts of the indictment. See Severance Order Pursuant to Internal Rule 89ter, Case No. 002/19-09-2007-ECCC/TC (Sept. 22, 2011). The first trial, Case 002/01, did not include forced marriage charges. In April 2014, the Trial Chamber decided that the second trial, Case 002/02, would include charges of forced marriage, and rape within this context, on a nationwide basis. See Decision on Additional Severance of Case 002 and Scope of Case 002/02, Case No. 002/19-09-2007-ECCC/TC, ¶ 33 (Apr. 4, 2014).

7 Closing Order, *supra* note 5, ¶¶ 1426-27.

8 *Id.* ¶ 1429.

9 See generally Civil Party Lead-Co Lawyers Response to the Co-Prosecutor’s Request to Re-characterize the Facts Establishing the Conduct of Rape as a Crime Against Humanity, Case No. 002/19-09-2007-ECCC/TC (July 21, 2011).

10 See Memorandum from Nil Nonn Trial Chamber President, Further Information Regarding Preliminary Objections, ¶ 3 (April 25, 2014).

11 Press Release, International Co-Prosecutor Requests Investigation of Alleged Sexual and Gender-Based Violence in Case 004 (Apr. 24, 2014), at www.eccc.gov.kh/en/articles/international-co-prosecutor-requests-investigation-alleged-sexual-and-gender-based-violence.

longstanding opposition to these cases by the Cambodian Government and unpredictable Court funding, it remains uncertain if these suspects will ever be brought to trial.

If, as is expected, the two accused senior leaders are the last to be tried, SGBV survivors will only be heard on specific elements of their experience. For example a forced marriage survivor who also experienced rape in prison will not be able to testify on the full extent of SGBV.¹² At the same time, these untold stories will not be included in the historic record produced by the ECCC through its judgments, reinforcing the myth that rape did not happen under the Khmer Rouge except in the context of forced marriage. In view of this gap, likely to be left unaddressed by the ECCC, and in face of the increasing risk of losing these stories with the passing of time, Cambodian Defenders Project¹³ (CDP) saw an urgent need to take action.

2. WOMEN'S HEARINGS IN CAMBODIA

In 2011, CDP initiated the first Women's Hearing in Cambodia. It was followed by two more Women's Hearings in 2012 and 2013 with different themes each year. All of them adhered to the same format with survivors giving public testimony before a panel. The selection of this specific format was largely inspired by truth commissions that have addressed SGBV during conflict,¹⁴ in particular the Commission for Reception, Truth and Reconciliation in Timor-Leste, which held separate hearings for women, and other civil society initiatives such as the Courts of Women.¹⁵ The proceedings of the Cambodian Women's Hearings were documented in the form of reports and films.¹⁶

In 2011, the focus of the Women's Hearing was sexual violence during the Khmer Rouge in Cambodia. Expanding on this theme, the 2012 Asia-Pacific Regional Women's Hearing shed light on patterns of SGBV in conflict situations by hearing the testimony of women from three countries in the region with a history of armed conflict. The target group for 2013 shifted from an international audience to the post-war generation in Cambodia, which is often unfamiliar with the

12 One client supported by the Cambodian Defenders Project faces this situation.

13 Cambodian Defenders Project is a local non-governmental organisation (NGO) providing free legal aid to victims of human rights violations, including survivors of the Khmer Rouge regime and SGBV in conflict. See www.cdpcambodia.org and gbvkr.org for more information.

14 For an overview on how truth commissions dealt with SGBV in conflict, see University of Wyoming Center for International Human Rights Law & Advocacy, *Background Paper on Dealing with Gender-Based Violence in Transitional Justice for Asia-Pacific Regional Women's Hearing on Gender-Based Violence in Conflict* (Oct. 2012).

15 See Introduction on the Courts of Women, at <http://weap.org/news/386/17/The-Courts-of-Women.htm>.

16 The reports can be downloaded at www.gbvkr.org/publications-and-materials/reports. The films can be viewed at www.gbvkr.org/publications-and-materials/audio-visual-material/.

history of the Khmer Rouge regime and has a limited understanding of SGBV.

All three Women's Hearings have sought to offer a non-judicial transitional justice platform to address SGBV in past conflict. The aim was to empower SGBV survivors by giving them a voice to break the silence surrounding these crimes and express their needs and demands; honor survivors by publicly acknowledging their suffering, their strength and courage; fight stigmatization and discrimination against survivors through awareness-raising of the impacts they face and their concerns; and create a more accurate historical record by documenting survivor experiences.

Whereas the panels in 2011 and 2012 consisted of national and international legal and gender experts, the panel in 2013 was staffed with students from various Cambodian universities. Each year the respective panel issued a public statement with findings and recommendations to a number of stakeholders.¹⁷ A total of approximately 1000 participants from various backgrounds, including students, staff from civil society organizations, ECCC officials, members of international organizations, donor representatives, and Khmer Rouge survivors, attended the three Women's Hearings.

Over the three years, 18 SGBV survivors and witnesses testified about their experience of SGBV, its impact, and their needs and demands. All of them voluntarily participated and provided prior informed consent to the entire process. CDP, in cooperation with other NGOs, assisted them prepare to testify, provided psychological support throughout the process, and continues to monitor their well-being. After the Women's Hearings, all who testified reported that they benefited from their participation, feeling a sense of justice, relief, and bonding with other survivors. They were also content to record their experience to allow the future generations to understand and prevent such oppressive regimes.

3. WOMEN'S HEARING AS A TRANSITIONAL JUSTICE MECHANISM

According to the International Center for Transitional Justice (ICTJ), the term "transitional justice" refers to a process of responding to past widespread and

17 See Cambodian Defenders Project, *Report on the Proceedings on the 2011 Women's Hearing on Sexual Violence Under the Khmer Rouge Regime* (May 2012), at http://gbvkr.org/wp-content/uploads/2013/01/Report-on-2011-Womens-Hearing_Phnom-Penh.pdf; Theresa De Langis, *Asia Pacific-Regional Women's Hearing on Gender Based Violence in Conflict – Report on the Proceedings 2012* (Dec. 2012), at <http://gbvkr.org/wp-content/uploads/2013/06/Women-Hearing-Report-2012-final-designed-EN-small-5.pdf>; Beini Ye, *2013 Women's Hearing with the Young Generation on Gender-Based Violence during the Khmer Rouge Regime — Report on the Proceedings* (May 2014), at <http://gbvkr.org/wp-content/uploads/2014/05/WomenHearingEng.pdf>.

systematic human rights violations.¹⁸ A resolution adopted by the United Nations Human Rights Council in 2011 specifies the elements of transitional justice to encompass the four areas of truth, justice, reparation and guarantees of non-recurrence.¹⁹ The process of the Women's Hearings addresses each of these components and has functioned as a valuable transitional justice instrument in Cambodia.

3.1. The Element of Truth

The element of "truth" involves truth-telling, meaning the opportunity for survivors and witnesses to share their experience allowing for multiple narratives. It also involves truth-seeking, meaning the documentation and understanding of past crimes and their impact. International judicial bodies such as the ECCC attempt to uncover the factual truth through a strictly standardized process of truth-telling and truth-seeking that takes the perception of the defendants into account. A judicial process run by an official body is necessary in the aftermath of mass crimes to create an official record that helps counter denial of the violations.²⁰ However, due to the strict legal framework certain narratives are not allowed or not possible at such forums. At the ECCC, for example, the indictments have thus far not included rape outside of forced marriage. As a result, accounts of rape committed in other contexts were not heard at trial.

In contrast, the Women's Hearings captured individual narratives only from the perspective of victims without endeavoring to present an objective version of past events. Being an unofficial and subjective recollection of past violence, the stories captured through the Women's Hearings may be more susceptible to denial and counter-narratives. But with their victim-centered approach they give a voice to marginalized and vulnerable survivors who are often omitted from official judicial processes.²¹

In the context of SGBV during conflict, truth-telling exercises, whether during traditional judicial proceedings or alternative truth-seeking forums, must take into consideration the risks of stigmatization and re-traumatization inherent in disclosing experience of sex crimes and ensure voluntary participation in a safe

18 See definition at <http://ictj.org/about/transitional-justice>.

19 UN Human Rights Council Res. 18/7 on the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees on Non-Recurrence, 18th Sess., U.N. Doc. A/HRC/18/2 (Oct. 22, 2012).

20 See, e.g., International Association for Humanitarian Policy and Conflict Research (aisbl), *Transitional Justice & Peacebuilding Processes*, at www.peacebuildinginitiative.org/index0eea.html?pageId=1691 (visited May 9, 2014).

21 On obstacles for women survivors of GBV in conflict to access courts and to claim reparations see Carla Ferstman, *Procedural and Substantive Obstacles to Reparations for Women Subjected to Violence through Judicial and Administrative Forums*, Address at the Special Rapporteur on Violence Against Women's Panel Discussion on Reparations for Women Subjected to Violence (June 8, 2010), at www.redress.org/UNSRVW_July_2010.pdf.

environment with sufficient support from psychologists, social workers, and other service providers.

During the Khmer Rouge regime, the traditional taboo surrounding sexual violence in Cambodian society was reinforced through both the myth that CPK cadres did not commit sex crimes and the culture of silence imposed by the regime. The myth can be traced back to a CPK moral code for cadres, which stipulated that “moral offenses” were a punishable crime. However, recent research shows that, in reality, sexual offenses by cadres were not uncommon but were rarely investigated, perpetrators were hardly punished, and victims never received support. Because any opposition or criticism towards the CPK rule was severely punished, survivors and witnesses often remained silent about crimes committed by cadres in order to survive. This is summed up in research with 104 survey respondents published in 2011:

Respondents were aware of the Khmer Rouge policy prohibiting **moral offenses** and many respondents reported having seen individuals punished for such offenses. Respondents reported that this policy led some victims of GBV to kill themselves rather than face punishment from the Khmer Rouge for what would be seen as their involvement in a moral offense. As well, respondents reported that the policy against moral offenses led perpetrators to kill their victims, kill themselves or run away to avoid punishment. Although nearly 20% of respondents participated in moral offense “judgment meetings” or witnessed punishments for moral offenses carried out, respondents in all but three cases reported that the individuals punished were involved in consensual relationships. A perpetrator was punished in only one case.²²

These factors intensified the obstacles for women to come forward and seek support.

The Women’s Hearings gave SGBV survivors the necessary platform and support to overcome these hurdles and break their decades-long silence. For many who testified, the Women’s Hearings process created their first opportunity to speak about their SGBV experience. Most stated that telling the truth to the public, especially the younger generation of Cambodians, was one of their major motivations for participating in the Women’s Hearings. Their testimonies—documented through print and film—contribute to the historic record and

22 Natale, *supra* note 3, at 2 (emphasis in original).

demystify the taboo surrounding SGBV during the Khmer Rouge regime, both of which are essential for an understanding and critical discussion of the past.

3.2. The Element of Justice

“Justice” usually refers to criminal justice, meaning the judicial investigation, prosecution and, when there is a finding of guilt, punishment of individuals for criminal acts. With the establishment of a number of international or hybrid courts in post-conflict settings worldwide to address past mass human rights abuses, this retributive aspect of transitional justice has received the most attention.

Whereas courts must ensure a fair trial and are therefore defendant-centered, the Women’s Hearings could be victim-centered because they did not determine individual responsibility for crimes or punish alleged perpetrators. Nevertheless, the question of presumption of innocence of alleged perpetrators arose at the Women’s Hearings, especially in the few cases when testifiers knew the individuals who allegedly harmed them. To avoid any violation of fair trial principles, persons who testified agreed not to identify alleged perpetrators during their testimonies. All of the victims agreed to this without any tensions or concerns. In most of the cases, they did not know the perpetrators. In the case of one testifier who was an eyewitness to the gang rape and killing of his sister and continued to be confronted with the presence of the former cadres in his village, not revealing the identity of these alleged perpetrators served as a protection for the testifier himself.

Cross-examination of witnesses, which can cause tremendous stress to survivors, especially in cases of SGBV, was not a feature of the Women’s Hearings. To decrease anxiety, persons who testified were guided through questions asked by the same person who helped them prepare their testimonies. All participants described being nervous and afraid of saying something “wrong,” but feeling eased by the presence of a person they trusted guiding the questions.

The Women’s Hearings cannot and were not intended to fulfill the role of a court. Nevertheless, those who testified at the Women’s Hearings expressed a sense of justice and satisfaction stemming from the public acknowledgment by the panel and the audience of their accounts of SGBV and their suffering. Following the testimonies, panel members addressed individually each person who testified to express their empathy, appreciation and encouragement for their contribution to the proceedings. Through the panel statement, they publicly acknowledged the participants’ experiences and condemned the abuses committed against them.

Explicitly labeling SGBV as a human rights violation and criminal conduct is particularly important for survivors as it shifts the blame and shame, which is often placed on victims, to the perpetrators. The Women’s Hearings, though no replacement for judicial prosecution, thus satisfied certain facets of justice inherent

in the notion of criminal justice that are valuable to survivors.

3.3. The Element of Reparations

In the broader context of transitional justice processes, the element of reparations is understood to encompass a variety of forms of state redress for gross human rights violations by the state as defined in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*²³ (Basic Principles). Comparatively, at the ECCC, victims admitted as civil parties to the proceedings only have the right to collective and moral reparations when an accused is convicted of committing a crime that resulted in the harm victims suffered.²⁴ Due to the ECCC's narrower authority to authorize reparations than the forms recognized in the Basic Principles, it cannot award individual or monetary reparations. Another difference lies in the fact that the ECCC Trial and Supreme Court Chambers have found that they cannot award reparations against the Government,²⁵ whereas the Basic Principles establish a state obligation to provide reparations.

The Women's Hearings provided a supplementary form of redress by contributing to rehabilitation and satisfaction. All persons who testified at the Hearings received psychological care before, during and after their participation, which has helped many to advance on their path to personal healing. Persons who testified at the 2012 Asia-Pacific Regional Women's Hearing expressed that, "while publicly sharing their stories was emotionally challenging, they feel a sense of empowerment and relief as a result of participating in the Hearing."²⁶ Similarly, in 2013:

The women stated that prior to their testimonies they felt hopeless and upset due to previously not having had the chance to speak out about the violence committed against them. They were also anxious to speak publicly in front of a large group for the first time. Following their participation in the Women's Hearing, all four expressed their relief and feeling of being supported by the audience, especially when seeing audience members crying and feeling empathy for them.²⁷

23 Adopted by the General Assembly on 21 March 2006.

24 See ECCC Internal Rules (Rev. 8), as revised on 3 August 2011, rr. 23(1)(b) & 23quinquies(1).

25 See TC Judgment, *supra* note 4, ¶ 671; Appeal Judgment, Case No. 001/18-07-2007-ECCC/SC, ¶¶ 662-65 (Feb. 3, 2012).

26 De Langis, *supra* note 17, at 31.

27 Ye, *supra* note 17.

Some survivors who disclosed their experience of SGBV for the first time are now able to benefit from interventions especially developed for cases of SGBV, such as women self-help groups.²⁸ According to the Basic Principles, satisfaction should include acknowledgment of the facts and an accurate account of the violations. Both of these aspects were addressed by the Women's Hearings as described above under the elements of truth and justice.

Being a civil society initiative and independent of any formal judicial process, the Women's Hearings do not fall under reparations as defined by the Basic Principles or the ECCC Internal Rules. However, the Women's Hearings can serve as a model for reparations projects awarded by the ECCC or taken up by the Government in the context of a wider reparations program. At a minimum, victims' testimony regarding their needs and demands, recorded during the Women's Hearings, can inform the development of reparations. The major theme running through nearly all their testimonies was the desire to document the experience of women for the younger generation to educate them and prevent future violence against women. This request could be used as the basis for reparation programs that incorporate an educational aspect and support the prevention of gender-based violence. Another strong demand calling for the end of discrimination against victims of sexual violence could be the foundation for reparations programs evolving around awareness-raising and behavioral changes.

3.4. The Element of Guarantees of Non-Recurrence

The element of guarantees of non-recurrence calls for the structural change of state institutions, including reforms of the security and legal sectors, to prevent future widespread and systematic state violence. Being a signatory to all of the core international human rights treaties, the Cambodian Government has taken on the obligation to promote and protect human rights and fundamental freedoms. In practice, state violence is still prevalent and currently manifested in the use of lethal violence against civilian protesters.²⁹

The ECCC may be seen as an attempt to establish the basis for a reform of the judiciary by setting a good practice example for domestic courts. A number of

28 The Self-Help Groups bring together 8-10 survivors who are guided by a psychologist through 7-8 meetings where they can learn to cope with past experience of violence and support each other. For a report on the impact of one self-help group for forced marriage survivors see generally Sotheary Yim, *The Past and the Present of Forced Marriage Survivors* (June 2012), at <http://gbvkr.org/wp-content/uploads/2013/04/The-Past-and-the-Present-of-Forced-Marriage-Survivors-small-2.pdf>.

29 See, e.g., Sean Teehan, Mom Kunthear & Sophak Chakrya, *Strikers, Police Clash*, PHNOM PENH POST, Nov. 13, 2013, available at www.phnompenhpost.com/national/strikers-police-clash; Cheang Sokha, Sean Teehan & Shane Worrell, *Crackdown Turns Deadly*, PHNOM PENH POST, Jan. 3, 2014, available at www.phnompenhpost.com/national/crackdown-turns-deadly (describing two recent incidents).

legacy projects are being implemented to transfer the lessons learned on fair trial rights and rule of law. The United Nations Office of the High Commissioner of Refugees (OHCHR) in Cambodia has taken the lead in this area by setting up round-tables with Cambodian prosecutors and judges.³⁰ In cooperation with the East-West Management Institute, OHCHR also recently published an annotated version of the Cambodian Code of Criminal Procedure in which procedural decisions of the ECCC Chambers are collected under the relevant articles in the Cambodian Code.³¹

All three Women's Hearings produced panel statements with policy recommendations to the Government and other stakeholders. Most of them describe specific measures necessary to prevent future violence, especially SGBV, and address its root cause of gender discrimination.

In 2011, among other measures, the panel recommended to the Cambodian Government that it conduct public awareness-raising and incorporate education about sexual violence into school curriculum in order to abolish the myths around sexual violence. Recommendations to ECCC included the establishment of a senior level gender expert position, with a national counterpart, to advocate for the inclusion of a gender perspective and attention to gender-based and sexual violence, and to ensure that these matters are part of the ECCC's legacy to national rule of law. Civil society was called on to empower and mobilize survivors of sexual violence during the Khmer Rouge regime by maintaining and building on the network of survivors and supporting dialogue among them.³²

In 2012, the panel issued recommendations for each of the participating countries. For Cambodia, the recommendations to the ECCC suggested mainstreaming questions regarding SGBV in relation to other allegations investigated for Cases 003 and 004. It also called on the Government to support documentation to preserve the history of past experiences of victims and survivors, to break the silence, and to assist in the healing process.³³

The student panel in 2013 addressed their peers by appealing to youth to participate in activities that address gender-based violence, such as training programs, public forums, workshops and study tours; to disseminate information and share knowledge in order to eliminate all forms of gender-based violence and

30 See the update on this project in Office of the United Nations High Commissioner for Human Rights (OHCHR), *Minutes of the 5th ECCC Legacy Update Meeting — Convened by the Office of the United Nations High Commissioner for Human Rights* (June 28, 2013) (on file with author).

31 Annotated Cambodian Code of Criminal Procedure: Annotations to ECCC and Select International Jurisprudence (Mar. 2014), available at http://cambodia.ohchr.org/WebDOCs/DocProgrammes/Annotated_Cambodian_Code_of_Criminal_Procedure_Eng.pdf.

32 See Cambodian Defenders Project, *supra* note 17, at 16-18.

33 See De Langis, *supra* note 17, at 55-56.

abolish discrimination against victims; to determine not to commit any form of gender-based violence; and to encourage people, especially family and friends, to end gender-based violence.³⁴

The panel statements were based on findings made from the testimonies of participants and document reviews conducted by legal and gender experts. These carefully drafted panel statements are a valuable resource for the Government and could provide guidance for the implementation of the guarantees of non-recurrence. Unlike legacy programs connected to the ECCC that target the judiciary and have a narrow focus on transferring legal knowledge, the Women's Hearing panel statements take a policy-level approach by making recommendations for larger structural changes.

The 2011 panel asked the Cambodian Government to establish a national trust fund for reparations for victims of sexual violence during the Khmer Rouge. In addition, as Chair of the Association of Southeast Asian Nations (ASEAN) in 2012, the Government was called on to provide leadership during the inauguration of the Institute for Peace and Reconciliation by promoting a strong gender perspective within this new Institute; ensuring that the issues of women, peace and security, including conflict-related sexual crimes, are addressed in ASEAN; and maintaining leadership on these issues as a member of ASEAN.³⁵

In 2012, the panel recommended the development of alternative non-judicial and peace-building mechanisms to provide opportunities for victims of SGBV to have their voices heard and to open up space for public recognition and dialogue around issues of gender-based violence. It also called on the Government to formulate National Action Plans for the implementation of United Nations Security Council Resolutions 1325 and 1820 on women, peace and security in conjunction with women's and human rights NGOs, containing time-bound benchmarks, concrete indicators and adequate resources.³⁶

The student panel in 2013 recommended the inclusion of studies on gender-based violence (both during the Khmer Rouge regime and present-day) into the curriculum of secondary schools and universities.³⁷

34 See Ye, *supra* note 17.

35 Cambodian Defenders Project, *supra* note 17, at 17.

36 See De Langis, *supra* note 17, at 55-56. See also U.N. Doc. S/RES/1325 (2000); U.N. Doc. S/RES/1820 (2008).

37 Ye, *supra* note 17.

4. WOMEN'S HEARINGS AS A MECHANISM COMPLEMENTARY TO COURTS AND TRUTH COMMISSIONS

Women's Hearings in the form conducted in Cambodia differ from truth commissions insofar as they were not set up by the state, were limited in scope and resources, and their main purpose was to give voice to a small number of SGBV survivors. According to ICTJ, truth commissions are non-judicial, independent panels of inquiry, usually established by legislation or decree by the executive branch to determine the facts and context of serious violations of human rights or of international humanitarian law in a country's past.³⁸ As state-run institutions their mandates are typically quite broad, covering a range of past mass crimes and hearing a vast number of victims and possibly perpetrators. In some cases truth commissions produce binding recommendations that the state must implement; in other cases governments are obligated to publicly report on the status of implementation.³⁹ None of these functions can be fulfilled by the Women's Hearings in Cambodia.

The Women's Hearings were also established independently from, and in addition to, the ECCC. Given that both were set up within the framework of the transitional justice process and are intended to address the four elements mentioned above, the question arises as to whether one renders the other obsolete. The answer to this is clearly: No. Both mechanisms fulfill different functions under each area and complement rather than duplicate each other.

As important as individual narratives are to truth-seeking, the Women's Hearings were not designed to capture past events to the same level of comprehensiveness as the ECCC. Though certain aspects of justice were addressed through the Women's Hearings, individual perpetrators must be held criminally responsible for their conduct in order to fully satisfy victims' claims for justice and to deter state leaders from abusing their power. A judicial process of criminal prosecution as conducted by the ECCC is also necessary to fully ensure defendants' rights to a fair trial and other international law standards enshrined in the International Covenant on Civil and Political Rights, including the right to a competent, independent and impartial tribunal or the prohibition of double conviction for the same offence.⁴⁰

The greatest weakness of the Women's Hearings is their lack of state sup-

38 Eduardo González, *Drafting a Truth Commission Mandate – A Practical Tool*, International Center for Transitional Justice (June 2013), at 3-8, available at http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013_0.pdf.

39 OHCHR, *Rule-of-Law Tools for Post-Conflict States – Truth Commissions* (2006), at I3, available at <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>.

40 See International Covenant on Civil and Political Rights, 999 U.N.T.S 171 and 1057 U.N.T.S. 407 / [1980] A.T.S. 23 / 6 I.L.M. 368 (1967), art. I4.

port. Being a civil society-driven initiative created by NGOs to fill a gap left unaddressed by the ECCC and the Government, the Women's Hearings' reach and significance in the transitional justice process remains limited. Neither the ECCC nor the Government supported or endorsed the Women's Hearings as an official non-judicial measure to deal with the past. Mechanisms set up and run with state support, such as the ECCC, continue to form the core of successful transitional justice processes, as they require the leadership and commitment of the respective post-conflict governments. All above-mentioned elements of transitional justice can only be comprehensively addressed through state action. Only state-run mechanisms for truth-seeking/truth-telling and reparation programs can be inclusive of a vast number of survivors and also give an opportunity to former perpetrators to voice their narratives; only state-run mechanisms can provide criminal justice as the privilege to prosecute and convict lies with the state; and only state-run reforms can ensure sufficient structural change to fulfill the guarantee of non-recurrence.

5. CONCLUSION

The Women's Hearings on SGBV during conflicts contributed to the transitional justice process in Cambodia by offering an alternative forum for victims to seek all four elements of truth, justice, reparation and guarantee of non-recurrence. They are non-judicial mechanisms that complement the mandate and work of the ECCC by focusing on individual narratives and being victim-centered. For SGBV survivors who thus far have been excluded from judicial processes and are in need of specialized support, they proved to be particularly valuable. If Case 004 moves forward with charges addressing rape outside of the context of forced marriage, the Women's Hearings should be credited with spurring the ECCC to act on this issue.⁴¹

The format of the Women's Hearings can be applied to other vulnerable groups such as ethnic minorities subjected to discrimination today. Similar to the situation of SGBV survivors, other vulnerable groups whose experience of violence was not included in the ECCC trials are in need of a platform to voice their experience that ensures a safe environment and sufficient support for their participation. For example, the Khmer Kampuchea Krom minority suffered targeted violence by the Khmer Rouge that is not included in the indictments at the ECCC.⁴² In view of

41 In the event that Case 004 is not brought to trial, consideration must be given to the question of preserving and possibly publishing any evidence gathered on SGBV for educational and documentation purposes.

42 Due to civil party investigative requests, the international co-prosecutor requested the investigation of crimes against the Kampuchea Krom minority in Case 004. See Press Release, Statement by the International Co-Prosecutor Regarding Case File 004 (June 16, 2011).

the current discrimination against this ethnic group in Cambodia,⁴³ hearings in the format of the Women's Hearings could ensure a certain level of protection but at the same time acknowledge their suffering and the crimes committed against them.

