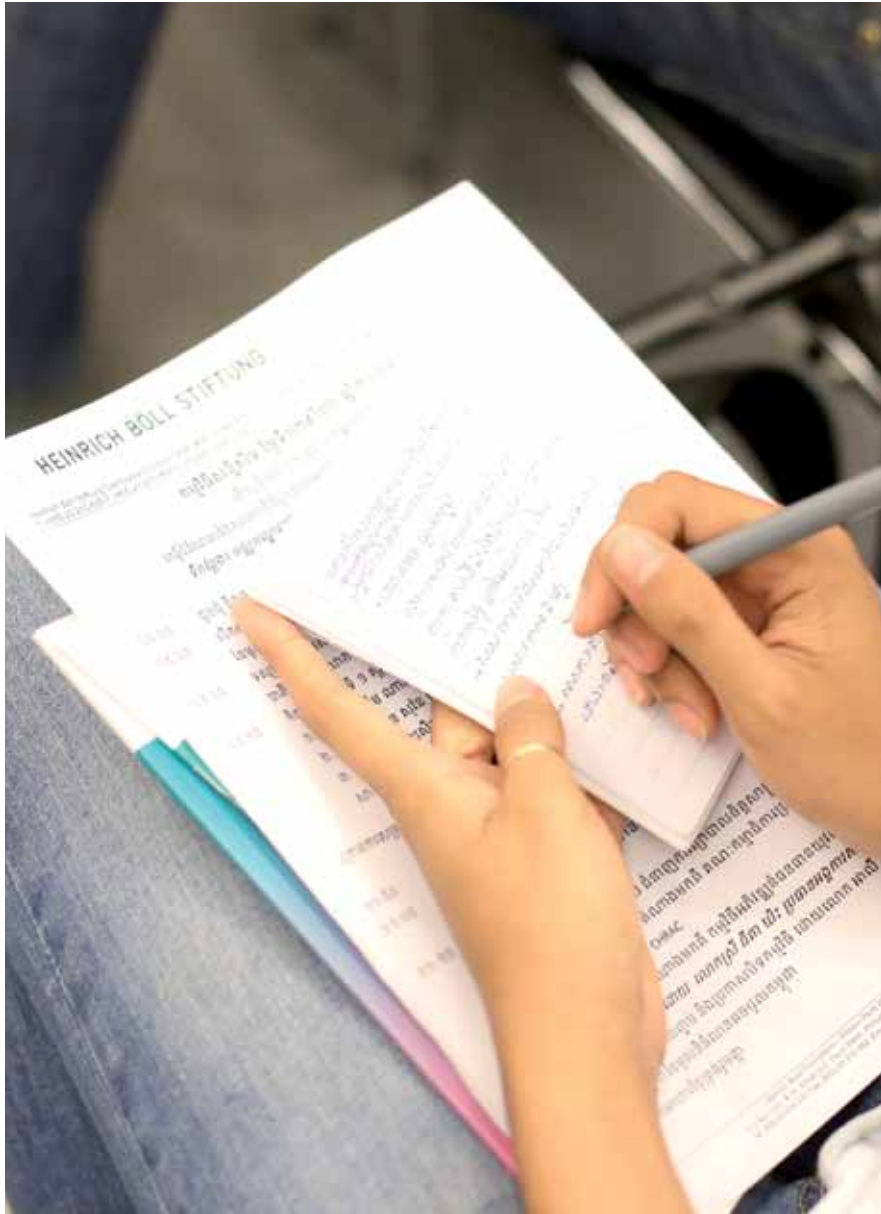


Justice done?

The Legacy of the Khmer Rouge Tribunal after the judgment of case 002/01, 12th Aug 2014, Phnom Penh

Edited by Maria Lobato and Ali Al-Nasani





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TUESDAY, 12 AUGUST 2014

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The legacy of the Khmer Rouge Tribunal after the judgment of case 002/01

Venue: Meta House, Sothea's Boulevard
English-Khmer interpretation will be provided.

- 8.30h** Get together
- 9.00h** Opening of the conference (Ali Al-Nasani)
- 9.05h** German Ambassador Baron von Marschall:
„The ECCC and international criminal justice –
a German perspective“ (confirmed)
- 9.25h** Panel I on the legal aspects of the judgment
Mr. Salim Nakhjavani - Assistant Prosecutor ECCC (confirmed)
Ms. Sin Saworn, lawyer from CDP (confirmed)
Mr. Lars Olsen, Legal Communications Officer in the
ECCC's Public Affairs Section (confirmed)
Moderation: Dr. Daniel Heilman, Legal Advisor at the Senate
of Cambodia (confirmed)
- 10.50 – 11.00h** Coffee break
- 11.00h** Introductory statement to Panel II (Ms Ly Vichuta, LSCW, confirmed)
- 11.20 – 12.50h** Panel II on the victim's perspective
(including gender based violence)
Dr. Ken Carswell (Mr.), Clinical Psychologist (confirmed)
Ms. Lach Sreytouch, CHRAC (confirmed)
Mr. Ly Bunthea, YRDP (confirmed)
Moderation: Ms. Thyda Kus (SILAKA, confirmed)
- 12.50h** Concluding remarks and closing of the conference (Ali Al-Nasani)
- 13.00h** Joint lunch

Introduction

On the 7th August, 2014, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) sentenced Nuon Chea and Khieu Samphan to life imprisonment, having found them guilty of crimes against humanity committed between the 17th April, 1975, and December, 1977. This verdict marks the completion of the first trial in Case 02, known as Case 002/01, which commenced on the 21st November, 2011, and concluded in October, 2013, after 20 months of evidentiary hearings.

