



## **FROM VICTIM TO WITNESS:**

### **INFORMATION PACKET ON THE KHMER ROUGE TRIBUNAL AND SURVIVOR PARTICIPATION**

#### **What is the Center for Justice and Accountability (CJA)?**

The Center for Justice and Accountability is an international human rights organization dedicated to deterring torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress. CJA is now the leading non-governmental organization that brings cases against individual human rights abusers in the U.S. and Spain. CJA has filed cases against former government officials and military officers from Bosnia, Chile, China, El Salvador, Guatemala, Haiti, Honduras, Indonesia, Peru, Colombia, and Somalia. CJA uses a survivor-centered approach that gives survivors an opportunity to tell their stories and contribute directly towards achieving justice in Court.

#### **How is CJA involved in the Khmer Rouge Court?**

Nushin Sarkarati, a lawyer at CJA, represents 45 Civil Parties in the second case against four surviving senior leaders of the Khmer Rouge. CJA's clients are all members of the Cambodian community in the United States who decided to join the proceedings as Civil Parties. CJA is working with Cambodian attorney Mr. Sam Sakong from Legal Aid Cambodia to provide the best legal representation possible for the Cambodian-American civil parties. CJA and ASRIC will also work with the Court to keep Cambodian-Americans informed about the upcoming trial.

#### **Partnership with ASRIC**

In this case CJA is working together with the ASRIC - a non-profit grass-roots organization founded by medical sociologist Dr. Leakhena Nou and committed to supporting survivors of the Cambodian genocide all around the world. ASRIC is dedicated to increasing cultural, individual, and collective strengths of the Cambodian population through education and justice-oriented initiatives. ASRIC seeks to educate Cambodians and Americans about the Khmer Rouge Tribunal. This mission gave rise to ASRIC's Cambodian Diaspora Victims Participation Project (CDVPP), which encouraged Cambodian survivors to actively engage in the Tribunal as Civil Parties and Witnesses. ASRIC played the lead role in organizing and collecting testimony from members of the Cambodian diaspora. In fact, having interviewed approximately 200 people, ASRIC has compiled the largest collection of survivor testimony in the United States.

## **Establishing the Khmer Rouge Court**

The Extraordinary Chambers in the Courts of Cambodia (ECCC), also known as the Khmer Rouge Tribunal or Court, is a special court in Phnom Penh established by the Cambodian government and the United Nations to judge the accountability of senior Khmer Rouge leaders and those persons “most responsible” for certain crimes that took place between 1975-1979.

To date, the Tribunal has accused five former Khmer Rouge leaders of severe human rights abuses, including murder, torture, rape, imprisonment, forcing people to leave their homes, forcing people to marry against their will, starvation, causing great suffering to the Cambodian and trying to destroy the Cham and Vietnamese people. In legal language, these crimes are known as “crimes against humanity”, “genocide”, and “war crimes” and are prohibited under international law.

## **Why did it take so long to create this Court?**

It is very difficult to create a Court that will try government officials for human rights violations. After the fall of the Khmer Rouge in 1979, Cambodia was still in the middle of a civil war that lasted until 1999. During this time, the country was not stable enough to create a court capable of respecting the rights of all participants and acting with sufficient legitimacy. In 1997 the Cambodian Prime Ministers requested assistance from the United Nations in determining the best way to hold the Khmer Rouge accountable. After years of negotiation, an agreement to establish the Court was approved by the UN and the Royal Government of Cambodia in 2003. The Court became fully operational in 2007.

## **Structure of the Khmer Rouge Court**

The Court uses both international and Cambodian law and the staff and judges are made up of both Cambodian nationals and foreign nationals.

