

PERSPECTIVES

**THE KHMER ROUGE TRIBUNAL:
AN AMBIGUOUS GOOD NEWS STORY**

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an ambiguous good news story**

Milton Osborne

It's [the Khmer Rouge Tribunal] heavily symbolic and won't have much to do with justice . . . It will produce verdicts which delineate the KR leadership as having been a small group and nothing to do with the present regime.

Philip Short, author of *Pol Pot: anatomy of a nightmare*, London, 2004,
quoted in *Phnom Penh Post*, 26 January-8 February 2007.

Some ten months after it was finally inaugurated in July 2006, and more than twenty-eight years after the overthrow of the Democratic Kampuchean (DK) regime led by Pol Pot, the Extraordinary Chambers of the Courts of Cambodia (ECCC), more familiarly known as the Khmer Rouge Tribunal, has at last handed down its first indictment. On 31 July Kaing Guek Eav – also transliterated as Kang Kech Iev – whose revolutionary name was Duch or Deuch, was charged with a range of offences including that of having committed ‘crimes against humanity’. Already held in government custody since 1999 in relation to other charges, Duch has now been placed in ‘provisional detention’ under the ECCC’s aegis.¹ The charges brought against Duch, which detail his having presided over ‘mass executions’, stem from his role as commandant of S-21, the Tuol Sleng prison, torture and extermination centre, located in the southern suburbs of Phnom Penh. (S-21 was its coded name, with the ‘S’ in its title derived from the Khmer name for the DK’s secret police, or *santebal*, and it was how the institution was known while the Pol Pot regime was in power between April 1975 and January 1979.)²

Housed in the buildings of a former secondary school, the institution was established in its present location in 1976 and functioned until the very last hours of the Pol Pot regime, when it was overthrown by invading Vietnamese forces at the beginning of 1979. During the time it was in existence at least 15,000 men, women and children – and possibly as many as 17,000 – were imprisoned, tortured and killed as supposed enemies of the state. Less than a dozen of those taken into S-21 survived.³ The interrogator of the French scholar, François Bizot when he was captured by the Khmer Rouge in 1971, Duch’s role in the terrible activities at Tuol

Sleng is widely known, and indeed self-admitted, for an audience much broader than those who study Cambodian affairs.⁴ Not least is this the case for the many thousands of foreign visitors who now come to Tuol Sleng in its present form as a ‘Museum of Genocidal Crimes’, and who also go to see the ‘Killing Fields’ of Choeung Ek. Formerly a Chinese graveyard located about fifteen kilometres from central Phnom Penh, this site was where at least half of prisoners were taken from Tuol Sleng to be killed and buried after torture and prolonged interrogation within the prison.⁵

In addition to laying charges against Duch, the ECCC’s prosecutors have also stated that they are now ready to bring down indictments against a further four Khmer Rouge figures.⁶ As of 26 August these individuals have not been named, but they are believed to be Khieu Samphan, former DK head of state; Nuon Chea, known as ‘Brother Number Two’ and the Khmer Rouge’s chief ideologue; Ieng Sary, DK foreign minister and Pol Pot’s brother-in-law; and Khieu (or Ieng) Thirith, former DK minister for social affairs, who is Ieng Sary’s wife and the younger sister of Pol Pot’s wife Khieu Ponnary. At the time of writing, all are living untroubled lives, either in the Pailin region of western Cambodia, close to the Thai border, or in Phnom Penh itself. Whatever happens to the persons just listed, two of the most notorious figures of the DK regime have escaped coming to trial; Pol Pot himself, who died, possibly by suicide, in 1998, and Ta Mok, the brutal deputy second secretary of the DK regime, known as ‘the Butcher’, who died in June 2006 after being released from prison because of poor health.⁷

It is not clear whether there will be other indictments. Over twelve months ago the official spokesman for the ECCC, Reach Sambath, stated that ‘It is approximated that we will try five to ten people.’ It is not clear if that estimate still stands, for there have been no official recent statements from the tribunal that go beyond the indication that four more people will be indicted in addition to Duch.⁸

The long lapse of time between the end of the DK era and the formal inauguration of a tribunal, in July 2006, has been a subject for considerable research, advocacy and publication. In this paper I am concerned only to provide a summary of the varying explanations of why this should have been so. Like so much modern Cambodian history, the issues involved are contested and replete with ambiguities. The substantial delay between the conclusion of the agreement between the Cambodian government and the United Nations to establish the ECCC in 2003 and the eventual inauguration of the ECCC last year is harder to explain, and so is the subsequent further delay that occurred before the handing down of the indictment against Duch. This final delay of twelve months can probably be linked to a series of supposedly procedural disagreements between the Cambodian and foreign judges making up the tribunal.

These were not settled until May 2007. It is these issues associated with the ECCC, from 2003 onwards, and most particularly since July 2006, that I address in this paper.

In reviewing all of these developments there is an important point to be made. This is the fact that despite the fundamental importance to Cambodians and to interested foreign observers of that country of finding a way to bring the leaders of the DK regime to account, the Khmer Rouge tribunal has never been *the* key feature of Cambodian politics over the past thirty years. The establishment of a tribunal has certainly been a matter of continuing importance to Cambodians who suffered under the Khmer Rouge and to advocacy Non-Governmental Organisations (NGOs), including several courageous domestic ones operating in Cambodia. Nevertheless, the issue of the tribunal has often been submerged beneath the larger political contest as to how the Cambodian state should be governed, and by which political party. And in terms of the policies pursued by the now-dominant Cambodian People's Party (CPP), the Khmer Rouge Tribunal is only part of the broader issue of how that party and its leaders have chosen to deal with the past.

The essentials of the tribunal

Throughout the 1980s, and into the 1990s, and most particularly after 1993, when Cambodia emerged from the UNTAC (United Transitional Authority in Cambodia) period, external actors, including the United States Congress, which in April 1994 passed the Cambodian Genocide Justice Act, were prominent in calling for a legal process to be instituted that would bring Khmer Rouge leaders to trial. The United Nations Special Representative for Human Rights in Cambodia, Thomas Hammarberg, played a particularly active role in promoting the desirability of establishing a tribunal. Partly in response to the external calls for action, the then co-prime ministers, Hun Sen and Norodom Ranariddh, in June 1997 wrote to the United Nations requesting its assistance in establishing a tribunal. What their motivations were in terms of domestic political concerns remains uncertain.

As discussed later in this paper, considerable time then passed before the next positive step towards establishing a tribunal was taken. For it was not until 2001 that the next key development in the establishment of the ECCC occurred. This was the passage through the Cambodian parliament of the Khmer Rouge Law in 2001. Its first substantive article (Article 1) states that:

The purpose of this law is to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.⁹

The significant point to be noted in relation to this Article, and a point not always recognised in commentary at the time the law was passed, is the reference to ‘senior leaders’. In enshrining this limiting point in law the Cambodian leadership associated with the CPP was following a strategy that was apparent in many of its actions: that was to limit the extent to which a Khmer Rouge tribunal would cast its net.

