



## **On the Record: Civil Society and the Tribunal in Cambodia**

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### **The Politicians**

Issue 7 presents the view of four politicians, speaking in their capacity as leading members of civil society. H.E. Son Soubert focuses on the weakness of the Cambodian justice system and recalls his own efforts to get a tribunal established in the early 1990s. He also notes his preference for an international (as opposed to mixed) tribunal. H.E. Kem Sokha reflects on the links between human rights, democracy, justice, and reconciliation, and underlines the importance of free speech and public debate in deciding what to do about the Khmer Rouge. H.E. Mu Sochua speaks of the importance of human rights, the public's ignorance about justice, and the concomitant need for the government to provide public education. Lastly, Son Chhay notes the past must be addressed in order to rid society of the violence and impunity that plague Cambodia today. At the same time, he also realizes there is a need for reconciliation. Exposing the truth would be an important first step in this process.

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### **From the AP Editorial Desk**

Two political parties make up the current Cambodian coalition government -- the Cambodian Peoples Party (CPP) and the Royalist FUNCINPEC party. Since the 1998 elections, both parties have clamped down on critics within their ranks.

This issue of 'On the Record' presents the view of four politicians, speaking in their capacity as leading members of civil society. Senator Kem Sokha and Minister Mu Sochua are both from the weaker party in the ruling coalition (the royalist FUNCINPEC). The third contributor, H.E. Son Soubert is a member of the Constitutional Council. The fourth statement is by H.E. Son Chhay, a member of the National Assembly and a leader in the opposition Sam Rainsy Party. We attempted to get the views of the dominant party in government, namely the Cambodian Peoples Party (CPP), but without success.

H.E. Son Soubert originally trained as an archeologist in France before following his father -- a Prime Minister under Prince Sihanouk -- into politics. Together, Son Soubert and his father

founded the Khmer People's Liberation Front, which later became the Buddhist Liberal Democratic Party (BLDP). Son Soubert helped his father when the latter was a member of the Supreme National Council established by the United Nations in 1992. Son Soubert has been involved with many causes and organizations, including Moral Re-armament and the Forum of Democratic Leaders in Asia-Pacific. He is a founding Member of the Council of the Asian Liberals. He is also one of only two members of the Constitutional Council who dare to speak out against the powerful ruling Cambodian People's Party.

In this article he focuses on the weakness of the Cambodian justice system and recalls his own efforts to get a tribunal established in the early 1990s. He also notes his preference for an international (as opposed to mixed) tribunal.

H.E. Kem Sokha has the reputation of being the one of Cambodia's most outspoken politicians. Between 1993 and 1998 he was a member of the National Assembly for BLDP. He then switched to FUNCINPEC after BLDP failed to gain seats in the 1998 elections. Kem Sokha has often incurred the wrath of senior government members for speaking his opinion openly, and after the 'events' (coup) of 1997, he was forced to seek political asylum in the United States. Unable to stay away from politics, he abandoned his search for asylum in 1998 and returned for the elections. He has served as the chair of the human rights commissions of both the Cambodian Senate and Assembly.

Like so many leaders of civil society, Kem Sokha's interest in democracy and human rights arose from personal experience. He spent five years in Czechoslovakia where he gained a degree. After returning home, he founded a human rights organization, Human Rights Vigilance, which is one of the four largest in Cambodia. In this article, he reflects on the links between human rights, democracy, justice, and reconciliation, and underlines the importance of free speech and public debate in deciding what to do about the Khmer Rouge.

H.E. Mu Sochua is a US-educated social worker, who helped Cambodian refugees at the Thai-Cambodian border in the 1980s. On return to Cambodia, she established one of the first local Cambodian nongovernmental organizations (NGOs) exclusively for women. She was also a prominent spokesperson for women in the drafting of the Cambodian Constitution. A prominent member of FUNCINPEC, she is one of a handful of women in senior positions in the coalition Cambodian government and the only woman minister.