However, as a non-governmental initiative, the Women's Hearings have been necessarily limited in their reach, scope and impact. In view of the Women's Hearings' potential for addressing past human rights violations, the Cambodian Government should consider the use of this format of non-judicial hearings for victims as a means to fulfill its obligation under international law to provide redress to survivors of the Khmer Rouge regime as called for by the committee monitoring the Convention on the Elimination of Discrimination against Women (CEDAW). In the CEDAW Committee's most recent Concluding Observations, the Cambodian Government was urged to develop effective non-judicial transitional justice programmes, including the provision of adequate reparations, psychological and other appropriate support to victims of gender-based violence committed during the Khmer Rouge regime.⁴⁴

43 See, e.g., Kevin Ponniah & Phak Seangly, *Khmer Minority Lacks Equal Rights: Report*, PHNOM PENH POST, Feb. 6, 2014, available at www.phnompenhpost.com/national/khmer-minority-lack-equal-rights-report.

44 Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Cambodia, CEDAW Comm., 56th Session, U.N. Doc. CEDAW/C/KHM/CO/4-5 (2013).

A MISSED OPPORTUNITY, A LAST HOPE? PROSECUTING SEXUAL CRIMES UNDER THE KHMER ROUGE REGIME

THERESA DE LANGIS¹

In the past two decades, a growing body of international obligations has been created to intensify attention to the specific ways that women experience armed conflict and atrocity, and to fortify accountability for gender-based violations. Among these, a cluster of resolutions of the United Nations (UN) Security Council (SC), often referred to as the UNSCR Women Peace and Security Agenda, has called for more consistent and rigorous investigations and prosecution of conflict-related sexual violence, progressively stressing the imperative of linking gender discrimination and women's oppressed status as contributing factors to the root causes of conflict.² Most recently, the committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) promulgated General Recommendation No. 30, delineating the application of the treaty in conflict and post-conflict situations and its complementarities with international humanitarian and criminal law.³

The Extraordinary Chambers in the Courts of Cambodia for the Prosecution

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2 See UN. Doc. S/RES/1325 (2000); UN. Doc. S/RES/1820 (2008); UN. Doc. S/RES/1888 (2009); UN. Doc. S/RES/1889 (2009); UN. Doc. S/RES/1960 (2010); UN. Doc. S/RES/2106 (2013); UN. Doc. S/RES/2122 (2013). See also Report of the Secretary-General on Conflict-Related Sexual Violence, ¶ 1, U.N. Doc. S/2014/181 (Mar. 13, 2014) (defining "conflict-related sexual violence" as: "rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and any other form of sexual violence of comparable gravity perpetrated against women, men or children with a direct or indirect (temporal, geographical or causal) link to a conflict. This link to conflict may be evident in the profile of the perpetrator, the profile of the victim, the climate of impunity or State collapse, any cross-border dimensions or violations of the terms of a ceasefire agreement.").

3 General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, UN Doc. CEDAW/C/GC/30 (2013).

of Crimes Committed during the Period of Democratic Kampuchea (ECCC) was established under Cambodian law in 2004 with the mandate to bring to trial senior Khmer Rouge leaders and those most responsible for crimes allegedly committed between 17 April 1975 and 6 January 1979 under the Democratic Kampuchea regime. Backed by the UN, the hybrid court, although situated within the Cambodian court system, includes mixed panels of international and national judges, prosecutors and officers.⁴ Four cases are before the ECCC (Cases 001-004).

Case 002 commenced proceedings in November 2011 and is considered a landmark in international law given the gravity of the alleged crimes and the leadership level of the defendants. Stephen J. Rapp, U.S. Ambassador at Large for War Crimes Issues, has referred to Case 002 as “the most important trial in the world” today.⁵ Nevertheless, the ECCC’s legacy from Case 002 will prove extremely limited in advancing the lessons learned from past tribunals in addressing sexual violence crimes. This is primarily due to the Court’s reluctant and narrow approach in taking up only a portion of the full spectrum of reported crimes committed under the regime.

The co-prosecutors’ office did not initially ask for investigations of forced marriage in Case 002; it submitted a supplementary request after concerted advocacy by civil parties and their lawyers.⁶ The Court’s investigating judges then found evidence that forced marriage occurred in mass ceremonies “during the entire period of the regime in nearly every zone.”⁷ Today, the charge of forced marriage is second only to forced transfers in the number of civil parties who have come forward as victims of the widespread application of a Khmer Rouge policy. The crime as taken up by the ECCC is unique in that men were also forced to marry, and also suffered the psycho-social consequences of the crime. At least one instance has been reported of a husband forced to rape his wife, as Khmer Rouge officials phys-

4 For background on the formation of the ECCC, see *THE KHMER ROUGE TRIBUNAL* (John D. Giorciari ed., Documentation Center of Cambodia 2006).

5 Press Release, Office of War Crimes Issues, U.S. Department of State, U.S. Announces Contribution to the Khmer Rouge Tribunal (Oct. 14, 2011), at www.state.gov/j/gcj/us_releases/other/2011/175540.htm. Accused Nuon Chea and Khieu Samphan are the most senior members still living and fit to stand trial. The charges include war crimes, crimes against humanity, and genocide.

6 For background on the role of civil parties and their lawyers in advocating the prosecution of forced marriage, resulting in a supplementary submission of the Office of Co-Prosecutors in 2009, see Silke Studzinsky, *One Eye Blind? Is the ECCC a Model of How Sexual Violence Crimes Should Be Investigated and Treated?*, Gerda Werner Institute: Feminism and Democracy (2012), www.gwi-boell.de/web/violence-conflict-international-criminal-court-model-of-how-sexual-crimes-should-be-investigated-and-treated-4573.html. See generally Order on Request for Investigative Action Concerning Forced Marriage and Forced Sexual Relations, Case No. 002/19-09-2007-ECCC-OCIJ (Dec. 18, 2009).

7 Closing Order, Case 002/19-9-2007-ECCC-OCIJ, ¶¶ 843-44 (Sept. 15, 2010) (citations omitted). See generally Beini Ye, *Forced Marriages as Mirrors of Cambodian Conflict Transformation*, 23 PEACE REV. 469-75 (2011).

ically held her down, and it is reported to have been common for recalcitrant couples to be “educated” about consummating the marriage or face punishment or death.⁸

Importantly, the Case 002 closing order names forced marriage and rape *inside* the context of forced marriage as a central element of control under the Khmer Rouge regime.⁹ Yet while the closing order points to instances of other forms of sexual violence, including most particularly rape at security centers, the indictment determines that the accused cannot be linked to these crimes because the Khmer Rouge aimed to prevent them through an official policy.¹⁰

This conclusion of the closing order has been rigorously contested, including through a mounting corpus of research and documentation on sexual and gender-based violence under the regime by both cadres and officers, both within forced marriage and outside of it.¹¹ The first Cambodian Women’s Hearing on Sexual Violence under the Khmer Rouge, convened in 2011 by local human rights organization the Cambodian Defenders Project (CDP), served as a non-judicial truth-telling event for victims and witnesses to publically “testify” about these crimes, with testimonies recounting systematic rape prior to execution; rape as an instrument of torture; mass rape, gang rape and repeated rapes; and rape with the object of sexual mutilation. In each instance, perpetrators were identified as agents of the regime, yet no punishment was evident.¹²

Margot Wallstrom, then Special Representative of the Secretary-General on Sexual Violence in Conflict, presented an opening message by video at the Women’s

8 Theresa de Langis, Personal Interview, Narrator #19, Cambodian Women’s Oral History Project (Feb. 19-20, 2014).

9 See Closing Order, *supra* note 7, ¶¶ 1430, 1441.

10 See *id.* ¶¶ 1426-29 (finding it to be “clearly established that under the Democratic Kampuchea [Khmer Rouge] regime crimes against humanity of rape were committed in diverse circumstances, notably in the security centres” yet concluding that “the official CPK [Khmer Rouge] policy regarding rape was to prevent its occurrence and to punish the perpetrators”).

11 See Kalyanee Mam, *Evidence of Sexual Abuse during the Rule of Democratic Kampuchea*, 15 SEARCHING FOR THE TRUTH (Documentation Center of Cambodia, Mar. 2001), <http://www.dccam.org/Projects/Magazines/Previous%20Englis/Issue15.pdf>; Nakagawa Kasumi, *Gender-Based Violence during the Khmer Rouge Regime: Stories of Survivors from the Democratic Kampuchea (1975-1979)* (Cambodian Defenders Project 2008); FARINA SO, THE HIJAB OF CAMBODIA: MEMORIES OF CHAM MUSLIM WOMEN AFTER THE KHMER ROUGE (Documentation Center of Cambodia, 2011); Duong Savorn, *The Mystery of Sexual Violence Under the Khmer Rouge Regime* (Cambodian Defenders Project, June 2011); Katrina Natale, *I Could Feel My Soul Flying Away from My Body: A Study on Gender-Based Violence during Democratic Kampuchea in Battambang and Svay Rieng Provinces* (Cambodian Defenders Project, Nov. 2011), available at http://gbvkr.org/wp-content/uploads/2013/01/Natale_K_Research_GBV_KR_ENG-web.pdf; Theresa de Langis & Silke Studzinsky, *Briefing Paper on the ECCC, the Cambodian Women’s Hearing, and Steps for Addressing Sexual Violence under the Khmer Rouge Regime* (May 2012) (unpublished manuscript on file with author); Theresa de Langis, *The Cambodian Women’s Oral History Project* (2013), www.cambodianwomensoralhistory.com.

12 See Cambodian Defenders Project, *Report on the Proceedings on the 2011 Women’s Hearing on Sexual Violence Under the Khmer Rouge Regime* (May 2012), http://gbvkr.org/wp-content/uploads/2013/01/Report-on-2011-Womens-Hearing_Phnom-Penh.pdf. Women’s Hearing were also held in 2012 and 2013.

Hearing, and her Chief of Staff, Nancee Oku Bright, presented the keynote address and observed the totality of the Hearing. Following the event, Wallstrom sent letters to the ECCC, the Royal Government of Cambodia and the UN, and published an open letter in the English-language Phnom Penh Post newspaper, urging the Court to use its full resources to address sexual crimes, including investigating and expanding the scope of what can be prosecuted, as well as providing adequate recognition of and reparations for victims.¹³ Cambodia has thereafter warranted mention in each of the subsequent annual reports of the UN Secretary-General on conflict-related sexual violence.¹⁴ The UN CEDAW Committee has also noted its concern that the ECCC has not adequately addressed sexual and gender-based violence under the regime. In its Concluding Observations on the combined 4th and 5th periodic reports of Cambodia in 2013, the Committee recommends “effective” redress for victims, including adequate reparations and integration of these issues into national policies and strategies aimed at addressing violence against women today.¹⁵

In response to Wallstrom’s and others’ calls for action, the Trial Chamber of the ECCC has consistently asserted it has no authority to “add new facts or charges to the Closing Order that were dismissed by the Office of the Investigative Judges.”¹⁶ As recently as April 25, 2014, the Trial Chamber reiterated that adjudication of sexual violence crimes under the Khmer Rouge in Case 002 will be limited to forced marriage, and the rapes that occurred within those marriages.¹⁷

The co-prosecutor’s office also did not initially request investigations into sexual or gender-based violence in Cases 003 or 004. Then, on April 24, 2014, the international side of that office filed a supplementary submission in Case 004 requesting investigation in key districts of sexual violence and rape both within and outside forced marriage, including “instances where women were raped prior to being executed, and instances where women who reported rapes during the Khmer Rouge period were subsequently executed.”¹⁸ While this provides a glimmer of

13 Margot Wallstrom, *The Forgotten Khmer Rouge Victims*, PHNOM PENH POST, May 29, 2012, available at www.phnompenhpost.com/national/forgotten-khmer-rouge-victims.

14 See *Report of the Secretary-General*, *supra* note 2, ¶ 68 (“Since my previous report on sexual violence in conflict, no governmental system has been put in place to respond to my recommendation that the effective prosecution of perpetrators be pursued.”). See also *Report of the Secretary-General on Sexual Violence in Conflict*, ¶ I14, U.N. Doc. A/67/792-S/2013/149 (2013).

15 Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Cambodia, CEDAW Comm., 56th Session, U.N. Doc. CEDAW/C/KHM/CO/4-5 at 3-4 (2013).

16 See, e.g., Memorandum from Nil Nonn, Trial Chamber President, Further Information Regarding Remaining Preliminary Objections, ¶ 3 (Apr. 25, 2014).

17 *Id.*

18 Press Release, International Co-Prosecutor Requests Investigation of Alleged Sexual and Gender-Based Violence in Case 004 (Apr. 24, 2014), at www.eccc.gov.kh/en/articles/international-co-prosecutor-requests-investigation-alleged-sexual-and-gender-based-violence.

hope that the ECCC will eventually address sexual violence outside of forced marriage, it is doubtful that Case 004 will ever be heard. Both Cases 003 and 004 have been stalled in judicial investigation since 2009, and mired in allegations of political interference and judicial misconduct—including repeated public statements by government officials, including Cambodian Prime Minister Hun Sen, that Cases 003 and 004 are “not allowed” and will not be permitted to go to trial.¹⁹

Expectations are therefore focused on Case 002. In order to expedite proceedings, the Trial Chamber severed the enormous Case 002 indictment into smaller “mini-cases” to achieve at least one final judgment on a portion of the charges before the aging accused pass away. Case 002/01, which concluded hearings in October 2013, focused primarily on the massive forced transfers of the population from urban centers to rural areas. However, the Trial Chamber recently announced that Case 002/02, which constitutes the next segment of the trial, will include forced marriage on a national basis,²⁰ rather than limited to only certain areas of the country as had been argued by the prosecutors.

These gains, though incremental, are the Court’s best last chance to contribute to the ever-evolving body of law aimed at better responding to perpetually neglected sexual and other gender-based crimes in times of conflict and atrocity globally. Above all, by including forced marriage in Case 002/02, the ECCC will finally be in a position to explain to survivors—who have courageously broken decades-long silence despite the risk of social stigma and censure—how gender-based violence was a feature of the general mass violence of the catastrophic Khmer Rouge regime.

19 At least one statement was made directly to UN Secretary-General Ban Ki-moon. See, e.g., Open Society Justice Initiative, *Recent Developments at the Extraordinary Chambers of the Courts of Cambodia* (Nov. 1, 2011), at 11, www.opensocietyfoundations.org/sites/default/files/eccc-developments-20111114.pdf. See also Human Rights Watch, *Cambodia: Judges Investigating Khmer Rouge Crimes Should Resign: UN Office of Legal Affairs Fails to Act Despite Judicial Misconduct* (Oct. 3, 2011), www.hrw.org/news/2011/10/03/cambodia-judges-investigating-khmer-rouge-crimes-should-resign.

20 See Decision on Additional Severance of Case 002/02 and Scope of Case 002/02, Case No. 002/19-09-2007-ECCC/TC, ¶ 33 (Apr. 4, 2014).

JUSTICE AND STARVATION IN CAMBODIA: THE KHMER ROUGE FAMINE

RANDLE C. DEFALCO¹

The topic of severe famine has received scant attention at international and hybrid tribunals despite the fact that an interdisciplinary discourse has emerged concerning the suitability of international criminal law as a legal response. This is the first of two articles² scrutinizing this prosecutorial gap by considering whether former Khmer Rouge leaders could be successfully prosecuted for international crimes predicated on the catastrophic famine that occurred while the Khmer Rouge held power in Cambodia from 1975-1979. Part 1 develops a detailed history of the Khmer Rouge period famine. Part 2 will analyze this history according to current formulations of international crimes.

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2 These articles are an abridgment of an LLM thesis. The full version, with extended citations, will be published as a monograph by the Documentation Center of Cambodia.

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I. INTRODUCTION

Cambodia suffered severe famine from 1975-1979 during the period of Democratic Kampuchea (DK). During this time, famine claimed somewhere between 500,000 and 1.5 million lives through a combination of starvation and disease, representing an “excess death”³ toll somewhere between ten and twenty percent of the country’s total population,⁴ making it one of the deadliest famines in modern history.⁵

Sung Phareth is a survivor of this famine. Shortly after the Khmer Rouge

3 The term “excess death” refers to the increase in death rate above an established normal death rate and is used by famine demographers as the primary metric for gauging famine severity. See, e.g., CORMAC Ó GRÁDA, *FAMINE: A SHORT HISTORY* 92 (2009).

4 The aggregate death toll attributable to the Khmer Rouge regime is controversial due to a lack of data and the ideological and political interests at stake. The most comprehensive study of the issue to date was commissioned by investigative judges at the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), a hybrid Cambodian-United Nations tribunal created to bring to justice former “senior leaders” and others “most responsible” for domestic and international crimes committed in Cambodia between 1975 and 1979. Ewa Tabeau & They Kheam, *Demographic Expert Report: Khmer Rouge Victims in Cambodia, April 1975 – January 1975, A Critical Assessment of Major Estimates*, ECCC Doc. DI40/1/1 (Sept. 30, 2009) at 41-47 (noting the “prevailing view” that the total number of victims is between 1.4 and 2.2 million lives and estimating that approximately 50 percent of the total number of excess deaths can be attributed to direct violence, with the other half attributable to living conditions, including famine.). Categorizing victims according to cause of death is even more difficult, as a virtually no forensic analysis of Khmer Rouge period mass graves has been conducted and victims were often buried haphazardly in unmarked locations. See Documentation Center of Cambodia (“DC-Cam”), *Forensic Pathology and Anthropology of Historical Mass Killing in Cambodia: Final Report on Phase 2 of the Forensic Project* (Jan. 14, 2004), at www.dccam.org. Despite the wide variation in the aggregate death toll attributable to famine, according to conservative estimates, approximately 700,000 non-violent excess deaths occurred in Cambodia under the Khmer Rouge, with a large percentage of these deaths attributable to famine directly or indirectly. Thus, for the purposes of this article, it is assumed that at minimum, the Khmer Rouge period famine claimed several hundred thousand lives, with the actual number of excess famine deaths likely being significantly higher.

5 See Ó Gráda, *supra* note 3, at 24 (Table I.I). See also Tabeau & Kheam, *supra* note 4.

revolution in 1975, when she was eleven years old, Phareth was assigned to a children's work unit. The main assignments were to carry soil, dig dikes and help with the construction of a local dam. Phareth and the rest of her unit lived at the worksite, sleeping under a makeshift shelter made out of palm leaves. During this time Phareth received two daily food rations, which typically consisted of rice with rock salt and sometimes also included *prabok*⁶ or fish soup. Phareth and her coworkers received these rations, which were relatively plentiful, because the dam her unit was working on was considered a highly important revolutionary project. Nonetheless, Phareth recalls being perpetually hungry and exhausted, as the rations were insufficient to sustain such hard labour.

After spending approximately three months living at the dam worksite, Phareth's unit finished its assignment and local government officials hosted a celebration to commemorate their efforts. Phareth recalls that the celebration included a play, revolutionary songs and a mass marriage ceremony consisting of approximately one hundred couples. She recalls feeling proud, as she was praised for her hard work.

Only later did Phareth learn what happened to her two younger sisters during this time. Her grandmother, who was old and unable to work, had been placed in charge of them, but was too sickly from lack of food to effectively supervise them. The unattended little girls were so hungry that they ate dirt, became sick and swollen from lack of food and ingesting soil, and eventually died of illness and starvation.

For a short time after their deaths Phareth's grandmother survived because she had a hidden stockpile of pre-revolution medicine to treat her various ailments. However this cache of medicine, along with the family's only cooking pot, was confiscated by local Khmer Rouge cadres, who searched village houses every three days for "contraband" such as cooking equipment, rice or anything else deemed useful to the revolution or improperly symbolic of private property ownership. This final indignity was too much for Phareth's grandmother and she told Phareth that she could not bear to live any longer. Soon she became even weaker with hunger, leading Phareth's aunt to secretly trade the last of the family's hidden gold for three cans of rice. Phareth's grandmother, however, refused to eat the rice because she was determined to die and end her misery. Within a week, the grandmother got her wish and succumbed to a combination of illness and starvation.

For civilians like Phareth and her family, even foraging for food was forbidden. As Phareth's family members starved to death, local Khmer Rouge cadres ate plen-

6 Prabok is a fermented fish paste that is a staple of the typical Cambodian diet and important source of protein.

ty of food and even had their own special chef. Today, Phareth remains angry with the Khmer Rouge regime, which she blames for the deaths of her two sisters and grandmother. According to her, everyone knew that communal rations were insufficient because it was “obvious.” Nevertheless, at mandatory community meetings, villagers were expected to proclaim their love for the revolution and never complain about the lack of food and horrific working conditions.

For thirty years famine survivors such as Phareth have received no official explanation as to why they were forced to watch family members weaken, sicken and die from lack of food and who, if anyone, is responsible.

2. TURAPHIK OR BONG-OT?

Despite survivors’ lack of definitive answers about what caused the famine, the term many use for what they endured places responsibility at the doorstep of the Khmer Rouge. When discussing their experience, these survivors do not say “*turaphik*,”⁷ the Khmer language word for “famine” that connotes a widespread lack of food attributable to natural causes, such as flooding or drought. *Turaphik* reflects the traditional reliance on predictable weather patterns to grow rice and other staples in Cambodia. Periods of *turaphik* are not unknown in Cambodia; however, the country’s abundant natural food sources, especially its freshwater fisheries have traditionally provided a crucial bulwark against severe famine and mass starvation events. Instead of *turaphik*, Khmer Rouge survivors typically use the verb “*bong-ot*,” meaning “to starve” or “to withhold food”⁸ when discussing their experiences of hunger and deprivation. *Bong-ot* implies human causality and therefore, concomitant individualized responsibility, making the term mesh well with foundational international criminal law principles.

Several prominent former Khmer Rouge leaders have publicly denied responsibility or shifted the blame to others when confronted with allegations of having knowingly caused mass starvation.⁹ They have claimed that any starvation during the Khmer Rouge period was the product of a combination of bad harvests, drought, foreign interference and/or honest mistakes by Khmer Rouge leaders in

7 Original translations by Youk Chhang, Director, DC-Cam, from the definitive Khmer dictionary written by Supreme Buddhist Monk Chuon Nath.

8 Translation by Youk Chhang, Director, DC-Cam.

9 See, e.g., Nate Thayer, *Day of Reckoning*, I60:44 FAR EASTERN ECON. REV. 14 (Oct. 30, 1997) (quoting Pol Pot in his last published interview as stating that his “conscience is clear” and that during the Khmer Rouge period “[t]here was rice, but [Vietnamese agents] didn’t give rice to the population.”).

providing local officials too much power.¹⁰ Essentially, these former leaders argue that any lack of food was an instance either of *turaphik* or bad acts by local Khmer Rouge cadres outside of their control, and not the result of Khmer Rouge leadership policies that may have prevented civilians from feeding themselves (i.e. *bong-ot*). Concomitantly, former local Khmer Rouge officials often claim that the edicts of the Khmer Rouge leadership — especially unrealistic rice production quotas and bans on private eating — rendered it impossible to provide for the civilian population, and point out that even the slightest deviations from the leadership’s policies could result in death.¹¹

This first of two articles provides an overview of the famine that occurred in Cambodia under Communist Party of Kampuchea (CPK) government. The evidence strongly suggests that the Khmer Rouge period famine was a direct, foreseeable and avoidable consequence of Khmer Rouge policies, and that over time the regime’s leaders became aware of their policies’ disastrous effects but nevertheless continued to enforce them strictly. Consequently, it is concluded that while the mere existence of famine in Cambodia may have been the product of numerous contributing causes, the main contributing factors can be traced back to the Khmer Rouge leadership. While no document or piece of evidence singularly demonstrates that members of the Khmer Rouge leadership became aware that their policies were enforcing famine throughout the country, the totality of the evidence strongly suggests such knowledge. Thus, it is concluded that from a factual standpoint, available evidence appears sufficient to establish beyond any reasonable doubt that high-level Khmer Rouge leaders knowingly enforced severe famine conditions on the civilian population under their control while in power.

10 See, e.g., *Ieng Thirith Talks about Cambodian Genocide*, 5 SEARCHING FOR THE TRUTH, May 2000, at 4, www.d.dccam.org/Projects/Magazines/Previous%20Englis/Issue05.pdf (quoting Ieng Thirith from transcript of interviews appearing in the documentary film “Die Angkar” as claiming that the Khmer Rouge had “had succeeded in giving our people sufficient food, sufficient clothes and free medical care for everybody” and blaming the Vietnamese for causing famine in Cambodia after ousting the Khmer Rouge in 1979.”); Sophal Ly, *Nuon Chea Denies Killing People*, 30 SEARCHING FOR THE TRUTH, June 2002, at I8, www.d.dccam.org/Projects/Magazines/Previous%20Englis/Issue30.pdf (quoting Nuon Chea as stating: “I am extremely regretful for the unintentional, enormous loss of human lives that occurred under the leadership of our party. [Our party] had no intention of killing her own people” and also claiming that people died from “starvation and disease only” during the Khmer Rouge period, apparently assuming that these deaths are not the result of criminal acts.); Khieu Samphan, Letter: *We Are Not Guilty of Genocide*, BANGKOK POST, Mar. 12, 1980, DC-Cam Doc D33566 (claiming that the Khmer Rouge did not commit genocide during the Khmer Rouge period and accusing Vietnam of “exterminate[ing]” Cambodian villages “by starvation”).

11 See, e.g., Transcript of Trial Proceedings, Case No. 002/I9-09-ECCC/TC (Apr. 23, 2013) at I4 (transcribing the testimony of former Khmer Rouge member Chhouk Rin explaining why party members feared senior Khmer Rouge leaders, such as accused Nuon Chea).

3. “HE WHO HAS RICE POSSESSES ALL”¹²

To discuss food availability in Cambodia is essentially to discuss rice production and distribution. Rice is the primary staple of the Cambodian diet, accounting for up to eighty percent of the total caloric intake and up to seventy percent of the protein intake of the average Cambodian.¹³ The early 1960s was a period of increased productivity in Cambodia’s rice fields, and prior to 1970, the average Cambodian ate 600 grams of rice per day, an amount approximately 100 grams greater than the average intake of citizens of most other rice-producing nations.¹⁴ When Cambodia descended into civil war in 1970, the rice crop predictably suffered. Planting, harvesting and processing rice were all negatively affected by the fighting between the incumbent Lon Nol government and the insurgent Khmer Rouge.¹⁵ The massive US bombing campaign in support of the government further reduced Cambodia’s agricultural production, as the bombs killed farmers and draught animals and damaged large swaths of croplands.¹⁶ According to official records, by 1975 Cambodia’s rice production had dropped by eighty-four percent compared to the 1970 crop.¹⁷

The importance of rice production and food security in Cambodia was not lost on the Khmer Rouge leadership and the movement gained support and new members by portraying its brand of radical socialism as a path towards better living conditions, more food, and a more equitable division of wealth.¹⁸ Khmer Rouge propaganda lionized Cambodia’s farming peasantry and portrayed its leaders as the heralds of a new era of agricultural prosperity in Cambodia. For example, in a

12 Survivor-reported slogan from the Khmer Rouge period. See HENRI LOCARD, *POL POT’S LITTLE RED BOOK: THE SAYINGS OF ANGKAR 238* (Chiang Mai: Silkworm Books, 2005).