With the Khmer Rouge Law passed, it was now necessary for the Cambodian government to reach an accommodation with the United Nations for the establishment of a tribunal. This was done following the passage of United Nations General Assembly Resolution 57/228 of 6 June 2003, and codified in ‘An Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea.’¹⁰

The ECCC is unique in that unlike similar ‘hybrid’ tribunals, as for instance in Sierra Leone, Cambodian judges are in the majority in each of the ECCC’s chambers.¹¹ They occupy three of the five judicial positions in the Pre-Trial and Trial Chambers and five of the seven positions in the Supreme or Appeals Chambers. For a binding decision to be reached, however, an international judge must join with Cambodian colleagues to affirm a decision. This mode of proceeding has been described as the requirement for achieving a ‘supermajority’ in decisions and was designed to meet Cambodian resistance, first, to international judges playing any part in the tribunal and, second, to suggestions that Cambodian judges might be in a minority when reaching a verdict in any tribunal that was established. And unlike other international tribunals, there are two co-prosecutors, one Cambodian, one foreign.

In short, the Cambodian government has been successful in achieving what it considered to be a defence of its sovereign rights in relation to the tribunal against a wide body of international opinion that doubted the existence within the country of a properly functioning legal system, particularly in relation to the independence of the judiciary. So far as what system of law will be followed during the tribunal, a hybrid system will again be in use, with Cambodian law, a very uncertain quantity derived mainly from French codes and essentially what prevailed or

was re-written under the UNTAC period, with resort to ‘international law’ when Cambodian law is unavailable or inadequate.¹²

What occurred under the Khmer Rouge regime

To understand the importance within Cambodian society of the concept of a tribunal to try Khmer Rouge figures, it is necessary to reiterate, briefly, the terrible history of the DK period and its part in Cambodia’s complex and tragic history since 1970. Although the record of the Khmer Rouge regime has been widely known for decades, since the Vietnamese invaded Cambodia and defeated Democratic Kampuchea in January 1979, research continues to elaborate our understanding of the extent of Khmer Rouge brutality and the number of lives that were lost because of it. While there can be no certainty of the number of people who died while the DK was in power, the current consensus is that the death toll was of the order of *at least* 1.7 million persons, who died from hunger, overwork, disease and execution. Some respected analysts argue persuasively that the total figure of deaths should be far higher, at 2.2 million. Just how many died through execution under DK is uncertain. The minimum accepted figure is 100,000, but some analysts believe this figure is too low and that the number of people executed as enemies of the state may have been as high as one million. One reason for giving credence to a figure much higher than 100,000 is the research that is continuing, particularly into the provincial prisons that operated during the DK years and which some analysts suggest may have tortured and killed in a fashion similar to what occurred in S-21.¹³

In contrast to a growing sense of agreement over the figures just recorded has been the lack of unanimity, both within Cambodia itself and on the part of external observers, as to how to deal with those who played a part in deciding and implementing policy during the DK years. This is an issue that bears directly on the culture of impunity that has been so characteristic of Cambodian politics and society since a degree of normality was achieved in 1993 following the United Nations intervention through UNTAC.

A trial of sorts: people’s revolutionary justice in 1979

Technically, it is not correct to write of the prospective trials before the ECCC as the first occasion on which senior Khmer Rouge figures will be brought to some form of justice. Less than a year after the DK regime’s defeat, in August 1979, the People’s Republic of

Kampuchea (PRK), the protégé regime installed by the Vietnamese after they invaded Cambodia, convened a ‘People’s Revolutionary Tribunal’ to try Pol Pot, the Cambodian communist party’s secretary-general and pre-eminent DK leader, and Ieng Sary, DK’s foreign minister, in absentia, for genocide and crimes against humanity. In the well-established tradition of show trials within communist states, with the Vietnamese coaching their Cambodian protégés on how to proceed, counsel for Pol Pot and Ieng Sary were instructed that they were not to defend their ‘clients’ but rather to present a picture of the regime’s horrendous character while focusing on the role of the Chinese government in supporting it. The atmosphere of the trial’s proceedings, replete with Cold War rhetoric, is well captured in the statement to the court of an American lawyer, Hope Stevens, of the National Conference of Black Lawyers of the United States and Canada. Acting as an international lawyer supposedly on behalf of the absent defendants, he condemned the ‘manipulators of world imperialism, the profiteers of neo-colonialism, the fascist philosophers, the hegemonists, who are supporting Zionism, racism, apartheid and reactionary regimes in the world’. After denouncing the ‘false socialist leaders of Fascist China’ he concluded that, ‘It is now clear to all that Pol Pot and Ieng Sary were criminally insane monsters.’¹⁴

At the end of a five-day trial the two absent defendants were declared guilty and sentenced to death. China, at that time Vietnam’s bitter enemy, was excoriated in the course of the proceedings and so was the United States. Criticism of the latter related, particularly, to US support of the DK’s continuing to occupy the Cambodian seat at the United Nations and Washington’s developing support for Cambodian forces opposed to the PRK. As a judicial exercise the tribunal was lacking on many counts, whatever the detailed knowledge that already existed about the horrors of the DK regime. At base, it was an exercise in victors’ justice, in a ‘court’ convened within a regime that was under the direction of an external power, and taking place without any proper legal system in place and with no proper opportunity to mount a defence for the accused. All this said, there is no doubt that the trial provided much incontrovertible evidence of the DK regime’s shocking character and the role of its leaders in presiding over the atrocities that had taken place.

Perhaps the most important aspect of the revolutionary tribunal was the fact that both the Vietnamese and their protégés did not move subsequently to hold trials of others of the well-known DK leadership, who by then were living either in exile from Cambodia or in the Khmer Rouge redoubts within the country, which that group was able to maintain throughout the 1980s and into the 1990s. An undoubted reason for this failure to act was, and is, the fact that leading members of the PRK regime and the subsequent regimes – first the State of Cambodia and after 1993 of the Kingdom of Cambodia – such as current Prime Minister Hun

Sen, had been members of the DK administration before defecting to Vietnam in 1977, or later, as in the case of the present Chairman of the CPP and President of the Cambodian Senate, Chea Sim. Moreover, in the difficult months following the 1979 Vietnamese victory the new Cambodian regime decided that it had little choice but to employ many of those who had worked in the DK administration, particularly in the provinces. While not all of these must be presumed to have committed crimes against humanity, many undoubtedly did. Having remained in Cambodia after their leaders fled they transferred their allegiance to the new regime. With their own background clouded by past associations and with a desperate shortage of qualified administrative personnel, the new leadership in Phnom Penh concluded it was better to forget the past, except in relation to a very limited number of individuals. To use a perceptive phrase that I borrow from David Chandler, it became state policy to develop a case of ‘induced amnesia’.¹⁵

So, against this background, and in addition to describing why there has been such a prolonged delay to bring Khmer Rouge figures to trial, it remains necessary to ask why the tribunal is not currently casting a wider net that might examine the possible guilt of a much larger number of men and women who were involved in the crimes of the DK regime. The actual size of this larger number is one of the many disputed aspects of Cambodia’s recent history. And the point should be made that there are sharply differing views on the manner in which responsibility should be apportioned for the delay that has taken place to bring the ECCC into existence. In all of the developments of the recent past in Cambodia there is a persistent theme of political and moral ambiguity.