Nuon Chea and Khieu Samphan were the last senior leaders of the Khmer Rouge Regime capable of standing trial. This trial was the first time that senior members of the Democratic Kampuchea (DK) have been held accountable for the crimes committed during the Khmer Rouge Regime. The Trial Chamber considered that Nuon Chea and Khieu Samphan, by participating in a joint criminal enterprise, perpetrated: 1) crimes against humanity of murder, political persecution, and other inhumane acts during the evacuation of Phnom Penh on the 17th April, 1975; and crimes of political persecution and other inhumane acts during the forced movement of the population in other regions of Cambodia from September, 1975, until December, 1977; and 2) crimes against humanity of murder and extermination through the executions of Khmer Republic officials at Tuol Po Chrey. The accused were also convicted for their roles in planning, instigating, and aiding and abetting the crimes of extermination and other inhumane acts, related to the enforced disappearances during the movements of the population and the political persecution at Tuol Po Chrey.

Only Nuon Chea was found to be responsible as a commander for the crimes committed during the forced movements of the population and at Tuol Po Chrey. With respect to Khieu Samphan, the Trial Chamber considered that through his position he had contributed not only to the design and implementation of the common purpose which resulted in the commission of the crimes; but also the endorsement of the DK policies, both domestically and internationally. The Chamber sentenced the accused to life imprisonment, taking into consideration the nature and gravity of the crimes committed, the Supreme Court Chamber's decision in Case 001, and precedents from other international tribunals.

Significantly, the Chamber considered sufficient funding had been secured to endorse the implementation of 11 reparation projects, namely: the institution of a National Remembrance Day project; the construction of a memorial in Phnom Penh to honour victims

of forced evacuations; a testimonial therapy project; various self-help groups; a permanent exhibition; a mobile exhibition and education project; the inclusion of a chapter on forced population movement and executions at Tuol Po Chrey within the Cambodian school curriculum; the construction of a peace learning centre; a booklet on adjudicated facts and civil party participation at the ECCC; two editions of the verdict in Case 002/01; and the inclusion of Civil Party names on the ECCC website.

At the time of the Court's decision, the Heinrich Böll Foundation held a conference in order to assess the impacts of the Judgment on the transitional justice process in Cambodia, and to analyse the legacy of the Khmer Rouge Tribunal.

Mr. Ali Al Nasani, Country Director of the Heinrich Böll Foundation, Cambodia, opened the conference. An introduction to the first panel was delivered by the German Ambassador, Mr. Baron Von Marschall, who addressed the German perspective of the ECCC and international criminal justice.

The first part of the discussion considered the legal aspects of the judgement. Mr. Salim Nakhjavani, Assistant Prosecutor at the ECCC, Ms. Sin Saworn, lawyer from the Cambodian Defenders Project (CDP), and Mr. Lars Olsen, Legal Communications Officer at the ECCC's Public Affairs Section, participated in the discussion with the moderation of Dr. Daniel Heilman, Legal Advisor to the Senate of Cambodia.

An introduction to the second panel, focused on the victims' perspective of the Judgment, was delivered by Ms. Ly Vichuta, lawyer from Legal Support for Children and Women (LSCW). The second panel was formed by Dr. Ken Carswell, from Transcultural Psychosocial Organisation, Cambodia (TPO Cambodia); Ms Lach Sreytouch, from Cambodian Human Rights Action Committee (CHRAC); and Mr. Ly Bunthea, from Youth Resource Development Program (YRDP); with the moderation of Ms. Thyda Kus from SILAKA.

This publication recounts the discussion and debate that took place during the conference, held at Meta House, Phnom Penh, Cambodia, on the 12th August, 2014.

**Baron von Marschall***German Ambassador in Cambodia:*

The ECCC, like other courts dealing with international criminal justice, represents universal principles. And even if future perpetrators may not necessarily be deterred by the existence of such courts (those who commit crimes against humanity usually are blind to the implications of their wrongdoings), the courts and their verdicts nonetheless play a crucial role: they provide objective confirmation to survivors that they have been treated wrongfully and ideally also restore their belief in the rule of law. And they are an institutionalized reminder that there is no action without consequence. Impunity is one of the greatest curses in any society where it is prevalent. The ECCC, through its mere existence and through its rulings, delivers that message loudly and clearly.

And while I am saying this, I am fully aware that the importance of this court and its role are not judged unanimously. Last week's verdict has stoked the public debate about the ECCC here and abroad.

My wife and I attended the court session last Thursday to witness ourselves the presiding judge's reading of the sentence, to see the two culprits, to sense the atmosphere in the court room. What we did not see, unfortunately, was the reaction of the Cambodian people who watched the event on TV all over the country – no doubt the reactions must have been very mixed. There are the victims who have survived the years of Khmer Rouge terror, some of them asking for revenge, others just trying to forget, and many still suffering from the traumas inflicted upon them. There are the many perpetrators, still living among the rest of the population, who do not fall into the jurisdiction of the ECCC and who assume that impunity will prevail for the rest of their lifetime because, so far at least, no national prosecutor seems to take any interest in their cases. And there are even people who have been both perpetrators and victims.