- *Judicial Chambers:* The Court has a Pre-trial Chamber, a Trial Chamber and Supreme Court Chamber. The Pre-Trial Chamber deals with appeals in the pre-trial phase of proceedings. Importantly, it was the Pre-Trial Chamber that made the decisions regarding admissibility of Civil Party Applicants. The Trial Chamber hears the evidence (witness testimony and documents), considers different sides of the case, makes decisions, and delivers written judgments. The Supreme Chamber is responsible for the appeals from the trial phase. Each chamber is governed by a majority of Cambodian judges, however any decision made by the Court needs to have the agreement of at least one international judge.
- *The Office of the Co-Investigating Judges* reviews all the facts set out by the Prosecutors and considers whether there is enough evidence to send a person to Trial and whether the crimes alleged are within the jurisdiction of the Court.
- *The Office of the Co-Prosecutors* is responsible for investigating and prosecuting the crimes.

- The *Defense Support Section* (DSS) makes sure that the Defendants have fair and adequate legal representation at trial. They also support the lawyers that represent each defendant.
- *Victim Support Section* (VSS) is responsible for supporting the victims and Civil Parties before the Trial. They also are responsible for informing victims about their rights and assisting them in finding suitable legal representation and/or Victims Associations. The VSS will also be in charge of setting up projects designed to support the survivors of the Khmer Rouge regime in Cambodia.

### **Crimes investigated by the Khmer Rouge Court**

- **Crimes against humanity:** Crimes against humanity are certain crimes that are committed against civilians because of their nationality, political views, ethnicity, race, or religion. The crimes can include killing large numbers of people, turning people into slaves, sending people away from their homes, putting people in prison without a good reason, torture, and rape. These crimes do not need to be part of a war, but need to be part of a large attack against a lot of civilians.
- **War Crimes:** war crimes are crimes committed against a civilian during a war with another country or with a large group within a country. War crimes include killing, torture; inhumane treatment; causing great suffering or serious injury; destruction or serious damage to property; denial of a fair trial; and unlawful deportation, transfer, or confinement of a civilian.
- **Genocide:** This is a crime committed against a specific group of people because of their nationality, ethnicity, race or religion that was done with the intent to destroy that group. The act can be killing, causing serious bodily or mental harm, causing life conditions such as hunger that lead to the group's destruction, preventing births, or forcibly transferring children from one group to another group. Most of the crimes committed by the Khmer Rouge have not been charged as genocide because they were committed against political groups and not against a particular nationality or ethnicity. Only the harm committed against the Vietnamese and Cham minority has been charged as genocide because these crimes were committed with the intent to destroy those groups specifically because of their ethnicity or nationality.
- **Crimes under the 1956 Cambodian Penal Code:** The Court will also hear evidence of crimes that violate the Cambodian Penal Code that was in place before the Khmer Rouge regime. These are national crimes and include murder, torture, and religious persecution.

### **Case 001 against Kaing Guek Eav (alias “Comrade Duch”)**

- **Position in the Khmer Rouge:** A former math teacher in Cambodia, Comrade Duch became one of the leaders of the Khmer Rouge and was chief of the S-21 detention center, Tuol Sleng Prison in Phnom Penh.
- **Capture and imprisonment:** Duch was arrested in 1999 in Samlot, Battambang province and held in a military prison for eight years without a trial. In 2007, Duch was transferred and charged by the ECCC.

