



On the Record: Civil Society and the Tribunal in Cambodia

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The Human Rights Community

In Issue 3, human rights leaders provide their own critical analysis of the proposed tribunal. They urge that the tribunal be fair, impartial and credible.

Contents:

- **Can the Cambodian People Trust the Government? by Dr. Kek Galabru**
- **A Fair Trial or no Trial at All by Thun Saray**
- **Khmer Rouge Confessions Would be Better Than a Flawed Trial by Dr. Lao Mong Hay**

From the AP Editorial Desk

The Cambodian National Assembly is soon expected to take up a proposal to establish a tribunal to prosecute the Khmer Rouge. The first two issues of this series looked at the background: how the package was put together, and how the tribunal would work. In this issue, three prominent and outspoken members of civil society analyze the proposed tribunal.

Dr. Kek Galabru was one of the first woman doctors in Cambodia. Formerly married to a French diplomat, she is able to put her many skills to good use as the head of one of the two largest human rights groups in Cambodia, LICADHO (French acronym for Cambodian League for the Promotion and Defense of Human Rights). Her elegant comportment, diplomatic skills, fluency in French, English, and Khmer, and extremely active schedule combine to make her a powerhouse for human rights. She is, without doubt, an eloquent spokesperson for the disenfranchised in Cambodia.

Dr. Galabru's family is well connected. Her parents were both members of the government in the Sihanouk regime, and her mother was a member of parliament and the first woman minister. Until recently, her father was a member of the Constitutional Council. (He resigned, reportedly due to worries that the Court would be used politically.) These connections no doubt afford her some unusual protection.

Of all the statements by leaders of civil society in this series, Dr. Galabru's was the most critical of the government. Many shared her concerns, but few dared to speak so openly. In this extract, she insists that the Cambodian public must be heard. She also identifies inconsistencies in the

government's policies on the Khmer Rouge. Above all, she says, the tribunal will have to be fair and impartial:

Thun Saray is director of ADHOC, the Cambodian Human Rights and Development Association and -- together with Kek Galabru -- one of Cambodia's two most prominent human rights leaders.

Thun Saray's entry into the world of human rights came from personal experience. Like so many Cambodians, he suffered greatly at the hands of the Khmer Rouge, losing several family members and escaping death many times. He was a target because he was a student, spoke foreign languages and wore glasses. This was more than enough to mark him out for immediate extermination.

In 1990 the government of the State of Cambodia (SOC) imprisoned Thun Saray for 17 months because of his involvement with a newly formed opposition party. The conditions in the prison were harsh, which is one reason he has developed into a committed advocate for prison reform in Cambodia.

Thun Saray fights tirelessly for human rights, even if it means speaking out against government policies. In the following article he explains what it will take to ensure an impartial and credible tribunal. For example, Thun Saray has been at the forefront of those advocating for a single, international, prosecutor. He takes issue with the Khmer Rouge who maintain that their crimes were committed for political reasons. He is also determined that not one of the Khmer Rouge leaders should be allowed to escape prosecution and that a trial should take place as soon as possible.

Dr. Lao Mong Hay is a British-educated PhD, who describes himself as 'one of the staunchest upholders of the pluralistic liberal democratic order in Cambodia who is not afraid to criticize when deviations occur.'

In his article he proposes holding a large ceremony in the Cambodian National Assembly where former Khmer Rouge leaders could confess their guilt to the entire nation. He feels strongly that only an international tribunal can be fair and impartial. Dr. Lao Mong Hay has also been critical of the international community during the run-up to establishing a tribunal.

Can the Cambodian People Trust the Government?

by Dr. Kek Galabru

Even before a tribunal is established and functioning, some points have already arisen that deeply concern me. The first is the goal of the tribunal. Is it to bring justice to the Cambodian people and to fight against the culture of impunity? Or is it just a show trial for the international community, especially to appease the donors? If the tribunal is a 'gift' to the Cambodian people, why not ask the Cambodian people if they want a national or international tribunal? No one has asked the people!

Second, the government has contradicted itself since 1997, and even before. In 1997 the

government wrote to the U.N. Secretary-General to ask for assistance in setting up an international tribunal, because they said the Cambodian courts did not have the competence to deal with this issue. Now, in 1999 they said that the Cambodian courts can deal with the issue. At the same time, the government also said that the courts are corrupt, which is the reason for a recent re-arrest campaign. In contradiction of normal judicial procedure, the executive branch gave an order to re-arrest, without warrant, some released acquitted detainees as well as some accused suspects who had not been tried.

In this context, how can the Cambodian people trust such a tribunal? The people are now feeling confused and without trust. It is of great importance that the tribunal to try Khmer Rouge leaders be seen by the Cambodian people as impartial and fair.

Third, the government has spoken about a national tribunal that meets international standards. But before this process was even started, the National Assembly and the Senate adopted a pre-trial detention law that did not meet international standards. International law states that everyone should have a speedy trial. Three years in pre-trial detention is not speedy, nor is there any mechanism to assess the progress of an investigation, and these are violations of international law.

Fourth, the government claims that this tribunal will be held with international standards and will be independent of political influences. But again, before the tribunal was set up, the Cambodian government tried to control the tribunal by declaring that only three to five former Khmer Rouge leaders would face a trial. They also tried to choose the day of the trial. These tasks should be the duty of the tribunal, not the role of the government. These tasks should be based on the evidence and the witnesses, not on the government.

I would sincerely like to ask the opinion of the Cambodian people on these issues and sincerely hope that the government listens to the wishes of the people.