Then there is the young generation, 70% of the population who have been spared the horrors of the Khmer Rouge terror and, if at all, have some knowledge about it merely from hear say.

It therefore is not surprising that last week's ruling caused very different reactions, from victims who were emotionally shaken, welcoming it as a late satisfaction and a restoration of their sense of justice, others who, sometimes no less emotionally, opposed it for various reasons, and those to whom it was a rather intellectual/academic experience of universal justice being done as an end in itself.

We must be aware that the ruling does not cover the whole array of crimes for which Nuon Chea and Khieu Samphan have been accused – important parts have been separated and reserved for a second trial, which has not even opened yet. Also, if we believe the media the legal defense of the two has already declared that they will appeal last Thursday's judgment, which would, formally spoken, restore the presumption of their innocence altogether.

Nevertheless, the court ruling has a highly symbolic value. It is important to understand that criminal justice is more than just retribution – it is a tedious process of dealing with a very complex and a very painful history, a process which is of paramount importance if this history should not paralyze the future. No doubt, the tremendous work and diligence which prosecutors, pre-trial and trial judges, Cambodian as well as international ones, have contributed to the judgment has fully served this purpose – they have set themselves a monument in the history books of Cambodia already, for the benefit of the victims and future generations.

So where does Germany come into all of this? No doubt, you are aware that my country has a history which has its own very dark chapters, full of human atrocities. The crimes which the Nazi regime committed in the 1930s and first half of the 1940s led to the death of 6 million Jews and a large number of people belonging to other groups who the Nazis also considered unworthy or undesirable. In addition war crimes on a large scale committed by the SS and the Wehrmacht took the lives of scores of more innocent people. The four allied powers, therefore, decided in 1945 to put the key decision makers, both civilian and military, to justice. What followed was the International Military Tribunal held at Nuremberg/Germany from 1945 to 1949 and involving almost 200 accused. A large number of Nazi leaders were sentenced to death, most of them received life sentences (the last one, Rudolf Hess, to die as late as 1987). The Tribunal for the first time confronted the German population with the horrible facts of their recent history which had mostly been hidden by the Nazi regime.

However, while the German population could not escape the unsettling insights, most people chose to deny the reality and to reject the Nuremberg Tribunal as "victors' justice", putting into question the legitimacy of much of the legal base on which the court's rulings had been founded. Similar sentiments prevailed among German legal scholars for much of the post-war period until the Cold War came to an end with the fall of the "Iron Curtain" in 1989. Until then, Germany and Germans had not considered themselves actors on the international political scene – they had felt like the objects of power politics, and the Nuremberg trials had been a particularly painful example for this.

Things changed dramatically with that night from the 9th to the 10th of November 1989. East Germans proved to themselves and to the world that they were able to take fate into their own hands, to overthrow a regime which may not have been as atrocious as the Nazis had been, which nonetheless had made life miserable for hundreds of thousands of East Germans who had dared to criticize the communist regime and which had openly expressed the wish to be able to travel freely to Western countries. Now that the GDR regime had been toppled, West German legal scholars and politicians began to see international criminal justice with new eyes. The need to deal with the crimes against humanity committed by numerous key decision makers of the politburo and central committee of the GDR's communist party convinced them of the merits of international criminal justice which they had hitherto criticized, now assuming that judges of one state (West Germany) were legitimized to judge politicians of another state (East Germany).

Political events in the early 1990s helped to strengthen this new attitude towards international criminal justice. Already one year after German reunification, the German foreign minister Hans Dietrich Genscher called for an international criminal tribunal to judge the crimes against humanity for which Saddam Hussein had been responsible.

Another key development, having an important impact on Germany's stance with regard to international criminal justice was the disintegration of Yugoslavia and the atrocities for which various political and military leaders had to assume responsibility. Germany, early on, had supported the secession of Slovenia and Croatia from the Yugoslav Federation on the grounds that they had been suffering under Serb crimes against humanity during the internal struggle that had started within Yugoslavia after the end of the Cold War. German recognition of Croatia's and Slovenia's sovereignty had initially been strongly criticized

by most leaders in Europe. But when in 1993 the UN Security Council mandated an International Criminal Tribunal for Yugoslavia which after some deliberations came to the conclusion that several Serb leaders had been the main culprits in the civil war that had torn Yugoslavia apart, Germany's step to legitimize secession received its ultimate moral justification. Germany had experienced the political value of a narrative emanating from an international court ruling. Now the stage was set for the German government supporting the rebirth of an idea which the UN had already floated at the end of the 1940s, an idea which had fallen victim to the Cold War: an international court of criminal justice. Now that the Cold War had ended, the UN Secretariat revived this project, eventually leading to the Rome Statute in 2002, with the full support and participation of the Federal Republic of Germany.

Let us now turn to the ECCC. The first deliberations in 1997 about the notion of a special tribunal to deal with the atrocities committed by the Khmer Rouge coincided with the debate about the Rome Statute. The idea of the ECCC therefore fell on open ears in Germany. A response to a parliamentary inquiry by the Liberal caucus in the Deutsche Bundestag, the German parliament, in February, 2007, indicates that apart from the prosecution of crimes committed by the Khmer Rouge, the restoration of the rule of law and of a legal culture were key motivating factors in Germany's support for the ECCC. German financial support for the ECCC to date amounts to USD 12,5 million and we also fund numerous judicial and technical experts.