The ambiguities of modern Cambodian history

In considering the issues associated with the ECCC, it is worth remembering that almost every aspect of modern Cambodian political history is disputed terrain. Nothing makes this clearer than the divided opinions that are held about the former king, now ‘King Father,’ Norodom Sihanouk, who reigned from 1941 until his abdication in 1955; was prime minister and chief of state of the kingdom between 1955 and his overthrow in 1970; was the nominal leader of the forces ranged against the Phnom Penh regime between 1970 and 1975, forces dominated by the Cambodian communists; was nominally head of state of Democratic Kampuchea before being discarded from that role and living as prisoner under house arrest between 1976 and 1979; was head of the Coalition of the Government of Democratic Kampuchea for much of the 1980s, and so again was closely linked with the forces of the Khmer Rouge; and finally after the Cambodian peace settlement of 1991 returned in 1993 to

be Cambodia's king once again before abdicating in 2004 in favour of his son, the current King Norodom Sihamoni. Further emphasising the complexities of all discussion of Sihanouk's political transmogrifications is the fact that he has continued over the past decade to retain former members of the Khmer Rouge on his personal staff.¹⁶

In short, Sihanouk during his adult lifetime has been a sworn enemy of the left, including in the late 1960s when he boasted of ordering the summary execution of hundreds of communists without trial, a nominal leader of communist forces between 1970 and 1975, and in the 1980s the nominal head, again, of an entity that depended on communist forces linked to the former DK regime that fought to overthrow the then government in Phnom Penh.¹⁷ None of this is to suggest the Sihanouk should be brought to trial, and a case can be made that to some extent he has been a victim of circumstances, a position underscored by a recent Cambodian government statement affirming his immunity from prosecution as 'a victim of the war in Indochina'.¹⁸ Nevertheless, there is no escaping the fact that his own career embodies the ambiguities and contradictions of his country.

Ambiguity is no less present in relation to the contemporary Cambodian leadership's background. Many of the current senior Cambodian figures in the ruling party, the Cambodian People's Party (CPP), were once active mid-level, if not senior, members of the DK regime. As already noted, this is true, notably, of Prime Minister Hun Sen, and of CPP and Cambodian Senate Chairman, Chea Sim. To cite their names does not mean that there is evidence of their having engaged in 'crimes against humanity'. Indeed, in the case of Hun Sen concerted efforts to link him to atrocities have produced no evidence to back up such a charge. But some scholars suggest that the jury is still out over the suggestion that these two men came from an area of eastern Cambodia that was, under the Pol Pot regime, distinguished by being less brutal than others.¹⁹

It certainly strains credibility to suggest that men such as Hun Sen and Chea Sim did not have some awareness of the nature of the regime they served for two years or more. And, as already noted, there is abundant evidence that both in the Cambodian government itself, and very certainly in the broader administration, today, there are many persons holding official positions who once worked in the Pol Pot regime. These facts, above all else, explain the 'induced amnesia' to which reference has already been made. From the point of view of those who first occupied leadership positions under Vietnamese tutelage in the 1980s and subsequently came to hold power in their own right, it was better that the past should not be investigated too closely. Trying Pol Pot and Ieng Sary as was done in 1979, condemning the actions of the regime in general and in particular, and holding annual 'Days of Hate' to

reinforce memories of what had been awful about the DK period, was one thing. But working to focus attention on the role of other senior Khmer Rouge individuals was better avoided.

Nothing makes the policy of avoiding a focus on the past more obvious than the reluctance of the Cambodian government to have the DK period studied at secondary school or university level. Only now, in 2007, has the government moved to sanction the limited use in schools of a new book detailing the nature and actions of the DK regime. Prepared by Khamboly Dy, under the sponsorship of the Documentation Center of Cambodia, it was published in 2007. The book will not be used as a formal text, although there is a suggestion that it may eventually gain that status.²⁰

The comparison with what happened in France after the Second World War has sometimes been proposed as a useful if inexact analogy for what happened in Cambodia so far as the acceptance into the PRK administration of many who had worked with the DK regime is concerned. But there is a fundamental difference between the two situations. In France, essentially at Charles de Gaulle's behest, many who had served the Vichy regime were accepted within the post-1945 French administration and a veil was drawn over the past, one that did not begin to slip in any serious fashion until the 1970s.²¹ But what was hidden in France was a history of collaboration at a time when it was occupied by a foreign power, Nazi Germany. To be a supporter of Vichy was to work with an external occupier which had conquered the French state. The amnesia that has been imposed in Cambodia hides an accounting for the actions of Cambodians against Cambodians, without the presence of a foreign party as the force in overall charge.

This fact led the French journalist Jean Lacouture to coin the term 'autogenocide' to describe what occurred in Cambodia, a term that like the word 'genocide' itself has been a basis for sharp arguments based on legal technicalities and the exploration of cultural norms. While, from the point of view of a lay person, there appear to be arguments worthy of attention, though still contested, in relation to the proposition that the Khmer Rouge did, indeed, commit genocide, in terms of the United Nations Genocide Convention, in relation to some non-ethnic Cambodian citizens, the term cannot really apply to their acts against their own countrymen. I am struck by the appropriateness of the recent summary proposition by Philip Short, to the effect that the Khmer Rouge killed fellow Cambodians as enemies of the state, not because of their ethnicity, so that what occurred were 'crimes against humanity yes, but genocide no'.²²

Indeed, a closer examination of the Cambodian case both further emphasises the difference between France and Cambodia and adds to the sense of ambiguity so clearly associated with the latter's history. For although it was Vietnam that was responsible for ridding Cambodia of the Pol Pot regime, the same Vietnamese leadership that was in power in 1979 had overseen the support given by Vietnamese military units to the Khmer Rouge forces as they fought against the Phnom Penh, Lon Nol, regime during the first three years of the Cambodian civil war that took place between 1970 and 1975. Possibly even more to the point, it was the Vietnamese who had trained and armed the Khmer Rouge and turned them into an effective military force.