13 RICE ALMANAC 141 (J L Maclean et al., eds., Wallingford: CABI Publishing, 3d ed. 2002), at http://books.irri.org/0851996361_content.pdf (providing country profile statistics for Cambodia). See also K A S Murshid, *Food Security in an Asian Transitional Economy: The Cambodian Experience* (1998) at www.unrisd.org/ (observing that in Cambodia “[t]he contribution of rice to total calories is high, indeed higher than is conventionally assumed” as “estimates put the figure at around 80 percent, suggesting an extremely heavy dependence on rice”) (internal citation omitted).

14 RICE ALMANAC, *supra* note 13, at 163.

15 See, e.g., RICE PRODUCTION IN CAMBODIA 5 (Nesbitt, H.J., ed., Manila: International Rice Research Institute, 1997) (internal citations omitted).

16 See generally Taylor Owen & Ben Kiernan, *Bombs Over Cambodia*, THE WALRUS, Oct. 2006, at <http://thewalrus.ca>.

17 RICE PRODUCTION IN CAMBODIA, *supra* note 15, at 5 (internal citations omitted). These amounts represent rough estimates and are used only as illustrative figures. It should be noted that, along with the effects of the 1970-75 civil war, large-scale smuggling of rice into Vietnam presumably accounts for some of the decrease in official production.

18 In 1978 Khmer Rouge official Nuon Chea stated that during the “democratic struggle” period from 1960-1967, the Khmer Rouge movement “raised slogans” demanding among other things “better prices for rice, bean curd and meat and better living conditions for the people.” Nuon Chea, *Statement of the Communist Party of Kampuchea to the Communist Workers’ Party of Denmark, July 1978* 3:1 J. COMMUNIST STUDIES 19, 21 (1987) [hereafter Nuon Chea, “Denmark Statement”].

1973 propaganda film shot in “liberated”¹⁹ Kampong Cham province, Khmer Rouge representative Khieu Samphan leads a visiting delegation from North Vietnam on a tour of a model collective farm teeming with agricultural bounty.²⁰ The workers in the cooperative grin for the camera as they thresh rice and perform other chores. Food is everywhere and storehouses burst forth with crops and fattened livestock.²¹

The Khmer Rouge began implementing cooperative farming in liberated areas early in the 1970-1975 civil war against the US-backed Lon Nol regime. In these cooperatives everyone was put to work in the fields, providing the community and the Khmer Rouge military with precious rice.²² As the Khmer Rouge took over more and more of Cambodia’s countryside, the movement scored a major strategic advantage by choking off the domestic rice supply into Phnom Penh, thereby forcing the Lon Nol government to rely almost exclusively on US airdrops for food.²³ Meanwhile, the price of rice in Phnom Penh and other cities began skyrocketing due to shortages and rampant corruption.

The Khmer Rouge swept into power after seizing control of Phnom Penh on 17 April 1975. Shortly thereafter, the Khmer Rouge-dominated CPK became the official government of Cambodia, which was renamed “Democratic Kampuchea.” The stage was thus set for the Khmer Rouge to deliver their promised agricultural bounty.

Due to the civil war, Cambodia was already on the brink of famine when the Khmer Rouge took power.²⁴ Nonetheless, the first acts of the new regime were to order the forced evacuation of Phnom Penh and to expel all foreigners, including humanitarian food aid organizations, from the country. While the exact motiva-

19 The Khmer Rouge referred to areas under their full control as “liberated zones” during the 1970-1975 civil war.

20 THE VIETNAMESE FOOTAGE: KHMER ROUGE LIBERATED ZONE IN 1973, available for viewing in DC-Cam’s Public Information Room (Phnom Penh, Cambodia), upon request.

21 Indeed, in many areas, Khmer Rouge commune-based agricultural reorganization may have presented a welcome alternative to the repressive *ramassage du paddy* [state rice collection] program enforced by the Lon Nol regime. The *ramassage du paddy* policy forced Cambodian rice farmers to sell their crop to the government at fixed prices. These prices were often significantly lower than those offered by the North Vietnamese military. For a discussion of the *ramassage du paddy* campaign, see, e.g., ELIZABETH BECKER, WHEN THE WAR WAS OVER: CAMBODIA AND THE KHMER ROUGE REVOLUTION, 103-04 (1998).

22 These initial collective reorganizations were not wholly alien to the rural peasant population, as the Sihanouk government had created the *sabaka* (“collective”) system in the 1960s. Author’s interview with Youk Chhang, Director, Documentation Center of Cambodia (May 2010) [hereafter Chhang Interview].

23 See BEN KIERNAN, THE POL POT REGIME: RACE, POWER AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975-79, 62-63 (2d ed. 2002). The Khmer Rouge military still needed more rice to continue fighting and unconfirmed rumours suggest that the Khmer Rouge secretly bought rice from corrupt Lon Nol officials, often with gold extracted from the population under its control.

24 *Id.* at 153.

tions behind the evacuation orders remain unclear,²⁵ CPK officials have publicly claimed that food shortages in the capital were a prime factor for the evacuation.²⁶ In August 1975, CPK Prime Minister Khieu Samphan announced that the CPK had “been able to solve the essential problem” of feeding the people by moving them to the countryside.²⁷

3.I. Socio-Economic Policies

Once firmly in control, the CPK government set about implementing its planned radical overhaul of Cambodia’s agricultural sector and its extreme version of socialism throughout Cambodia. At a large meeting in Phnom Penh on or around 20 May 1975, fundamental CPK policies were outlined, including plans for creating cooperatives, abolishing money, and establishing communal eating and living.²⁸ These policies became part of what the CPK leadership or Party Center²⁹ referred to as the national plan to achieve a “Super Great Leap Forward” towards a utopian agrarian-socialist state. This “leap” was to be achieved independent of any foreign aid³⁰ according to the strict policy of extreme self-reliance, referred to as

25 Various sources and Khmer Rouge statements cite possible air raids, dispersal of possible anti-communist elements and the shortage of food in Phnom Penh as the motivation for the forced evacuation. It is clear however, that regardless of whether these other motivations existed, the evacuation of cities was part of the Khmer Rouge leadership’s overall plan to reorganize Cambodia as a rural socialist agrarian state. See generally KHAMBOLY DY, A HISTORY OF DEMOCRATIC KAMPUCHEA (1975-1979), 14-17 (Phnom Penh: DC-Cam, 2007); KIERNAN, POL POT REGIME, *supra* note 23, at 31-64. Case 002/01 at the ECCC addressed this topic; the verdict will be announced on August 7, 2014.

26 For example, CPK Deputy Prime Minister in Charge of Foreign Affairs Ieng Sary was quoted in 1976 as stating “[t]he problem [facing the new regime in April 1975] was to find ways to feed these people by our own means.” He went on to claim that “[t]his problem has brought us tremendous experience, experience that makes us determined to increase our food supply. Although there is not now a great quantity, there is enough to feed one another. Today, people are working in the countryside and participating in productive activities.” Gareth Porter & George C Hildebrand, *From Starvation to Self-Sufficiency in Cambodia*, 47 *Indochina CHRONICLE* 7 (Feb./Mar. 1976) (on file at DC-Cam).

27 *Id.* at 17.

28 See, e.g., KIERNAN, POL POT REGIME, *supra* note 23, at 55.

29 For the sake of brevity, throughout this article the term CPK leadership or Party Center is used to refer to this highest echelon of command within the CPK government. The organization of the CPK will be discussed in Part 2.

30 In a 2003 interview granted to Youk Chhang of DC-Cam, now-deceased former CPK Commerce Minister Van Rith claimed that shortly after the 17 April 1975 Khmer Rouge victory, when “Pol Pot went to China, he asked Mao only for 2,000,000 hoes, refusing Mao’s offers of rice and other assistance, saying the people would sort this out for themselves, by farming the fields themselves.” Interview by Youk Chhang with Van Rith, Khpop commune, S’ang district, Kandal province (2003), at <http://d.dccam.org/Archives/Interviews>.

“independence self-mastery.”³¹ In order to maintain this independence, the Center decreed that the revolution would rely on agriculture, especially rice production. To produce sufficient rice to both feed the population and finance the CPK’s planned development projects, the Party Center announced a plan to nearly triple the country’s rice crop to an average of three tons of rice per hectare. Despite the manifest impossibility of rapidly tripling rice production, the Party Center apparently believed that attaining its production targets was a matter of revolutionary willpower and ordered military-style agricultural “offensives” throughout the country. These offensives involved a nationwide system of forced labour.

The Party Center’s practice of relying on human labour and applying socialist theory to agricultural production resulted in deeply flawed agricultural policies. Nonetheless, it appears that an appreciable rice crop was harvested each year during the Khmer Rouge period—although yields never even approached the fantastical three tons per hectare goal. Meanwhile, other CPK socio-economic policies contributed to famine conditions. As part of the pursuit of pure socialism, any perceived vestiges of “individualism” or “privatism” were banned, including cultivation of private subsistence gardens, private ownership of foodstuffs, and even the act of cooking privately. Absolute socialism also meant that all natural resources became the property of the revolution; consequently, Cambodians were forbidden to forage for alternative food sources.

Despite the extreme demands the Super Great Leap Forward plan placed on agricultural production, there is no indication that the Party Center ever second-guessed the soundness of its policies. Instead, the Center blamed inevitable shortfalls in rice production on local CPK officials or the acts of “enemies” and saboteurs. This practice of blame shifting and denial, combined with the Party Center’s well-documented penchant for extreme violence, maintained the fiction of the infallibility of Party Center’s leadership, even in the face of overwhelming evidence to the contrary. Anyone, including veteran Khmer Rouge cadres, who criticized the policies of the Party Center or complained about the terrible living conditions or lack of food, was branded an enemy of the revolution and subject to arrest, torture and summary execution. This hubristic mixture of impossible rice production quotas, forced labour, violence and denial created severe famine

31 The phrase “independence self-mastery” occurs frequently in primary CPK documents from the Khmer Rouge period and also in scholarship on the Khmer Rouge movement. *See generally* POL POT PLANS THE FUTURE: CONFIDENTIAL LEADERSHIP DOCUMENTS FROM DEMOCRATIC KAMPUCHEA, 1976-1977 (David P. Chandler, Ben Kiernan & Chanthou Boua, eds. & trans., New Haven: Yale Southeast Asian Monograph Series, 1988) (translated anthology of primary Khmer Rouge documents which contain numerous references to the concept of independence self-master or more generally for the need for absolute self-reliance).

conditions for virtually the entire civilian population, resulting in extreme suffering and mass mortality.

In 1976, Pol Pot instructed CPK party members that “the basic line” of the CPK was to “build” Cambodia “rapidly” into a powerful, self-sufficient socialist nation.³² He explained that the Party Center had compared the Cambodian revolution with those of China, Korea and Vietnam and concluded that “[w]e are faster than they are. If we examine our collective character, in terms of a socialist system, we are four to ten years ahead of them.”³³ This obsession with speed appears to also have stemmed from the Party Center’s pervasive fear of perceived enemies, as the leaders sought to achieve revolutionary goals quickly to entrench themselves in power.³⁴

The planned Super Great Leap Forward also had to be achieved without substantial foreign aid in order to adhere to the policy of independence self-mastery. The complete self-reliance dictated by this policy meant that neither food nor goods and equipment to assist with rice production would be imported in any significant quantities, even as crops were supposed to vastly increase and large quantities of rice were aside for export. Implementation of the independence self-mastery policy locally down to the local cooperative level also resulted in complete reliance on local food production for subsistence.³⁵

32 *The Party’s Four-Year Plan to Build Socialism in All Fields, 1977-1970 (June 1976)*, in POL POT PLANS THE FUTURE 36, 45, *supra* note 31 [hereafter Four-Year Plan] (“According to documents from other countries, after a war, they had three-year plans in order to prepare the economy. At the end of their three-year plans, they prepared their own five-year plans ... [however] we [the CPK Center] want to build the country quickly, and build socialism quickly ... [and therefore] [i]t isn’t necessary to wait three years like them.”). *See also* David P Chandler, *Introduction to Preliminary Explanation Before Reading the Plan, by the Party Secretary (Party Center, 21 August 1976)*, in POL POT PLANS THE FUTURE 119, 120-23, *supra*. *See also* *Preliminary Explanation Before Reading the Plan, by the Party Secretary (July-August 1976)*, in POL POT PLANS THE FUTURE, 119, 126-28, *supra* [hereafter Preliminary Explanation] (recording a speech delivered by Pol Pot stating “[o]ur socialism is characterized by its speed [and when] [c]ompared to other countries, in terms of method, we are extremely fast.”).

33 Four-Year Plan, *supra* note 32, at 46.

34 *See, e.g., Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a Zone Assembly” (June 1976)*, in POL POT PLANS THE FUTURE 9, 24, *supra* note 31 [hereafter Excerpted Report] (recording the speaker, presumed to be Pol Pot, stating “[i]f we are not strong and do not leap forward quickly, outside enemies are just waiting to crush us. Enemies of all kinds want to have small countries as their servants. So, in order to prevent them from crushing us, we have to be strong. For that reason we must strive to move fast.”).

35 *See, e.g., Preliminary Explanation, supra* note 32 at 144 (recording a speech delivered by Pol Pot stating that “[i]n rural areas, don’t move old houses yet, or build new places. We must think of agriculture first, and then of factories and workshops. In this way every base area will be independent in economic terms. If we are independent, we have mastery in peace and war.”); Four-Year Plan, *supra* note 32, at 92 (calling for “everyone [to] be self-supporting 100% throughout the year in terms of fresh, dry and preserved vegetables.”). Various CPK slogans reminded Cambodian civilians that they would receive no assistance from the central government. *See, e.g.,* LOCARD, *supra* note 12, at 78-79 (reporting slogans saying “[e]veryone has to rely solely on his own strength” and “[e]veryone must minister to his own needs” respectively.).

3.2. “Standing” on Agriculture

In order to maintain self-sufficiency while simultaneously pursuing the rapid development integral to the Super Great Leap Forward plan, the CPK Party Center dictated that the revolution would “stand” (i.e. rely) on agriculture.³⁶ In practice, this reliance on rice to fund the revolution placed an enormous burden on Cambodia’s already weakened agricultural sector, as the regime sought to achieve a massive rice surplus on a remarkably aggressive schedule. The CPK’s basic economic policies are laid out most comprehensively in the Party’s draft “Four-Year Plan to Build Socialism in All Fields” completed in August of 1976.³⁷ The Plan dictated that the “capital base” of the revolution was to be rice.³⁸ To produce enough rice to remain self-sufficient while simultaneously funding national development, the Four-Year Plan called for increasing yields nearly threefold, to a national average of three tons per hectare of cultivated land. This goal was effectively impossible to achieve, as Cambodia had never approached this level of production, even during the relatively bountiful harvests of the 1960s.³⁹ Nonetheless, the quixotic optimism of the CPK leadership knew few bounds and in 1976 Pol Pot projected that the CPK “can gain three tons per hectare on single harvests, and from six to seven tons per hectare on land that is harvested twice; and that’s not all, for we can [occasionally] exceed these targets.”⁴⁰

The Four-Year Plan included a meticulously detailed forecast of expected rice crops for the period of 1977-1980. The Plan forecasted that during this period

36 For example at a 1976 meeting, a representative of the Party Center, most likely Pol Pot himself, stated: “We stand [i.e. rely] on agriculture in order to expand other fields; industries, factories, metals, oils, etc. The basic key is agriculture. Self-reliance means capital from agriculture.” Excerpted Report, *supra* note 34, at 31 (emphasis added).

37 Four-Year Plan, *supra* note 32, at 46. It appears that the Four-Year Plan is the result of a meeting of the CPK Standing Committee from 21 July to 2 August 1976. See David P Chandler, *Introduction to The Party’s Four-Year Plan to Build Socialism in All Fields, 1977-1980*, in POL POT PLANS THE FUTURE 36, 37, *supra* note 31 [hereafter Introduction to Four-Year Plan]. The Four-Year Plan was never officially released or implemented during the Khmer Rouge period because by December 1976, the CPK leadership had become convinced of a “sickness in the Party” and believed “unspecified ‘documents have revealed that enemies have tried to defeat us using every possible method.’” DAVID CHANDLER, VOICES FROM S-21: TERROR AND HISTORY IN POL POT’S SECRET PRISON 60 (2000). See also Introduction to Four-Year Plan, *supra* at 37 (“The 110-page typewritten text [of the Four-Year Plan] was never published, and much of the Plan appears never to have been set into motion, but the document is still one of the most revealing to have come to us from the [Khmer Rouge] era.”).

38 Four-Year Plan, *supra* note 32, at 51 (stating: “We [Cambodia] must increase rice production in order to obtain capital. Other products, which are only complimentary, will be increased in the future.”).

39 Even in 2006, the Cambodian rice harvest was only 5,986,179 tons at around 2.5 tons per hectare, despite over a decade of peace, massive amounts of investment and a population approximately double that of 1975. See Regional Data Exchange System (RDES), Agricultural, Forestry and Fisheries Statistics in Cambodia 2005-2006, at www.fao-rap-apcas.org/cambodia.html.

40 Preliminary Explanation, *supra* note 32, at 131.

Cambodia would export 6,955,400 tons of rice and receive \$1,390,640,000 USD in return.⁴¹ This figure was based on the fantastical projection that total rice production over the same four-year period would be 26,660,000 tons.⁴² Despite the sheer fantasy of rice production projections in the Four-Year Plan, Pol Pot stated at a Party meeting that the rice production and export figures in the Plan had been “estimated fairly precisely.”⁴³ To make matters worse, assigned rice quotas were all based on the assumed production of three tons per hectare and were expressed as numerical requirements based on this fallacious assumption, rather than percentages of actual production, meaning that the Party Center had a specific amount of rice it expected to receive from each of the country’s administrative zones.⁴⁴

In order to achieve the massive rice harvests necessary to pursue its Super Great Leap Forward plan, the Party Center sought to transpose onto agricultural policy the guerrilla warfare tactics that had worked so well during the 1970-1975 civil war. In 1976, Pol Pot stated that the country faced three main difficulties: it had “just emerged from a war”; “lack[ed] technology”; and “lack[ed] capital equipment” that had to be imported.⁴⁵ He then said, “[t]hese difficulties are minor. We can solve them all in a short period of time.”⁴⁶ At a previous 1976 meeting with Northwest Zone CPK officials, Pol Pot had discussed how these massive problems could be overcome through sheer revolutionary effort and discipline, stating: “When we were united, we were strong and courageous; the enemy could not successfully withstand us; we could attack the American imperialists. The economic fight is not as difficult as the fight against the American imperialists.”⁴⁷ He then explained how revolutionary warfare tactics could be applied directly to agriculture, stating: “We raised the principle of attacking wherever we (could) win, wherever the enemy was weak. And the same goes for the economy. We attack wherever the opportunities are greatest.... We must prepare offensives for the whole

41 Four-Year Plan, *supra* note 32, at 56.

42 *Id.* To put this figure in perspective, in 1985 Cambodia produced only approximately 1,812,000 tons of rice. See RICE ALMANAC, *supra* note 13, at 141. Four years of this level of production would result in a total of 7,248,000 tons, or less than a third of the production forecasted in the Four-Year Plan.

43 Four-Year Plan, *supra* note 32, at 155.

44 Preliminary Explanation, *supra* note 32, at 125. Pol Pot goes on to explain:

[W]e should strive to produce a plan that is accessible to all of the people, and to all of the army, and can be understood quickly. . . . [thus, along with the rationale of simplicity] we must give our figures in a form easy for people to understand, so they can know what the figures are, and can understand them.

The unacknowledged result of this decision was that the CPK Center had a specific amount of rice it expected from each Zone that was not contingent on actual production.

45 Preliminary Explanation, *supra* note 32, at 128.

46 *Id.*

47 Excerpted Report, *supra* note 34, at 21.

country.”⁴⁸ Indeed, Pol Pot reasoned that achieving the planned massive increase in rice production was a relatively easy task in comparison to winning the civil war, stating:

[T]he preparations for offensives to build up the country are like our past military offensives and not even as difficult. In building up the country the obstacles are direct: whether there is water or not, what kind of fertilizer, what kind of seed. As for the military battlefields, they involve sacrifices. Comparing thus, *we see that there is nothing to worry about.*⁴⁹

Pol Pot’s 1976 Northwest Zone speech roughly coincided with the publication of an issue of the CPK’s propaganda magazine *Tung Padevat* (Revolutionary Flag), which announced this new phase in the revolutionary struggle: “[O]ur peasants, in the cooperatives throughout the country, our cadres and youths, every ministry, every office, our workers in every factory, and every unit of our Revolutionary Army have the mission of going on the offensive to achieve the party’s strategic plan for this year: achieving three tons per hectare.”⁵⁰

Various CPK slogans repeated throughout the countryside reinforced the conception of agricultural warfare. Workers were reminded: “In the battlefield of agriculture, industry and handicrafts, let us be determined to battle to fulfill one hundred percent of the plan and even go beyond.”⁵¹ As another slogan proclaimed, the enemy in this struggle was nature itself: “Let us not be defeated by nature!”⁵²

The “army” in the CPK’s agricultural battlefield was the entire civilian population. Manual labour was portrayed as the key to achieving a high revolutionary consciousness.⁵³ Work teams were ordered to “work together, as if [they] were on a battlefield”⁵⁴ and to “strike, crush and win absolutely the production goal of three tons per hectare.”⁵⁵ The purpose of every Cambodian’s existence was to work

48 *Id.* at 20.

49 *Id.* at 31 (emphasis added).

50 TUNG PADEVAT (“REVOLUTIONARY FLAG”) MAGAZINE (June 1976), ECCC Doc. No. E3/36 at 00509610 (ECCC trans). *Tung Padevat* was the official publication of the CPK outlining Party policies and was distributed to party members to use in mandatory party study sessions. As the CPK government passed very few laws or other formal policy documents, *Tung Padevat* served as a crucial mechanism of disseminating policy to regional and local leaders by the CPK Central leadership.

51 LOCARD, *supra* note 12, at 227.

52 *Id.* at 249.

53 See Excerpted Report, *supra* note 34, at 30 (stating: “Rice production is a very great lesson. The city people do not know what a rice field is, what a cow is, what harvesting [is]. Now they know and understand; they are no longer scared of cows and buffaloes.”).

54 LOCARD, *supra* note 12, at 162.

55 *Id.* at 242.

and struggle to advance the revolution. A CPK slogan stated that good revolutionaries were “born straight from the plough’s furrow in a rice paddy.”⁵⁶

The labour conditions that resulted from this militaristic agricultural push were horrendous. The entire civilian population was forced to work from sunrise to sunset every day in the rice fields or on massive irrigation projects without the benefit of modern machinery.⁵⁷ These workdays would range from around ten to fourteen hours, based on seasonal hours of daylight, and many survivors report working until midnight or later during busy times such as harvesting when moonlight permitted.⁵⁸ The physical demands of this labour were tremendous and workers burned calories at a greatly accelerated rate. Revolutionary slogans instructed workers to “pledge to sacrifice your life to accomplish *Angkar’s* work”⁵⁹ and to remain “on the worksite until death!”⁶⁰

The CPK central leadership appears to have soon become aware that labour conditions had severely weakened the population. For example, already in August 1976, Pol Pot observed at a meeting that “some regions managed to harvest three tons” of rice but “they became tired, because we were attacking everywhere at once [and] [t]o attack in this way over a long period of time is impossible.”⁶¹ However, this concern for the health of the civilian workforce was quickly brushed aside and Pol Pot stated that a “rearranged” and “improved” party “line, classifying some places as ones which could be harvested once a year and other places as ones which could be harvested twice a year” would fully solve this issue.⁶²

3.3. Flawed Agricultural Practices

CPK agricultural policy also suffered from flaws in implementation, further widening the gap between expectations and reality. The largest of these flaws was the Party Center’s assumption that massive irrigation projects could rapidly solve

56 *Id.* at 236.

57 Due to the lack of mechanized equipment and trained engineers as well as Cambodia’s closed borders, which prevented the importation of machinery and expertise, major infrastructure projects were attempted using human labour alone. Most of these projects were irrigation-related and often conditions at worksites were abysmal, with workers dying regularly of starvation, exhaustion and diseases. *See, e.g.,* DY, *supra* note 25, at 37-38 (providing an overview of the national system of forced labour enforced by the CPK during the Khmer Rouge period).

58 *See, e.g., id.* Survivors also consistently report 10-15 hour workdays in interviews conducted by the author as well as those on file at DC-Cam. A CPK slogan told Cambodian workers that “[i]f you do not complete your task during the day, you will complete it by night.” LOCARD, *supra* note 12, at 222.

59 LOCARD, *supra* note 12, at 230.

60 *Id.* at 306.

61 *See* Preliminary Explanation, *supra* note 32, at 131.

62 *Id.*

the “water problem”⁶³ and thereby achieve a second rice crop in fertile areas.⁶⁴ To solve the water problem, the Center ordered the creation of a national system of dikes, canals and dams to capture, store and redistribute seasonal monsoon rainwater year-round.⁶⁵

The regime’s leaders again assumed that a mix of revolutionary zeal and ingenuity could overcome any problems. In an April 1977 radio address marking the second anniversary of the Khmer Rouge victory, CPK Prime Minister Khieu Samphan boasted that when building dams, workers “learn technical skills and implement them while working.”⁶⁶ In the same address, he admitted that the irrigation systems hastily thrown together by the CPK might not last, but argued that “[w]hether the dams and reservoirs that we have built last only five or 10 years does not matter [because] [i]n the five or 10 years to come we shall be much more developed, richer and more experienced than we are now, and we will grasp many more technical skills than we do now.”⁶⁷ The result of this reckless rush forward was a series of fundamentally flawed irrigation projects that cost thousands of lives to build, yet were prone to collapse or failure during annual floods.⁶⁸

Other aspects of the CPK’s plan to achieve three tons per hectare illustrate the Khmer Rouge leadership’s lack of understanding of large-scale agricultural production. For example, in many areas, Cambodia’s individual plots of land that spread across the countryside in a variety of shapes and sizes were reorganized into uniform one-hectare squares. This required a series of new rice paddy walls that

63 *Id.* at 145 (“In the plan we have raised the issue of water. This problem is not new. We raise it again in order to solve it. To grow one or two crops of rice per year, we must have water. If we understand the problem of water, we must solve it so adequate water will be available.”).