Germany is a member of both the Principal Donors Group and the Friends of the ECCC.

I am not giving away any secrets when I tell you that the present situation of the ECCC is far from perfect. One must bear in mind, however, that is unrealistic to expect international criminal tribunals to function as efficiently as national criminal courts. Nevertheless, in my view, those concerns regarding the ECCC which cannot and must not be ignored include first the lengthiness of the procedure, caused by particularly complex procedural rules and a complicated language regime; and second, uncertainties regarding the court's financing. The relevance of the time issue is evident if we consider the timetable. According to the most recent predictions, the first part of case 002, on appeal, will be closed by 2016, the second part by 2019. The trials in cases 003 and 004 have not even begun yet and would be closed at the earliest in 2021, i.e. seven years from now. Given the age of

Nuon Chea and Khieu Samphan, it is uncertain whether they will still be able to stand trial until the final judgment in Case 002/02 has been made in 2019, let alone be fit to serve their sentence. While I do not want to put into question the wisdom of starting trials almost thirty years after the crimes have been committed – political circumstances probably would have made an earlier start difficult in the case of the ECCC -, I feel that all the more effort needs to be made to bring about justice swiftly and efficiently. The accused have to be treated in a fair manner, but the same has to be asked for the victims. Also, no doubt donor motivation, a fundamental prerequisite for the continuation of the court as an institution, will thereby be strengthened.

Before finishing, I want briefly to mention an aspect of international criminal justice which is particularly close to my heart: support for the victims. To me, sustainable support for those who have suffered is an essential complement to the trials. I do not want to elaborate on the theoretical aspects of the inclusion of the victims in criminal proceedings. Much has been written about this. Suffice it to say that the ECCC has succeeded in developing rules for the victims' participation in Case 002 which appear workable. This is no small achievement, given the huge number of people involved. In this regard, the reparations program deserves a special mention, and I am very happy that last week's judgment has included a ruling on reparations. It is catering for the psychological and emotional needs of the victims in quite an immediate way, even though we have to be fully aware that no reparation can be conceived which could make good for the loss of human lives and for the pain which huge numbers of victims are suffering to this day.

My country's experience handling the aftermath of the Nazi regime, dealing with victims and perpetrators was profound and painful. In the 1960s the West German government began paying reparations to the State of Israel for the holocaust which eliminated 6 million Jews and, in addition, other innocent members of groups which the Nazis considered "unworthy".

Reparations were also paid to several states which had been occupied by the German army and where civilians had suffered as a result of Germany's occupation. With the establishment of the "Foundation remembrance, Accountability and Future" in August 2000, the German government and about 6000 German companies had created a fund to the amount of € 10 billion (USD 13,4 billion) to compensate survivors of forced labour under

the Nazis. Thus, both the public and private sector in Germany recognized their responsibility for the crimes committed by their predecessors during the 1930s and 1940s.

It is always invidious to make comparisons. Each culture feels its own pain and has its own coping mechanisms when it is overwhelmed by human catastrophe. But Germany feels solidarity with Cambodia and other countries that have suffered crimes against humanity. This is why my country has assisted Cambodia in the area of victim support. Since its inception in 2008, Germany has, as the sole national donor, contributed a total of 5.2 million USD and has promised another half million this year to the VSS. We very much hope that other countries will join us and that the Royal Government of Cambodia will continue to support the reparations program. One may even consider a foundation to aid the victims.

The fate of the victims is a matter of public concern for which Cambodians themselves bear the primary responsibility. By raising public awareness of the victims' suffering, a public debate about Cambodia's civil war history will be provoked: a debate which will elicit that solidarity among Cambodian citizens, among victims and their families, a debate, I believe, which is so vital for the future of this country. Just as in Germany, there will be pain, but out of that pain will come strength and a future for Cambodia free of the evil spirits which have haunted this country for so long.



Mr. Salim Nakhjavani

Assistant Prosecutor, ECCC Office of the Co-Prosecutor:

My thanks, at the outset, to the Heinrich Böll Stiftung for this timely opportunity to reflect on the implications of the judgment of the Trial Chamber in Case 002/01 for the legacy of the ECCC and their kind invitation to participate in this conference. In the interests of the free exchange of legal views, I make these comments in an individual capacity, and these comments should not be taken to reflect the views of the Office of Co-Prosecutors of the ECCC or the United Nations.

This is a very important judgment. It is a just outcome for those who are gone, and for those who remain. As a prosecutor, one takes joy in the proper application of the law – there is no pleasure or pain in these sentences. But I recognise that there will be many citizens of this country for whom this judgment brings pleasure, or pain, or – as has been noted – both. This reminds me of the thoughtful remarks of the distinguished British professor of international law, and former diplomat, Philip Allott, about the process of international criminal justice:

“Feeble old men and their seedy subordinates shuffle into the court-room, shrunken figures bearing no physical relationship to the physical scale of the suffering for which they are responsible [...] Due process. Verdict and sentence.” [...] But, “The past is beyond resurrection. The arrow of human time cannot be reversed. The past cannot be re-enacted or relived. The dead, murdered in the public interest, cannot be reborn. The tortured cannot be un-tortured. The disappeared cannot be made to reappear” (Phillip Allot, *The Health of Nations: Society and Law beyond the State*, 2002, paras. 2.74-2.75).