To add further to this complicated picture, the role of China over the past four decades in relation to Cambodia is no less ambiguous, as it backed the Khmer Rouge both before and after its victory in 1975. Once the DK regime was in power there was a permanent presence in Cambodia of some one thousand Chinese advisers assisting the government. In addition, specialist Chinese groups performed particular tasks for the DK regime, most notably in the case of army engineering regiments sent to Cambodia to construct an airport near Kompong Chhnang. China continued to back forces opposing the Vietnamese-supported regime in the 1980s before slowly changing its policies after 1993 to become, as described ten years later, in Hun Sen's own words, Cambodia's 'most trusted friend'.²³

Where does responsibility lie for the long delay?

The question of where responsibility lies for the glacial progress towards the establishment of the ECCC is beset by issues of ambiguity and contested interpretation. At one level, discussion of this issue has focused on the protracted and sometimes acrimonious dealings between the Cambodian government and the United Nations over the form that the tribunal should take. Most importantly discussion and debate on the issue centred on whether the tribunal should be composed (a) solely of foreign judges, or (b) solely of Cambodian judges, or (c) a mix of Cambodian and foreign judges. With eventual agreement, that option (c) was appropriate, discussion then moved to the question of how to resolve differences that might arise between the Cambodian and foreign judges. This issue was finally resolved, as already noted, by the concept of a 'supermajority' in judicial decision-making.

Very broadly, the apportioning of responsibility boils down to two contrasting judgments. One attributes the delay to the actions and policies of the Cambodian government, and Prime Minister Hun Sen. The other judgment, while accepting that some faults might lie on the side

of the Cambodian government, argues that it has been the international community in various forms: the United Nations, the United States and several prominent NGOs, in particular, but by no means only, Amnesty International and Human Rights Watch.

The case for the latter position is vigorously argued by Tom Fawthrop and Helen Jarvis in *Getting away with genocide: elusive justice and the Khmer Rouge Tribunal*.²⁴ In this view, the Cambodian government is recognised to have played a part in failing to cooperate, but by far the balance of fault is attributed to the international actors. The contrary view, as proposed by Craig Etcheson among others, makes the assumption that the United Nations did indeed want to see a tribunal established that took due account of the need for an appropriately independent judiciary. It also focuses on the actions of the Cambodian government, and in particular on those of Hun Sen. In regard to the latter, his support of pardons or amnesties for Ieng Sary, Khieu Samphan and Nuon Chea, noted below, argues against his genuine commitment to seeing a tribunal established. Moreover, as noted previously, his growing friendship with China cannot be separated from the desire of that country to have its role in the Pol Pot period minimised.²⁵

In 1996 Hun Sen played a crucial part in arranging for the then King Sihanouk to issue a royal pardon for Ieng Sary in return for his playing a part in arranging for the surrender to government authority of some of those former Khmer Rouge soldiers who remained in dissidence.²⁶ Then, two years later, at the end of 1998, Hun Sen announced at a press conference that he was accepting Khieu Samphan and Nuon Chea back into Cambodian society and that he was granting them amnesties for their actions during the period of DK rule. It was at this press conference that Hun Sen made a statement that many observers have come to see as the central aspect of his approach to the DK past. Cambodia and its population, he said, 'should dig a hole and bury the past'.²⁷

Of even greater importance for assessing his approach to dealing with that Khmer Rouge past, and so with the problems posed by the possibility of a Khmer Rouge tribunal being established, is the reported statement that he made to members of the Central Committee of the CPP in February 2000. In this statement, which was reported to Craig Etcheson by a person present at the meeting, Hun Sen stated that CPP members had no reason to fear the eventual establishment of a tribunal since he would act to prevent its taking place before those likely to come before it had died.²⁸ Etcheson suggests that this statement could be interpreted either as a way of cutting off debate about how to proceed in relation to the tribunal, or as a real statement of purpose. What I will go on to argue is that the latter interpretation is the correct one, and that the way in which Hun Sen and the government have behaved, both

before and after the 2003 agreement to establish a tribunal, favours this interpretation overwhelmingly. Moreover, Hun Sen's determination that there should be no widespread prosecution of former Khmer Rouge figures was reinforced by assurances to former Khmer Rouge soldiers, given at meetings between 2001 and 2003, that they would not be prosecuted.²⁹

One step forward and one step backwards

The conclusion of the agreement between the Cambodian government and the United Nations in 2003 was followed by a period of domestic political deadlock that lasted until the middle of 2004 as the CPP and FUNCINPEC failed to reach an agreement over power sharing following the July 2003 parliamentary elections. After this issue was resolved in the middle of 2004, and the agreement with the United Nations was ratified, in October, substantive progress began towards setting up the ECCC. Administrative work proceeded behind the scenes, with much of this devoted to consideration of a budget for the tribunal, but the central issue of bringing a tribunal into being was stalled. This did not stop Khieu Samphan, one of the likely indictees in 2007, from releasing an 'open letter to compatriots' in December 2003 in which he absolved himself from any of the violence of the DK period, stating that throughout it he was 'cloistered' from the decision-making process that marked the regime. This was a position which he elaborated in a self-serving book, *L'Histoire récente du Cambodge*, published in Paris shortly afterwards.³⁰

When the government stalemate ended in June 2004, there was a renewed prospect of progress for the establishment of the ECCC. But once again there were delays. The issue of funding for the tribunal and the role of Cambodian judges became sticking-points. With ratification still not achieved, Hun Sen complained that Cambodia could not meet the cost of the tribunal and condemned the manner in which international observers criticised the quality of Cambodian judges. Speaking at his acceptance into membership of the Cambodia Bar Association, on 15 September, Hun Sen said, 'Can you trust that all [people with] white skin and all the foreigners in the world have justice and the Khmers have no justice?'³¹ Meanwhile the funding of the trial process remained unresolved, with Kofi Annan, UN Secretary-General, reporting in October 2004, that without a guarantee of at least one year's funding for the ECCC it could not proceed.³² At that stage very little had been pledged towards a then estimated budget of US\$57 million. One of those countries that had honoured a pledge to support the costs of the tribunal was Australia, with a contribution of some US\$2.2 million.³³

Progress continued, if slowly, through 2005 with Kofi Annan announcing on 28 April 2005 that 'legal requirements' for the tribunal had been met, even though there was a shortfall of funds. Nevertheless, he indicated that preparations for the ECCC could go ahead. This decision reflected the fact that by early April 2005 US\$40 million had been pledged towards the anticipated budget.³⁴ By December 2005 a site for the tribunal, on the outskirts of Phnom Penh, was selected and it began to appear that no new hurdles remained to be cleared for the tribunal to come into being. This expectation was to prove seriously flawed.