- **Trial:** The trial against Duch lasted from February to November 2009. The Trial Chamber listened to evidence of the atrocities that occurred at S-21 prison and the Choeng Ek killing fields. At least 12, 272 prisoners were brought into S-21 prison where they were tortured and forced to confess to “anti-revolutionary crimes.” During the Trial, Duch admitted that he knew that most of the confessions were false and that the persons named were not really involved in anti-revolutionary crimes. Duch also admitted that everyone who entered S-21 was destined for execution at the Choeng Ek killing fields. In fact, of the 12, 272 prisoners brought in to S-21, only a small number survived.
- **Sentence:** For his role as Chief of S-21 detention center, the trial court found Duch guilty of crimes against humanity and war crimes. In determining Duch’s sentence, the Court took into account Duch’s cooperation with the Court and Duch’s admission of responsibility for the crimes and sentenced Duch to 35 years in prison. This was reduced to 19 years for two reasons: first, Duch was held in prison without a trial for 8 years. Under Cambodian law, a person cannot be held in prison for more than 3 years without a trial. So the Court reduced the sentence to thirty years in recognition of the five years of illegal detention. Second, the Court acknowledged that Duch has already served eleven years in prison and therefore only has 19 years left to serve for his 30 year sentence.
- **Appeal:** Both Duch’s lawyers and the Prosecutor appealed the trial chamber’s decision. The Prosecutor appealed the length of Duch’s sentence, saying that the 35 year sentence against Duch is too low and “gives insufficient weight to the gravity of Duch’s crimes.” Duch’s lawyers appealed the sentence as well, arguing that since Duch was not a senior leader in the Khmer Rouge, he should not have been tried by the Court.
- **Final Judgment:** On 3 February 2012, the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) sentenced Duch to life imprisonment, the maximum sentence available under the law, for crimes against humanity and grave breaches of the 1949 Geneva Conventions.

## **Case 002 against top officials of the Khmer Rouge**

### **Who is being tried?**

Case 002 was originally filed against the four top surviving officials of the Khmer Rouge: Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan.

### **Background on the Defendants:**

- **Nuon Chea (alias “Brother Number Two”):** Nuon Chea was born in Battambang province and studied law at Bangkok’s Thammasat University, where he became a member of the Thai Communist Party. Upon returning to Cambodia in 1950, he joined the Communist Party of Kampuchea (CPK) and became a senior member by 1960. He held the position of Deputy Secretary and was the second most powerful member of the

party, after Pol Pot. He also held the position of Chairman of the People's Assembly, acting Prime Minister, and Vice Chairman of the CPK Centre Military Committee.

In Case 002, the prosecutor will try to show that Nuon Chea was in charge of the prisons during the Democratic Kampuchea regime, including S-21 (Tuol Sleng) prison, and that he was responsible for designing and implementing a lot of the party's policies; such as forcible transfer of people from their homes to other locations, enslavement, forced labor, and other inhumane acts. He directed the policy of purging alleged enemies, including intellectuals returning from abroad. He was also a key decision maker in the massive purge of the East Zone on May 25, 1978. He was arrested by the Tribunal in 2007 and has been in detention awaiting trial.

- **Ieng Sary (alias Van):** Ieng Sary was born in an area of Cambodia that is now part of Tra Vinh province in Vietnam. He studied in Phnom Penh and France, and returned to Cambodia in 1957 where he became a history professor. Ieng Sary was one of the original organizers of the Communist Party of Kampuchea and was a member of the CPK's decision making body, the Standing Committee, along with Pol Pot and Nuon Chea. After the Khmer Rouge came into power, Ieng Sary held the position of Deputy Prime Minister and Minister for Foreign Affairs. He is alleged to have sent a number of members of the Foreign Ministry to S-21 prison where they were tortured and executed. Further, as Minister for Foreign Affairs he regularly traveled abroad and met with foreign diplomats. In doing so, he facilitated the continued commission of crimes by the Khmer Rouge by denying the existence of these crimes to the world abroad.

Ieng Sary fled to Thailand in 1979 and, during his absence from Cambodia, was convicted by the People's Revolutionary Tribunal in Phnom Penh for genocide. He received a death sentence but was later pardoned by then King Norodom Sihanouk and welcomed back into Cambodia after Ieng Sary, and several thousand of his followers, left the Khmer Rouge. He was arrested in 2007 by the Khmer Rouge Tribunal and has been charged with genocide, crimes against humanity, war crimes, and crimes under the 1956 Cambodian Penal Code.

- **Ieng Thirith (alias Sister Phea):** Ieng Thirith, wife of Ieng Sary and sister-in law of Pol Pot, was a senior member of the CPK. She was born in Phnom Penh and studied at the Lycee Sisowath and the Sorbonne in Paris. She met Ieng Sary in Paris and returned to Cambodia in 1957.