With this judgment the ECCC fulfils an important part of its legacy. But this legacy remains incomplete because certain charges remain unaddressed and two investigations are ongoing.

Those attending the pronouncement of the summary of the judgment on the 7th August, 2014 would have noted the differences that the Trial Chamber identified between the respective roles of Nuon Chea and Khieu Samphan. Among other findings, the Trial Cham-

ber found insufficient evidence proving beyond reasonable doubt that Khieu Samphan was the Chairman of the Office 870 – which one expert refers to as the “nerve centre” of the DK regime. Making such findings is exactly what judges are there to do. They weigh the evidence before them. This does not mean that certain allegations are not true, it only means that they have not been proven before the court at this time.

The Co-Prosecutors, in their written submissions, characterised the role of Khieu Samphan as a commander who provided a legitimate public face to the DK regime. The Trial Chamber did not adopt exactly this classification, but establishes that one of the five ways that Khieu Samphan contributed to the criminal enterprise was through his role as a diplomat. The Chamber analyses his role in planning, disseminating, implementing, endorsing and defending Party policy. It states that his contribution to the joint criminal enterprise arose, in part, from his actions giving the regime a legitimate public face, preventing feared foreign interference and deflecting attention from the crimes being committed. This judgment resonates down to the events of the present day, as well-intentioned diplomats seek to resolve complex world crises. This judgment establishes that diplomats are responsible for what they do when they defend causes and interests. They are not simply messengers. The jurisprudence of the International Military Tribunal at Nürnberg established clearly that propagandists who spread hatred through the media will be held to account for violating international law – recalling the conviction of Julius Streicher, founder and publisher of *Die Stürmer*. To my knowledge, this is the first time that an international or internationalised Trial Chamber has gone further and put its finger so precisely on the exercise of diplomatic functions as giving rise to criminal responsibility for violations of international law.

Unlike what happened in Case 001, the Civil Parties in Case 002/1 participated as a consolidated group. The impact of their role can be described in terms of value of their evidence: during the pronouncement of the summary, and in the judgment itself, the Trial Chamber quotes in detail and refers often to the accounts of Civil Parties, more so than to the testimony of ordinary witnesses. For those familiar with common law systems, it is significant to note that how the Chamber gives such weight to the testimony of Civil Parties – who, in civil law systems such as Cambodia, give evidence without taking the formal oath to tell the truth – as compared to witnesses who testify under oath. This confirms the great importance of their participation at trial.

Significantly, the Trial Chamber has made important findings related to enforced disappearances during the Khmer Rouge regime. Jurists will be aware that enforced disappearance is, by nature, a continuing crime that does not end until the fate of the person is known. Now that Cambodia has signed and ratified the International Convention for the Protection of all Persons from Enforced Disappearances, the findings of the Trial Chamber on this point are very relevant to the understanding and implementation of Cambodia's obligations under such treaty.

**Ms. Sin Saworn***Lawyer, Cambodian Defenders Project (CDP):*

I am very interested in this verdict. Cambodian people have been looking forward to this opportunity for over 30 years. For all that time, the accused continuously denied their responsibility for these crimes. The truth has finally been revealed. This verdict is just a little part of the healing process for the victims and it cannot turn back the losses of relatives and loved ones. But for the victims, it means justice.

From the summary of the Judgment read by the President of the Trial Chamber, we observe that both accused were sentenced to life imprisonment. Bearing in mind that the accused are over 80 years old now, the question remains: how many years of effective imprisonment does this mean? It will probably be between five to ten years at best. This is very little for the victims if we take into account their suffering, their losses, and the cruelty and brutality of the Khmer Rouge regime. However, this is better than nothing as it sends a message for the future leaders; a message to perpetrators of these sorts of crimes demonstrating that they will be held accountable; and a message to all generations to choose the right way, to respect the law, to respect human rights, and to strengthen the rule of law in Cambodia.

The verdict in Case 002/01 only refers to the forced displacement of people at stages 1 and 2, and to the killing of former Lon Nol soldiers at Tuol Po Chey. This is because the proceedings were severed in September, 2011, upon the amendment of the ECCC Internal Rules on the 23rd February, 2011. The inclusion of Rule 89 allows the severance of the proceedings when the interest of justice so requires. Under this provision, the Trial Chamber can at any stage order the separation of proceedings in relation to one or several accused, and concerning part of, or the entirety of, the charges contained in an indictment. In Case 02, the severance of the proceedings proved to be advantageous for victims as it has allowed the trial to move more expeditiously.

The Trial Chamber also received requests from the Office of the Co-Prosecutors and Civil Party Lawyers to redefine the charges of rape as crimes against humanity in itself, rather than including them under the category of other inhumane acts. The Chamber will hear the charges of nationwide forced marriage and rape in Case 002/02.

**Mr. Lars Olsen***Legal Communications Officer, ECCC Public Affairs Section:*

ECCC Public Affairs Section welcomes every opportunity to disseminate the work of the court. Last Thursday was historical, more than 35 years to see the leaders of the Khmer Rouge regime to be held accountable for the atrocities. This has been the first time that someone from the national leadership has been judged for the crimes, as Duch was not member of the national leadership.