64 A second rice crop had never been achieved in Cambodia on a large scale prior to the Khmer Rouge period. See KIERNAN, *POL POT REGIME*, *supra* note 23, at 8. Typically, Cambodian rice farmers have grown small amounts of “dry-season rice” irrigated by makeshift water retention devices located along receding waterways. This rice is known as “recession rice” because the planting follows the receding water during the dry season. See *Topography, Climate and Rice Production in RICE PRODUCTION IN CAMBODIA*, *supra* note 15, at 15.

65 See, e.g., Preliminary Explanation, *supra* note 32, at 145-47 (outlining plan to achieve multiple annual rice crops through overhauling national irrigation systems.).

66 Khieu Samphan, *1977 Anniversary Address*, DC-Cam Doc. D29015. Khieu Samphan goes on to deride “so-called agricultural experts of the previous era” saying that if it had been up to these “Japanese, French, [or] British experts” Cambodia “would have remained deprived of water for rice planting and rice for national construction for years and years to come”). *Id.*

67 *Id.*

68 See, e.g., *RICE PRODUCTION IN CAMBODIA*, *supra* note 15, at 6 (“The Khmer Rouge irrigation systems were a disaster due to lack of technical knowledge. One estimate indicated that by the mid-1980s, 70-80% of these structures were unusable or useless.”).

often interfered with existing irrigation channels.⁶⁹

Another major problem was the severe lack of drought animals. The civil war and the US bombing campaign had reduced the number of oxen and water buffalo in Cambodia to critical levels by 1975.⁷⁰ These animals were crucial to rice production, as they were used to till rice fields and perform all types of heavy labour. High-level CPK officials acknowledged that drought animals were in low supply and “skinny” in some areas, but simply concluded that the revolution would grow feed, breed more animals and thereby quickly solve this problem.⁷¹

Fertilizer was also in extremely short supply. Again this problem was brushed aside by the leadership, which viewed this major problem as one “not difficult” to solve.⁷² The proposed fix, in line with the general policy of independence self-mastery, was to assign workers — usually children and the elderly — to collect human and animal excrement to use as fertilizer.⁷³ In some areas, survivors have even reported being forced to strip the flesh off of fresh corpses and burn the bones to

69 See, e.g., Jeffrey Himel, *Khmer Rouge Irrigation Development in Cambodia* (Apr. 11, 2007), at www.genocidewatch.org/images/Cambodia (Report sponsored by DC-Cam and authored by owner of Aruna Technology Ltd, whose expertise is in irrigation and water management infrastructure). This reorganization also had the unfortunate effect of allowing the Party Center to set rice production quotas with exacting specificity and produce a target amount of rice for each zone to remit as a “gift to the state.” See Preliminary Explanation, *supra* note 32, at 125.

70 When a US bomb attack occurred, villagers ran for shelter and into the jungle to avoid the bombs. However, there was no time to move animals and slow moving, large animals such as oxen and buffaloes were killed at a high rate. For a history of the US bombing campaign in Cambodia, see, e.g., KIERNAN, *POL POT REGIME*, *supra* note 23, at 16-25; see also Owen & Kiernan, *supra* note 16.

71 Excerpted Report, *supra* note 34, at 22-23 (stating that the problem of “skinny” buffaloes and oxen is merely an “infantile disease of socialism” that will be resolved.). The draft Four-Year Plan forecasted that Cambodia’s supply of oxen would double from 200,000 to 400,000 animals from 1977-1980 and that the supply of water buffaloes would more than triple, from 30,000 to 100,000 animals over the same period. See Four-Year Plan, *supra* note 32, at 94. No detailed explanation appeared in the plan concerning how this massive increase was to be achieved.

72 See, e.g., Excerpted Report, *supra* note 34, at 28-29:

As for ... problems such as fertilizers, they are not difficult. ... As a vanguard view we estimate that for the country as a whole, we will produce at least 500,000 tons of fertilizer, by calculating that one Subdistrict produces 1,000 tons. Kampuchea has more than one thousand subdistricts; but we take only 500 subdistricts as being able to produce fertilizer. If we had to buy it from abroad, we do not know where we would get the money. If we build a factory, we have to buy it first, and we do not know how many factories either. So this fertilizer movement is very strong. This shows that our people have a very strong combative consciousness, they believe in the revolution.

See also Four-Year Plan, *supra* note 32, at 89 (Table outlining planned types and amounts of fertilizer for 1977-1980); Preliminary Explanation, *supra* note 32, at 146-47 (Stating that there are “natural fish” that can be “turned into fertilizer” and that the “Tonle Sap [river] also has many fish that go upstream; many get caught in traps, many tens of tons, and we can increase our strength greatly by turning these fish into fertilizer. ... There is the possibility of making a good deal of capital from fertilizer.” This statement helps to explain the Center’s belief that Angkar owned all of Cambodia’s natural resources (e.g. fish stocks), which in turn made it illegal for civilians to privately harvest natural or wild food sources including fish.).

73 See, e.g., *id.* at 18.

ash for fertilizer.⁷⁴ The results were substandard fertilizer and the further spread of famine-related diseases through lack of sanitation.

Finally, a lack of pesticides plagued the agricultural sector, and pests such as rats, crabs and insects reportedly further damaged rice crops.⁷⁵

3.4. State Expropriation of Rice

To achieve a Super Great Leap Forward, the Party Center decreed that the CPK government had to “sell the maximum possible of [its] agricultural production” to raise capital.⁷⁶ Party rhetoric claimed: “The state is not taking exports from the people. Instead, we exchange goods for agricultural products on a collective basis.”⁷⁷ There is no evidence, however, to suggest that the CPK “exchanged” resources to assist civilians living in Cambodia’s countryside. Instead, beginning in 1976, the government exacted large quotas of rice for party use and export⁷⁸ and provided virtually nothing in return.⁷⁹

There are no surviving CPK documents that provide any specific aggregate

74 See, e.g., Sophearith Chuong, *Grandmother of “Fertilizer,”* II SEARCHING FOR THE TRUTH, Nov. 2000, at 45 (including translated transcription of interview survivor), www.dccam.org/Projects/Magazines/Previous%20Englis/IssueII.pdf; Sadie Blanchard, *You will be Soil for the Rice Field*, SEARCHING FOR THE TRUTH, 3d Quarter 2008, at 26, www.dccam.org/Projects/Magazines/Image_Eng/pdf/3rd_Quarter_2008.pdf (summarizing interviews of villagers in Trung Bat Mountain, Kra Lanh District, Siem Reap Province of Cambodia who stated that during the Khmer Rouge period a crematorium was operated nearby to turn the bodies of executed victims into ash which was subsequently used as fertilizer).

75 See, e.g., Marie Alexandrine Martin, *Rice Culture and Water Control in Democratic Kampuchea*, RURAL STUDIES MAGAZINE (July-Sept. 1983), DC-Cam Doc. D01062 (unofficial English translation by Jeffrey Himel and Nathalie Schnuriger).

76 See Preliminary Explanation, *supra* note 32, at 155. The expected income from these exports from 1977-1980 was \$1.4 billion USD, or 90% of the CPK’s expected foreign exchange. David P. Chandler & Ben Kiernan, *Preface*, in *POL POT PLANS THE FUTURE* xiv, *supra* note 31.

77 Preliminary Explanation, *supra* note 32, at 155.

78 Only scattered and inconclusive primary CPK documentation of rice exports has survived to this day. Survivors, however, report that ships with Chinese markings regularly left Kampong Som seaport loaded with unknown quantities of rice and other goods. See “Commerce Dossier” (a large volume of correspondence between China and Cambodia regarding trade issues and sometimes discussing specific quantities of rice. This document, written in a mix of Khmer and Chinese languages, is available in hard copy available at DC-Cam, selected documents translated for author by DC-Cam).

79 What little imports did come into Cambodia arrived mostly in the form of weapons and machinery rather than food, save for several shipments of Chinese “assistance rice” beginning in mid-1975 and ending in 1976. See, e.g., State Commerce Committee, 33 *Assistance Rice* documents, DC-Cam Doc. D20468 (Mar. 15, 1976) (listing “income” of rice as 4,970,122 kg); D20469 (Apr. 30, 1976) (listing “income” of rice as 1,720,122 kg); D20470 (May 31, 1976) (listing “income” of rice as 844,122 kg). According to available documentation at DC-Cam, this assistance rice was then distributed throughout the country, but it is unclear if it was used as food or as seed for the planned push to increase rice yields. The use of the name “33 Assistance Rice” suggests the latter, as it is likely this phrase referred to a fast-growing strain of Chinese rice that only grows to approximately thirty-three centimetres in height.

amounts of rice exported during the Khmer Rouge period.⁸⁰ Nonetheless, evidence does exist suggesting that the CPK exported large quantities of rice throughout the Khmer Rouge period. First, numerous survivors of the period, including former Khmer Rouge cadres, have stated in interviews that they witnessed large quantities of rice being expropriated by the CPK government and apparently prepared for export. For example, in 2013 former CPK state warehouse official Ros Suoy testified before the Extraordinary Chambers in the Courts of Cambodia that he worked at two warehouses in and around Phnom Penh between 1975 and 1979, and that he was aware that at least several other similar state warehouses existed in the area at the time.⁸¹ Ros Suoy further testified that only unmilled rice was eaten within the country and that his warehouse often had to keep “four to five” rice mills operating constantly in order to process sufficient rice to meet the CPK’s demands for exports.⁸² Meanwhile, Ros Suoy stated that unmilled rice was kept in reserve for export orders and that, although other goods such as salt and cement were distributed from the warehouse to locations within Cambodia, rice was never redistributed within the country.⁸³

Certain primary CPK documents, such as surviving reports of the CPK’s “State Commerce Committee,” based in Kampong Som (now Sihanoukville), Cambodia’s sole deep-water port, generally support this assertion. These reports, transmitted to the central CPK leadership in Phnom Penh, accounted for “income” and “expenditure” of rice.⁸⁴ Many were signed by a person named Roeung, whom Ros Suoy testified was his superior, and suggest that the CPK operated a system whereby unmilled rice would be shipped from all locations in the countryside to state warehouses near Phnom Penh where it was processed, packaged and sent to Kampong Som seaport for export under the supervision of Roeung and the

80 Chhang Interview, *supra* note 22. The exception is the “Commerce Dossier,” discussed *supra* note 78. It is clear however, that Chinese ships regularly docked at Cambodia’s deep-water port in Kampong Som throughout the Khmer Rouge period. In interviews granted after the Khmer Rouge period, CPK dock workers claimed that they loaded tons of rice onto these ships. The only known official CPK documents that report the exportation of rice are a pair of communiqués dated 15 September 1977 from “Sarin” copied to “Oum, Van [Jeng Sary], Vorn and Kieu,” which report that a ship was scheduled to transport 5,000 tons of rice to Madagascar. See *Production Exporting to Madagascar from 1/1/77 to 11/6/77*, DC-Cam Doc. D20715; *Rice Production Exported to Madagascar from 1/1/77 to 11/6/77*, DC-Cam Doc. D22941.

81 Doreen Chen, *Former Warehouse Official Provides Limited Insight on Accused Persons’ Knowledge of Arrests, Rice Distribution*, Cambodia Tribunal Monitor Blog (25 April 2013), at www.cambodiatribunal.org. [CTM: “Former Warehouse Official”]. The Extraordinary Chambers is a hybrid Cambodian-United Nations tribunal with jurisdiction over international and domestic crimes committed in Cambodia between 1975 and 1979.

82 *Id.* Ros Suoy further testified that the warehouse he supervised regularly prepared large amounts of rice for export. *Id.*

83 *Id.*

84 The documents discussed are examples of the available documentation; other documents outlining CPK expropriation of rice are also available in the DC-Cam archives.

State Commerce Committee.⁸⁵ A more limited number of surviving CPK documents discuss specific instances of actual or planned rice exportation,⁸⁶ and a 1977 article in the *Far Eastern Economic Review* reported that the CPK government had purchased large quantities of jute sacks, commonly used to transport rice, in an apparent attempt to prepare for massive rice exporting activities.⁸⁷

Although precisely how much rice was exported from Cambodia during the Khmer Rouge period is likely unknowable, there appears to be ample available evidence in the form of primary CPK documentation, potential witness testimony, and circumstantially, proving the basic fact that the CPK government exported large quantities of rice over extended periods of time while in power even as Cambodian civilians died by the thousands of famine.

4. DEEPENING FAMINE: PURITY, PARANOIA AND VIOLENCE

While the CPK Party Center set Cambodia down the path to famine through the implementation of flawed agricultural practices, overwork, and state expropriation of rice, additional policies emanating from the Center served to worsen famine conditions. Khmer Rouge leaders sought to achieve absolute socialism rapidly by banning all perceived vestiges of private ownership. This desire for purity ended individual cultivation of subsistence gardens as well as the traditional famine prevention and coping activities of foraging, hunting and fishing. The regime also distrusted anyone who had lived in the urban power centers of the Lon Nol government during the civil war and subjected these groups to especially harsh labour and living conditions, making famine especially acute within this group. Finally, the healthcare sector was dismantled by the Party Center, contributing to the further spread of disease amongst a population already compromised by famine.

4.I. The Pursuit of Pure Socialism

A surviving unsigned CPK document dated 20 December 1976 states: “The socialist revolution encompasses everything. This is what is basic about our revolu-

85 See CTM: “Former Warehouse Official,” *supra* note 81.

86 See, e.g., *Business Meeting Between Democratic Kampuchea and Korea’s Ministry of Commerce Committee 51*, DC-Cam Doc. D22718 (Dec. 6 1976) (translation available in SEARCHING FOR THE TRUTH, 3d Quarter 2004, at 8, www.dccam.org/Projects/Magazines/Image_Eng/pdf/3rd_Quarter_2004.pdf (“Rice: This year rice production is very good. We plan to sell some to other countries. But the priority is to sell to our allies. If [North] Korea agrees to buy our rice, they can sell it to other countries if they want to. We want to sell Korea 50,000 tons of rice in 1977.”).

87 Nayana Chanda, *Cambodia Goes to Market*, FAR EASTERN ECON. REV., May 20, 1977.

tion.”⁸⁸ In order to implement this party line of all-encompassing socialism, money was immediately banned and Cambodian villages were reorganized into cooperatives shortly after the final victory of 17 April 1975. Communal eating was established nationwide by early 1977.⁸⁹ All private ownership was abolished and personal belongings, including cookware, were confiscated. Literally everything became the property of the revolution, including all agricultural production and even wild food sources.⁹⁰ CPK party slogans warned the starving civilian population: “Hands off the people’s property! Not a single grain of rice, a single chilli, a single needle!”⁹¹ Other slogans drove the point home, reminding the people that “enemies” of the revolution included “[t]hose who boil rice in secret or in private.”⁹² The CPK government also severely restricted civilian freedom of movement and constantly searched for perceived enemies of the revolution, rendering it difficult and dangerous for Cambodians to secretly forage for food.⁹³

4.2. Mistreatment of “New” People

CPK propaganda promoted an ideology modeled on Chinese-Marxist theory, which blamed “feudalists” and capitalists for the economic woes of Cambodia’s peasantry.⁹⁴ The stated goal of the revolution was to eliminate Cambodia’s social class structure altogether and turn everyone into a worker-peasant, under the party’s “proletarian dictatorship.”⁹⁵ The minutes from a CPK Standing Committee meeting held on 11 March 1976 state:

88 See, e.g., *Report of Activities of the Party Center According to the General Political Tasks of 1976* (Dec. 20, 1976), in *POL POT PLANS THE FUTURE* 182, 183, *supra* note 31 [hereafter *Report of Activities*].

89 See KIERNAN, *POL POT REGIME*, *supra* note 23, at 58 (“Communal eating was probably foreshadowed in May 1975, but it was not ordered until 1976.”).

90 As one CPK slogan put it: “Absolutely everything belongs to the Angkar.” LOCARD, *supra* note 12, at 277.

91 *Id.* at 83.

92 *Id.* at 183.

93 See, e.g., Kim Cheam aka Kosal, *My Life During the Pol Pot Regime*, *SEARCHING FOR THE TRUTH*, 2d Quarter 2006, at 53, www.dccam.org/Projects/Magazines/Image_Eng/pdf/2nd_Quarter_2006.pdf; Chab Chanda Pheakdey, *Five Sons in the Khmer Rouge Butchery*, *SEARCHING FOR THE TRUTH*, 2d Quarter 2007, at 56, www.dccam.org/Projects/Magazines/Image_Eng/pdf/2nd_Quarter_2007.pdf; Sotheany Hin, *To Be Starved Like a Prisoner*, *SEARCHING FOR THE TRUTH*, 2d Quarter 2007, at 22, www.dccam.org/Projects/Magazines/Image_Eng/pdf/2nd_Quarter_2007.pdf.

94 See, e.g., DY, *supra* note 25, at 5-12 (providing a basic overview of the formation of the Khmer Rouge movement and stating that key Khmer Rouge leaders who were students in Paris, France in the 1950s “saw peasants and poor people throughout the world as enslaved and repressed by capitalism and feudalism. They thought a Marxist-Leninist revolution was the only way Cambodia could attain independence and social equality.”).

95 See Karl D Jackson, *Cambodia 1977: Gone to Pot*, 18 *ASIAN SURVEY* 76, 78 (Jan. 1978) (citing radio address by Pol Pot of September 27, 1977).

[I]t is necessary to put an end to feudalism. We have reached this stage. The whole feudal regime has been destroyed and definitively dismantled by the Revolution. The Monarchy existing for over 2000 years has finally been dismantled. We do not have any other alternatives. Reactions will certainly take place, but we must follow the path of the Revolution in order to win.⁹⁶

After the CPK swept into power, Cambodia's pre-existing social structures were quickly dismantled and, despite Khmer Rouge rhetoric extolling the virtues of a classless society, a new three-tiered caste system quickly developed. At the top of this rigid class structure were full-rights CPK party members,⁹⁷ followed by "base" people who were rural-based civilians who had lived in areas under Khmer Rouge control prior to 17 April 1975.⁹⁸ The bottom rung of this new system was occupied by so-called "new" or "17 April" people who had lived in the areas controlled by the Lon Nol regime when the CPK took power.⁹⁹ Despite the fact that many of these "new people" actually hailed from the countryside but had fled to urban areas to escape the civil war, they were scorned by the CPK and Party slogans labeled them "prisoners of war."¹⁰⁰ New people were viewed as a source of hidden enemies working to undermine the revolution and denied even the most basic rights and freedoms.¹⁰¹

One result of the Party Center's scorn towards new people was especially severe famine conditions within this group, as new people were subjected to repeated forced relocation and received the worst of everything, including rations, work assignments, housing, medical care and sanitation. Those new people who survived relocation trips typically arrived in areas lacking the infrastructure, including extra shelter and food, necessary to accommodate a population influx.

One major example of how the general mistreatment of new people led to more severe famine conditions was the mass forced transfer of new people to the Northwest Zone in 1976. Northwest Cambodia was long known as the country's rice bowl, and the Zone was subjected to especially high rice production quotas by

96 *Minutes of the Standing Committee of the Front*, DC-Cam Doc. D7562 (Mar. 11, 1976) (unofficial translation by Bunsou Sour and edited by Professor David Chandler).

97 For an explanation of the process whereby Cambodians could become eligible for membership in the CPK, see *Statute of Angkar*, DC-Cam Doc. D21490.

98 See, e.g., Dy, *supra* note 25, at 30-31.

99 See *id.*

100 LOCARD, *supra* note 12, at 186.

101 See, e.g., Alexander Hinton, *Agents of Death: Explaining the Cambodian Genocide in Terms of Psychological Dissonance*, 32 SEARCHING FOR THE TRUTH, Aug. 2002, at 38, www.d.dccam.org/Projects/Magazines/Previous%20Englis/Issue32.pdf.

the CPK. In 1976, the leadership announced that the Zone needed “additional forces” to achieve the rice production targets assigned to it and ordered the evacuation of 500,000 to 800,000 new people to the Zone.¹⁰² Those who survived the trip were sent to areas that lacked the capacity to house and feed them, creating especially high famine mortality amongst new people in the Northwest Zone.¹⁰³

Upon arriving in their designated cooperative, new people were scorned and essentially enslaved in service of the revolution. One CPK slogan stated: “Where there are I7 April people, no development is possible.”¹⁰⁴ Another slogan viewed new people as useless hungry mouths to feed: “The new people bring nothing but stomachs full of shit, and bladders bursting with urine.”¹⁰⁵ Still another slogan derided new people as “parasitic plants” sapping strength from the revolution.¹⁰⁶

One survivor’s experience illustrates the scorn with which starving new people were treated:

In 1977 I became emaciated and was sent to a hospital. However, *Angkar’s* medical staff were heinous. They accused me of having a consciousness illness. In fact I was sick. I was starved. I became smaller and smaller to the point that my knees appeared to be bigger than my head. Even with such conditions, they still could not see what was really wrong with me. They hated April I7 People so much.¹⁰⁷

4.3. Revolutionary Medicine: Denial of Basic Medical Care

Another consequence of the policy of independence self-mastery and the CPK’s distrust of new people, including health professionals, was a complete denial of basic medical care. The CPK systematically dismantled Cambodian civil society, including the nation’s already weak medical infrastructure. Many of the nation’s experienced doctors were executed or hid their background from the suspicious *Angkar* because indicators of a privileged or urban background such as

102 For an overview of conditions in the Northwest Zone, see, e.g., KIERNAN, POL POT REGIME, *supra* note 23, at 216-50.

103 See *id.*

104 LOCARD, *supra* note 12, at 184.

105 *Id.* at 185.

106 *Id.*

107 See Sokhym Em, *Female Patients*, 33 SEARCHING FOR THE TRUTH, Sept. 2002, at 25, www.d.dccam.org/Projects/Magazines/Previous%20Englis/Issue33.pdf [hereafter *Female Patients*].

education or professional training were viewed with extreme skepticism by the Khmer Rouge and created a high risk of summary execution if discovered.¹⁰⁸ As a result, “revolutionary hospitals” were often no more than depots where the injured and sick were deposited and subsequently ignored, and were staffed largely by illiterate teenage girls with “clean” revolutionary biographies with no regard given to their actual ability to provide healthcare services.¹⁰⁹

Additionally, the party line of independence self-mastery resulted in medicines being imported only from China or other preferred nations, leading to massive deficits of basic items. What little medicine the CPK did have was apparently reserved primarily for party members and the military.¹¹⁰

The CPK Center addressed the pervasive lack of medicine in ineffectual ways. Abundant food for civilian consumption — which never materialized — was the first of two equally non-existent lines of defense against the spread of disease. A 1976 CPK document described food as “the important medicine to prevent sickness,” stating: “If there were enough to eat, there would also be little sickness.”¹¹¹ When sickness did strike, often as a result of endemic famine, the second line of defense was the employment of “traditional” or revolutionary medicines.¹¹² These pseudo-medicines were usually a mixture of various plant products rolled into balls

108 See, e.g., Damien de Walque, *Selective Mortality during the Khmer Rouge Period in Cambodia*, 31 POP. & DEV. REV. 351, 358-61 (2005) (estimating that Cambodians with at least a secondary school education had a nearly 30% probability of dying during the Khmer Rouge period, a significantly higher percentage than non-educated and/or younger population cross-sections.). For a review of the estimates of de Walque and others, see Tabeau & Kheam, *supra* note 4.

109 See *Female Patients*, *supra* note 107, at 26 (confirming through interviews that “most of Angkar’s medical staff were very young — from 14 to 15 years of age — with at most three months of technical training”). See also Sokhym Em, *Revolutionary Female Medical Staff in Tram Kak District*, 34 SEARCHING FOR THE TRUTH, Oct. 2002, at 24, www.dccam.org/Projects/Magazines/Previous%20Englis/Issue34.pdf [*Revolutionary Female Medical*]; Keo Kanitha Kim, *Clean-Cut Children, A Failure of the Revolution*, 21 SEARCHING FOR THE TRUTH, Sept. 2001, at 20, <http://www.dccam.org/Projects/Magazines/Previous%20Englis/Issue21.pdf> (discussing how the Khmer Rouge viewed children as “blank” slates who could be fully indoctrinated and how as a result of this preference for children members, hospitals were largely staffed by young teenagers during the Khmer Rouge period).

110 There are CPK documents that show the importation of medicines but there are no reports by civilians of receiving any actual medical care. There are documents listing the importation of medicines from Korea and China and also bought apparently from Hong Kong (likely in exchange for state-expropriated rice), but these medicines appear to have been reserved only for Party members and possibly the military. DC-Cam documents on file with author and available at DC-Cam.

111 Excerpted Report, *supra* note 34, at 30.

112 See, e.g., Sokhym Em, ‘Rabbit Dropping’ Medicine, 30 SEARCHING FOR THE TRUTH, June 2002, at 22, www.dccam.org/Projects/Magazines/Previous%20Englis/Issue30.pdf.

“Rabbit dropping” medicine consisted of plant roots, tree bark, the sap of the tropical thnung tree, and other ‘natural’ compounds. It was produced by female medical staff (many of whom were illiterate or semiliterate) during the [Khmer Rouge] regime. Made without proper scientific testing, it was rarely known to help patients, and often made them worse or killed them.

These balls were referred to as “Rabbit Medicine” because they resembled rabbit droppings in both appearance and bitter taste. See *id.*

and administered orally — or worse, dissolved in unsanitary liquids such as coconut juice and injected by untrained nurses with dirty, reused needles. When administered, such medicines were usually ineffectual and often worsened a victim's health. This “revolutionary medicine” likely increased the number of famine-related deaths across the country.¹¹³ Nonetheless, at times the CPK boasted of the regime's “mastery” of medical care.¹¹⁴

It was also dangerous admit to being sick in the first place. The suspicious CPK Center accused overworked and underfed workers of feigning illness to avoid work and obtain more food. Various CPK slogans mocked sick and starving Cambodians, telling them: “The sick are victims of their own imagination”¹¹⁵; “[t]he ill are sly as rabbits, and can swallow a whole pot of rice”¹¹⁶; and “[w]e must wipe out all those who imagine they are ill, and expel them from our society.”¹¹⁷ A further slogan mocked Cambodians wracked by hunger, telling them that they had caught an “imaginary disease.”¹¹⁸ There was usually no respite for the exhausted, underfed and disease-plagued civilian population and many victims simply collapsed and died from exhaustion, undernutrition and disease.

4.4. Using Violence: Enforcing Policy and Blame-Shifting

The CPK Center not only enacted policies that created mass famine, but also enforced these policies through acts of extreme violence. The revolution, embodied by the members of the Party Center, was infallible according to CPK rhetoric and ideology.¹¹⁹ Despite the obvious flaws in CPK policy, this myth of infallibility was jealously guarded throughout the Khmer Rouge period by a mix of denial and blaming any admitted shortcomings on supposed anti-revolutionary groups working to sabotage the revolution. These perceived “internal enemies” were to be

113 *Revolutionary Female Medical*, *supra* note 109, at 26.