From 17 April 1975 to 6 January 1979, Ieng Thirith held the position of Minister of Social Affairs and Action and, along with Ieng Sary, was responsible for foreign affairs. She was also sent to the North West Zone by Pol Pot in 1976 to investigate the health, diet and housing of workers and therefore most likely knew that Cambodians were starving and in poor health under the Democratic Kampuchea Regime. Ieng Thirith is also alleged to be responsible for the Ministry's work in replacing trained medical personnel with unqualified and illiterate teenagers as well as refusing to import and distribute modern medicine throughout the country.

Ieng Thirith lived with her husband in Phnom Penh until 2007, when she was arrested by the Tribunal and charged with genocide, crimes against humanity, war crimes and crimes under the 1956 Cambodian Penal Code.

- **Khieu Samphan:** Khieu Samphan was born in Svay Rieng province and studied in France, where he joined the French Communist Party. After Prince Sihanouk resigned as head of State in 1976, Khieu Samphan became the new Head of State under the Democratic Kampuchea regime. He became one of the most powerful officials of the Khmer Rouge, but Pol Pot was still the group's true political leader.

One of Khieu Samphan's responsibilities as head of state was the political education of those returning from exile to Democratic Kampuchea, and he also played an active role in policies directed at inciting hatred towards the Vietnamese, with whom the Khmer Rouge were at war. He ordered, incited and encouraged widespread executions and participated in the organization of forced labor across Democratic Kampuchea.

When Pol Pot retired in 1987, Khieu Samphan became the official head of the Khmer Rouge. He was arrested by the Tribunal in 2007 and presently faces charges of crimes against humanity, war crimes, genocide, and crimes under the 1956 Cambodian Penal Code.

### **What happened to Ieng Thirith?**

Under the rules of most courts, a person has a right to defend themselves when they are charged with a crime. If a person is mentally unfit, and does not understand the evidence presented against them, then they are unable to defend themselves. Ieng Thirith was found mentally unfit to stand trial, likely due to Alzheimer's disease. She has been released on three conditions. First, she had to surrender her passport and travel documents and remain within Cambodia. Second, she cannot move her residence without prior authorization by the Court. Third, she may still be brought before the Court if they request her presence.

### **What about the health of Ieng Sary?**

Ieng Sary was admitted to a hospital in Cambodia on September 7, 2012. The doctors found that there was limited blood flow to his brain due to a bone pressing on an artery in his neck, causing dizziness and fatigue. He is currently stable and the doctors as well as the Court are currently deciding how best to continue with the trial. Ieng Sary has a right to be in Court, however if he is unable to attend the trial, the Court could order that certain witnesses be heard without his presence. They may also require that Ieng Sary participate from his hospital bed, via video conferencing. No decision has yet been made but the Court is working quickly to

get through the evidence in order to issue a decision before the health of the Accused worsens.

### **What sentence can the senior leaders receive?**

The maximum sentence in this case is life imprisonment. In addition, the Court can take away their property such as land, houses, money or cars, which they acquired against the law. They will not receive death penalty or be tortured, because such punishment is not permitted under the laws of Cambodia.

### **Victims' Rights before the Khmer Rouge Tribunal**

The Khmer Rouge Court is the first international-type court that allows survivors of human rights violations to participate as parties to the trial. The Court created a separate body, the Victim Support Section, to facilitate the participation of survivors in the trial.

“Victim” is defined as an individual who suffered physical, psychological or material harm as a direct consequence of the Khmer Rouge regime. According to the rules of the Court, victims have a right to file complaints (“Complainants”) as well as to participate in the proceedings as Civil Parties if accepted by the Court.

**Complainants** are people who submitted useful information regarding the crimes of the Khmer Rouge to the Court in a Victim Information Form. This information in the Victim Information Form is used to help in investigations and trials by the Court. Complainants do not participate as parties in hearings, and they are not entitled to ask the court for reparations. They may however be requested to give evidence or testify as witnesses.

