



NEVER TOO LATE FOR JUSTICE

A Bearing Witness Trip to Cambodia
October 22–28, 2012

UNITED STATES
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BETWEEN 1975 AND 1979, one of the great crimes of the 20th century was perpetrated: Some two million people died under the Khmer Rouge, a radical Communist regime that ruled Cambodia through a cruel and ruthless system of forced labor, persecution, and execution aimed at bringing about an agrarian utopia. The so-called Killing Fields, which took the lives of one quarter to one third of the population, constitute one of the largest cases of government-organized mass slaughter since the Holocaust.

Immediately after World War II, the victorious Allied forces moved quickly to set up a system of justice, with trials held at Nuremberg to hold the Nazis accountable for their crimes. Amazingly, it has taken more than three decades for the world to try to hold the Khmer Rouge accountable in trials that meet international standards of justice.

At the end of October 2012, the United States Holocaust Memorial Museum sent a mission to Phnom Penh to observe the Extraordinary Chambers in the Courts of Cambodia (ECCC), the joint Cambodian-United Nations trial of the surviving leadership of the Khmer Rouge. Led by Michael Chertoff, former US secretary of Homeland Security and federal appeals judge, and current chairman of the Museum's Committee on Conscience, the delegation also visited memorial sites and met with judges, lawyers, and NGOs monitoring the case, as well as with Cambodian officials and US Ambassador William Todd. We were joined by Elizabeth Becker, a former *New York Times* and *Washington Post* reporter who has visited Cambodia on numerous occasions and interviewed Pol Pot before his overthrow by the Vietnamese Army in 1979.

Perhaps most significant, we met with survivors of the Killing Fields and heard stories of the immense and continuing impact the crimes committed by the Khmer Rouge have had on the people of Cambodia. As Andrew Cayley, the international prosecutor for the tribunal, told us, the Khmer Rouge regime left such devastation in its wake that every single person in the country, even those born after its reign, has been affected.

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One of the most moving experiences for our delegation was meeting with the “civil parties” to the cases, that is, victims who suffered at the hands of the Khmer Rouge and have been permitted to offer testimony to the ECCC about their experiences. One such witness, an elderly woman named Im Sunthy, told us of her husband Phung Ton, a respected professor who left Cambodia in March 1975, shortly before the Khmer Rouge seized power, to attend several conferences in Europe and never made it back to his family. As she and her daughter discovered after the war, he returned to Phnom Penh in December 1975 but was immediately detained and sent to several camps before his final journey to S-21, or Tuol Sleng, the notorious Khmer Rouge jail. There he was tortured before being killed at Choeng Ek, the mass killing site outside of Phnom Penh.

“What I want is non-recurrence” of the Khmer Rouge crimes, said Im Sunthy, who told us she was reliving her suffering nearly 40 years after the fact. She raised a framed picture of her murdered husband as she told us her story, bringing tears to the eyes of every member of our group.

BACKGROUND ON THE ECCC

The ECCC was formed in 2003 by a treaty between the United Nations and the government of Cambodia, empowered to investigate and prosecute senior leaders of the Khmer Rouge and those deemed “most responsible” for the crimes committed in Cambodia between April 17, 1975, and January 7, 1979. It is unusual in that it is a “hybrid” court, composed of both Cambodian and international judges, prosecutors, and other personnel.

So far, the ECCC has heard only two cases. The first involved Kaing Guek Eav, better known as “Duch,” the commander of Tuol Sleng, who was found guilty in 2010 of crimes against humanity and war crimes related to the torture and killing of close to 14,000 people sent to the prison. After an appeals process, which upheld the conviction and increased his sentence, Duch was sentenced to life in prison.

The current case involves the surviving leadership of the Khmer Rouge: Nuon Chea, the number two leader in the regime; Khieu Samphan, the former head of state; and Ieng Sary, the foreign minister. All face charges of crimes against humanity, war crimes, and genocide (for campaigns against ethnic Vietnamese and Cham Muslims). Pol Pot, the leader of the Khmer Rouge, died in 1998.

When our group arrived to observe the proceedings, several hundred people were lining up outside the converted auditorium that sits on the outskirts of the city and serves as

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the courtroom. Court authorities have mounted an extensive effort to encourage Cambodians to attend the trials by offering bus service from their villages. So far, an estimated 150,000 Cambodians have come to watch the proceedings in person—more than all the people who have watched other war-crimes tribunals combined (such as special courts for the former Yugoslavia, Rwanda, and Sierra Leone) according to David Scheffer, a Northwestern University law professor and special UN expert on the Khmer Rouge trials, who assisted with our visit to the Court.

Inside the courtroom, the proceedings unfolded behind a glass barrier. Seated on a raised dais was the team of judges, all wearing red robes. To the left were the prosecutors and the lawyers for the civil parties. Sitting in a chair with his back to the spectators was the witness. To the right, looking ahead impassively, were two of the octogenarian defendants—the white-haired Khieu Samphan and Nuon Chea, wearing his trademark dark sunglasses. The third defendant, Ieng Sary, has been absent of late because of medical problems. The proceedings are simultaneously translated into English, French, and Khmer, and we were able to follow along on headsets.

At the time of our visit, the case was focusing on one of the five criminal policies charged in the indictment: the forced evacuation of some two million people from Phnom Penh after it was seized by the Khmer Rouge on April 17, 1975, and subsequent population transfers.