114 See IENG SARY'S REGIME: A DIARY OF THE KHMER ROUGE FOREIGN MINISTRY, 1976-79, at 33 (Phat Kosal, Ben Kiernan & Sorya Sim, trans., New Haven: Yale Center for International & Area Studies, 1998) (quoting Foreign Minister Ieng Sary saying: “We have built up medical specialists. We are able to produce medicine. We master this field 100% at the moment.”).

115 LOCARD, *supra* note 12, at 188.

116 *Id.* at 190.

117 *Id.* at 188.

118 *Id.* at 190 (“You shiver with fever, you shake like a tractor, you vibrate like a motor car, you ache for food, you quiver from laziness, you've caught an imaginary disease.”). See also *Female Patients*, *supra* note 107 (providing an anecdotal account).

119 CPK propaganda and rhetoric from the time reflected this myth of the infallible revolution. See, e.g., LOCARD, *supra* note 12, at 75, 112 (reporting Khmer Rouge slogans: “The clear-sighted and radiant revolution”; and “We, the Communist Party, we follow the correct and clear-sighted line”).

sought out and “smashed” (i.e. killed) according to official CPK policy.¹²⁰ This mix of hubris and paranoia resulted in a nationwide system of violence and terror. The smallest miscue or perceived slight against the revolution could result in death. Even veteran revolutionaries were not immune from the wrath of *Angkar*, especially as internal purges began to spread throughout all levels of the CPK.¹²¹ Anyone, including CPK party members, who complained about working conditions or insufficient food rations risked being arrested, tortured and executed.¹²² In some instances local officials were directly scapegoated for causing starvation in rather transparent attempts to shift blame away from CPK policies.¹²³ Through this process of denial, blame-shifting and systematic murder, the CPK central leadership effectively avoided acknowledging its responsibility for famine and responded to reports of hunger and starvation with violent purges that only made conditions worse.

Early in the Khmer Rouge period the core CPK leadership began to purge party members who showed any resistance to its quixotic social or agricultural policies. For example, prominent left-wing intellectual Hou Yuon, who had served as a public CPK figure for years leading up to the Democratic Kampuchea period,¹²⁴ was apparently secretly purged soon after the Khmer Rouge took power for opposing the CPK party line on issues such as the abolishment of money and

120 See *Proclamation of the Central Committee of the Communist Party of Kampuchea: The Party's Policy Towards Those Who Accidentally Joined the CIA, Vietnamese Agencies or the KGB against the Party, the Revolution, the People, and Democratic Kampuchea*, DC-Cam Doc., D2I228, 22 SEARCHING FOR THE TRUTH, Oct. 2001, at 11, www.d.dccam.org/Projects/Magazines/Previous%20Englis/Issue22.pdf.

121 For a history of the purges of the Eastern Zone, see KIERNAN, *POL POT REGIME*, *supra* note 23, at 369-76, 393. For a history of the purge of the West, see *id.* at 68-80. See also generally DY, *supra* note 25, at 38-40.

122 See, e.g., Sopal Ly, *Confession Summary: Pouy Tyang*, SEARCHING FOR THE TRUTH, 4th Quarter 2004, at 3, www.d.dccam.org/Projects/Magazines/Image_Eng/pdf/4th_Quarter_2004.pdf (confessing to a wide array of traitorous activities including destroying *Angkar's* farm equipment, seedlings and crops as well as sowing dissent about the party's rice policy and food shortages).

123 See, e.g., Farina So, *Confession Summary: Mok Heng, Chambkar Leu District Ministry of Commerce Chief*, SEARCHING FOR THE TRUTH, 4th Quarter 2004, at 6, www.d.dccam.org/Projects/Magazines/Image_Eng/pdf/4th_Quarter_2004.pdf. Mok Heng was in the unfortunate position of being responsible for allocating and remitting rice to the CPK leadership. He was arrested and sent to S-21 prison on 1 March 1977, where he became a direct victim of scapegoating by the regime based on the object failure to achieve the three tons per hectare rice production quota. He was forced to confess to “export[ing] rice, corn, beans, oxen, and buffalo to the CIA base zone, and wr[iting] letters ordering villagers to bring sugar, rice, and banana preserves to sell in the Lon Nol-controlled zones” during the 1970-1975 civil war. Between May and July, 1970 Mok Heang's anti-revolutionary activities include sending “7,200 kg of rice and 6 sacks of banana preserves to [hidden enemy] agents, and kill[ing] pigs to sell to villagers.” After the Khmer Rouge victory in April of 1975, Mok Heang allegedly continued his acts of economic sabotage unabated by urging only base people to work in the fields, while allowing evacuated city people to just stay home and eat. This allegedly caused the base people to work less because they were angry with the Khmer Rouge, leading to starvation that year in the district.

124 See Four-Year Plan, *supra* note 32, at 64.

foreign relations.¹²⁵ As the Khmer Rouge period progressed and famine worsened, it was considered a crime against the revolution punishable by execution to criticize CPK policy or even to acknowledge the existence of famine or starvation. For example, Cambodian expatriate returnee¹²⁶ Chin Suon was arrested, tortured and executed, ostensibly for having attended meetings “to discuss starvation, overwork, the loss of freedom, the stealing of collective goods, and the conditions of families living in foreign countries.”¹²⁷

The Party Center’s penchant for responding violently to reports of agricultural failure is exemplified by events in the Northwest Zone, where the combination of especially high rice quotas and the arrival of hundreds of thousands of new people in early 1976 caused severe famine conditions. In mid-1976, newly appointed CPK Minister for Social Affairs Ieng Thirith was sent to the Northwest Zone to “investigate charges of shortcomings in the health, diet, and housing of the worker-peasants.”¹²⁸ In a subsequent interview with journalist Elizabeth Becker, Ieng Thirith said that she found evidence of “problems” and that “conditions were very queer.” Specifically, Ieng Thirith said:

In Battambang I saw [local party members] made all the people go to the rice fields. The fields were very far away from the villages. The people had no homes and they were all very ill. . . I know the directive of the Prime Minister [Pol Pot] were that no old people, pregnant women, women nursing babies, or small children were to work in the fields. But I saw everybody in the open rice fields, in the open air and very hot sun, and many were ill with diarrhea and malaria.¹²⁹

Despite witnessing this suffering, Ieng Thirith did not consider the possibility that the Party’s socio-economic policies needed to be revised. Instead, she concluded that “agents had got into our ranks” all the way to the “highest ranks” and that these enemies “had to behave with double faces in order to make as if they were

125 See, e.g., *Planning the Past: The Forced Confessions of Hu Nim*, in POL POT PLANS THE FUTURE 304, *supra* note 31 [hereafter *Confessions of Hu Nim*] (accusing Hou Youn of this stance).

126 Shortly after the 17 April 1975 victory, Party Center member Ieng Sary issued a public call for the numerous highly educated Cambodians living abroad to return to Cambodia in order to assist with the reconstruction of the country. The vast majority of those who returned were shortly thereafter arrested and sent to S-21 prison where they were tortured and executed, often along with their entire family. For an overview and analysis of S-21 prison, see generally CHANDLER, VOICES FROM S-21, *supra* note 37.

127 Kalyan Sann, *Confession Summary: Chin Suon*, SEARCHING FOR THE TRUTH, 4th Quarter 2005, at 13, www.dccam.org/Projects/Magazines/Image_Eng/pdf/4th_Quarter_2005.pdf.

128 BECKER, *supra* note 21, at 236.

129 *Id.*

following our line [i.e. policies].”¹³⁰ Thus, in her view, it was not the attempted implementation of the Party line, but deviance from the line by “internal enemies,” that was responsible for causing famine and disease.¹³¹ The Northwest Zone was subsequently violently purged and CPK officials from the Zone were forced to confess to sabotaging rice crops under torture before being executed.¹³²

Similarly, in the North Zone, perceived opposition to famine-inducing policies and complaints about living conditions were used as a pretext for an internal purge. Koy Thuon aka “Thuch” was a veteran revolutionary who was North Zone Secretary from 1970 until April 1976, when he was reassigned by the Party Center to the CPK’s Commerce Ministry in Phnom Penh.¹³³ Ke Pauk, a CPK Central Committee member and Thuch’s political rival who was known for his willingness to enforce more extreme policies replaced Thuch as North Zone Secretary.¹³⁴ Shortly after assuming control of the Zone, Ke Pauk sent a telegram to the Party Center that reported on “the enemy, the masses, and cultivation in the northern zone” and stated: “The enemy says that the revolution is too strict. They oppose the idea of cooperatives and the construction of new dikes. They also complain about starvation.”¹³⁵ As he informed the Center, Ke Pauk “advised regions to investigate the above-mentioned enemy activities closely. We have already arrested the former cooperative chiefs. In addition to these actions, the enemy has a hidden network, which we are investigating. We will take appropriate measures to deal with this.”¹³⁶

In 1977 Thuch was arrested and sent to S-2I prison where he was forced to claim that he had been party to a subversive plan to “‘produce confusion’ by reinstating private property.”¹³⁷ After Thuch was executed, the prison staff at S-2I who had tortured and executed him were told that eliminating the “strings” or “networks” of traitors associated with Thuch had solved “problems of defense and construction and problems affecting people’s livelihood.”¹³⁸

Hu Nim, another prominent Cambodian leftist who became the CPK Minis-

130 *Id.*

131 *Id.* at 236-37.

132 See CHANDLER, VOICES FROM S-2I, *supra* note 37, at 68-70.

133 See *The First Congress Meeting of the People’s Representative Assembly*, DC-Cam Doc. D21227 (Apr. 11-13, 1976), in DY, *supra* note 25, at 71 [hereafter First Congress Meeting]. Another CPK document lists Koy Thuon as “vice-minister of economy and finance.” See *Composition of the Royal Government of National Union of Cambodia*, DC-Cam Doc. D24008.

134 See, e.g., ALEXANDER LABAN HINTON, WHY DID THEY KILL? CAMBODIA IN THE SHADOW OF GENOCIDE 152 (2004).

135 *Telegram 94*, SEARCHING FOR THE TRUTH, 2d Quarter 2003, at 11, www.d.dccam.org/Projects/Magazines/Image_Eng/pdf/2nd_Quarter_2003.pdf. The document was also copied to “Brother Nuon [Chea],” and “Brother Khieu” (most likely fellow CPK leader Son Sen).

136 *Id.*

137 HINTON, WHY DID THEY KILL?, *supra* note 134, at 63.

138 *Id.*

ter of Propaganda during the Democratic Kampuchea period, was secretly arrested in April 1977 and later executed. According to one report, Hu Nim suggested that the Party reintroduce money to incentivize peasant workers to produce more crops after a particularly bad harvest.¹³⁹ A former CPK regimental commander who defected to Thailand in 1978 has “claimed that ‘several members of the Party such as Hu Nim and [Ros] Nhim asked the Party to have mercy on the people’” and this led to them being purged.¹⁴⁰ After being arrested, Hu Nim was transferred to S-2I where he was systematically tortured and forced to author a series of “confessions” until his execution in August of 1977.¹⁴¹

In some of these confessions, Hu Nim managed to point out some of the basic problems with CPK policy. For example, Hu Nim described of the actions of four supposedly fellow anti-revolutionary “intellectuals” he worked with in an office code-named K-33 as follows:

When the Office was short of food and we ate only gruel, the four of them attacked collectivization. . . . One day during a general meeting of the Office, Nak took a stand against collectivization and criticized the collective system, giving reasons such as the shortage of medicine, the shortage of food, and the inability to grow vegetables, catch fish, or raise animals.¹⁴²

Elsewhere in his confession, Hu Nim claimed that then-Northwest Zone Secretary Nhim Ros had “[disagreed] with the party on the path of agricultural construction”¹⁴³ and implicated him in “crimes” including resistance to the central leadership’s agricultural and social policies.¹⁴⁴ Hu Nim explained that, contrary to CPK policy, “brother Nhim’s concept was of a system of plenty. The concept of a system of plenty and of not relying on labour power are concepts opposed to the basic political line of the party, which is independence — self reliance — mastery.”¹⁴⁵ He described this line of “plenty” as “brother Nhim’s fundamental an-

139 Ben Kiernan, *Introduction to Planning the Past: The Forced Confessions of Hu Nim*, in *POL POT PLANS THE FUTURE* 230-31, *supra* note 31.

140 *Id.* at 231 (citing defector Lim Mean, who crossed into Thailand on 2 November 1978).

141 *Id.* at 227.

142 *Confessions of Hu Nim*, *supra* note 125, at 287-88.

143 *Id.* at 290.

144 *See id.* (alleging that Nhim Ros said: “The standpoint of the [CPK] Standing Committee on agricultural construction is basically to rely on labor power. I do not agree with that. In the Northwest, especially in Regions 3, 4, and 5 which are the granary of [Cambodia], there are vast farms kilometers long. In ploughing, harvesting, and threshing, the use of labor power alone has a retarding effect. Tractors and machinery must be used.”).

145 *Id.*

ti-party position.”¹⁴⁶ Hu Nim said that Nhim cultivated fellow internal enemies in Northwest Zone areas that are the “granary of Kampuchea,” by explaining that this area could only produce the “hundreds of thousands of tons of rice exported overseas” by utilizing modern farming techniques, including machinery.¹⁴⁷ Hu Nim also said that Nhim Ros had blamed the Party Center for demanding impossible production targets.¹⁴⁸

Later in his confession, Hu Nim said Eastern Zone Secretary Sao Phim shared Nhim’s desire to open Cambodia’s borders and to accept foreign aid.¹⁴⁹ The confessions of Hu Nim and fellow former prominent CPK members Koy Thuon and Doeun all implicated Sao Phim in an elaborate scheme to overthrow the CPK leadership. Sao Phim was a long-time revolutionary and, by most accounts, a popular leader. During his leadership the Eastern Zone was a relatively better place to live than others, with less executions and better rations.¹⁵⁰ The Eastern Zone was viewed with suspicion by the CPK leadership group, which feared Sao Phim’s autonomy, popularity, and ties with the hated Vietnamese communists.¹⁵¹ The Eastern Zone was thoroughly purged throughout 1977 and it was only a matter of time before Sao Phim was arrested and sent to S-21. In June of 1977, Sao Phim shot himself as CPK internal security officers were on their way to arrest him.¹⁵² Shortly after Sao Phim’s suicide, Sok Thuok, alias Vorn Vet, CPK Second Deputy Prime Minister and Minister of the Economy¹⁵³ was arrested and also implicated Sao Phim in a plot against the CPK Center:

[Sao Phim] informed me on the good situation in the East Zone. [The alleged enemy group, the ‘Workers Party of Kampuchea’] had been able to build itself up in the ranks of the military and among the people. Cooperatives had already been established,

146 *Id.*

147 *Id.* at 292.

148 *See id.* at 293. Quoting Nhim Ros as saying:

[T]he party has assigned us the task of achieving three tons per hectare throughout the whole country. As for the Northwest, in particular Regions 3, 4, and 5, the party has assigned us four tons per hectare . . . How can we [fulfill this quota], if there is no solution to the problem of tractors, machinery, and petrol? We cannot. This is not my fault, it’s the fault of the Standing Committee.

Id.

149 *Id.* at 296 (alleging that Sao Phim said: “[B]uilding agriculture is the same as making the country prosper quickly. We cannot just depend on our own forces, we must also rely on foreign aid”).

150 CHANDLER, VOICES FROM S-21, *supra* note 37, at 71-74.

151 The Eastern Zone shared a long land border with Vietnam and Sao Phim, as a long-time revolutionary fighter had spent time with Viet Cong forces. *See, e.g.*, HINTON, WHY DID THEY KILL?, *supra* note 134, at 164-67.

152 *See, e.g., id.*

153 *See* First Congress Meeting, *supra* note 133.

but the harvest was distributed and there was a private standard of living in accordance with the demands of the people [who] did not want to eat in common because they perceived that this meant shortages of everything. If they...lived privately, eating in families as in China, the people would be very happy.¹⁵⁴

Purged Northwest Zone Secretary Nhim Ros, implicated in Hu Nim's extensive confessions discussed above, was in a similar position as Sao Phim in that both were long-time revolutionaries before their affiliations with the Khmer Rouge movement and were thus presumably perceived as a threat to the absolute authority of the Pol Pot-led faction that dominated the central CPK leadership. Additionally, available evidence suggests that both men critiqued and/or strayed from the strictures of the CPK line regarding the requirements of the Super Great Leap Forward plan. As the Secretary of the Northwest Zone, Nhim Ros was put in an especially untenable position, as he was asked to produce thirty percent of the country's rice for export, without the benefit of the modern machinery that previously allowed Northwestern Cambodia to become the nation's rice-producing capital.¹⁵⁵ Thus, both men were apparently purged because they were not trusted by the highest echelons of the CPK leadership, in part due to a willingness to oppose some of the more extreme policies that were also the primary causes of famine.

While underperforming or mistrusted areas were violently purged, districts that reported achieving assigned rice production goals were labeled "model" cooperatives and earned the right to fly the Great Leap Forward flag, denoting their special achievement.¹⁵⁶ This practice created the incentive for local CPK officials to issue false reports to the Center in order to avoid its deadly scrutiny. Nevertheless, the CPK leaders assumed that problems with living conditions were the work of internal enemies. In 1978 Nuon Chea explained:

[T]he party had to give directives to a branch concerning the living

154 CHANDLER, VOICES FROM S-21, *supra* note 37, at 72.

155 See generally KIERNAN, POL POT REGIME, *supra* note 23, at 216-50 (providing an overview of living conditions, rice production quotas and purges of the Northwest Zone).

156 See *Decisions of the Central Committee on a Variety of Questions*, in POL POT PLANS THE FUTURE 3, *supra* note 31 [hereafter *Decisions of the Central Committee*]. For example, in 1977 the Central Committee of the CPK awarded the districts of Prasot, Kampong Tralach Leu and Tram Kak honorary red flags denoting their model status. See *Honorary Red Flag Award to the Districts of Prasot, Kampong Tralach Leu and Tram Kak*, 28 SEARCHING FOR THE TRUTH, APr. 2002, at 7, www.d.dccam.org/Projects/Magazines/Previous%20Englis/Issue28.pdf (original document dated 30 June 1977 on file with DC-Cam). See also *1976 Decisions of the Central Committee*, 26 SEARCHING FOR THE TRUTH, Feb. 2002, at 2, www.d.dccam.org/Projects/Magazines/Previous%20Englis/Issue26.pdf (translation of CPK Central Committee document explaining why certain areas were given the honor of flying the revolutionary flag).

conditions of the people. When nothing changed, we realized something was wrong. Where there were deviations to the left or to the right, we looked carefully into the backgrounds of the cadres. We also sought the opinion of the masses. We have thus been able to uncover enemy agents step-by-step.”¹⁵⁷

5. THE RESULT: FAMINE AND DENIAL IN CAMBODIA

By late 1975, the evacuation of Cambodia’s cities was complete, the borders closed and the CPK was firmly in control of national policy. The stage was thus set for the Khmer Rouge leadership to deliver on its promise of a new, more bountiful Cambodia. Instead, through what Cambodian history scholar David Chandler has aptly referred to as a “volatile mixture of hubris, paranoia, and wishful thinking[.]”¹⁵⁸ Pol Pot and the rest of the central CPK leadership almost immediately set the nation down a path to catastrophic violence and famine.

Conditions in 1975 did not provide the CPK with a true opportunity to overhaul national agricultural policies, as the final throes of the civil war had left much of the country unprepared to begin the rice-planting season.¹⁵⁹ As such, for the remainder of 1975, the Party Center established its power base and prepared to implement its planned radical overhaul of Cambodian society in 1976 in earnest. Indeed, it appears that during this period of consolidation and preparation, the meagre 1975 rice crop was left largely free from state expropriation. Moreover, the CPK’s full range of famine-inducing social policies, including bans on private cooking and eating and absolute collectivized living were not yet nationally implemented. Despite the trauma of the five-year civil war, the rapid end of international food aid, and the chaos caused by the evacuation of Phnom Penh, famine does not appear to have been widespread in 1975, although hunger was not unknown and many evacuees were left to fend for themselves, resulting in food shortages and the spread of disease.

Throughout 1975, the government also imported rice from China, which was received at Kampong Som seaport and subsequently distributed throughout the

157 Nuon Chea, “Denmark Statement,” *supra* note 18, at 30.

158 CHANDLER, VOICES FROM S-21, *supra* note 37, at 44.

159 The planting season for Cambodia’s main wet-season rice crop is May through July with rice shoots transplanted from late June through September. Fields must be prepared for planting and seed selected and allocated prior to planting season. *See, e.g.*, UN Food & Agriculture Organization, “Cambodia: Country Profile,” at <http://coin.fao.org/cms/world/cambodia/CountryInformation.html>.

country.¹⁶⁰ The imported rice, however, appears to have been destined for use as seed rather than consumption, as part of the CPK's preparations to overhaul Cambodia's agricultural sector.¹⁶¹ By the end of 1975, the Khmer Rouge-dominated faction of the CPK had assumed full power, with the entire nation under its direct control.¹⁶² The absence of mass famine in 1975 likely stoked belief amongst the central leadership in the superiority of the Cambodian revolution, contributing to the air of unrealistic optimism that reigned at the time within the upper CPK echelons. For example, in the handwritten minutes of a 10 July 1976 CPK meeting attended by Deputy Prime Minister and Minister of Foreign Affairs Ieng Sary, under the heading "The Current Political Tasks of Democratic Kampuchea" it states:

Emerging from the war, we focus on agricultural tools. This year, we have made these agricultural necessities available to a great extent both in the rural and urban areas, but we have never met with starvation. This year alone, we have rice, cassava and corn. Since 17 April 1975, we have opened a new historical page in which we have brought back the entire production mechanism....If we are compared to Vietnam and Laos, we see that Vietnam still remains a mixture of classes like Cambodia in 1965, whereas we have a complete class purification. In terms of rice production, Vietnam lacked 1,200,000 tons and Laos invited French companies to help, but we met basic needs which is unique in our history. In China, it is not good and in Russia, pretty good.¹⁶³

Lower-level CPK officials were instructed to follow, unquestioningly, the regime's broad policies in pursuit of the Super Great Leap Forward plan. These local leaders were instructed by the central leadership to "grasp hold of

160 See, e.g., 33 *Assistant Rice*, DC-Cam Doc. D22459 (Apr. 2, 1976); *State Commerce Committee Report on Rice for 28 August to 30 September 1975*, DC-Cam Doc. D21975 (Sept. 30, 1975); *State Commerce Committee Weekly Report on Rice from 1 to 8 October 1975*, DC-Cam Doc. D21985 (Oct. 8, 1975).

161 Surviving documentation repeatedly refers to rice imported in 1975 as "33 Assistance Rice." The CPK planned to increase rice production and national income partially by cultivating fast-growing rice varieties suitable for sale on the international market, especially to the regime's main trade partner, China. The CPK sought to achieve a second annual rice crop through this focus on fast growing varieties. As such, it is probable that "33 Assistance Rice" referred to a Chinese variety of rice reaching only approximately thirty-three centimetres in height but maturing for harvest more rapidly than longer Cambodian varieties. Chhang Interview, *supra* note 22.

162 See KIERNAN, *POL POT REGIME*, *supra* note 23, at 65-101. See also Excerpted Report, *supra* note 34, at 25 (quoting Pol Pot as stating at a June 1976 meeting: "All the people are in our grasp. We hold full state power, as well as the whole economy.").

163 Kosal, Kiernan & Sim, *supra* note 114, at 17.

[the workers'] consciousness [and] make things clear to them”¹⁶⁴ in order to achieve rice production targets. They were told not to complain about the CPK’s overly rapid Super Great Leap Forward expectations, but to “do the plan” regardless of the difficulties they encountered.¹⁶⁵ In order to “grasp hold of the cooperatives” and thereby ensure that its agricultural policies were strictly followed, the CPK leadership “suggest[ed] that the majority of the armed forces...stay with the people[,]” which resulted in armed militia being dispersed amongst the people to oversee the implementation of CPK policies.¹⁶⁶

In support of the CPK’s military-style all-out push to increase rice production in 1976, Cambodian civilians spent almost every waking moment working to produce rice or on irrigation projects. The caloric output of Cambodia’s workforce during the Khmer Rouge period was tremendous, and it is likely the typical 2,000-calorie per-day diet of the average Cambodian¹⁶⁷ needed to be increased in order to avoid famine. Instead, the rations given to the labour force fell far short of even the modest diet of most Cambodians. While CPK rhetoric commonly referenced the need for adequate food in order to support the civilian workforce¹⁶⁸ and, nominally, every Cambodian was entitled to a ration equivalent to approximately 0.85 kilograms of rice per day,¹⁶⁹ there was never any systematic oversight of food rations. In sharp contrast, the Party Center took careful note of the amount of rice collected from each administrative Zone and any shortfalls risked a violent purge. The CPK’s voracious demand for rice, combined with the potential for violent repercussions if it was not met, potentially incentivized local CPK officials to report fictitiously large production amounts in order to evade the volatile scrutiny of the Party Center, with the brunt of the inevitable shortfall borne by the civilian population.¹⁷⁰ The resulting rations were woefully

164 Excerpted Report, *supra* note 34, at 17.

165 *See id.* at 128.

166 *See id.*

167 RICE ALMANAC, *supra* note 13, at 7.

168 *See, e.g.*, Preliminary Explanation, *supra* note 32, at 158.

169 *See* Four-Year Plan, *supra* note 32, at 55. The CPK leadership even went so far as to project in the Four-Year Plan that dessert would be served every day by 1979. *Id.* at 107.

170 Expert witness Philip Short, a journalist and author of the book *POL POT: ANATOMY OF A NIGHTMARE*, testified in ECCC Case 002 that in his opinion, the CPK leadership did not affirmatively seek to control the population by providing starvation rations, but instead failed to supervise local leaders, who in turn reduced civilian rations in order to satisfy the CPK’s demands for rice. *See* Mary Kozlovski, *Defense Dissects Philip Short’s Credentials, Methodology, and Biography of Pol Pot*, Cambodia Tribunal Monitor Blog (May 8, 2013), at www.cambodiatribunal.org/blog.

insufficient¹⁷¹ in most if not all areas, and starting in 1976 Cambodians numbering at least into the thousands began to perish from a mixture of undernutrition and disease as famine spread across the countryside.¹⁷² Reports of famine, however, only led the central leadership to respond with more violent purges, such as the purge of the Northwest Zone following Ieng Thirith's 1976 investigatory visit. Meanwhile, the policies responsible for causing famine to begin in the first place were treated as infallible and left unchanged, even as the death toll continued to rise into the hundreds of thousands.