**Civil Parties** are formal participants in the trial against those allegedly responsible for the crimes under investigation by the Court. Survivors who submitted Victim Information Forms that show a direct harm resulting from the specific crimes under investigation by the Court are admitted as Civil Parties. Some of the crimes that are under investigation in Case 002 include: forced transfer out of Phnom Penh, detention in Tuol Sleng prison, and forced transfer to the North West Zone of Democratic Kampuchea. Becoming a Civil Party not only gives victims the right to actively participate in the proceedings, but it also allows victims to ask the court for collective and moral reparations from the convicted persons.

In Case No. 002, the VSS received 8202 Victim Information Forms, which includes approximately 4000 Civil Party Applications. A little over half the civil parties' applications were accepted and the appeals of the remaining applications are pending.

### **Why were some applications rejected?**

The crimes committed by the Khmer Rouge were extensive. Because the crimes in Cambodia were so extensive, the Court limited the scope of the investigation to certain geographical sites and specific crimes. Civil Parties must show that their harm is linked to the crime sites and crimes that are at issue in Case 002. Most applications were rejected because they did not

contain enough facts or did not show that the crimes alleged were linked to the scope of investigation. CJA has filed appeals on behalf of 11 Civil Parties.

### **Changes in victim participation since Case 001**

In Case 001, there were many legal teams representing a small number of Civil Parties. This created some difficulties as each Civil Party lawyer would take time at trial to question a witness or make a statement. To make the trial of Case 002 more efficient, Civil Parties will be represented by two Lead Co-Lawyers: Ang Pich (a Cambodian attorney) and Elisabeth Simonneau-Fort (an international attorney from France).

Significantly, CJA will continue to communicate directly with its clients. CJA will support the lead co-lawyers by making the interest of its clients known to the lead co-lawyers. In addition, CJA may participate in trial by questioning witnesses and making presentations about issues important to the clients. If any of the CJA's clients are asked to testify, the lawyers will travel with them to Phnom Penh and be with them during the testimony.

### **Reparations**

If the accused are found guilty, Civil Parties have a right to an award which addresses the harm that they suffered. The Court will not give money to the Civil Parties or to any other survivors. Instead, the Court can grant what the Court calls "collective and moral" reparations. These are awards that benefit a large group of survivors and have a symbolic value. Such reparations could aim to preserve history and educate future generations, to honor victims and survivors and/or to disseminate information about the trial. For example:

- Creating a national archive;
- Publishing a book with the stories of the survivors;
- Creating a public exhibition;
- Building a memorial or monument, creating national commemoration day;
- Publicizing the judgment through newspapers, radio and TV;
- Sending an official letter from the Court with the judgment to all Civil Parties.

In Case 001 against the defendant Kaing Guek Eav (alias Duch), Civil Parties requested several reparations such as building of memorials, introduction of a national commemoration day for victims, free counseling services for the survivors, an apology from the Cambodian government, funding for educational programs and dissemination of the defendant's apology. Out of all the reparations, the Court granted only the request to include Civil Party names in the final judgment and the request to disseminate the statement of apology made by the accused. The rest of the reparations were rejected because they were not specific enough, did not qualify as moral and collective reparations, or the Court lacked competence to enforce such reparations.

Civil Party lawyers (including CJA) have created a working group on reparations to address some of the problems in Case 001 in an effort to avoid these problems for the second judgment. CJA and ASRIC will work together to advocate for reparations that address the harms suffered by Cambodians now living in the United States. CJA and other civil party groups will submit a unified reparations request to the Court and will seek guidance from the Court to determine what

types of reparations will be admitted. CJA and ASRIC will also design a methodology for implementing the reparations in order to avoid rejection by the Court. For reparations that require government action, CJA and other civil party lawyers will request that the Court grant the reparations as a “recommendation for government action.”