In the past, H.E. Mu Sochua has been publicly outspoken, but in her position with the government she has toned down her comments. It was difficult to get any member of the coalition government to address the politically charged issue of the Khmer Rouge, and H.E. Mu Sochua proved to be no exception. In this article she speaks of the importance of human rights, the public's ignorance about justice, and the concomitant need for the government to provide public education. She also argues for the justice system to be improved so as to provide equal access for all Cambodians. This is not helped by the absence of women from the system.

H.E. Son Chhay is one of the few Australian-Cambodians in the government. He has been a member of parliament for the BLDP since 1993. When the BLDP lost in the 1998 election, he chose to join the upstart Sam Rainsy Party opposition party.

As an opposition party member, Son Chhay speaks his mind openly, but he also feels more isolated than when he was a member of the government coalition. He laments the fact that even his old friends are afraid to speak to him. Many fear that associating with Sam Rainsy can be the kiss of death, but he believes in the principles of the party. Son Chhay has been active in the Khmer Rouge debate. He and his party President Sam Rainsy have made strong calls for an international tribunal.

This article is excerpted from a speech addressing the legacy of the Khmer Rouge. Son Chhay notes the past must be addressed in order to rid society of the violence and impunity that plague Cambodia today. At the same time, he also realizes there is a need for reconciliation. Exposing the truth would be an important first step in this process.

### **Justice for the Dead Victims**

by H.E. Son Soubert

When the U.S. Government Office of Cambodian Genocide was created, I met with the Director of the Office, Mr. La Porta and with the American Ambassador, Charles Twining. I told these American officials, in my capacity as the Second Vice-President of the National Assembly, that I agreed with the plan to investigate the crimes of the Khmer Rouge. I told them that we, Cambodians, wanted to know the truth, for the sake of those million victims presumably assassinated by them.

I also told the American officials that at this juncture, it would be counterproductive to talk about an International Tribunal, because of the ongoing but fragile process of national reconciliation. His Majesty the King NORODOM Sihanouk initiated this process with roundtables in Pyong Yang and in Phnom Penh in 1993, to bring the Khmer Rouge back into the legal framework of the Royal Government. Unfortunately the efforts to bring the Khmer Rouge into the process were unsuccessful, because of opposition from the Cambodian People's Party (CPP). In fact the CPP later introduced a draft law outlawing the Khmer Rouge to the National Assembly, which BLDP President SON Sann opposed for the sake of national reconciliation. Any move toward an international tribunal at that time would have involved many Cambodian personalities among the CPP, who were in the Royal Government.

We now know the consequences of these five years of wasted time -- caused by fighting against the Khmer Rouge and resultant insecurity, and political harassment against the opposition parties -- were that Cambodia and the Cambodian people could not develop themselves nor improve their very poor standards of living. We were accused at the time of being pro-Khmer Rouge. May I remind our detractors that the KPRLF (Khmer People's National Liberation Front) and later the BLDP President SON Sann was always opposed to the Khmer Rouge genocidal regime and was fighting against the Khmer Rouge with the AGKE (French acronym for the General Association of the Khmer Abroad) since 1975 in France.

But in the present circumstances, the truth must be told. The Cambodians, even if it is not our normal social behavior to cry for justice, still wish to know the truth and once and for all to delete this atrocious past, in the name of their relatives assassinated during the Khmer Rouge

reign of terror, between April 17, 1975, and December 25, 1978. It is not in the Cambodian tradition to be revengeful, because we believe that those who have committed sins of this dimension will receive in this life or in another life, consequences of their acts. But besides this moral and spiritual or divine justice, we also need human justice, because justice should also be an exercise of democracy.

To argue about national sovereignty on this issue is a political maneuver, rather than the political will of a democratic and civilized society. The Khmer Rouge need to show that they have the courage to face their past mistakes, if they want to redeem themselves in the face of Cambodian history. They should have the courage to face the truth and shed light on this truth. In this case, the question as to whether it should be an international or a national tribunal is secondary.