Despite the fact that famine conditions were already becoming severe in various parts of the country as a result of their policies, CPK leaders viewed the 1976 rice crop as a modest success.¹⁷³ At a December 1976 CPK Party meeting, a top leader—very possibly Pol Pot himself¹⁷⁴—discussed the successes and failures of the preceding year, declaring that the regime had “scrutin[ized]” the results of implementing the socialist revolution for the year and the “outcome of our scrutiny is that we can see increased results for 1976.”¹⁷⁵ These successes existed despite the fact that “some shortcomings can be noted,” including “the matter of assembling food reserves for our people,” which the speaker admits “is our [the CPK’s] fault.”¹⁷⁶ In an uncharacteristic moment of candour, he acknowledged that “three-quarters of the country has failed [to adequately feed] the civilian population and that this affects the health of the people.”¹⁷⁷ The purported reason for this shortfall in food reserves, however, was that “the party line has not yet filtered down,” to all areas.¹⁷⁸ These shortfalls would be avoided in the future by adhering more strictly to the CPK’s political edicts, rather than altering the party “line” in any way, as the central leadership still believed in itself “completely.”¹⁷⁹ Meanwhile,

171 Survivors from various locations throughout Cambodia have reported a typical ration of two small ladles of watery rice or corn gruel per day, sometimes supplemented with salt or a vegetable such as *trakuon* (water morning glory) and rarely, small amounts of meat or fish. See, e.g., Barry Kramer, *Tales of Terror: Cambodian Refugees Tell a Story of Hunger, Repression and Death*, WALL STREET JOURNAL, Nov. 22, 1978, at 1; Henry Kamm, *The Agony of Cambodia*, NEW YORK TIMES MAGAZINE, Nov. 19, 1978, at 42. Survivors also consistently cite variations on this ration in interviews with the author and DC-Cam staff members.

172 See, e.g., KIERNAN, POL POT REGIME, *supra* note 23, at 235-36; CTM: “Former Warehouse Official,” *supra* note 81.

173 See Report of Activities, *supra* note 88, at 195 (summarizing that “[o]n the whole in 1976, a period when we had real difficulties, we performed quite well”).

174 Pol Pot is not named as the speaker in the primary CPK document, which consists of the transcript of a speech by a comrade “representing the party.” However, Khmer Rouge researchers have concluded that he likely wrote and delivered the speech. See David P Chandler, *Introduction to Report of Activities of the Party Center According to the General Political Tasks of 1976*, in POL POT PLANS THE FUTURE 177, *supra* note 31.

175 Report of Activities, *supra* note 88, at 182.

176 *Id.* at 188.

177 *Id.*

178 *Id.*

179 *Id.* at 189.

despite the spread of famine, in December of 1976, the CPK estimated that a national “surplus” of 247,000 tons of milled rice had been achieved¹⁸⁰ and in January of 1977, Phnom Penh radio announced that 150,000 tons of rice was being prepared for export “to earn capital for national defence and construction efforts.”¹⁸¹

After these perceived “increased results” of 1976, the Party Center continued to pursue the Super Great Leap Forward plan despite evidence of its harmful impact on the civilian population.¹⁸² In a late 1976 “Report on Political Tasks” the Party Center announced a production target of 5,400,000 tons of milled rice for 1977 in order to harvest a “surplus” of 841,000 tons.¹⁸³

The renewed push to multiply Cambodia’s rice production soon escalated the severity of the national famine. To make matters worse, at the beginning of 1977 a flood occurred in Cambodia, followed by a drought throughout Southeast Asia, reducing crop yields throughout the region.¹⁸⁴ Cambodia, along with Vietnam, Laos, Thailand and Myanmar all suffered reduced rice output, however, the effects were not catastrophic outside of Cambodia and none of the bordering nations experienced famine.¹⁸⁵ Adding to these difficulties, internal party purges began in 1976 and continued unabated throughout the rest of the Khmer Rouge period, disorganizing the economy and decreasing agricultural production.¹⁸⁶ Around the end of 1976, Cambodians began starving to death on a massive scale, and in particularly hard-hit areas entire villages virtually disappeared due to mass starvation events.¹⁸⁷

Despite this continual worsening of famine conditions, there is no evidence that the CPK leadership ever considered changing or slowing down the pace of its

180 *Id.* at 195.

181 KIERNAN, POL POT REGIME, *supra* note 23, at 204 (citing Phnom Penh Radio broadcasts of 27 January and 12 April 1977).

182 The CPK Center appears to have been aware of the fact that the workforce was depleted, especially in areas that had been assigned especially high quotas of rice production. The Center assumed however, that this problem would be solved through pure revolutionary zeal and strict adherence to the party line. *See generally* Preliminary Explanation, *supra* note 32, at 131 (admitting that “[t]here was a fault in the 1976 [draft] plan where the plan set a target of three tons of padi [unmilled rice] per hectare. When we started out with the 1976 plan, the line was to struggle and to scatter everything before us in disorder. Some regions managed to harvest three tons. They did so because their political consciousness was particularly strong, but they became tired, because we attacked everywhere at once. To attack in this way over a long period of time is impossible.”).

183 Report of Activities, *supra* note 88, at 196 (considering this figure, which would result in 500,000 tons of milled rice for export, a “low estimate”).

184 *See* Jackson, *supra* note 95, at 88.

185 *See* RICE ALMANAC, *supra* note 13, at 105, 109, 113 and 183 (Vietnam, Thailand, Myanmar and Laos PDR rice-production charts respectively).

186 In a 1977 report, Karl Jackson described the CPK as “already staggering from the effects of previous bloodlettings.” Jackson, *supra* note 95, at 81.

187 For example, Ben Kiernan found that anywhere from 2,982 to 5,017 people died of starvation in Preah Net Preah village in 1976 alone. KIERNAN, POL POT REGIME, *supra* note 23, at 235-36.

famine-inducing policies.¹⁸⁸ Faced with overwhelming evidence that the goal of three tons per hectare was unachievable and its rice exports were coming at the expense of a starving civilian populace, the CPK Center continued to shift blame for famine to fabricated networks of enemies. For example, in October 1977 CPK propaganda magazine *Tung Padevat* blamed “bad class elements” for administering cooperatives “without rice to eat.”¹⁸⁹ Meanwhile, the Party Center continued to expropriate and export rice from the countryside throughout the remainder of the Khmer Rouge period while simultaneously publicly denying the existence of mass famine, especially in international media.¹⁹⁰

In late 1978, the Vietnamese military invaded Cambodia and swept the Khmer Rouge from power, taking control of Phnom Penh on 6 January 1979. The horrendous results of the Khmer Rouge’s socio-economic policies were evident in the Thai refugee camps to which many Cambodians fled in 1979. Undernutrition and associated diseases, along with malaria, were the main causes of death amongst newly arrived refugees.¹⁹¹ According to an account written by John Collins Harvey, a doctor who worked in a Thai refugee camp in 1979: “Among the refugees, the most serious problems were starvation. . . in the children, vitamin deficiencies, particularly beri-beri, unattended war wounds compounded with starvation, untreated malaria. . . and anaemia.”¹⁹² Harvey observed that “[m]ost of the children suffered from diarrhea,”¹⁹³ a common symptom of undernutrition. In fact, the “chronic undernutrition so altered growth patterns that boys who looked to [Harvey] to be eight to 11 years of age reported ages anywhere from 16 to 20 years.”¹⁹⁴

Only the ouster of the Khmer Rouge from power brought famine relief to Cambodia. Indeed, the speed with which famine conditions improved in post-Khmer Rouge Cambodia is both a testament to the agricultural prowess of Cambodian farmers and a powerful indictment of CPK policies. The fighting between the invading Vietnamese military and retreating Khmer Rouge forces and the exodus of newly freed Cambodians back to their homes resulted in scattershot plant-

188 See Chandler & Kiernan, *Preface*, *supra* note 76, at xv (“There is no evidence that [CPK leaders] ever considered doing things differently. People who proposed going slowly were ignored or put to death.”).

189 See CHANDLER, VOICES FROM S-21, *supra* note 37, at 69 (quoting TUNG PADEVAT, October 1977).

190 See, e.g., *The Dialogue between Pol Pot, Secretary of the Central Committee of the CPK and First Minister of the Democratic Kampuchea Government, and a Delegation of the Belgian-Kampuchean Association Phnom Penh August, 1978* (DC-Cam Doc, D00108), SEARCHING FOR THE TRUTH, 2d Quarter 2004, at 15, www.d.dccam.org/Projects/Magazines/Image_Eng/pdf/2nd_Quarter_2004.pdf.

191 See *Emergency Refugee Health-Care: a Chronicle of Experience in the Khmer Assistance Operation 1979-1980* (Department of Health and Human Services – Public Health Services – Center for Disease Control, Donald T. Allegra, Phillip Nieburg & Magnus Grabe, eds., 1984) at 29-34, 75-84.

192 John Henry Collins, *Medical Relief Work Among Cambodian Refugees in Thailand* 92 TRANSACTIONS AM. CLINICAL & CLIMATOLOGICAL ASS’N 28, 30-31 (1981).

193 *Id.* at 31.

194 *Id.*

ing of the 1979 rice crop. It is impossible to know exactly how much rice was planted;¹⁹⁵ however, one estimate placed the national rice crop for 1979 at 265,220 tons—an shortfall of approximate eighty percent of typical yields in prewar times.¹⁹⁶ The world press predicted mass famine and starvation in Cambodia under the new Vietnamese-backed People's Republic of Kampuchea (PRK) government.¹⁹⁷

The popular perception at the time was that only a herculean international aid effort could head off the looming famine catastrophe. These prognostications of catastrophic famine turned out to be overblown. The PRK allowed international food aid into the country, but various logistical and political problems limited the amount of this aid and where it could be distributed.¹⁹⁸ When food aid arrived, the PRK government appropriated much of it to feed government workers and returning urban populations and made little effort to dispense food to the countryside.¹⁹⁹ Ousted Khmer Rouge leaders responded with propaganda accusing the PRK government of committing crimes of “genocide” and “extermination” by

195 See MAGGIE BLACK, *THE CHILDREN AND THE NATIONS: GROWING UP TOGETHER IN THE POSTWAR WORLD* 380 (Melbourne: MacMillan, 1987) (“The tremendous dislocation of people in the early months of the year had coincided with the pre-monsoon and early monsoon planting season. Millions of acres of rice paddies had been left unplanted at a time when planting should be far advanced. Estimates of the probable consequences on the 1979 crop were pure guesswork. If anything resembling a survey had been undertaken, no-one in the international aid community was aware of it.”).

196 This is the figure put out by the post-Khmer Rouge Vietnamese-backed People's Republic of Kampuchea (“PRK”) government and listed in the Cambodian Ministry of Education's social science textbook, available at www.d.dccam.org.

197 See, e.g., *The National: Genocide and Famine in Cambodia*, CBC TV NEWS, Oct. 16, 1979, <http://archives.cbc.ca> (reporting that estimates suggest 2.5 million people could die from hunger and/or disease due to lack of food in Cambodia due to the fact that the rice crop had not been planted and the infrastructure problems facing relief efforts). See also *Cambodia: And Now the Horror of Famine*, TIME MAGAZINE, Oct. 22, 1979.

198 See, e.g., *Cambodia: Blocking Food*, INT'L HERALD TRIBUNE, Dec. 20, 1979, at 6; *Relief Agencies Slow Down Food Aid to Kampuchea*, THE TIMES, Jan. 3, 1980. For a detailed history of the events and negotiations leading up to the provision of food aid to Cambodia in 1980, see Black, *supra* note 195, 378-93.

199 Black, *supra* note 195, at 398.

The policies of the Phnom Penh authorities was the other reason why famine on a mass scale was avoided. In normal times, a grain tax was traditionally levied on the farmers; the grain thus taken by the authorities was sold in the towns or for export to raise revenues. In November 1979, and during the two harvest seasons in 1980, the grain tax was suspended. Instead, following negotiations with Unicef and FAO, the Heng Samrin [i.e. PRK] regime used relief food supplies to feed and pay government servants and party officials (rice was still the only medium of exchange in 1979 and early 1980). They also used the imported relief food for urban dwellers, putting it in the markets of the gradually re-emerging towns and cities. This meant that those who had planted rice kept their entire crop; there was no movement of food out of the countryside.

using “famine as a weapon” against the Cambodian people.²⁰⁰ Nonetheless, although food was scarce and famine did occur in some areas, when left to their own devices and free from government interference, most Cambodians acquired enough food to survive through a mixture of food crops, hunting, fishing and foraging.²⁰¹ As observed by humanitarian aid historian Maggie Black:

The main reason that the famine was not as severe as forecast was that the tropical climate and natural productivity of [Cambodian] soil produced food, willy nilly. People had cultivated maize, cassava, bananas and other crops in garden plots; and they harvested fish from the many rivers and from the large lake of Tonle Sap. They did manage, in addition, to grow some kind of a rice crop. In November, they brought in a harvest thought to approximate 300,000 tons, or one-third of the 900,000 tons needed.²⁰²

Black’s observations make clear that, when mass famine could be avoided in Cambodia essentially by leaving the civilian population to its own devices, Khmer Rouge policies had the impact of starving the population. This fact on its own serves as a strong moral indictment of the Khmer Rouge for the famine and starvation that took place in Cambodia from 1975 to 1979.

6. CONCLUSIONS

Several important conclusions can be drawn from the foregoing overview of the Khmer Rouge period famine. First, as a general matter, responsibility for basic famine causation can be laid squarely at the doorstep of the Khmer Rouge regime. The country avoided mass famine during both the pre and post Khmer Rouge periods, despite the devastation of the civil war during the former and the initial absence of a state infrastructure during the latter. Meanwhile, when there was a minor Southeast Asian drought in 1977, Cambodia was the only nation in the region to experience famine, demonstrating that natural variations in food production conditions played at most an exceedingly minor role in the famine. Finally, it is noteworthy that Cambodia has never experienced severe famine in its modern history other than during the Khmer Rouge period.

Second, specific CPK policies enacted by a small group of prominent leaders

200 See *Statement by Mrs. Ieng Thirith, Minister For Social Affairs, Head of the Delegation of Democratic Kampuchea, International Conference on Solidarity with Kampuchea*, DC-Cam Doc. D32322 (Stockholm, Sweden, Nov. 17-18, 1979) at 6, 8-10, 14. See also *Speech by the President of the Presidium of the State and Prime Minister Khieu Samphan at the Welcome Dinner Given by Prime Minister Hua Guofeng In Honour of the Delegation of Democratic Kampuchea* (excerpts) (Beijing, China, Mar. 9, 1980), DC-Cam Doc. D33445I at 2 (accusing the “Le Duan clique” [i.e. PRK] of “genocidal crimes” through inter alia, using “famine as a weapon to starve [the Cambodian] people”).

201 See RICE PRODUCTION IN CAMBODIA, *supra* note 15, at 6.

202 Black, *supra* note 195, at 398.

in Phnom Penh triggered, maintained and deepened famine conditions throughout the country for the duration of the Khmer Rouge period. CPK socio-economic policies eschewed virtually all sources of national revenue save for that gained through the export of rice, placing an enormous strain on production of the country's main food staple. This strain was made more severe by the leadership's desire to achieve production increases at a manifestly impossible pace and independent of foreign aid and modern equipment. Poor agricultural planning made rice production targets even more fantastical. As evidence of abject failure mounted and starvation spread, the central leaders refused to reconsider their deeply flawed policies.

Third, the CPK's pursuit of "pure" socialism and use of extreme violence to enforce its policies prevented local officials or civilians from ameliorating the severity of famine conditions. Civilians were forbidden from growing or foraging for food and private cooking or eating was outlawed. There was no room for local leaders to deviate from or even critique CPK policy, as those who did — including high-level CPK officials, such as Sao Phim, Nhim Ros, Hu Yuon and Hu Nim — were systematically arrested and executed, often along with all of their subordinates and extended families.

Fourth, the central leadership in Phnom Penh received regular reports on conditions throughout the country, some of which mentioned civilian starvation, such as Ieng Thirith's report on living conditions in the Northwest Zone in 1976.²⁰³ As famine conditions worsened over time and mass starvation events began to occur in numerous locations, the sheer scale of the famine renders the ignorance of Party Center members remained implausible. Moreover, it appears that the Party Center was aware of international concern that mass starvation was occurring, as CPK propaganda demonstrates a concerted effort to publicly deny the existence of mass famine and simultaneously shift responsibility for famine conditions to imagined "enemies" of the revolution, who were allegedly sabotaging food crops and spreading dissent.

These basic facts suggest an evolution in the degree of knowledge amongst key high-level Khmer Rouge leaders that their policies were enforcing famine conditions on the civilian population. If one focuses solely on the point in time when the regime enacted its various famine-inducing policies, it appears plausible that

203 These high-level leaders, including members of the Central and Standing Committees, were also the only individuals who had the authority to travel freely throughout the country and many of these leaders would regularly visit worksites and cooperatives in order to inspect progress on important revolutionary projects, such as the construction of dams. While there is some evidence that the true horror of living conditions was purposefully hidden from visiting leaders to prevent violent backlashes, the possibility that such leaders did not see evidence of rampant starvation and disease strains believability, especially when some areas visited were sites where civilians were in the midst of dying off by the thousands from hunger, disease and overwork.

some or all former CPK leaders may have been initially ignorant of the deadly implications their policies portended for the civilian population. To focus solely on this moment in time, however, fails to account for the fact that famines generally are dynamic phenomena that weaken and kill victims over extended periods of time, and that the Khmer Rouge period famine itself lasted more than three years. When viewed in this dynamic way, continuing ignorance of the existence of mass famine among high-level CPK officials begins to strain credulity, as these leaders were openly obsessed with controlling national policy and monitoring conditions in the countryside, where civilians were dying of starvation by the thousands. Even if senior Khmer Rouge leaders were genuinely ignorant of the extent of famine in certain areas of the country, such ignorance would have been itself wilful: the product of the leaders' policy of responding with automatic violence against anyone who even pointed out the existence of famine, let alone complained about it or called for a change in policy.

At some point during the Khmer Rouge period, ever-mounting evidence and reports of mass famine and starvation rendered it impossible for the regime's leaders to maintain a state of actual ignorance, and possible initial negligence or recklessness on the part of individual CPK officials evolved into actual knowledge that government policies were causing civilians to starve by the thousands. Nevertheless, the CPK continued to enforce policies of forced labour, communal eating, bans on the private production and/or consumption of food and state expropriation of rice for export throughout the Khmer Rouge period. As such, it appears that Khmer Rouge leaders, at some point *after* becoming aware that the civilians under their authority were starving by the thousands, *chose* to prioritize the revolutionary goals over of the survival of the civilian population.

From a moral perspective, it is not difficult to blame the Khmer Rouge leadership for enforcing famine conditions on the civilian population while in power. However, group moral responsibility does not necessarily entail individual penal sanctions. How these facts interact and fit within the required elements of established international crimes and associated modes of liability must be assessed to determine potential criminal responsibility of former Khmer Rouge leaders. The second part of this article, to be published in the next issue of the CLPJ, will seek to perform this assessment by considering how the international criminal law concepts of genocide, war crimes and crimes against humanity interact with the foregoing factual overview of the Khmer Rouge period.

THE MISSING PICTURE¹

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Production Rithy Panh

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In Cambodia's first Oscar-nominated film, Rithy Panh uses clay figures, archival footage and voice-over narration to tell a deeply personal story: "For many years, I have been looking for the missing picture: a photograph taken between 1975 and 1979 by the Khmer Rouge when they ruled over Cambodia...On its own, of course, an image cannot prove mass murder, but it gives us cause for thought, prompts us to meditate, to record History. I searched for it vainly in the archives, in old papers, in the country villages of Cambodia. Today I know: this image must be missing. I was not really looking for it; would it not be obscene and insignificant? So I created it. What I give you today is neither the picture nor the search for a unique image, but the picture of a quest: the quest that cinema allows."

ENGLISH COMMENTARY/VOICE OVER²

In the middle of life, childhood returns.

The water is sweet, and bitter.

1 Courtesy of Editions Grasset and Catherine Dussart (CDP). THE MISSING PICTURE won the Un Certain Regard prize at the 2013 Cannes International Film Festival, the Grand Jury Award at the Cinemanila International Film Festival, and was nominated for Best Foreign Language Film at the 86th Academy awards (2014). In 2013 Rithy Panh was awarded Asian Filmmaker of the Year at the Busan International Film Festival.

2 English translation Letitia Farris Toussaint with the voice of Jean-Baptiste Phou.

I seek my childhood
like a lost picture.

Or rather it seeks me.

Is it because I am fifty?

Because I've seen troubled times
when fear alternates with hope?

The memory is there now,
pounding at my temples.

I'd like to be rid of it.

With clay and with water,
with the dead,
with rice fields,
with living hands,
a man is made.

It doesn't take much.

It just takes will.

His suit is white, his tie is dark.

I want to hold him close.

He is my father.

I remember in the old days in Phnom Penh,
the great gatherings at our house.

I remember laughter and singing,
the smell of caramel,
fish, spices and mango.

We danced.

We chatted with aunts and uncles.

Cousins brought fruit:
Guavas and jackfruit.

It was a time for studies and books.

I loved to hear my father read us poetry at night.

I remember how sweet life was.

Then came the war.

The bombings drew nearer in the 1970s.

I remember the first who died,
our fear,
my sorrow as a child.

So many pictures that go by again and again in the world.

We think we own them, because we've seen them.

When we discover a picture on a screen
that is neither painting,
nor shroud,
then it is not missing.

Phnom Penh was surrounded by the Khmer Rouge
who'd come to end injustice and exploitation.

They entered the capital on April 17th 1975.

There were no cries of joy,
only silent expectancy.

I was there.

I remember the look in the eyes of the young soldiers,
as if we had not been there.

They had their orders:
never touch the enemy by the hand.

The enemy, that's me.
I am thirteen.

The central bank blows up with all its money.
There is no turning back.

The city is impure.
The city is corrupt.
It is emptied within hours.

Two million people are thrown onto the roads.
They leave behind their homes,
their loved ones,
their memories.
In fact, the former world.

*Long live the glorious April 17th,
a day overflowing with joy.*

The revolution is pure.
It wants nothing of people.

Now Phnom Penh can be filmed
like in the prophecy of Puth Tumneay:
*Houses with no occupants, streets with no pedestrians,
stairs that no one will climb,
flowing rivers of blood.*

Very soon we were separated.
We headed into the country in the middle of dry season.

We are hungry and thirsty.

We go from hand to hand like animals,
in cattle cars,
then wagons.

Phnom Penh's deportation is a missing picture.

Immediately, the Khmer Rouge counted,
then separated women and men,
adults and children.
Souvenirs were forbidden, all personal effects.
Suddenly there are no individuals,
only numbers.

They cut our hair.
They take our watches, glasses,
toys, books.
They dye our clothes black.
They change our first names.

We are the new people:
bourgeois, intellectuals and capitalists,
to be reeducated,
to be destroyed.

You must embrace the proletarian condition!

This is the new land
that we call Democratic Kampuchea.
A factory with smoke most unsettling.
Concrete dikes and rice fields.
No people.

All of society is organized, collectively and militarily,
in working units.

The Angkar takes care of you all comrades!

brothers and sisters, fathers and mothers!

The Angkar is the organization.
It is all. It is each.
It is the young Khmer Rouge,
the village chief,
the head of the torture center,
and Pol Pot.

They must be watched, this barefoot people
of the sand dust.

Soon there will be no more faces,
no more friends,
no more love,
no more father and mother.
Soon there will be no more emotion,
and even words will be transformed.
Each being will be a revolutionary,
or fertilizer for the rice fields.

To hang on,
you must hide within yourself
a strength, a memory,
an idea that no one can take from you.
For a picture can be stolen, a thought cannot.

*The Angkar requests that you attend
A study session
to reconstruct yourself!*

*Comrades
soon we will be masters of the water,
of the earth and the elements.*

*Every hectare will yield three tonnes of rice.
Or five.
Or seven.*

Then we will be ten million.

*There will be no more hunger,
no more fatigue, no more injustice.*

The elderly will be fed by machines.

The Angkar is perceptive and full of solutions.

The people are the brain of the Angkar.

Long live the extraordinary grandiose Kampuchean Revolution!

Long life to a new society devoid of rich and poor!

We raise our fists.

We repeat the slogans.

The Angkar will establish a model society,
unique in the world,
without class division.

In this perfect world,
the dams are made of concrete.
The embankments are paved.
There is order in everything.

Flying over this utopia
is a red flag,
and of course this truth:
Comrade, you are so very free!

For now, you must obey,
dig ceaselessly,
move earth,
move rock.

For months
I dug a pond on arid plains.

I never saw water.
Not once.

Long live Democratic Kampuchea
A prodigious leap forward!
A marvelous leap forward!
An extraordinary grandiose leap forward!

Be determined to work in the rice fields!
Don't count on the heavens!

These slogans have not left me.
I sometimes hear them still.

Former society thought only of feasting.
Collectivism is the fertilizer and the fodder.

From now on, a saucepan is individualistic.
It is forbidden to possess one.
So we share everything.
Our only belonging is our spoon.

With hunger you get a man.
You get them all,
living or dead.

As for the sick
or those who do not obey
they are not fed
or only get half rations.

Hunger, it's for us.
Hunger, it's a weapon.
The new people are a parasitic plant.

The ancient peoples, who watch us,
live in the granaries.
They are never hungry.

To reeducate is first to destroy.

In Phnom Penh, there is a people to wipe out.

Conquest through emptiness is a picture glaring with simplicity.

The Khmer Rouge want a man made of metal,
a pure instrument of revolution.

Khmer Rouge leaders
are *the universal and homogenous State*.
They never look at each other.

There is of course Pol Pot, brother number I,
whom we recognize by his fan.
And then his comrades:
Nuon Chea, Ieng Sary, Khieu Samphan.

And Son Sen.

Rise, you damned of the Earth!

The damned, that's us,
we in the fields, in chains,
wandering like ghosts.

In this capital, four years empty,
there remains the Central Committee,
and Ponear Yat High School,
which becomes Center S2I.
Here they whip,
they electrocute,
they cut,
they force feed excrement,
they get confessions.

It all starts with purity, and ends with hate.

I know the Khmer Rouge
photographed executions.

Why?
For proof?
To complete a report?

What man having photographed this scene would not want it to go missing?
I look for this picture.
If at last I should find it
I could not show it, of course.

And anyway, what would the picture of a dead man reveal?

I prefer this anonymous young woman,
who defies the camera,
and the eye of her torturer,
and still looks straight at us.