On 4 May 2006 the names of the judges, Cambodian and foreign, who were to sit on the bench of the tribunal were finally announced, with the international judges drawn from Austria, France, Japan, New Zealand, Poland and Sri Lanka.³⁵ Given the frequent, and justified, expressions of concern about the independence of the judiciary in Cambodia on the part of both local and foreign NGOs, remarkably little media attention was given to the qualifications and background of most of the Cambodian judges. There were exceptions, with particular attention paid to the appointment of Ney Thol to the position as a judge in the Pre-Trial Chamber. A military judge with close connections to the CPP, Ney Thol, has a reputation in Cambodia for refusing to permit defence witnesses to testify. He presided over the much-criticised trial of Sam Rainsy Party member, Cheam Channy, in August 2005, when Channy was sentenced to seven years imprisonment for organising an 'illegal military force'. This was a decision that prompted Amnesty International to adopt him as Cambodia's sole 'prisoner of conscience'.³⁶ Such international criticism of Cambodian judges and the country's judicial system brought a sharp response from Prime Minister Hun Sen, who referred to critics of Cambodia as 'perverted sex-crazed animals, among other things'.³⁷

Following the formal inauguration of the tribunal and the swearing-in of judges in July 2006, it was not questions about judicial probity that proved to be the next major stumbling-block to the ECCC's progress. First, it became clear that problems existed between the Cambodian and foreign judges over procedures before the tribunal, with 'substantive disagreement' emerging between the two sets of judges over how to integrate Cambodian and international law, and how the ECCC would function within the Cambodian court system. Ominously, though as it proved accurately, officials speaking on behalf of the ECCC suggested that the tribunal might not convene until mid-2007.³⁸ At the same time as this delay over procedural matters emerged, the Cambodian Bar Association, through its president, Ky Tech, made clear its objections to foreign judges playing a role in the ECCC's deliberations and to the right of foreign lawyers appearing before the tribunal. Both within Cambodia and externally, considerable scepticism was expressed about this intervention by Ky Tech, for although he claimed to speak on behalf of his association and not the government, his links to the ruling

party, and to Hun Sen's wife, Bun Rany, as her lawyer, are well known, according to the NGO Global Witness. In his capacity as President of the Bar Association, Ky Tech stepped in to prevent Cambodian lawyers attending a training program, linked to the ECCC's operation, sponsored by the International Bar Association and due to be held in Singapore, threatening that any attendees would face disciplinary action.³⁹ In terms of all that is known about the nature of contemporary Cambodian society, it is difficult, indeed impossible, to believe that Ky Tech's statements were made and actions taken without some form of backing from the government, however hard it might be to provide proof for such an assertion.

By the beginning of 2007 it was clear that there was a fundamental issue which had to be resolved before the ECCC could begin to function. This was the Bar Association's objection, presented by Ky Tech, to the participation of foreign defence lawyers appearing before the tribunal unless they paid substantial fees. This was a position opposed by several of the foreign judges on the tribunal. But before there was any movement towards a resolution of this problem another disturbing issue emerged. This was the claim, circulating widely in Phnom Penh political circles in the latter part of January, that senior government officials connected to the ECCC were receiving large 'kickbacks' from Cambodian personnel working at the tribunal, from the judges to the ancillary staff. I first heard this allegation on 25 January, before, so far as I am aware, any media outlet had publicised the issue. The allegation was retailed to me by a very well-placed Cambodian informant of considerable seniority, who claimed that the kickbacks were of the order of 40 % of the salaries of the ECCC's personnel, including the judges.⁴⁰

By 30 January a Cambodian-language newspaper had published a version of the claim that had been made to me, stating that the kickbacks being required were of the order of 30 % of salaries. And during February the allegation was discussed in the Phnom Penh-based Western-language press as the result of the issue being raised by the New York-based Open Society Justice Initiative, an NGO backed by George Soros.⁴¹ In the event, and after some sharp exchanges between officials of the ECCC and the Open Society Justice Initiative office in Phnom Penh, the issue largely faded from public discussion.

Was the allegation true? In the nature of things there can be no certainty about the veracity of the claims. A United Nations audit of the ECCC's finances, undertaken following the allegations, was completed in May 2007, but its findings were not released, though according to a press report the audit had found that the ECCC was not immune to Cambodia's widespread corruption. 'It was a leap of faith to ever assume we could [be]', the *Phnom Penh Post* quoted a UN spokesman associated with the tribunal as saying at the time the audit was

completed.⁴² Predictably the fact that the audit was not released publicly led to sharp criticism from various NGOs, both Cambodian and foreign, but once again the issue then faded from discussion. All that can be said with any certainty is that the possibility of bribes being paid caused no surprise in those Cambodian circles which are well informed and which recognise that the culture of corruption is a fact of life and reaches to the highest levels of the administration.

At the beginning of March 2007, as the kickback issue faded from discussion, there was still no agreement between the Cambodian and foreign judges over the rules of procedure to be followed in the tribunal, and in particular over the Cambodian Bar Association's demand that foreign lawyers, if they were permitted to appear before the court, should make a substantial payment to the Association for this privilege.⁴³ The payments involved should be, the Bar Association said, on the basis of an initial payment of US\$500 to join the Association, a payment of US\$2,000 to be made when a lawyer is selected to represent a client, and a monthly payment of \$200 thereafter. With the matter still unresolved in March, some of the foreign judges began giving public expression to their concerns. French judge Marcel Lemonde expressed his concern that fees such as those being demanded by the Cambodian Bar Association could limit the number of lawyers who could appear before the tribunal, while Austrian judge Claudia Fenz spoke of the tribunal being at risk because of the Bar Association's position.⁴⁴

Finally, on 27 April, in the face of mounting criticism, including from some United Nations officials, the Bar Association reduced its demands, asking simply that foreign lawyers appearing before the tribunal should pay a one-off fee of US\$500. With this concession made, a plenary meeting of the Cambodian and foreign judges, held at the end of May, led to an announcement on 12 June that agreement had been reached on all procedural matters, including the issue of fees.⁴⁵ Nineteen days later Duch was indicted.

Looming issues

With more than a year having elapsed since the ECCC was formally inaugurated, questions remain as to its future funding. As matters currently stand, funds will be exhausted before the original three-year span allotted to its existence is reached in July 2009. This is probably not the issue of most concern for the tribunal's future. Rather more to the point is the question of how the courts will be able to handle the likely protracted efforts of counsel acting on behalf of their defendants and raising difficult questions of law and fact for consideration. Among

the international lawyers who have indicated their intention to appear before the tribunal are the prominent French lawyers, Jacques Vergès, who defended Klaus Barbie and Ilich Ramirez Sanchez, better known as ‘Carlos the Jackal,’ and Francois Roux, who was a member of the defence team in the case of Zacarias Moussaoui, who was convicted for involvement in the 11 September 2001 attack on New York’s World Trade Centre. It seems correct to anticipate that these lawyers, and others, will mount vigorous defences of their clients that will raise difficult issues, not least in relation to the pardon received by Ieng Sary and the amnesties accorded Khieu Samphan and Nuon Chea. And, particularly in the case of Vergès, it seems probable that his appearance before the tribunal will be seized as an opportunity to advance a personal political agenda.