It was hard not to think of the Nazi policies of population transfer as we listened to the prosecution and civil party lawyers question the witness, Sok Chinn, a former railway worker who testified that he was tasked with repairing railway lines under the supervision of a Khmer Rouge commander named Ta Moun. If any train were derailed, he said, he and the other railway workers were told they would be killed.

Sok Chinn described the movement of the old, the young, and the sick on the trains, and recalled the stench of dead bodies lying near the train tracks. Only those corpses lying directly on the railway track were buried, he said. Under questioning from Elisabeth Simonneau Fort, the French lawyer representing the victims, Sok Chinn described the cruel conditions for those traveling on the trains—they were given no water and had to go to rice paddies to drink (and wash.)

Asked whether he tried to talk with the people being transported, Sok Chinn testified that he was instructed to stay silent. “I couldn’t do anything, because I myself experienced the same hardship,” he said. “I was absolutely afraid to say anything.”

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KEY ISSUES IN THE CASE

Controversy has surrounded the Khmer Rouge tribunal even before it became operational in 2007, and during our weeklong visit to Cambodia, we were exposed to conflicting perspectives about the ECCC. In conversations with human rights groups and others monitoring the case, considerable concern was expressed about corruption, judicial independence, and political interference in the workings of the tribunal.

Perhaps the biggest controversy is whether there might be additional trials after the current case is completed. Prosecutors have been looking into whether they might bring charges against two additional groups of defendants, regional and military commanders suspected of orchestrating the deaths of tens of thousands of people. But in repeated statements, Cambodian officials, including Prime Minister Hun Sen, have insisted that the court will close after the completion of this trial, claiming further trials might destabilize the country. Two of the international judges, who determine whether cases will be sent for trial, have resigned amid allegations that the government interfered with their work.

In our conversations with those following the ECCC, there was considerable hope that the new International Co-Investigating Judge, Mark Harmon, a highly respected American jurist with long experience at the International Criminal Tribunal for the former Yugoslavia in The Hague, would ensure that a proper investigation be carried out in the two additional cases. Our strong sense was that the international community is pushing hard to make sure that this happens.

We were also hopeful that the current case would be followed through to its conclusion and meet international standards of fairness and due process. Although the Cambodian government does not want further trials, it is clearly proud of the fact that it is holding the leadership of the Khmer Rouge accountable in a trial that many thought would never happen.

One concern expressed by many is that the defendants, all of whom are elderly and frail, would not live long enough to face a final verdict. It could take several more years for all the charges to be adjudicated.

A major problem has been adequate funding. On the day we visited, the judges announced from the bench that they would be cutting back the number of days of testimony they would be taking each week because of inadequate funding. The ECCC, with an annual budget of roughly \$45 million, is funded by voluntary contributions

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from UN member states, and we were told of considerable “donor fatigue” related to the trials. Millions of additional dollars must be raised to ensure that the court will continue through 2013. It would be more than a shame if this important initiative to achieve accountability for one of the greatest slaughters of the past century falters for lack of funds.

KAMPONG CHHNANG

One special feature of our trip was a visit to Kampong Chhnang, a province outside of Phnom Penh, where we met villagers and survivors and got a taste of the rural life, untouched by modernity, which most Cambodians live. The trip was organized by Youk Chhang and his team at the Documentation Center of Cambodia, which has been a leader in collecting testimonies and other documentation about the crimes of the Khmer Rouge.

We stopped at Kshach Sar Meditation Center, built on the site of a former prison and execution site for people accused of being enemies of the regime. Sim Ry, 72, a petite nun who had survived the labor camps of the Khmer Rouge, showed us the small pits where victims’ bodies had been strewn. The bones were dug up by villagers in the 1980s, and a small number of the skulls are preserved in a glass memorial near the middle of the facility. It is one of hundreds of such memorials that dot the countryside of Cambodia.

Sim Ry’s gentleness and spirit of forgiveness astonished us all. Despite having lost many members of her family during the Killing Fields period, she is paying little attention to the proceedings of the tribunal and believes justice will be achieved in the next world.

During the day, we came across a 20-meter crater that fills up during the rainy season and provides water to the nearby rice paddies. The crater was created by one of the many bombs dropped on Cambodia during the Vietnam War by US B-52 planes, a small, yet extraordinarily compelling, reminder of the decades-long American involvement in the story of Cambodia. Reactions to the ECCC differed among many of the people we met. At a nearby village, we spoke with Taing Kim, who as one of the thousands of civil parties told the tribunal her story of being raped by a Khmer Rouge prison guard. Taing Kim has resurrected her life since the Khmer Rouge period, living for a while as a nun before becoming, once again, a farmer in the rice paddies surrounding her tiny village.

Like many of the people we met in Cambodia, she spoke gently and softly about the terrible experiences of her life, avoiding mention of the sexual violence in front of her

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small granddaughter. But, as she expressed frustration over the slow pace of the proceedings, it was clear to us that she is seeking a measure of justice from the ECCC. It underscored that for the perpetrators of the world's most heinous crimes, it is never too late for justice.

COVER PHOTO Chum Mey survived for two years in Tuol Sleng prison, the most notorious of the approximately 196 Khmer Rouge prisons. It is believed that at least 14,000 people died there. Mey is one of the few survivors. At what is now the Tuol Sleng Genocide Museum, he shows the barbed wire that was put in front of the prison buildings to prevent prisoners from jumping to their deaths. *Lucian Perkins for the United States Holocaust Memorial Museum*