The Trial Chamber found that Khieu Samphan and Noun Chea were among those who planned and instigated the crimes. This judgment is the conclusion of a long, public process. 100.000 Cambodians participated in this trial. This is unprecedented, no other tribunal has enjoyed so much victim participation. This is also the first time victims have been allowed to participate directly in an internationalized trials as civil parties. Nearly 4,000 individuals participated as civil parties and there were 11 reparation projects granted for the victims. This is a milestone in terms victim participation and reparation processes.

Although these two convicted individuals are in their 80s, the process before the ECCC demonstrate the importance of no impunity and no statute of limitations for crimes against humanity. This judgement sends a very clear message to leaders, to end impunity for national leaders.

In terms of sentencing, the Trial Chamber makes a difference in the modes of liability applied to convict both accused. However, assessing the nature of the crimes in light of international jurisprudence, in light of the first judgment in Duch; and also bearing into account the gravity of the crimes and the number of victims, the Trial Chamber sentenced both accused to life imprisonment.



Ms. Vichuta Ly

Legal Support for Children and Women (LSCW):

First of all, I would like to thank Heinrich Böll Stiftung for giving me the opportunity to read this introductory statement to the panel. Your Excellency; Mr. Baron Von Marschall, the German Ambassador; Mr. Ali Al Nasani, Country Representative of Heinrich Böll Stiftung; Ladies and Gentlemen.

The Khmer Rouge regime took power on the 17th April, 1975, and was overthrown on the 7th January, 1979. At least 1.7 million people are believed to have died from starvation, torture, execution and forced labour during this period of 3 years, 8 months and 20 days.

In 1997, the Government requested the United Nations (UN) to assist in the establishment of a court to prosecute the senior leaders of the Khmer Rouge. In 2001, the Cambodian National Assembly passed a law to create a court to try serious crimes committed during the Khmer Rouge regime: the ECCC. The Government of Cambodia insisted that, for the sake of the Cambodian people, the trial should be held in Cambodia using both Cambodian and international staff and judges. Cambodia invited international participation due to the weakness of the Cambodian legal system and the international nature of the crimes, as well as to help in meeting international standards of justice.

An agreement between the Government and the UN was ultimately reached in June 2003, with the creation of this special new court: a Cambodian court with international participation that applies international standards of justice.

On the 26th July, 2010, the ECCC Trial Chamber convicted Kaing Guek Eay, alias Duch, sentencing him to 35 years imprisonment. His sentence was reduced five years as a remedy for his illegal detention by the Cambodian Military Court between the 10th May, 1999, and the 30th July, 2007. He also received credit for the time he had already spent in detention under the authority of both the Cambodian Military Court and the ECCC.

Case 002 began in 2011 with the trial of four senior Khmer Rouge leaders. However, only two leaders remained in trial. Leng Sary died in 2013; and his wife, Leng Thirith, was deemed unfit to stand trial due to dementia in 2012.

On the August 7th, 2014, the Trial Chamber found Nuon Chea and Khieu Samphan guilty of crimes against humanity committed during the Khmer Rouge Regime and sentenced them both to life imprisonment.

However, neither of the accused have acknowledged these crimes. The trials moved slowly. The deaths of Pol Pot, Leng Sary and other members of the Khmer Rouge regime caused many difficulties in the search for justice.

My mother waited 20 years for justice. Unfortunately, she passed away in 1998. She did not see justice done for the losses of her husband, children and grandchildren.

In addition, the sentence imposed on the Khmer Rouge leaders cannot be compared to the very large number of victims and survivors who suffered immeasurable harm; including physical suffering, economic loss, loss of dignity, grief arising from the loss of family members and close relatives, and psychological trauma; especially in regards to the victims and survivors of forced marriage and rape.

I was 10 when they killed my father. My sister was only 17. She died from forced labour. Another sister, her husband and her four children were killed because she and her husband were university lecturers. My brother was separated from his family and killed. My sister's son, who was born during the regime, lost his father when he was only one year old. I lost 35 family members and close relatives in 3 years, 8 months and 20 days.

I am also a victim and a survivor of this atrocious regime. I was made to live in a forced labour camp. I was forced to witness the rape and killing of innocents. I was only 12.

Many Cambodian victims and survivors have similar stories; they just have different experiences.

In October, 2013, the CEDAW Committee urged the Cambodian Government to provide effective redress to victims of gender-based violence. In particular, sexual violence against women committed during the Khmer Rouge regime. The Government was likewise urged to develop effective non-judicial transitional justice programs, including the provision of adequate reparation, psychological assistance and other appropriate support.

The Chamber endorsed the implementation of 11 reparation projects that have been designed to appropriately acknowledge the harm suffered by Civil Parties. The questions we ask are: will this be enough to compensate victims and survivors? And what will the next generations learn?

Cambodian civil society remains concerned that there may be no financial capacity in the ECCC to support most of the reparation projects for the victims of the Khmer Rouge regime. Lack of funding remains a serious concern

Amnesty International's Asia-Pacific Deputy Director, Mr. Rupert Abbott, said that the long awaited ECCC ruling was an important step toward justice for the victims of the Khmer Rouge period and highlighted "the importance of addressing impunity."