We would not have wasted our time concocting this hybrid formula of a mixed national tribunal with international judges. In fact this hybrid formula, according to the opinion of Dr. SAY Bory, is a violation of our sovereignty as an independent state.

Sooner or later the truth will be known, but what is important is that we need to heal the past, and exorcise our past demons.

- **H.E. Son Soubert** is a member of the Constitutional Council.

### **The Courts Must be Fair**

by H.E. Kem Sokha

Because Cambodian society has been destroyed by civil war, violence and communist rule, Cambodian people have strong desires for justice and national reconciliation. To what extent does the Cambodian population want justice? And will they be lucky enough to have it?

Laws that ensure justice for the general population are the ones that are made based on democracy. This means that these laws should be freely discussed and debated and then passed by members of the National Assembly who are actual representatives of the people. The representatives should be selected through a fair and free election with no intimidation, vote buying, or fraud. The laws in force in Cambodia at the present time are a mix of democratic laws, laws under communism, and international laws. However, Cambodia is able to function under these laws. But laws alone cannot ensure justice if the law enforcement system such as the judicial and executive branches are not regulated.

A court that can provide justice in a trial must be an independent and competent court. Independence of the judges doesn't mean independence from the laws. Justice requires independence of the court from fear, and free from intimidation from individuals, groups, or parties. The court must also avoid being influenced by money, power, and materialism (corruption). The court must also be separate from relationships of family and relatives. The court must be free from confusion, ignorance, and incompetence.

Concerning the courts in Cambodia -- from the provincial and municipal courts, to the court of appeals to the supreme court: throughout Cambodia, there are less than 200 judges and prosecutors for a population of about 11 million; The majority of current judges were appointed by the communist regime of the State of Cambodia, and some judges and administrators of the

courts are still activists of the CPP. The majority of the judges appointed by the past regime do not possess legal qualifications; they also have low salaries that are not sufficient to sustain their living conditions, thus bribery has become common practice of corruption in the Cambodian courts.

The Cambodian people have been standing up to complain for justice. They are hungry for justice like they were hungry for rice during the Pol Pot regime. There are many places that the people can come to complain or file their complaints, such as the Commission of Human Rights Protection and Reception of Complaints of the Senate, the National Assembly, the Royal Government, the courts, and the King, etc. However, the places for dealing with these complaints are unclear and have not been reliable for the people. This is why Cambodian people are still hungry for justice. In Cambodia, if there is not a government that can ensure justice, the conflicts between Khmer and Khmer will never end, and civil war will be likely to re-occur once groups or parties are influenced by neighboring countries. We have had this experience before in Khmer history.

Sustainable national reconciliation cannot happen in Cambodia if the justice for its people is not ensured. No rights -- no democracy. No democracy -- no justice. No justice -- no national reconciliation.

- **H.E. Kem Sokha** is a FUNCINPEC Senator and Chairman of the Senate's Commission for Human Rights, Protection and Reception of Complaints.

### **Equal Access to Justice for all Cambodians**

by H.E. Ms. Mu Sochua

On the issue of justice, I believe it is of great importance that all persons living in Cambodia are provided with access to equal and equitable justice. By signing the Paris Peace Accord of 1991, all Cambodian leaders have made it clear that human rights is a cross-cutting element that should be one of the bases for achieving national reconciliation and peace in the Kingdom.

Following are the challenges that I believe confront Cambodia in providing fair access to justice, for all men and women, rich and poor, and how we can work together to overcome them.

First, establishing the Rule of Law presupposes ready access to, and a good understanding of, the laws, regulations, administrative procedures and decisions of the courts. While the Royal Government has taken a number of measures to improve people's access to justice, progress is tardy and fraught with political, technical, and financial constraints. This, in turn, impedes free and fair flow of information to people, particularly the most vulnerable and poorer sections of the society. As the access to information laws and rights remains unclear, a great deal of gender discrimination and gender-based violence occurs and continues to fall outside the area of effective enforcement.