- **Dr. Kek Galabru** is Founder and President of LICADHO (Cambodian League for the Promotion and Defense of Human Rights)

A Fair Trial or no Trial at All

by Thun Saray

At this time of cautious hopefulness, we must look at the whole process of justice for the Khmer Rouge and must keep our position: I support a mixed tribunal to try the Khmer Rouge leaders. The 1979 trial was not fair. There is no need to do it again. If the trial is to be local, I believe it will be unacceptable to the people, the NGOs and the international community. We could always try later -- we've already waited 20 years, we can wait five more years! But it would be much better if there were a fair trial now.

We must examine, what is the purpose of a trial? I believe first it is to give justice to the Cambodian people and to society; and second to prevent future genocide. Who will guarantee that genocide does not happen again in Cambodia if we don't prosecute now? We must all act to prevent the attitude: 'If I am the big boss I can do whatever I want because if Pol Pot killed two

million people, and I just kill 5,000, why punish me?'

The search for justice must be based on principles, and the results should have a dissuasive effect -- so that these horrific crimes do not occur again in Cambodia. However, we must acknowledge that some jurists think that punishment does not have a dissuasive effect, because crime comes from other causes. But I believe that punishment does have some dissuasive effect.

Perhaps perpetrators in the future might think before they act. Perhaps a trial would at least create some fear and cause those who consider such acts to reflect beforehand. And I believe that we also need to prevent pardons. If we pardon, the whole process is meaningless.

We must also consider that if only the lower level leaders are punished and the big ones go free, how can this be free and fair? I believe there is no problem to find enough proof, and the trial must be based on this of course. A mixed tribunal does not mean only the judges -- having foreign prosecutors is even more important than having foreign judges. Providing adequate witness protection is another key issue.

We must look at the leaders of the Khmer Rouge. But I think we should limit (any trial) to the leadership to the Central Committee. They are the ones who are responsible because they allowed the others to kill. Under the Khmer Rouge, it was the chief of the village who in many cases did the killing, but it was the top leaders that created the conditions that allowed them to kill.

Of course those leaders didn't give direct orders to kill individuals, but when the lower levels did kill, no one was punished afterwards. Thus they created an environment that allowed the lower-ranking people to kill others. It was the leader's fault that they hadn't created a system to control themselves, thus it is they who are responsible. They put everyone in an animal-like situation; they made us live and fight for food like animals. At that time we even feared small children because they had the right to kill us -- at that time I didn't dare to even look at those child spies (kong chlop).

In looking at the future of Cambodia, however, we need to combine justice and peace, especially for the many lower-level former Khmer Rouge. We need to tolerate them, because those of us who lived through the regime understand that they received orders from the top, and that the majority didn't want to kill. I worry that if we condemn all the former Khmer Rouge, we will have problems; they will fight back. It is impossible: for example, if there are 10,000 perpetrators, they won't allow us to arrest them.

Some say for ordinary crimes people must be punished, but for political crimes, people cannot be punished because those crimes were committed for the national interest. Those people use the excuse that they killed in the interest of others, not for themselves. But I don't agree with this. If political leaders commit crimes, they must be responsible for their actions, especially if they kill. I believe we should combat this idea; it is very dangerous for humanity. Thus, I support 100 percent a permanent tribunal (International Criminal Court). We must try to change society. If the strong can kill others indiscriminately, it is like an animal state: the big fish can eat the small fish. Even if society is like this, we must change society. Humanity must progress also.

Justice is not perfect, but we must strive for perfection. This is a tendency of humanity as a whole. Even those who commit injustice -- they should think -- what if these injustices happen to them? We, Cambodian society, need to explore this chain of logic. We need to debate about these issues, to think about the big issues, and to deepen our ideas and our thinking.

- **Thun Saray** is President of ADHOC (Cambodian Human Rights and Development Association)

Khmer Rouge Confessions Would be Better Than a Flawed Trial

by Dr. Lao Mong Hay

In their book 'The Nuremberg Trial,' Ann and John Tusa acknowledged that 'all law is ultimately a political affair.' Actually, politics has decided and dictated the process to try the Khmer Rouge right from the beginning, and the Nuremberg precedent is nowhere to be found. At first the Prime Minister requested the United Nations to organize the trial but later has insisted upon Cambodia conducting that trial.

The United Nations has spurned the advice of its experts and has now agreed with the idea of a Cambodian trial. Other concerned parties have joined in and settled for a compromise, regardless of whether their compromise could compromise the process altogether.

Politics has further dominated the preparations of the trial from the drafting of the law to the choice of judges and prosecutors, to the number of Khmer Rouge to be tried. It is unlikely that politics would end just at this part of the process.

The coming trial, as it is currently prepared, is a political trial. The trial cannot find the truth and justice for the victims of the Khmer Rouge and cannot therefore address Cambodia's past. It could instead create new problems.

One alternative would be the South African modeled truth commission. This commission sounds attractive but due to the lack of similar leadership, personalities, and culture, it is likely to encounter so many practical problems that it could soon become a farce.

Another alternative would be a mass confession of guilt and request for pardon by the Khmer Rouge themselves to the entire Cambodian nation at a special ceremony held at the Olympic Stadium in Phnom Penh. The ceremony would be presided over by the King with the presence of the Queen, the Prime Minister, and other members of the ruling elite and as many people from all over the country as the stadium can accommodate.

The Khmer Rouge would come forth to confess their crimes, plead guilty, ask the nation to forgive them and support an amnesty for them, and request the King to exercise his constitutional powers to grant such amnesty to them. Further such ceremonies could be organized in the provinces.

This alternative would be a short event and would cost virtually nothing. It would, however, have

no less impact than the truth commission or the political trial that is currently being organized.

- **Contact Dr. Lao Mong Hay** at kid@camnet.com.kh

In the next issue: The Legal Experts