### **Non-Judicial Measures**

For Case 002, the Court expanded the role of the Victim Support Section to create projects that benefit victims of the Khmer Rouge. These projects are called non-judicial measures and are not restricted to just Civil Parties, but will be designed to benefit Cambodians in general. For example, the VSS can create a victim registry which lists the names of all the people who were either killed or harmed by the Khmer Rouge. These projects will include outreach and other services to Cambodian people and can begin even before the end of the trial. CJA and ASRIC will work with the VSS to design non-judicial measures that benefit the Cambodian survivors living in the United States.

### **CJA’s work in the upcoming trial**

CJA will work with Cambodian Attorney Sam Sokong from Legal Aid Cambodia in representing the United States-based Civil Parties during the upcoming trial. CJA has already filed appeals on behalf of eleven Civil Party applications and will continue to represent the interests of these clients. CJA will also assist in the prosecution of the crimes by proposing Civil Parties and expert witnesses to present evidence at trial. CJA will vigorously advocate for the interests of Cambodians living in the Diaspora and to make sure their testimony and interests are included in the decisions of the Court. CJA will also collaborate with other civil party lawyers to ensure the efficient and effective representation of all Civil Parties.

### **CJA’s and ASRIC’s work for the Cambodian people**

CJA and ASRIC will conduct outreach to Cambodians living in the United States and connect them to the work of the Khmer Rouge Court by setting up forums throughout the United States. We will work with the Victim Support Section of the Khmer Rouge Court to inform the Cambodian survivors living in the United States on key decisions and events coming out of the Court.

CJA and ASRIC will work on setting up non-judicial measures that will benefit the Cambodians living in the United States.

CJA will also assist non-governmental organizations in Cambodia to develop projects that will help advance the rule of law in Cambodia and ensure the human rights of the people of Cambodia.

### **Will the Khmer Rouge Tribunal try more officials in the future?**

The prosecutor’s office has submitted a request to investigate five more former leaders of the Khmer Rouge. However, this investigation is confidential and the names of the five suspects have not been released. If the Investigating Judges permit the case to move forward, then there

will be a third and fourth trial before the Tribunal and victims of the Khmer Rouge may file a request to participate as civil parties or complainants in those trials.

### **For more information**

- You can learn more about CJA's work at the Khmer Rouge Tribunal at our website: [www.cja.org](http://www.cja.org). For more information on ASRIC, please visit: [www.asricjustice.org](http://www.asricjustice.org) or [www.apa.nyu.edu/ASRIC](http://www.apa.nyu.edu/ASRIC)
- To learn more about the Khmer Rouge Tribunal, visit the Court's website: <http://www.eccc.gov.kh/>
- To listen to the weekly radio broadcast on evidence presented at the court, go to <http://www.eccc.gov.kh/en/media-center/weekly-radio>
- You can also read about the Victim Support Section and listen to radio commentary about the trial on the web at: <http://vss.eccc.gov.kh/>.
- To watch videos of the trial against Comrade Duch and read useful reports on the Tribunal, visit the Cambodia Tribunal Monitor at: <http://www.cambodiatribunal.org/>

### **How can I contact CJA?**

You can contact CJA attorney Nushin Sarkarati by phone at (415) 544-0444, ext 318 or by email at [nsarkarati@cja.org](mailto:nsarkarati@cja.org). CJA is located on 870 Market Street, Suite 680 in San Francisco, CA 94102.

### **How can I contact ASRIC?**

To get in touch with Dr. Leakhena Nou, you may send an email to: [apa.asric-khmer.justice@nyu.edu](mailto:apa.asric-khmer.justice@nyu.edu)

### **How can I contact the Victim Support Section (VSS) of the Khmer Rouge Tribunal?**

To contact the VSS in Cambodia, you may call +(855) 023 214 291 or use their help line (855) 097 742 4218. You can also send an email to: [vss@eccc.gov.kh](mailto:vss@eccc.gov.kh).

### **How can I visit the Tribunal?**

If you are in Cambodia and would like to visit the Tribunal, you may contact the VSS to arrange a seat for you or you can contact CJA to make the arrangements on your behalf. The Tribunal is located outside of Phnom Penh. The address is: National Road 4, Chaom Chau, Dangkao District.