Addressing impunity, we recall. We, the victims and survivors, want justice. And justice is to learn the full truth regarding the alleged crimes. If the truth is not revealed, these crimes may happen again.

His Excellency; the Ambassador; Mr. Ali Al Nasani; Ladies and Gentlemen; participants: Thank you all again for your attention.

**Dr. Ken Carswell**

Psychologist, Transcultural Psychosocial Organisation Cambodia (TPO Cambodia):

Firstly, I would like to thank the Heinrich Böll Foundation for their kind invitation to speak at today's conference, which is a wonderful opportunity to discuss the outcome from the recent verdict and the issues of gender based violence to be addressed in the upcoming Case 002/02.

I am a clinical psychologist from the UK where I spent a number of years working with refugees from around the world. For the past year I've been employed by the Center for Victims of Torture in the US and based at TPO, where I have been working to support the psychosocial projects TPO are implementing.

The effects of trauma, genocide and other human rights abuses can be severe and long lasting, with the effects of these abuses remaining after decades. At a community and society level, there may be a breakdown in the rule of law, ongoing human rights abuses and changes to societal beliefs and customs. For individuals, harm may include long lasting physical harm, such as disability caused by torture, psychological harm (in the form of PTSD, Baksbat, or other psychological problems) and financial or economic harm, to name a few. Research studies in Cambodia and in the Cambodian diaspora show a high prevalence of mental health problems, reflecting the harm caused by the abuses committed by the Khmer Rouge.

Transitional justice in the form of courts and reparation projects can provide support to individuals, communities and the wider society to start to repair the damage from the past. The problems caused by human rights abuses occur within a political and social context, and projects aimed at both the individual and society may be required.

In the Cambodian context, the recent trial has acknowledged the crimes committed by the Khmer Rouge and through the sanctioned reparations projects, has acknowledged the suffering of individuals. TPO Cambodia has worked closely with civil parties and the ECCC to provide individuals with psychological support, self-help groups and Testimony Therapy. Testimony Therapy seeks to provide survivors with an opportunity to narrate their story and experiences which forms the basis for a ceremony to acknowledge past

harms. This can be a powerful, culturally appropriate intervention as the telling of the history, the public acknowledgement of the history and the contribution of the testimony to the wider public record can all help to reduce psychological distress.

Given the recent reports concerning gender based violence in Cambodia, the upcoming Case 002/02 provides an opportunity to address both historical allegations of GBV as well as to inform a discourse concerning more contemporary problems. Given the substantial harm caused by gender based violence to individuals, this is an important opportunity to create a context where civil society can work with perpetrators and communities to reduce the incidence of violence, and to work with survivors who have been affected by gender based violence more recently or historically.

Thank you for listening and I look forward to an interesting discussion.



Ms. Lach Sreytouch

Project Assistant, Cambodian Human Rights Action Committee (CHRAC):

Numerous victims participated in the proceedings before the ECCC in order to seek justice for the harm they suffered under the Khmer Rouge regime. They applied to become civil parties, complainants or witnesses. 94 victims applied to become civil parties in Case 001, while more than 4000 victims applied as civil parties in Case 002. Because of the many years that passed prior to this Judgment, most civil parties complained that justice was too late for them. The older civil parties died. Some of the accused died before the completion of the trial. Therefore, it has been suggested that the ECCC should accelerate the trial proceedings.

Regarding the Judgment pronounced on the 7th August: Most civil parties were very satisfied with the fact that Khieu Samphan and Nuon Chea were sentenced to life imprisonment. This is what they have wanted to see for a long time. But they were still unhappy, as the convicted did not accept the crimes they committed. Some civil parties were still unsatisfied and said that this sentence was light in comparison to what they lost under the Khmer Rouge regime.

With regards to the reparations: there were many reparation projects suggested by the civil parties, both individual and collective reparations. However, based on the ECCC's internal rules, the civil parties only had the right to claim moral and collective reparations. Upon consultation with the civil party lawyers, only collective reparations were submitted to the Trial Chamber for recognition. As a result of this, NGOs working with the Civil Parties, the Lead Co-Lawyers and Victims Support Section assisted in the creation of 13 reparation projects which were divided into three groups: 1) Remembrance and Memorialization; 2) Rehabilitation; and 3) Documentation and Education. These projects will benefit the civil parties and other victims as well. On the Judgment day, the civil parties expressed that despite moral and collective reparations being granted they still wanted the court to provide individual reparations; such as financial support for their illnesses, religious ceremonies for their dead relatives, and the granting of land titles to build houses on, among other requests.

Among the reparation projects, CHRAC produced a Civil Party Story Book called “Stories from Civil Parties participating in the Extraordinary Chambers in the Courts of Cambodia”, funded by GIZ. This book compiles the real stories of victims who became civil parties before the ECCC. This book will be an opportunity for the civil parties to share their stories to the world. It is also an acknowledgment of the effort, perseverance and courage they have demonstrated. We hope that this book will be a reminder that such atrocious crimes must never happen again.

**Mr. Ly Bunthea**

Youth Empowerment Coordinator, Youth Resource Development Program (YRDP):

YRDP Community Dialogues were created in 2008. The Dialogues aim is to serve as a bridge between the Cambodian youth and survivors of the Khmer Rouge Regime from small communities. The goal is to mainstream the concept of reconciliation and foster a culture of forgiveness and non-violent communication in communities.