Second, people's perceptions of justice have inevitably created situations of conflicts, aversion, and dilemma. The affected parties, often women, do not seek legal remedy to secure justice.

Third, the impact of the lack of trained human resources to manage the judiciary and related institutions is difficult.

Finally, we are aware that the judicial system in Cambodia is in need of major strengthening in all aspects of its application and enforcement. In general terms, the judicial system tends to favor men, who have better access to financial and legal resources, and particularly, to influential networks that can sway judgments. Women, however, are less literate and more likely to be ignorant of the law and susceptible to intimidation. In addition, few women are members of the judiciary. There are only 11 female judges and no female prosecutors in the country. Comprehensive action is called for which will not only educate women as to their legal rights but which will also review the standing laws that pertain to women.

The Royal Government, despite difficulties, has taken several initiatives to promote and advance the cause of human rights and provision of equitable justice to all persons in Cambodia. Given Cambodia's commitment to human rights and democracy, to the pursuit of free enterprise and commerce, and to full participation in the Association of South East Asian Nations (ASEAN), it is both essential and urgent that judiciary and related systems become a reliable and effective instrument to uphold the rule of law.

In conclusion, access to justice is one of the fundamental rights of all citizens. For Cambodia, access to justice is key to a culture of peace and changing the public perception of the role of the state. Peace and national reconciliation can be sustained when the whole nation is engaged in the process of rebuilding a justice system based on human rights.

- [H.E. Ms. Mu Sochua](#) is head of the Ministry of Women's and Veterans Affairs and a member of FUNCINPEC.

### **The Khmer Rouge Legacy**

by H.E. Son Chhay

Facing the legacy of the Khmer Rouge past is a living reality for the Cambodian people. The legacy is very difficult to enumerate. The first thing is the suffering of the Cambodian people from separation, loss, revenge, discrimination, division, etc. People lost their assets, property, family, morality, nobility, culture, beliefs, history, health, and the list goes on. Currently those who suffered under the Khmer Rouge regime, even if they are physically healthy, may have memories and feelings that still affect them.

Infrastructure and administrative structures were also lost. What is the legacy they left for us? Violence, intimidation, coercion, fear, poverty, abuse, and division of society? The whole society has been affected by the acts of these notorious people. We have turned to a bad, violent society. We saw many bad things during the Khmer Rouge period: children fought each other and were forced to kill their parents; families fought among themselves to get a tin of rice. They turned our society from human to inhuman. How can we face this?

Violence and atrocities have had a very strong effect on us. We try to forget, but it is impossible, and we cannot live in peace. We cannot achieve serenity in our hearts. Cambodians still have nightmares that people in black uniforms are chasing them to kill them.

There is a lack of support to heal the wounds in society. It is true to say that we have to talk to our enemy to achieve peace. As Nelson Mandela has put it in his speech to an audience of Northern Irish politicians, to gain peace in our minds, we need to see that justice was done.

In our continuing war with continuing atrocities, we look at each other like enemies with so much hatred. Also, the culture of impunity, which is the heritage of the Khmer Rouge, is continuing to play an important role in our day-to-day lives. The fear of this kind of culture causes a great deal of pain when we see criminals, old and new, walk free from their crimes. We want peace in our hearts and souls, so we can sleep without nightmares. This can only happen when there are strong measures in place to insure that crimes against humanity or genocide will be prevented from happening again. If we don't dig up the Khmer past, we won't be able to find justice. But the justice must be genuine; otherwise it will only re-ignite our trauma.

### Past Activities to Deal with the Legacy

The two most notorious Khmer Rouge leaders were already tried by the PRK in 1979. One has been allowed to join the government and has been elevated to the status of general and called His Excellency. He is now free. More than that, he has never admitted his bad actions. They do not admit the truth about what they did. In fact they seem to be proud of their acts. Is this justice? Can we live with our hearts in peace?