Although Duch has often indicated that he is ready to confess to his past deeds, he has made it clear that he will embrace the ‘Nuremberg defence’ to the effect that he was acting under orders. ‘I was under other people’s command, and I would have died if I disobeyed it,’ (sic) Duch has said. And according to an interview with Duch, held in 1999, he has specifically implicated Nuon Chea in the direction of S-21.⁴⁶ As already noted, Khieu Samphan has denied involvement in criminal activity under the DK regime, while a defiant Nuon Chea has stated repeatedly that ‘I was not involved in the killing of people,’ and that he does not know who was responsible for deaths that occurred while Pol Pot was in power. But he has also said that he will reveal ‘yet untold secrets’ if he is brought before the court.⁴⁷

With the prospect of trials before the ECCC being protracted affairs, it seems unlikely, though not impossible, that there will be an attempt to bring down indictments against other Khmer Rouge figures, because of the terms of the Khmer Rouge Law of 2001, as already discussed. The Cambodian judges on the ECCC bench will probably seek to adhere strictly to the terms of Article 1 of that law. But there is no certainty that this will be a point of view accepted by the international judges. There has already been a report that the French judge, Marcel Lemonde, has suggested that the tribunal should not limit its targets to only the most senior Khmer Rouge leaders.⁴⁸

Very recently, and just as the ECCC’s proceedings appeared to be moving forward, there was briefly the prospect that there could be yet a further delay affecting its functioning. For on 9 August the government announced that one of the investigating judges at the tribunal, the Cambodian judge You Bun Leng, had been appointed to become head of the country’s Appeals Court, replacing the incumbent who had been dismissed for corruption. Despite You Bun Leng’s own affirmation that his appointment would not affect the ECCC, there was doubt on the part of many observers that this would, in fact, be the case. As a result, several

senior United Nations officials, including the Secretary-General's Special Rapporteur for Human Rights for Cambodia, Yash Ghai, weighed in to express their concern that the appointment might impede the ECCC's proceedings. In the event, the government heeded these expressions of concern and made clear on 24 August that You Bun Leng would remain in his position at the tribunal and that the Appeals Court appointment would, for the moment, only be titular.⁴⁹

What does the future mean for the past?

The quotation from Philip Short that serves as an epigraph at the beginning of the paper neatly sums up the view that the problems that are associated with the ECCC – questions over the independence of the Cambodian judges; the fact that such a limited number of Khmer Rouge figures are likely ever to come to trial and the concomitant fact that so many other persons who were identifiably linked to the DK regime will not be tried; the lack of issues of accountability being raised about the actions of the current Cambodian regime – along with other points of criticism that may be validly made, raise serious doubts about the worth of the ECCC. Indeed, in the light of the backing and filling that has been associated with Hun Sen and the CPP leadership it may be said that they have already skilfully ensured that the ECCC will operate at a restricted level of effectiveness. In this, the summary of Hun Sen and his fellow CPP leaders by the cold-eyed realist, the former Prime Minister of Singapore, Lee Kuan Yew, might serve a suitable commentary. Hun Sen and his colleagues, Lee wrote, 'are utterly merciless and ruthless, without humane feelings. History has been cruel to the Cambodians'.⁵⁰

Yet there are other views that deserve consideration, including from individuals whose record in seeking an accounting for what took place during the DK years guarantee that their voices should be heard. Not least among these is Youk Chhang, the indefatigable Director of the Documentation Center of Cambodia, who has welcomed the announcement from the ECCC that indictments will be handed down, noting that, 'Things are moving along right now. There remains hope that justice will prevail.'⁵¹

As a foreigner I can only express an outsider's view of what has happened in terms of the slow progress towards the establishment of the ECCC and offer a reflection of what might occur once indicted individuals come to trial. I judge that the Khmer Rouge Tribunal will go some way towards assuaging the national pain that is part of the Pol Pot regime's legacy to Cambodia, even though there is considerable evidence that the ECCC and the manner in

which it is supposed to function are poorly understood by many in the Cambodian community, particularly in provincial areas. Moreover, with more than 50 % of the Cambodian population under 18 years of age, direct experience of what occurred between 1975 and 1979 is no longer part of the memory of more than half the population, as a large proportion of those adults who survived the Pol Pot years have now died.

I am sympathetic to the views offered by Philip Short, but am left with the conclusion that while the ECCC is far from ideal, it may well be the best chance of achieving some form of accountability for at least a few of those who plunged Cambodia into the awful and murderous tyranny that was the Pol Pot regime. But if this judgment is correct, it should be recognised as an imperfect answer to questions about guilt and responsibility that will continue to be asked for many years to come. So while I judge that it is better that some Khmer Rouge figures face the ECCC, rather than none, what seems likely to be achieved will be one more example of the profound ambiguity of modern Cambodian history.