Scarlet blood
that covers Kampuchean cities & plains, our Fatherland,
sublime blood of workers and peasants,
sublime blood of men and of women,
of revolutionary fighters.
Blood turned to implacable hatred and resolved fighting,
you freed us from slavery.

Yet
one does not film with impunity.
I look at these child laborers.
Their hands. Their faces. Their weary bodies.
This young avant-garde works toward its own destruction.

At night, I told stories from before
of ghosts,
and witches,
of lost travelers,

and mischevious children.

So they put me in the kitchen, where we ate well.

I told the story of the Apollo rocket,
racing for the moon,
to these revolutionaries who spoke in numbers and codes.

Scarlet blood that covers the cities and plains,
do you cover the Moon too?

I dreamt of walking on it like Neil Amstrong
lightfooted and childlike.

One small step for man
One giant leap for mankind.

But who are these people? asks a comrade.
These people who walk on the moon?
They are Americans. I saw the pictures back then.
Americans?
You're lying.
That's impossible.

The storyteller confesses.
The storyteller is killed.

The great leap for mankind is not to be found in capitalist propaganda.

It is here,
for we who are hungry.

*Long live the independent masterful way
of Democratic Kampuchea's revolutionary Angkar
Long live its extraordinary clairvoyance*

On our moon, there is nothing.
Parched earth and dust bury it all.

It took me years to learn to walk upon it,
bare feet on thorns.

Muddy water trickles down my throat.
Little by little I disappear.
I'm nothing anymore.

It is strange to drink mud.
The buffalo watch us.
How odd these humans are to drink our water.

A Nestle tin becomes our unit of measure.
It contains two-hundred fifty grams of rice.
Very soon, famine strikes.
These two-hundred fifty grams, we share them daily
Seven of us
then sixteen
then twenty-five.

We share hunger.

My mother fights for us.
She builds a shack of branches, leaves and vines.
Each day she walks two hours,
so we may drink clean water.

She gets permission to take my father a half-ration.
But one night he tells us
I will no longer eat animal food.
No. I am a man.
And he stops eating.

I don't understand. I resent him.

They found some sheet metal
to carry his body to the pit grave.

My mother doesn't cry.
Not a tear before the Khmer Rouge.

That night,
she tells me how my father should have been buried,
by his own, by school teacher friends,
traditionally and peacefully.
This funeral in words
I don't want to forget.
It was an act of resistance.

My father came from a poor family.
He believed in schools.
He dreamt of sending his sisters and brothers,
his children and ancestors,
that we should be a free people.

He didn't abandon us.
He was teaching us free will.

I still feel his soul returned to our home,
where he can at last recite in peace
his favorite poem by Prevert:

*Black hair,
black hair, caressed by waves
Black hair,
black hair, tussled by winds*

Here, schools become extermination centers.
Here,
pigs become readers,
since readers were pigs.

Here, every soldier has a pen in his pocket.
Sometimes a watch on his wrist.

For us it is forbidden.
But it is a sign,

a distinction in a land that hates knowledge.

*The spade is your pen
The rice field is your paper*

*Here is the school of applied electricity
intended to train technicians.*

*The students of this school must be children of poor peasants,
or the lower middle class, or fighters,
girls and boys from the revolutionary army.*

*Comrade Thaon is sixteen years old.
At nine he joined the Revolution
and the revolutionary army.
He fought on many battlefields.
He was also wounded.*

*There are many children like Comrade Thaon
at the front and behind it.
They are countless.*

*They all have exceptional biographies.
Today they work hard with all their might and heart,
within their units,
to defend and rebuild the country.*

I spent my own childhood in film studios,
with a director neighbor.

I loved the wonderful world of wigs and costumes,
the colors and gold.
The land of giants and fairytales.
I loved it backstage,
where beautiful actresses seemed to dance just for me.

I collected scraps of film
that I watched using a box and a small light.

Then that world was destroyed
The cinemas were closed.
The artists were executed.
The singers, technicians and directors
were sent to the fields.

A Khmer Rouge film is always a slogan.

*Practice is worth all theories
so don't entertain personal ideas!*

*He who has the disease of former society
let him take Lenin for a pill!*

From now on there is but one actor.
It is not the people, but Pol Pot.

He is the Revolution. His myth must be forged.

A hut is built in the jungle, a wooden set.
Pol Pot is a Revolutionary. He drinks only tea,
uses an oil lamp,
washes outdoors.
Lives with his country, his books,
his gun, his comrades.
He lives the ideology.

Brother no. I was inspired by young humanity.
The original people.
The Jarai,
the Kuoy,
the Bunong.
A sparse handful of families who shared everything in common.
By observing them, he understood.
Like Rousseau's noble savage.

Already in Paris

Pol Pot signed his articles “Original Khmer”.

The Khmer Rouge, it’s Marx and Rousseau,
integral communism and the pure, original world.
A perfect society.

The radiant revolution shines in all its glory!

These peasants, scorned, abandoned,
adhere to the fight for justice.
They look good on the new country’s banknotes,
which will never be used.

*There is no more selling, no more trade,
no more complaints, no more theft, no more pillaging,
no more private property!*
There are no more problems.

The new people are reeducated in the rice fields.
Plunged into the original world,
that they be purified.

They must be forged.
Return to ancient ways or be destroyed.

Pol Pot says
*Those whom we cannot re-educate,
we will fight like enemies.*

*The Angkar never uses any object
from imperialist or feudal society.*

Capitalist automobiles confess their crimes.
They too are reeducated
These cars work toward edifying the new country.

Evenings after the worksite, are for indoctrination.

Words change meaning.

We speak in slogans.

The comrade with many faults is the enemy!

Whoever protests is an enemy.

Whoever opposes is a corpse!

A 9-year old boy denounces his mother for picking mangoes.
She confesses.

The child shouts

The comrade has recognized her crime!

His mother weeps softly.

To confess

is to accept to die,

for the Revolution to be just.

When humans will be free and equal to this degree,
will they still be humans?

The mother closes her eyes.

Is it to picture her child?

She says nothing.

Then she is taken into the forest by guards,
never to return.

I want to escape the mud, the hunger,
my black clothes.

Walking in the water is torture.

I collapse from exhaustion.

Sometimes an airplane crosses the sky.

Is it observing us?

Will it parachute a camera to me?

So the world will know at last?

The missing picture: that's us.

This unreal airplane saves me.
I have no more name, no more family,
no more hope, but I still have a human heart.

I think of the old days.
Of my brother who disappeared in Phnom Penh
on April 17th, 1975,
with his guitar.
The Khmer Rouge must not have liked him.
Not his smile,
not his teenage bangs,
not his songs.

Colour has vanished,
like laughter, song and dance.

Our day to day life is a combat,
a war against nature,
against words,
against the enemy.

*The children sent to the front are small
but full of energy to fulfill their duty!*

And me, I kept repeating
*The Angkar never makes mistakes,
The Angkar is everything.*

I don't wish anyone to see a child die.
Feet swollen.
Face swollen.
As if all that was left was water.

The little girl is shaky with hunger,
so she steals corn.

The group leader catches her,
and brings her back to us.

It is a crime.

The grandmother forbids her to eat the corn.

We don't steal. We are proud.

The little girl cries.

And me? I don't get it.

During the night the child chews salt.

Her teeth crunch.

Hunger strikes at night.

She sleeps next to me,

her belly swollen, her expression blank.

She sighs.

She calls her mother.

She calls her father.

Then she called no more,

and we buried her.

The two other children died soon afterward.

I wish to be rid of this picture of hunger and suffering.

So I show it to you.

The mother is transported to the hospital.

There she learns her sixteen-year old daughter has died.

Here, everyone dies.

Without a word she strokes her forehead.

She picks the lice off the beautiful, gaunt face.

Then she too lies down on the wooden planks.

Fishing is forbidden,

yet fish abound by the hundreds.

In hiding I catch one.

Two days later I take it to my mother.

But she is already dead.

So, I understood I would be alone.

I pictured our house again,
our kitchen,
the garden,
the notebooks,
my parents' faces.

These pictures are not missing
they are inside me.

*We are determined to fulfill our 1977 political duty
with an extraordinary great leap forward.*

I have become one of these children at the worksites.

Looking closely at this movement,
one sees the fatigue,
the falls,
the gaunt faces.
One sees the cruelty.

One sees that some can no longer work.
Yet, there is a camera.

Here is the teacher.
That's what we call her.
She teaches us the spade and shovel.
And ideology.

Let us live in perfect equality!

It's the children's revolt. We are not happy.

Of course,
Each must count on no one else!

But Khmer Rouge cadres eat better than us.
They never go hungry.
Where is the equality?
So our leaders do their self-criticism.

My friends and I are sent to a very tough camp
the very next day.

At this worksite
we must dig 3 cubic meters of dirt in the morning
and make 25 to 30 kilos of fertilizer in the afternoon
from leaves and cow manure.

There were so few cows
trees and leaves
that these quotas are unattainable.

If we don't manage to extract these 3 cubic metres,
they are raised to 5 cubic metres.

Work eagerly!
Don't be defeatist before the enemy !

You must love and respect the collectivity!

This camp was a tomb guarded by a man in a felt hat.
His dog watched us curiously.

This man beat those who didn't obey his rules.
We were forbidden to dig for roots to eat,
and forbidden to speak.

He ate alone and had his own food.
So did his dog.

We share our children's rations.

In Paris or elsewhere,

those who loved our slogans,
those who read books
have they seen these pictures?
Or were they missing?

I return to the past.
To all those who died.
My sisters,
my brothers,
my cousins,
my parents.
Childhood is both far and near,
with its gentleness,
its joyful cries,
its laughter,
and voices.
Childhood is a refrain.

I haven't been home since April 17th, 1975
yet I remember every detail,
the paintings,
the doors,
the jugs,
the hallways.

My house became a gambling dive,
a karaoke,
then a brothel.
It too was voided,
torn from its history.

There is no truth.
There is only cinema.
The revolution is cinema.

I remember the great flood of 1978.
I was already at a labor camp
and we were so hungry.

Then a huge bale of rice straw
washed up on the riverbank.
We even found eggs.
So we ate.

With film too, the harvest is glorious.
There is grain.
There are these calm, determined faces.
Like in a painting.
A poem.

At last I see the Revolution they so promised us.
It exists only on film.

These sacks of rice were not for us.
Were they reserved for our leaders?
Or shipped abroad, since they are marked in Arabic numerals?
Or were they film props?
Full of sand?

Our every move was scrutinized,
Our every breath,
and even our silence.
But the great famine escaped Khmer Rouge leaders.

Did they not know?
Did they not see?
Could they not act?
Does the truth lie in the slogans so glorious?
Or in these pictures, that are not missing?

This is what Pol Pot has to say:

*Currently our cooperatives are well-established units,
politically,
and in spirit,
capable of accomplishing all of the Angkar's directives.*

*Throughout the land
they have fulfilled their revolutionary duties well.
They have transformed our sad, dry regions of former times,
poor and without drinking water.
Now there are ponds great and small,
canals interconnecting,
green rice fields and orchards.
These cooperatives are founding a new society,
purged of corruption,
and rogues of all sorts.
These cooperatives are founding a new society,
collectivist, un-corrupt
equal and prosperous.
These cooperatives live a perfect existence
in terms of food,
health, sanitation,
culture, studies
and education.*

The reality is this:
Straw huts.
Drought.
Exhaustion.
Hunger.
Neon lights to work by night.
Speakers blaring slogans.

Ideology was rampant in the fields.

The one who shot this footage, slow and true,
was named Ang Sarun.

He was a Khmer Rouge cameraman.

To him we also owe this footage of a speech by Pol Pot.

Why this haze?
Is it a technical glitch?

Or did he mean to show the children in rags?
To show brother no. I the true state of the nation?

The cameraman is tortured,
then executed.
His body disappears.
His story disappears.
But not this footage.

*Let us commit to brandishing ever higher
the red standard of the Revolution!*

It sounds like Mao.
It's an Angkar slogan.

Pol Pot goes to the airport in person
to greet Zhang Chunqiao of the Gang of Four
and Geng Biao.

Chinese comrades inspired the policies and ideology
of Democratic Kampuchea.
This picture of fraternity is not missing.

The great leap forward, is it not wonderful?
Is not each day a celebration?
Is not Kampuchea succeeding,
through purity, through void
where the Chinese Revolution failed?

Is not Kampuchea an extraordinary laboratory of ideology?
Is not this visit a lesson?

We hunted rats.
We ate them.
We ate insects,
roots,
and raw snails.
That's how dehumanization starts.

With hunger.
With disease.
With physical decay.

Who filmed the sick people?
Who filmed the pagodas turned hospices?
The maggot-eaten knee of my bunk neighbor?
Or the young woman
who can't deliver,
who screams all night,
alone,
hitting her belly, to death?

Of course, there's a Khmer Rouge hospital.
I lived there for weeks in the huge halls of death.
Medicines are stored in Coca-Cola bottles.
Patients are injected with coconut water, so pure.

I wished I could not hear the moaning,
the hiccups, the screaming,
no longer smell the damp rotting flesh.

The dead go at night.
Mornings I'd carry them away on wood planks.

And I survived.

This man sitting on the floor is too weak.
He does not eat.
He cannot move.
I've pictured him all these years.
I hold out a hand to him.

The Khmer Rouge have banned capitalist medicine.
They chop roots.
They boil them.
They experiment with traditional remedies,
and therefore revolutionary.

Everywhere are experimental units using humans.
At S21, for example.

There are no more diplomas!
There are only practical diplomas!

I washed the halls.
I washed the sick.
And every morning,
I carried the dead
down to the pit.

Sometimes, I teeter at the edge of the void.
There are hollow sounds.
Bones knocking.
Hands that seek and find those of a child.

This child who says he's alive and who tells the tale,
that's me.

In the middle of life,
childhood returns,
sweet and bitter,
with its pictures.
Childhood as drowning.
Childhood as a question:
How is it that I am here?
Why couldn't I have helped my loved ones more?

Already in childhood,
death is present.

We understand the Khmer Rouge by watching their footage.
Pol Pot forges a reality conformant with his desire.
Even nature must conform.

Sometimes

the cadres gathered several villages
and showed a film
boasting our bare-handed fight
against the colonial powers.

Of course,
we knew that the actors were bad,
that the film was bad,
and many of us slept in the back, exhausted
like me.

For four years
we were moved from worksite to worksite.
How do you revolt when all you've got are black clothes and a spoon?
When you are lost?
When you are hungry?

Some say now that it's because of Buddhism and the acceptance of destiny.

Where were those fine minds then?
In their books?
In their lofty ideas?

Here it is not karma, not religion that kills.
It's ideology.

At the start of all totalitarianism is falsity.

*You're afraid of your enemies?
You're afraid of tree trunks.*

I worked in the great forests.
We had to cut trees to plant corn crops.
There was the heat, the humidity,
the snakes, the tarantulas,
the monkeys,
and the lizards that some of my comrades ate.

Don't let yourselves be vanquished by nature!

Vow to attack!

Make a breach!

These slogans never roused me
but the sounds of the great forest did.

We hardened,
grew used to fighting the cold,
to controlling our bodies.
After the storm, we slept in wet clothes.

I remember the central market
its tart, joyful smells,
the scent of jasmine.
I remember lovers
their shy gestures
their glances.

I remember abundance.
I remember silk,
fish, meat,
and the smell of boiled chicken,
that obsessed me for four years.
I remember happy meals.

At my childhood market
people had a mouth.
They laughed and talked. They kissed.

It's the same street,
lively then empty.
Yes, the same,
the neighborhoods of Phnom Penh,
if you only open your eyes.

I remember this world so imperfect and human.
2000 years of slavery
said Pol Pot

He's a human being like you and me.
He simply made a choice,
an ideological choice,
be it a criminal one.
It's complicated,
that's why I really wanted to make this film.
No one is born an assassin or an executioner.

The father
Our son sure jabbers now...
On and on he rambles.
At least he's good with words...

The mother
You'd rather he be a teacher, like you.
But it's our story he's filming.
That's us.

The father
But there are the poor who are hungry
The rich expropriated them too,
yet he thinks only of the Khmer Rouge...

The father is right.
Already before the Khmer Rouge,
the poor were thrown off their land.
They enrolled the people because of this injustice.

And then there were the Americans.
They dropped 500,000 tons of bombs
on the country.

So the poor joined the Revolution.
They raised their fists.
The Khmer Rouge lied to them about justice,
about equality,
about happiness,

about progress,
about everything.
And these same poor
still dig dirt today.

Sometimes I picture a child.
Let's say it's me.
He had it all wrong.
He didn't know how to fish,
to walk barefoot, or fight.

Years later
He feels guilty for not having helped the destitute.

They say talking helps.
You understand.
You get over it.

For me,
this wisdom will never come.
It's not a picture of loved ones I seek.
I want to touch them.
Their voice is missing,
so I won't tell.
I want to leave it all
leave my language, my country
in vain
and my childhood returns.

Now it's the boy who seeks me out.
I see him.
He wants to speak to me.
But words are hard to find.

This black dog
is the god of passage.
It takes me to its boat.
When I look at it, I see the man in the felt hat

and the river of floating corpses.

In the village where I lived,
Some families stayed on after the Khmer Rouge left.

The young men went to work in Thailand.
The former village chief,
who was cruel and terrified us on his horse,
was not arrested.
He lived happily, I believe,
and had many children.

The Khmer Rouge canteen is gone.
Hardly anything remains.
A few shards of jugs,
rusted pans,
a clay oven.

It's all over
like a cruel film.

As for the pit graves near the hospital
where I buried so many,
and my mother, and my sisters,
The pits have become a manmade lake,
dug out by an international organization.

The bones have been carried away.
Pumpkins and corn have been planted.
But the lake is so salty,
and such an odd green,
that no one dares use it or drink from it.

Are the dead there?
Yes.
Sometimes it seems we walk over them.
So I step away.

There are always souls who wander,
seeking a place,
a sweet, noble thought.
Many resisted.
Many.
In silence.
In a word.
In a smile.

Sometimes a small gesture is all it takes to say no.

I think of my father who announced his choice.
Sometimes, silence is a scream.

Mourning is difficult.
There's no end to the burial.

There are no more cattle cars.
There are no more slogans.
No more young guards in black.
There is the blood-drenched earth.

Their flesh, is mine.
So we are together.

There are many things that Man should not see or know.
Should he see them,
he'd be better off dying.

But should any one of us see or know these things,
then he must live to tell of them.

Every morning,
I worked over that pit.
My shovel hit bones and heads.
As for dirt, there is never enough.

It's me they will kill.

Or maybe they already have.

Of course I haven't found the missing picture.
I looked for it,
in vain.

A political film should unearth
what it invented.

And so I make this picture.
I look at it.
I cherish it.
I hold it in my hand like a beloved face.

This missing picture
I now hand over to you,
so that it never cease to seek us out.

A JUDGE IN FRONT OF THE KHMER ROUGE¹

*“The issue is rather to understand how they ended up there.”
- Jacques Sémelin, Purifier et Détruire.*

MARCEL LEMONDE
with the Collaboration of Jean Reynaud²

After a year-long judicial investigation, Extraordinary Chambers in the Courts of Cambodia (ECCC) Co-Investigating Judges Marcel Lemonde and You Bunleng sent Kaing Guek Eav alias “Duch” to trial on charges related to the deaths of at least 12,272 men, women, and children at the Khmer Rouge’s S-21 security center.³ In this excerpt from Judge Lemonde’s memoir of his four years at the ECCC, he recounts his evolving impressions of Duch as he investigated the nature of Duch’s responsibility for the crimes that took place at S-21 and associated facilities.

CHAPTER 19

March 2008.

Suos Nov, *alias* “Chhouk,” seems to have been a moderate — and even brave

1 Author approved excerpt translated by Tiphaine Ferry and Anne Heindel from UN JUGE FACE AUX KHMERS ROUGES (Paris, Seuil 2013).

2 French magistrate Marcel Lemonde was the first international Co-Investigating Judge of the Extraordinary Chambers in the Courts of Cambodia (2006-2010), during which time his office issued two closing orders indicting five former Khmer Rouge for international crimes. To date, they remain the only persons charged by the ECCC. Lawyer Jean Reynaud is co-author of a documentary entitled KHMER ROUGE, A SIMPLE QUESTION OF JUSTICE.

3 See generally Case No. 001/18-07-2007-ECCC-OCIJ, Closing Order (Aug. 8, 2008).

— member of the Khmer Rouge. At the beginning of the [Democratic Kampuchea] regime, he in fact opposed the systematic execution of supporters of the [deposed] Lon Nol regime. Not long after, when he was secretary of the Eastern Zone — a zone particularly targeted for purges — Chhouk was arrested and taken to S-2I [security center]. [S-2I Chief] Duch followed the interrogation closely. [The ECCC Office of the Co-Investigating Judges] found a letter Duch addressed to Chhouk during his detention. It refers to a “committee” that would order Chhouk’s execution if he did not confess his crimes.

When we showed this document to Duch and asked him to explain who was on this “committee,” he burst out laughing. His eyes sparkled with amusement: “It was only a stratagem to terrify the prisoner,” he said. There was neither a committee, nor a real threat of execution, nor any ultimatum. The S-2I chief invented everything in order to persuade the prisoner to sign a confession. When we interrogated Duch, he appeared to be delighted still with the subterfuge.

Chhouk confessed like all the others. And, like all the others, he was executed.

With a distant gaze, Duch very slowly gives us an account of Chhouk’s execution, at five in the morning, at a crossroad not far from the detention center, by stabbing to the carotid with a blade. He had witnessed it from a distance, terrified.

When we interrogate him, Duch gives the impression of reliving the events he describes. He has an absent look and his eyes are misting up. For a moment, he leaves us.

In the course of our interviews, the relationship we establish with Duch is quite special. I feel a sort of “Lima syndrome.”^[4] Progressively, I no longer feel that I have a torturer in front of me, but simply an ordinary prisoner. Although it is impossible to forget the crimes he committed, I can no longer see him only as a criminal. Sometimes I find myself facing a man, with qualities and defects, a friendly side, and an annoying habit of precision. Lately he does not seem terrifying anymore, and this is precisely what terrifies me. We get along well. He is polite and always smiling: the opposite of a monster.

Clearly he committed appalling acts. There are moments when there is still something terrifying about him, like his way of showing his teeth when he laughs. But he remains a man. It is precisely because he is a man that he can be put on trial. Even in matters of crimes against humanity — especially in matters of crimes against humanity — it is essential not to label the accused as a “monster.” I explained this in detail in an interview with the weekly magazine *Paris Match*.⁵ Quite unsuccessfully, I must admit, since the article was published under the title *Thirty Years*

4 “Lima syndrome” describes the sympathetic feeling that detainees can develop for their detainers.

5 *Paris Match*, Nov. 20, 2008.

After, the Monster Is Finally Tried!

Obviously, there is a considerable political dimension to the Duch trial, but a regime can only function through individuals. It is not possible to ignore the human element without abandoning part of the problem. For that reason, we hired two experts in psychological examination: Françoise Sironi, a specialist in helping victims of torture and mass atrocities, and Ka Sunbaunat, one of the only Cambodian psychiatrists.

The report they gave us few months later, based on fifty hours of interviews with the prisoner, highlighted a number of Duch's personality traits. Duch suffers from a fundamental insecurity, for which he constantly strives to compensate by joining groups he perceives to be dominant. What better for him to do now, he seems to think, than place himself under the protection of two most powerful institutions: international justice (which currently holds him in its grasp) and Christianity (which, according to his analysis, defeated communism in Poland).

Nothing is more important for Duch than being well considered by his superiors. He probably sincerely regrets the crimes he committed, but at the same time he is proud that he was able to successfully carry out his policing responsibilities. He remains very much influenced by Khmer Rouge ideology. His relationship to authority shows that clearly. By choosing to cooperate with us, and by being very conscientious in his manner of answering our questions, he reproduces the arrangement he had as S-21 chief: leaders are of the greatest importance to him. At the time of Democratic Kampuchea, these were Son Sen and then Nuon Chea; today, they are the investigating judges. Just as thirty years earlier he was a model police chief, with us too he is always standing at attention and contemplating how to be a model accused.

Regarding the question of whether or not Duch suffers from major psychological disorders such as neuroses, psychoses or perversion, the experts declared without ambiguity that this was not the case. Having seen Duch regularly for months, I never had much doubt on the matter. It is true that the former S-21 chief shows an obvious lack of empathy and emotion, but this is insufficient to substantiate the existence of pathological traits.

However, one incidental anecdote we learned threw light on the question of sadism, as it suggested that he took pleasure in his duties. Duch liked to go to the ground floor of the central [S-21] building, where two or three painters and sculptors were producing works of art glorifying Pol Pot and the regime. He would sit there and watch them work. One day, he gave a pack of cigarettes to one of them, Bou Meng, and asked him for no reason to beat up Iem Chan, a sculptor working at his side. In front of Duch, Bou Meng and Iem Chan started fighting each other

with plastic pipes. Asked why he did this, Duch answered that he did not know, then added that he would prefer to discuss the incident first with a priest.

The former S-21 chief also has patently obsessive traits. He is exceedingly careful, and his concern for accuracy is limitless: he asks for corrections on witness statements regarding details that are of no interest to anyone else. He cares obsessively about truth, or at least precision.

Despite this, the system he set up was based on the opposite of truth. By making prisoners confess when he knew very well that the torture would make them say anything, he elaborated a paranoid system involving enemy networks, conspirators, and murder attempts through many absurd confessions in which even he did not believe. But this is what the leaders required.

How could Duch, so obsessed with exactitude, adapt to this undertaking? In an interview during which he was particularly open, I asked him: “Today, you admit that you knew since the beginning that these confessions did not reflect the truth. Is this not recognition that you deliberately sent thousands of people to their deaths, knowing they had done nothing wrong? Did you not have the opportunity, like others, to flee, considering your rank?”

He did not directly answer the first part of the question, but limited himself to saying: “I did not have the right to withdraw. Superiors monitored. The only cadres who could flee were those who fought the Vietnamese at the border. . . .”

Anyway, it is incontestable that Duch sent to death people he knew were innocent. He does not contest this himself.

The way Duch worked can not help but bring to mind Eichmann.^[6] Without a doubt, there are differences between their personalities (to begin with, Eichmann was probably more mediocre and careerist than Duch). However, in the role of accused, the similarities are striking. We can identify the same reactions, sometimes the same phrasing, and in both cases, the absence of any mental disorder.