What have we done about such atrocities to date? In 1994 the National Assembly approved a law on July 7 to outlaw the Khmer Rouge. This law states that 'only during the period of six months after the law was approved, the defected Khmer Rouge can be pardoned. But the pardon will not extend to the Khmer Rouge who defected after the six-month period'. Article 6 of the Law states that 'for the Khmer Rouge leaders there is to be no pardon at all.' The Khmer Rouge who do not defect in the period as mentioned above will be imprisoned for 20-30 years, or serve life imprisonment by the same law. But I observed that those leaders who defected after six months from the beginning of 1996; although they should have been punished, they didn't receive any punishment. In contrast they have been given high positions in the government army. In addition, so much land has been de-mined for these ex-Khmer Rouge military chiefs, just to please them.

Before Mr. Ieng Sary received a pardon from the King, we in the National Assembly were encouraged to sign urgently the petition of pardon. Although we were not forced, we were urged to sign quickly. I did not agree to sign. Instead I sent a letter to the King to explain my reason, as I believe that suffering does not belong only to the National Assembly members, but belongs to all the Cambodian people. So the decision on how to try the Khmer Rouge should be left to every citizen who has suffered through this horrific past.

### Justice in Society Today

When we want peace we have to negotiate with our enemy, but when we bargain for justice, then there will be no justice at all. So give us justice with the tribunal that we can trust, otherwise it will only cause more pain and sadness. For us, we prefer to wait for the real justice, rather than just having something that is meaningless to assuage our life-long suffering.

The government says we have 100 percent peace. But we have not yet achieved peace when it comes to trying the Khmer Rouge at an international tribunal. It is quite strange to see the United Nations continuing to negotiate with the government to identify political solutions to the trial. Some of these solutions provide protection to these notorious people. In addition there is also pressure from countries who have supported the Khmer Rouge regime in the past, to insure that the tribunal be created in a way that their past involvement will not be mentioned in the trial.

Instead, we must organize a trial to bring justice. If we don't, these past atrocities will continue to haunt us. If we bring justice for the Cambodian people, this will bring a clear message to world leaders, so others will not dare commit such crimes in the future.

The Cambodian people have undergone a great deal of trauma and suffering already. Our minds and our souls have been affected forever. We want a fair trial that will satisfy our souls and minds, to help us bear to go on living what is left of the rest of our lives. ; We must give opportunities to the people to decide. They are victims now, as well as during the Khmer Rouge period. Their ability to make this decision about how the trial should be organized is necessary, and it could help show that the Cambodian people are free -- free to determine their own pasts and futures with freedom and democracy.

This is a very important decision, as we don't want to face the trauma again and again. The trial must bring justice. The proceedings must satisfy the hearts of the victims. If there is a trial that pacifies the hearts of the victims, this will enable Cambodians to leap into a state with the rule of law and give honor to the leadership. If it is a free and fair trial, it can unify society. The divisions of the Cambodian society caused by the Khmer Rouge caused great loss among us.

However we must remember that we are still in conflict, and our democracy is still fragile. We continue to behave as we are still living under the regime of the Khmer Rouge, when it comes to associations with people belonging to different political parties. It is quite clear that many of my old friends who are now working for the government controlled by the ruling party, do not dare to talk to me in public. They fear losing their jobs or being punished in one way or the other. People are still full of fear.

I believe in democracy, a genuine democracy that must accept the existence of opposition political parties. A real democracy begins by being able to talk frankly with each other, including the political party leaders. We should be able to talk together in a friendly way without holding knives behind our backs. We must work together to close this black chapter and begin to develop this poor country to make it a successful and prosperous for every living Cambodian.

- **H.E. Son Chhay** is a member of the National Assembly for the Sam Rainsy Party. He is chairperson of the Assembly Committee for Public Works, Transportation, Telecommunications, Industry, Energy, Post, and Trade.

**In the next Issue: The Khmer Rouge**