ACKNOWLEDGMENTS

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NOTES

1. Seth Mydans, Khmer Rouge figure is first charged in atrocities, *New York Times*, 1 August 2007.
2. The most thorough examination of the facility is provided by David Chandler in his, *Voices from S-21: terror and history in Pol Pot's secret prison*, Sydney, 2000.
3. Chandler, *Voices*; Ben Kiernan in his, *The Pol Pot regime: race, power, genocide in Cambodia under the Khmer Rouge*, New Haven CT, 1996, describes Duch supervising the last executions at Tuol Sleng as Vietnamese tanks rolled into Phnom Penh on 6 January 1979.
4. François Bizot's account of his interrogation by Duch forms an important part of his book, *The gate*, London, 2000. See, Seth Mydans, Khmer Rouge figure is first charged in atrocities; for details of Duch's arrest, Nic Dunlop, *The lost executioner: a story of the Khmer Rouge*, London, 2005, recounts Dunlop's discovery of Duch.
5. Chandler, *Voices*, p 139.
6. Seth Mydans, 5 defendants proposed in mass killings in Cambodia, *International Herald Tribune*, 19 July 2007.
7. David Chandler, *Brother Number One: a political biography of Pol Pot*, revised edition, Boulder CO, 2004 and Philip Short, *Pol Pot: the history of a nightmare*, London, 2004, for background on Pol Pot. On Ta Mok's death, see, Michael Hayes and Vong Sokheng, Ta Mok: mourned by hundreds, feared by millions, *Phnom Penh Post*, 28 July-10 August 2006.
8. Charles McDermid, Headaches for Khmer Rouge trials, *Phnom Penh Post*, 28 July-10 August 2006.
9. www.yale.edu/cpg/news/html
10. www.eccc.gov.kh/english/cabinet/Agreement_between_UN_and_RGC
11. The unique character of the ECCC is established by comparison with war crimes tribunals in the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the War Crimes Chamber in Bosnia-Herzegovina. In the last case, it should be noted, the present majority of international judges is supposed to change after a lapse of five years when all international participation in the court is supposed to cease. For details and discussion of this issue, see, Charles McDermid, How the ECCC 'experiment' compares, and the accompanying table, *Phnom Penh Post*, 1-14 June 2007.
12. For a discussion of the character of the tribunal and in particular the aspect of a 'supermajority,' see Caitlin Reiger, Marrying international and local justice: practical challenges facing the Khmer Rouge Tribunal, Operational Program of the Open Society Institute in, *Justice Initiatives*, (Open Society Justice Initiatives), April 2006, pp 97-108.
13. Discussion of just how many Cambodians died is an ongoing debate. As early as 1980, as the result of interviews I carried out among Cambodian refugees, while consulting for the United High Commissioner for Refugees in Thailand, I concluded that 1.5 million people died when the DK regime was in power. See, Milton Osborne, Pol Pot's terrifying legacy, *Far Eastern Economic Review*, 6 June 1980. When Ben Kiernan reviewed the issue in the *The Pol Pot regime*, in 1996, he arrived at a figure of 'at least' 1.5 million, pp 456-60. A slightly higher figure of 1.7 million was generally accepted by 2000. See, the extended discussion in Craig Etcheson, *After the killing fields: lessons from the Cambodian genocide*, Westport CT, 2005, pp 117-19. David Chandler has recently written of 'perhaps as many as two million' Cambodians having died between 1975-79. See, *Cambodia deals with its past, in Totalitarian movements and political religions*, 2008. In discussions with the French researcher, Henri Locard, in Phnom Penh in January 2008, he drew my attention to the need to review the total death toll, and that relating particularly to executions, in the light of ongoing research in provincial prisons that appear to have operated very similarly to S-21.
14. Evan Gottesman, *Cambodia after the Khmer Rouge: inside the politics of nation building*, New Haven CT. 2003, p 65; also, Etcheson, *After the killing fields*, pp 14-15.
15. Chandler, *Cambodia deals with its past*.
16. Etcheson, *After the killing fields*, p 147.
17. Milton Osborne, *Sihanouk: prince of light, prince of darkness*, Sydney, 1994. See, Endnotes to Chapter 15, 201, quoting Agence Khmer de Presse, 25 May 1968, for Sihanouk's ordering summary executions.
18. *Japan Today*, quoting Kyodo News report, Cambodia affirms Sihanouk's immunity from Khmer Rouge trial, 25 August 2007.
19. Etcheson, *After the killing fields*, Chapter 6, pp 87-106.
20. Khamboly Dy, *A history of democratic Kampuchea (1975-1979)*, Phnom Penh, 2007; also discussions with expatriate university teachers in Phnom Penh, in January 2007, when they told me of

the manner in which they were cautioned by local authorities not to review Cambodia's history after 1970 in the courses they taught.

21. Key developments in the stripping away of the veil that had been drawn over the history of Vichy France were the publication of Robert Paxton's, *Vichy France, old guard and new order, 1940-1944*, New York 1975, and the release of the film of Marcel Ophüls, 'Le chagrin et la pitié,' first released in 1968, but banned from French state television for some years.

22. Philip Short, interview, *Phnom Penh Post*, 26 January-8 February 2007. As is clear from the title of their book, *Getting away with genocide: elusive justice and the Khmer Rouge Tribunal*, Sydney 2005, and the arguments contained in it, which are discussed later in this paper, Tom Fawthrop and Helen Jarvis adopt the view that what occurred under Pol Pot was genocide. David Chandler neatly summarises the contested views in his *A history of Cambodia*, fourth edition, Boulder CO, 2008, p 260. For some sense of the opposing views advanced on this issue, see the exchange of letters between Alex Hinton and Bora Touch in the *Phnom Penh Post*: Bora Touch, letter, Evidence of intent lacking, *Phnom Penh Post*, 13-26 January 2006; Alex Hinton, letter, Defining genocide, *Phnom Penh Post*, 27 January-9 February 2006; Bora Touch, letter, Defining genocide, *Phnom Penh Post*, 24 March-6 April 2006. See, also, Etcheson, *After the killing fields*, passim. In a personal communication David Chandler has also emphasised the importance that the Vietnamese placed on describing developments under Pol Pot as genocide.

23. On Hun Sen's statement, see, Milton Osborne, *The paramount power: China and the countries of Southeast Asia*, Lowy Paper 11, Lowy Institute for International Policy, Sydney, 2006, p 29.

24. See footnote 20 for publication details.

25. Etcheson, *After the killing fields*, in particular Chapters 8, 9 and 10.

26. A Khmer Rouge rebel gets Cambodian amnesty, *New York Times*, 15 September 1996.

27. Seth Mydans, Cambodian leader resists punishing top Khmer Rouge, *New York Times*, 29 December 1998.

28. Etcheson, *After the killing fields*, p 163.

29. The issue is discussed in Verghese Mathews, Cambodia: positioning for 2008, pp 76 and 88; note 10, in Daljit Singh and Lorraine Salazar, eds, *Southeast Asian affairs 2006*, Institute for Southeast Asian Studies, Singapore, 2006.

30. See, Michael Hayes, The Khieu Samphan letter; smoke and mirrors, *Phnom Penh Post*, 2-15 January 2004. For David Chandler's review of this book, see, Mr Nice Guy's tales hard to swallow, *Phnom Penh Post*, 23 April-6 May 2004.

31. Richard Woodd, Law holdup puts KR trials on ice, and Liam Cochrane, No greenbacks, no justice, *Phnom Penh Post*, 24 September-7 October 2004.

32. Sam Rith and Richard Woodd, Money last hurdle to KR trial, *Phnom Penh Post*, 19 November-2 December 2004.

33. Department of Foreign Affairs and Trade, Minister for Foreign Affairs, Media Release, 20 June 2003.

34. James Golston, A Khmer Rouge tribunal: now or never, *International Herald Tribune*, 3 April 2005.

35. Full listing of the judges may be found in *Phnom Penh Post*, 5-18 May 2006, or on the ECCC's web site, www.eccc.gov.kh.

36. Whitney Kvasager and Prak Chan Thul, ECCC reports progress: mum on criticism, *Cambodia Daily*, 11 May 2006. See, also, Vong Sokheng and Liam Cochrane, Channy a 'prisoner of conscience,' *Phnom Penh Post*, 12-25 August 2005.