During a four-day dialogue, 90 community members meet with 30 university students from Phnom Penh and 30 local high school students. Most of the university students are currently studying psychology, history, law and attended at least one of YRDP's trainings. The selected community members are all survivors of the Khmer Rouge regime interested in looking into Cambodia's past. Among them there are former Khmer Rouge cadre, local authorities, religious leaders and farmers.

Below there is a brief outline of the four-day dialogue**Day 1:**

University and high school students visit and bond with people from the communities. After a meeting with the community authorities and district governor, the program opens with a traditional ceremony in the pagoda honouring the deceased. The students are subsequently guided to the local crime sites by community members. The day ends with a public screening of the movie "The Killing Fields", followed by a reflection on the lessons of the day.

Day 2:

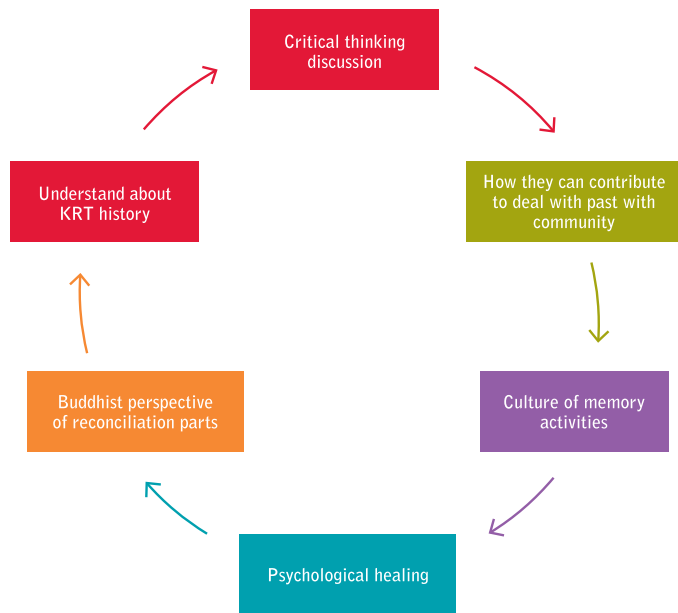
After a general introduction on Khmer Rouge history, students and community members get together in groups to learn about the personal experiences of the survivors. An expert on history also provides an overall picture of what happened during the Khmer Rouge regime. Youth and villagers engage in a role-play exercise. The day closes with Buddhist teachings on reconciliation, followed by the screening of "Forced Labour of Angkor Lue".

Day 3:

During the morning, a workshop on listening skills is conducted for the students, while group counselling and psychological support is offered for community members. Students and villagers engage in art therapy. Survivors paint their remembrances of the Khmer Rouge regime, while students support and listen to them. In the afternoon, students work on the reparation and restoration of memorial sites. The day ends with a documentary screening related to the proceedings before the ECCC.

Day 4:

Summary and reflections. Students present a list of the relatives of the villagers who died during the Khmer Rouge regime. This list, hand-written and framed, is brought to the temple during a final Buddhist blessing ceremony.

Graphic: YRDP's strategy for Communication Dialogues

The graphic above shows some key aspects of the community dialogues: Learning, actively remembering, and taking steps towards reconciliation.

Concluding Observations:

The significance and importance of this Judgment, both for the international community and in the context of the Cambodian reconciliation process, is an incontestable fact. Notwithstanding its late delivery, the Trial Chamber's decision imparts a strong message to all leaders of the world: perpetrators of the most heinous crimes will be held accountable.

One of the key features of the ECCC has been the inclusion of the victims as participants in the proceedings. 3,869 Civil Parties were admitted and participated as a consolidated group in the trial of Case 002-01. The suffering, losses and grievances of the Civil Parties and a very large number of other victims was acknowledged by the Trial Chamber, endorsing the implementation of 11 reparation projects.

The decision also recognises the grave impacts of these heinous crimes upon Cambodian society, acknowledging that many survivors of the Khmer Rouge regime suffered ongoing physical trauma, as well as mental and psychological disorders. As trauma is carried through generations, it is paramount to actively include the voices of the young Cambodian population in the reconciliation process.

Because the ECCC Internal Rules only provide for moral and collective reparations, victims and civil party lawyers continue to advocate for a reparation scheme that is inclusive of individual reparations. Although it is possible for the lead co-lawyers to request an amendment in the Internal Rules, the approval of the Court's super majority required for those purposes appears to be an endeavour difficult to achieve.

The severance of Case 02 into smaller trials has made it possible to attain at least one judgment before the accused pass away. However, the exclusion from Case 002/02 of the charges of forced marriage and rape, as well as the charges related to the genocide of the Cham and the Vietnamese, denotes that many groups in Cambodia are still eager for justice.

This judgment is a milestone for international criminal law. There is, however, still a long way until the ECCC entirely fulfils its legacy. Ensuring a lasting legacy will require that all the remaining charges in Case 02 are addressed and that the two ongoing investigations are finalised. It is also vital that the proceedings before the ECCC serve as a model for the development of the Cambodian justice system and contribute to the strengthening of the rule of law in Cambodia.

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