Duch no doubt was drafted into a position [of security center chief] he did not particularly like, and then given the command of S-21 because of his previous experience at M-13.^[7] He explains that he was reluctant to be appointed to the

6 Adolph Eichmann was the head of the Nazi Central Office for Jewish Emigration during World War II and “played [a] central role in the deportation of over 1.5 million Jews from all over Europe to killing centers and killing sites in occupied Poland and in parts of the occupied Soviet Union.” He was put on trial in Israel for crimes against humanity and sentenced to death. United State Holocaust Memorial Museum, *Holocaust Encyclopedia*, at www.ushmm.org/wlc/en/article.php?ModuleId=10007412.

7 From 1971-75, Duch was chief of the Khmer Rouge M-13 security center where he was responsible for “interrogating individuals suspected of being spies or enemies of the [Communist Party of Kampuchea] CPK.” Case No. 001/18-07-2007-ECCC/TC, Judgment, ¶ 115 (July 26, 2010). Similar to S-21, many—though not all—of the detainees were tortured and executed after their interrogations. *See id.* ¶¶ 116-117.

position, claiming that he tried to have someone else selected in his place. This can be compared to Eichmann, who declared himself “radically hostile to any form of violence against Jews,” and supporter of Zionism.⁸ But their senses of duty prevented either one of them from refusing. Like Eichmann before him, Duch said: “I was under the impression that, although I hated police work and interrogations, if I did it, I would do it better than Nat [his predecessor at S-2I]. I had to do it; it was unavoidable; it was an order; I had to do it.”

Both cared about pleasing their superiors, showing respect to authority above all. As soon as these superiors trusted them to complete a task, it was necessary to do it well because the superiors embodied legality. During the reconstitution at Choeng Ek, Duch told us in substance: “At that time we would call it a task; today, considering the spirit of the laws of the [ECCC] Tribunal, it is considered as a criminal act.” Eichmann employed nearly the same wording: “What he did was only a crime retrospectively; he always had been a citizen obeying the law because the orders of Hitler, which he did his best to execute, had the force of law during the Third Reich.”⁹

But as soon as the context changes, both are ready to condemn, in the harshest terms, the criminal character of their acts: Eichmann declared that “the annihilation of the Jews is one of the biggest crimes in the history of humanity.”¹⁰ Similarly Duch, speaking of Democratic Kampuchea in almost identical words, first during his initial appearance and then again at the opening of his trial, says: “Concerning these revelations that I want the world to hear about S-2I, [...] it’s a long story; I would like to summarize. The crimes committed at the S-2I were serious, well organized and systematic. This is a summary.”

Both men are similar in their strategic trial-and-error: we know that during the entire trial Duch demonstrated constant repentance — before asking for acquittal on the last day. As for Eichmann, he explained repeatedly that the worst for him would be to flee from his true responsibilities — before he submitted a document appealing for leniency.¹¹

Both seemed to undergo depressive episodes: Duch declared that in the past, he had stayed prostrate all day, waiting for his turn [to be purged] to arrive. Similarly, regarding his horrifying discovery of the real meaning of the “Final Solution,” Eichmann said, “I sat for hours next to my driver without exchanging even a word. At this moment, I had had enough. I was finished off.”¹²

8 HANNAH ARENDT, EICHMANN IN JERUSALEM 130, 174 (French edition: Folio-Histoire).

9 *Id.* at 78.

10 *Id.* at 75.

11 *Id.* at 127.

12 *Id.* at 181.

A notable difference between the two is that Duch was closer to the place where the crimes were committed. This raises the question of whether or not he directly participated. Duch is always much more at ease declaring in a general manner, "I am responsible for everything that happened at S-21," than responding precisely to our questions about his own actions.

He still denies practicing torture himself, admitting reluctantly that he might have "given some slaps." This is contradicted by some of his subordinates. One of them, for example, affirms that Duch tortured a woman between nine at night and three in the morning by giving her electric shocks until she passed out. Duch denies this categorically.

Regarding his implication in the acts of torture committed by his subordinates, Duch does not contest it, but always introduces complicated nuances. Interrogated about a document containing his handwriting, regarding a certain Oum Soeun, he studied the document carefully before answering that he had indeed written on it: "Has not yet confessed. Torture." Other papers are presented to him. They concern a woman called Danh Siyane. Within them it is written: "Interrogate meticulously, and torture seriously but moderately in order to find the networks. Hit her until she stops saying she went to Vietnam with her grand-father for cancer treatment and menstruation problems."

Duch confirms that he personally wrote these instructions. But there is an explanation for it, and he wants us to hear it:

This document is dated from January 8, 1976, at the time when Nat was supervising everything; me, I just carried out the orders and he corrected my reports before sending them to Son Sen. [...] When I was appointed chief of S-21, this changed [...]. As for employing torture, the situation was this: for ordinary combatants, Hor was in charge and could order torture; for important prisoners such as Ya, Son Sen gave me orders and decided on the use of torture.

In other words, he was too high-ranking to be implicated in the torture of some prisoners, and not high-ranking enough to order the physical abuse of others.

Likewise, even though he was the chief of camp dedicated to the systematic execution of prisoners, he never made the decision to kill anyone. When we show him confessions on which the order of execution is written in his hand, he again he has an explanation indicating that his role was merely to conform to external demands. Thus, one day he tells us:

It must be remembered that the general principle, in the security centers and especially at S-2I, was that every arrested person should be executed [...]. The only decision to take concerned the time of the execution. The person in charge of these executions was Hor [...]. Before all executions, I had to confirm that the interrogations were over. Hor would present me with the list of the people to be executed and I would confirm that their interrogations were over, sign the list, and Hor carried out the decision to execute.

A few days before the fall of the regime, on the January 2 or 3th of 1979, Nuon Chea summoned him and gave him an “absolute” order to kill all the remaining prisoners at S-2I. Interrogated about what happened next, he replied: “On this question, I was terrorized. I spoke about the order with [my subordinate] Hor.”

[Co-Investigating Judge] You Bunleng insists:

- You “informed” him or you “ordered” him?

- Informed. After telling Hor, I went to sleep because I had lost all hope. I would like to specify clearly that even before receiving this order I was a desperate man.

So Duch did not give orders but “informed” his subordinates about orders from above. It is almost as if he had worked at a press agency, transmitting information from above and confessions from below.

During an important interrogation in August 2007, I confront him with his contradictions:

- To summarize, you were a chief who had no power and never made decisions by himself; your role was only to transmit orders, and by the end (from late 1978 to 1979), you knew nothing about what was going on at S-2I, nobody transmitted any information to you about what was happening there?

- I had power to report communications from above and to disseminate them, nothing more, nothing less. When S-2I was created, my role was to read the confessions and report on them by phone to Son Sen every day.

When Son Sen left, I transmitted this information to Nuon Chea once every three, four or five days. As for my power, it was to report communications from above and spread them at the lower level [...]. I was merely a “nominal head.”

A nominal head? Duch would not speak differently if he were adopting a defense strategy similar to that of Khieu Samphan’s — pretending he had power only on paper but not in fact. But contrary to Khieu Samphan, Duch does not try to escape sanction, recognizing his overall responsibility for the crimes committed at S-21.

In reality, Duch is probably just having a hard time facing his past. He was incontestably in an all-powerful position at S-21, where he alone reigned (and at least 64 S-21 staff were executed at Choeung Ek and others were likely executed at Tuol Sleng). In such a context, no one has been seen restraining his actions. The theory of a “nominal head,” in his case, seems unacceptable.

When Duch says he is responsible for the crimes committed in S-21, he is probably speaking the truth. When he adds that he never killed anyone, it is far less credible but does not necessarily taint his sincerity or his overall responsibility. There are many defendants who acknowledge a crime yet refuse to explain the details. It is a very human inclination: admitting to having not been irreproachable in one’s life is not difficult; confessing to a precise wrong action is more painful. . .

As highlighted by the experts, the question of whether or not Duch is sincere when he expresses remorse probably leads to a dead end. The truth, in a case like his, lies beyond. He himself, overwhelmed by his own destiny, cannot find it. He must live with what he did, and this may exceed human capacity.

Excerpts from THE MASTER OF CONFESSIONS: THE MAKING OF A KHMER ROUGE TORTURER¹

THIERRY CRUVELLIER

In 2009, journalist Thierry Cruvellier attended all evidentiary hearings and closing arguments in the Extraordinary Chambers in the Courts of Cambodia trial of Kaing Guek Eav, alias Duch, the former director of the Khmer Rouge's S-21 security center. On July 26, 2010, The Trial Chamber convicted Duch of crimes against humanity and war crimes² and, recognizing the existence of "significant mitigating factors," sentenced him to 35 years in prison.³ On appeal, the Supreme Court Chamber found that the trial verdict did not reflect the gravity of the crimes Duch committed and increased his sentence to life imprisonment.⁴

1 Published by Editions Gallimard in France in 2011 as *LE MAÎTRE DES AVEUX*. Translated into English by Alex Gilly and published by Ecco Press in March 2014. Excerpts reprinted by permission of Thierry Cruvellier, Susanna Lea Associates and HarperCollins Publishers.

2 The ECCC Trial Chamber found Duch responsible for the crimes against humanity of murder, extermination, enslavement, imprisonment, torture (including one instance of rape), persecution on political grounds, and other inhumane acts; and for the grave breaches of the Geneva Conventions of 1949 of willful killing, torture and inhumane treatment, willfully causing great suffering or serious injury to body or health, willfully depriving a prisoner of war or civilian of the rights of fair and regular trial, and unlawful confinement of a civilian. *See* Case No. 001/18-07/ECCC/TC, Judgment, ¶ 559 (July 26, 2010).

3 *See id.* ¶¶ 628-31 (recognizing mitigating factors including his "admission of responsibility, expressions of remorse . . . , the coercive environment in [Democratic Kampuchea] in which he operated, and his potential for rehabilitation"). Duch's sentence was to have been reduced by five years as a remedy for his illegal prolonged detention without trial by the Cambodian Military Court prior to his transfer to the ECCC, and by the nearly 11 years he had spent in provisional detention since his arrest by the Cambodian Government in 1999. *See id.* ¶¶ 623-27, 632-33.

4 *See* Case No. 001/18-07-2007-ECCC/SC, Appeal Judgment, ¶ 383 (Feb. 3, 2012).

CHAPTER 6

Duch stands and greets the court. He begins by saying that his people's suffering started with Prince Sihanouk's repressive government in the mid-1960s and continued after the far right-wing coup of March 18, 1970, when "all the parties competed to kill Cambodians until April 1975." He holds a sheet of paper in one hand and leans on the edge of the table with the other. It takes just seconds for the room to fall silent. Though the trial started the previous day, not until now has it been imbued with that solemn atmosphere so specific to important moments in courtrooms. Duch is asking for forgiveness:

No single image can illustrate my remorse and suffering. I feel so much pain. I will never forget. I always say that a bad decision can lead in the blink of an eye to a lifetime of grief and remorse. I defer to the judgment of this tribunal for the crimes that I have committed. I will not blame my superiors. I will not blame my subordinates. I will not shirk my responsibilities. Although these crimes were committed under the authority of my superiors, they fall within the purview of my own role at S-21. On the ideological and psychological levels, I am responsible. I carried out Party policy and I regret it.

[S-21 survivor] Bou Meng nods approvingly. Duch looks like he's trembling. The judges barely look in his direction. He removes his spectacles and leans on the desk with both arms. He looks at each person in turn, first left, then right, giving most of his attention to the prosecutor's bench.

"I never liked my job," he says.

When he describes his arrest in May 1999, Duch's breathing grows heavy and he sounds ill. He finally mentions the sheet of paper he's been clasping since the start of his address to the court. It's a drawing that he has made, he says. He would like to show it to the judges. He sits back down while waiting for their permission. People have been waiting thirty years to hear Duch speak out in his own defense. The public gallery is abuzz. Yet the moment is utterly devoid of emotion.

Duch tries to explain his peculiar drawing. He points to three chairs on the sheet of paper, which he says are occupied by Pol Pot, Nuon Chea, and Ta Mok—Brothers Number One, Two, and Four of the Khmer Rouge leadership. Along with Brother Three, Ieng Sary, this was the structure of the Communist Party of Kampuchea, explains Duch. The presiding judge keeps his eyes glued to the defendant. The other judges look away. Duch's first address to the court is a resounding flop.

After arriving in Phnom Penh on June 21, 1975, Duch, like everybody else, went through a few days of political training. He was taught “the revolutionary conception of the world,” he says in French. Each person was made to write down his “biography” and ideology. Celebrating the “great victory of April 17,” the date the Communist insurrection took Phnom Penh, was mandatory. So was committing oneself in writing to the good of the collective, to the teachings of socialism, and to the continuation of the Revolution. Once a person had written down his biography and commitments, he read them out to his comrades, who were then encouraged to ask questions. He also had to reveal his family background, which was far more perilous than it sounds: having the wrong family tree could get you killed. Duch made sure not to mention that he was related to the niece of Lon Nol, the recently deposed field marshal with a price on his head. Duch says that it was at this time that he tried to quit the Party’s security services after having worked for them for four years. He asked a high-placed contact for a transfer to the Ministry of Industry, he says. When the court asks him to elaborate, Duch answers with a proverb that the judges, particularly the foreign ones, are free to interpret however they choose: “Is it necessary to crack open a crab to see its shit?”

When asked whether he hadn’t developed a taste for police work, if he hadn’t found fascinating the secret and all-powerful world of the Party security apparatus, Duch has no good answer. Pressed, he dodges the question. Pressed further, he rehashes the explanations that his conscience has already endorsed: that his work was evil by its nature, or that the confessions were half-false. But the difficult question of whether he enjoyed committing the crimes won’t go away, and eventually Duch makes an effort to answer it.

His effort fails.

“I was just an instrument of the Party,” he says, defeated, “an absolute, authoritarian instrument.”

The S in S-2I stands for *Santebal*.

In the Buddhist lexicon, the Santebal are those who keep the peace and maintain order, like the police. Under Pol Pot, Santebal was the name given to the internal security service, more commonly known in Communist regimes as the secret police. At the end of June 1975, Son Sen, the head of state security and minister of defense, informed Duch that a detention and intelligence center was being created in Phnom Penh. He told Duch that they were to follow the French “counterespionage” model.

The 21 in S-2I was, according to Duch, the radio code that belonged to the center’s first director, Nath.

Duch was sent to search government buildings and the homes of former government employees. He gathered reports and archives from the fallen regime. From the judicial police headquarters, he took documents on torture. S-2I was created on August 15, 1975, with Nath as its director and Duch as his deputy.

It was set up first and foremost to eliminate the *ancien régime*. This included army officers, civil servants, aristocrats, and “new people”—those who stuck with the old regime right to the end and those who lived in the cities. The revolution soon found that it had no use for the mentally impaired, either: in its earliest days, S-2I served as a psychiatric hospital as well. What became of its patients?

“Based on my own analysis, more than 50 percent of patients were smashed,⁵ though I’m not entirely sure,” says Duch.

He has a better recollection of what he was ordered to do with lepers: destroy them all. Communism must liberate man. Communism abhors the handicapped, the sick, the mentally ill, the religious, homosexuals, and intellectuals.

On March 30, 1976, Party leaders signed a secret order authorizing purges within the Party itself. It would prove a watershed moment. That decree is the most tangible proof we have of the policy of extermination implemented by the secretive Angkar. The order formalized as policy the already existing practice of summary execution by giving the zone committee, the central committee, the standing committee, and the military staff the authority to kill. Thus began the great purges, ministry by ministry, division by division, region by region. Nath lost his job, Duch was promoted, and S-2I had a new mission. Its focus was now on the internal purges, as per the decree of March 30. Yet Duch was unaware that this decree even existed. He would only learn of the Angkar’s decision some thirty years later, while in prison.

“Why were you chosen to run S-2I?” asks Judge Lavergne.

First, it’s true that I was a much better interrogator than Nath. But it was more than that. The Party had no confidence in him. Son Sen used to say that Nath’s methods were dubious and that he was a schemer. I was honest. I would have rather died than lied to a Party member. And I was loyal. I reported every single thing I learned. I was methodical about it. All my life, whenever I’ve done something, I’ve done it thoroughly.

Duch claims to have been terrified when he took over. He says he even suggested that someone else take the position instead. But Son Sen threatened him, he says. When he tries to reenact their conversation in court, the pitch of his

5 “To smash” was the official English translation used in court for executing or killing people.

voice climbs until his Khmer sounds metallic, jarring.

“I was their sheepdog,” he says.

But for the prosecutor, he was clearly the perfect fit for the job.

The historian David Chandler likes to say that S-2I was probably the most efficient institution in all of Cambodia during the Khmer Maoists’ tragic and grotesque reign. Its own impeccable archives showed that S-2I was efficient, modern, and professional. The archives, down to the smallest detail, convinced the Party leadership that its suspicions were well-founded. They satisfied the Party’s need to prove that it had eliminated all its enemies and that it had emerged victorious, even if newly conjured enemies constantly surfaced.

Chandler doesn’t think the Khmer Rouge followed any particular Communist model. Similar security centers existed in China and the USSR, where the security apparatuses extorted the most dubious confessions and “reeducated” reactionary minds with the same unabated enthusiasm as the Khmer Rouge did at S-2I. From Lenin onward, the Russian Revolution was blighted by purges. What Chandler does believe is unique to S-2I, however, is its completely secret nature. And he calls the practice of “reeducating” prisoners only to then kill them unprecedented. The systematic killing that took place at S-2I made it a unique combination of a secret police prison and death camp.

A network of prisons and interrogation centers in which black-clad agents carried out violent abuse abounded across the Khmer Rouge’s Democratic Kampuchea. But each little island in this police archipelago was isolated from the others. S-2I had no authority over any other prison, nor any autonomous or direct contact with them. Everything had to go through the “center.” S-2I was unusual because it did have a sort of national jurisdiction in that it could receive prisoners from anywhere in the country, and because it was directly linked to what everyone called the “upper echelon.” S-2I was an arm of Santebal directly linked to the center of power: the standing committee, the true Angkar, which comprised between five and seven members. This prison was its exclusive tool. The most important arrestees were sent here and nowhere else, including those made within the Central Committee or the Politburo.

But S-2I is also unique in that we have its archives. It is often emphasized that no other prison in Democratic Kampuchea was run as efficiently or with such sophistication. Perhaps. But no other prison in Cambodia remains with its archives intact. We know little about the two hundred other centers of the secret police that have been identified, just as we would know nothing about S-2I had Duch been ordered or had the presence of mind to destroy its records.

Duch's confession makes him unusual among the members of the Khmer Rouge's inner circle. But would he have confessed had he not left so much evidence behind? Duch is a mathematician; his arguments adhere to logic. He has admitted nothing that can't be found in the archives.

"If documents exist then I can't deny it," he says simply. "I recognize everything that comes from S-21. I accept no other evidence."

His first great error was not anticipating the rapid Vietnamese invasion in early 1979, and his second was not destroying his archives before fleeing. His superiors made the mistake of not ordering him to do so. Didn't they know about their warden's meticulous record-keeping? Did Duch leave the fruits of his endeavors intact out of haste or simply out of lack of foresight? Or was it because he had been too proud to destroy the exemplary work he had accomplished for the Party and for the Revolution, the testament to his talent and proof of his ability to establish a successful and efficient institution?

Had Duch destroyed his archives, we never would have known much about the prison nor the magnitude of the crimes committed there. We might never have known the true identity of its director, "Brother East." It's true that a handful of survivors might have told us about a terrible place that had once existed in Pol Pot's Cambodia. But with no written records, how many other terrible prisons have been erased from the pages of history? Without the written confessions, photographs, and "biographies," there is no S-21. In short, S-21 exists today because hubris or professional oversight prevented its director from destroying his work.

The archives are of exceptional quality and incredibly thorough. Without them, the history of Democratic Kampuchea would be much murkier and less detailed. And if we had all the regime's documents, says Chandler, "We would have a completely new history of Democratic Kampuchea." Ever the iconoclast, Chandler tells the court:

Maybe S-21 was not as important [to the Angkar] as it is to those of us seeking evidence about the Democratic Kampuchea regime. I think if we had [all the minutes of Angkar] cabinet meetings, I'd be very surprised if S-21 gets mentioned very often. Certainly the top leaders were very interested in the confessions of high-ranking cadres, but for the people who were not high in the chain of command, [they] would not be interested.

CHAPTER 17

The reality of the totalitarian experience is often gray. The woman on the witness stand today has come to honor the man the Khmer Rouge decided she

should marry. A revolutionary soldier, he was killed at S-21 in 1977. She describes how she joined the Communist guerrillas in 1971 “because I was very angry about what we were suffering at the hands of the American capitalists and imperialists.” She went into the *maquis* “to liberate the country from those people,” and ended up with the rank of company commander in Democratic Kampuchea’s victorious army. When the Angkar arranged her marriage, she and her husband were one of three couples married simultaneously. Conveniently for a woman who found it difficult to celebrate being married to a man not of her own choosing, the Angkar had a remedy: there would be no celebration. Festivities were considered bourgeois.

“It all happened very quickly,” says the woman.

That morning, we were told that the wedding would take place at two in the afternoon. I was shocked and asked why we were being married so quickly. I asked if my parents, my family, and the people from my village were invited. The answer was no. I wasn't happy about the way our marriage was celebrated, but the times were what they were. The time had been set, and I couldn't refuse. I was also told that we were in a special unit and that we weren't allowed to marry someone outside the unit; I was told that the Angkar was like our parents arranging our marriage, and that therefore we had to accept the arrangement made for us. I was very unhappy on my wedding day.

One year later, her husband was purged at S-21 and she was sent to S-24 for “reeducation.” After the fall of the Khmer Rouge in 1979, she returned to her village, where her mother told her that it was because of her, the revolutionary, that her father was dead. She fell to her knees before an aunt and begged her forgiveness, but the aunt refused to give it. So today she says that she must reject Duch’s apology in order to prove that she isn’t Khmer Rouge, that she is loyal to the nation, and that she was “betrayed by that group,” symbolized in her mind by Duch.

If we look beyond the anticipated punishment for the crimes committed at S-21, we see how they have torn apart Cambodian families; we see the terrible burden of family betrayals and insurmountable feelings of guilt.

Another woman takes the witness stand. She’s wearing a burgundy-colored jacket over a white blouse and an elegant sarong typical of city folk. Her hair, touched lightly with gray, is cut short and neatly pushed back. A thin pair of spectacles rests on her nose. She is seventy years old, but looks younger. She pinches the hem of her blouse and nervously pulls it down. A victims’ assistant puts a hand on her arm. Of the hundred or so students who passed the entrance exam for medical school in her generation, this witness was one of the few women. She immediately

apologizes: “Sometimes I feel as if I am mentally unstable.”

She speaks quickly and forcefully. There are notes in front of her, but she doesn’t use them. As soon as she starts talking, her story carries her away. She describes how the entire population of Phnom Penh was evacuated in the hours after the arrival of the Khmer Rouge. She remembers each moment. She can still mimic the way black-clad soldiers with megaphones in hand insinuated that all educated people were to be eliminated. “They said that they would keep only the base people.”

Her husband was deputy director of civil aviation at Phnom Penh airport. He was arrested. She was sent out to be “reeducated” by working on the dykes and dams. During the rainy season, her black-clad supervisor told her that if she passed this test, she would survive. If not, she would die. She closes her eyes to help jog her memory before diving back into the details of her tragic odyssey. Duch is sitting up straight, listening closely.

“I’ve lived in despair for so long that when death comes, I won’t falter,” she says.

After the fall of the regime, she returned to Phnom Penh and found work at the hospital. One day, her boss summoned her and told her to visit the museum at S-21. She knew very well the Ponhea Yat High School, where the Khmer Rouge had set up its detention center. Friends of her parents used to live close by. She reached the prison and was met by one of the survivors, she says. It’s at this point that, in court, the pitch of her voice rises and cracks. Her speech becomes a series of short, strident cries, and she addresses the court in that striking timbre that the Khmer language reserves for anger, grief, and incomprehension. At S-21, she was shown documents, including a photograph. It was the last one taken of her husband, Thich Hour Tuk, alias Tuk. The documents contained the date he was brought to S-21: February 2, 1976, and the date he was executed: May 25, 1976.

In the photograph, the prisoner’s piercing gaze appears to defy the photographer. He wears a thin mustache and has a few hairs on his chin. He looks slightly cross-eyed. Tuk is pursing his full lips, which gives him a skeptical expression. His brother, a pilot, was also destroyed at S-21.

The widow lowers her voice to give the court an impression of a conversation she had with a cousin, and another she had with a niece. Sometimes she seems disorientated and confused, as though suffering from the mental malady she mentioned at the beginning of her deposition. Then she reminds herself that the regime accused her husband of a “great crime.” And then her angry voice returns and cracks through the courtroom like a whip and she asks the same question over and again: “Why? Why? Why?”

She says that men fall into one of two categories: those that resemble humans and have gentle hearts; and those that resemble humans and have animal hearts. An extremely devout woman, she prays for Duch's reincarnation and that "all of these beings cease to be cruel like Pol Pot's people." Then that question again: *Why?*

"Why should people who have done no wrong be locked up and mistreated? I don't understand."

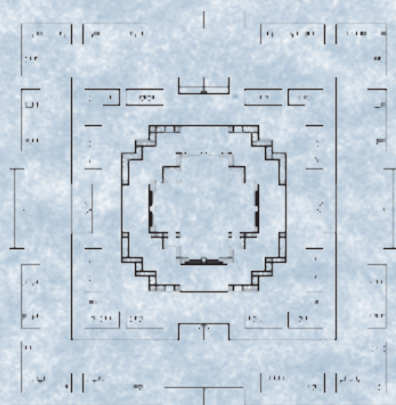
Her story returns ceaselessly to the inexplicable, a circle without end: they came for him, he disappeared, he's dead. It is enough to drive you mad.

"This is a good moment to take a break," says the presiding judge.

It turns out that it was the witness's older sister who denounced her husband to the black-uniformed guards. She considered her older sister like a mother.

We felt betrayed. She had been indoctrinated. That's why she said the things she did. Once, after all that happened, after all the suffering, I asked her what exactly Communism was. Now I know what it is: it's jealousy; it's competition and mass murder; it's sending people to S-21; it's betrayal; it's the denunciation of kith and kin; it's your loved ones getting arrested and executed. When I remember Buddhist teachings, I feel calmer; I understand that she did what she did because of the way the Communists brainwashed her. She denounced my husband. I blamed her, but perhaps she wanted to be Pol Pot's wife. She's the one who will have to suffer the consequences.

The judges have fallen quiet. Her lawyer has cast her adrift on the river of her memory, aboard her raft of grief. Her lawyer doesn't ask a single question; not one person in the courtroom interrupts her frenzied torrent of words, her heartbreak, her pain and madness, and that question — *Why?* — that keeps coming back again and again, the woman banging her head against it until it bleeds. "I was loyal to my country. I was loyal to my husband. Why have I been punished like this?"





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