37. Marwaan Macan-Markar, Cambodia: Hun Sen's hand in genocide trial delays? *Inter Press Service*, 27 November 2006.

38. Rules for Khmer Rouge trials not yet set, Associated Press, 26 November 2006, *boston.com*; and That Sambath and Erika Kinetz, KRT affiliates not surprised by tribunal holdup, *Cambodia Daily*, 28 November 2006.

39. Marwaan Macan-Markar, Khmer Rouge tribunal hits snag, *Asia Times Online*, 28 November 2006.

40. Because of the seriousness of the allegation I checked again with my informant the next day, 26 January, in order to be sure I had not misunderstood what had been said. I had not.

41. See, Cat Barton, Kickback claims stain the KRT, *Phnom Penh Post*, 23 February-8 March 2007.

42. Cat Barton, UN private audit draws public ire, *Phnom Penh Post*, 1-14 June 2007.

43. Procès des Khmers Rouges; réunions de la dernière chance sur le règlement intérieur, *Cambodge Soir*, 8 March 2007.

44. Associated Press, Legal fees for lawyers could derail genocide trials, *International Herald Tribune*, 16 March 2007; Cat Barton, Bar fees last KRT hurdle, *Phnom Penh Post*, 23 March-5 April 2007; and *Radio Australia News*, Cambodia's Khmer Rouge Tribunal still at risk: UN, 24 March 2007,

http://www.abc.net.au/ra/news/stories/s_1880419.htm. Some time previously I was told by an adviser to another foreign judge that the continuing failure to reach an agreement soon could result in the judge concerned resigning from the tribunal.

45. Cat Barton, About face: CBA lowers bar fees for KRT, *Phnom Penh Post*, 4-17 May 2007, and, Cat Barton and Vong Sokheng, KRT climbs over major rules hurdle, *Phnom Penh Post*, 15 June-28 June 2007.

46. Ker Muthit, Khmer Rouge prison guard is charged, Associated Press, 31 July 2007, and Khmer Rouge official to reveal crimes, *Associated Press*, 1 August 2007.

47. Suy Se, Aging Khmer Rouge defiant to end, *Agence France Presse* 21 July 2007. See, also, Charles McDermid and Vong Sokheng, Duch may be first in docket says lawyer, *Phnom Penh Post*, 18-31 May 2007.

48. Observers say potential impediments await Cambodia's genocide tribunal, *Associated Press* 14 June 2007.

49. UN urges Cambodia to reconsider judge's transfer from genocide tribunal, *Associated Press* 22 August 2007. UN envoys slam Cambodia over genocide judge's transfer, *Associated Press* 23 August 2007. Cambodian government heeds call to keep judge at genocide tribunal, *Associated Press* 24 August 2007.

50. Lee Kuan Yew, *From third world to first world, the Singapore story: 1965-2000*, New York, 2000, p 328.

51. Seth Mydans, 5 defendants proposed in mass killings in Cambodia.

APPENDIX

Brief biographies of leading Khmer Rouge identities mentioned in this paper.

Duch or Deuch. Widely known by his revolutionary name, he was born Kaing Guek Eav, also transliterated Kang Kech Iev, of Sino-Cambodian parentage in 1942. Educated at the Lycée Sisowath in Phnom Penh, he excelled at mathematics and became a teacher. He joined the Cambodian communist movement in the 1960s and was imprisoned for two years by Sihanouk's security services. Released, he went into the *maquis* around the time of Sihanouk's overthrow in 1970. After the victory of the Khmer Rouge he worked as the commandant of S-21. Following the Vietnamese invasion in 1979 Duch disappeared, but he reappeared in 1996 with a new identity and the claim to have become a Christian. He was arrested in 1999 and was still in custody when he was indicted by the ECCC.

Ieng Sary. Born in 1924 into an ethnic Cambodian family in Cochinchina (modern Southern Vietnam) his original name was Kim Trang. Leaving home to live with relatives in Cambodia, he was an able student at the Lycée Sisowath and won a scholarship to France, where he joined the French Communist Party. A foundation member of the Communist Party of Kampuchea, formed in 1960, he went into the *maquis* in 1963, finally to re-emerge in 1975 as the DK minister for foreign affairs. Following the defeat of the Pol Pot regime he lost influence with the rump elements of the DK and defected to the Kingdom of Cambodia, after striking a deal with Hun Sen that led to his pardon by King Sihanouk in 1996.

Khieu Samphan. Born in 1931, he was a talented student in both Cambodia and France, completing a PhD in the latter which argued for the desirability of Cambodia's achieving economic self-sufficiency. Unlike many of his Khmer Rouge colleagues, he continued in open politics in Phnom Penh in the 1960s, when he gained a reputation for being incorrupt and hard-working. But by 1967 he was in danger from Sihanouk's security apparatus and he, too, went into the *maquis*. During the DK regime he became head of state. In 1998 he defected from the remaining communist organisation and received an amnesty from Hun Sen.

Khieu Thirith, also known as Ieng Thirith. Another of the Cambodian students who embraced communism in Paris in the 1950s, where she met and married Ieng Sary. During the DK regime she was minister for social affairs.

Nuon Chea. Born 1932, like Duch he was a Sino-Cambodian whose real name was Long Bunruot. He studied law at Thammasat University in Thailand, where he joined the Thai Communist Party. He was involved with the emerging Cambodian communist movement from the late 1940s and operated clandestinely in Phnom Penh through the 1950s and much of the 1960s. Regarded as the Communist Party of Kampuchea's chief ideologue during the DK regime, he eventually accepted an amnesty from Hun Sen in 1998.

Pol Pot. Born in 1928 into a prosperous peasant family, his birth name was Saloth Sar. Despite being an indifferent student, he was awarded a scholarship to study in France, where he became a member of the French Communist Party. Returning to France without any formal qualifications, he taught in private colleges in Phnom Penh, becoming a founding member of the Communist Party of Kampuchea in 1960. He went into the *maquis* in 1963, not returning until the communist victory in 1975, as the effective leader of the party. He assumed the public role as DK's prime minister in 1976. After the defeat of the DK regime in 1979, Pol Pot continued to play a role as the leader of the rump forces of the Khmer Rouge until 1997, when his closest associates, including Ta Mok, fell out with him and placed him under arrest. Condemned by them to life imprisonment, he died in April 1998.

Ta Mok. Real name Chhit Choen, he was born in 1926. Active in anti-colonial circles in the 1940s and 1950s he joined the Communist Party of Kampuchea in 1963 and played an important part as a military commander fighting against the government in Phnom Penh in the 1970-75 period. His brutality earned him the nickname of 'the Butcher', Still linked with the rump Khmer Rouge forces in the 1990s, he was captured by government forces in 1999 and held in detention until his death in 2006.

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