



Inside the court room at the
Extraordinary Chambers in the
Courts of Cambodia at the Duch
verdict on July 26, 2010.

JUSTICE *for*



Between 1975 and 1979 the Khmer Rouge killed more than 1.7 million Cambodians. Invading Vietnamese troops ended the mass-atrocity crimes in 1979, but Khmer Rouge leader Pol Pot continued to operate along the Cambodia/Thailand border until he was detained by his own people in 1997. He died in 1998 without facing a court of law for his crimes. Ambassador David Scheffer, now a Northwestern Law professor, was instrumental in creating the Extraordinary Chambers in the Courts of Cambodia. Through this national court, Scheffer and his students work year-round to bring justice to the people of Cambodia.

By Tracy Marks

CAMBODIA



ECCC AT A GLANCE

- Seventeen judges presiding in three chambers: the Pre-Trial Chamber, Trial Chamber, and Supreme Court Chamber.
- In each chamber the majority of judges are Cambodian.
- Two co-investigating judges: one Cambodian and one UN-nominated foreigner.
- Two co-prosecutors: one Cambodian and one UN-nominated foreigner.
- Any decision or judgment by one of the chambers requires the supermajority (majority plus one) vote of the judges.

As a US State Department official between 1993 and 2001, David Scheffer helped establish the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the permanent International Criminal Court at The Hague. He had just become the United States' first war crimes ambassador when, in 1997, the Cambodian government appealed to the United Nations to establish a court to try those responsible for the Khmer Rouge's atrocities.

Scheffer had worked on Cambodian issues before—in 1979, as an associate at the international law firm Coudert Brothers, where he worked pro bono to clear the legal hurdles involved in shipping desperately needed food aid up the Mekong River to Phnom Penh. He advocated the normalization of relations with Vietnam in the mid-1980s, a position that continued to stoke his interest in the politics of the region. So when the request for assistance came from the Cambodian government, Scheffer was uniquely positioned to negotiate the creation of the Extraordinary Chambers in the Courts of Cambodia (ECCC)—a difficult process that unfolded slowly, and by fits and starts, from 1997 to 2006. Even after he left the State Department at the end of the Clinton Administration, with most of the negotiations completed, Scheffer remained involved with the Cambodia tribunal. He now serves as a special expert on United Nations assistance to the Khmer Rouge trials.



Left: Nuon Chea during the Trial Chamber hearing in Case 002 on December 5, 2011. Right: A group of Buddhist Monks from Preah Sihanouk Raja Buddhist University attended the second day of the preliminary hearings on Nuon Chea's and Ieng Thirith's fitness to stand trial on August 30, 2011.

The ECCC was established to bring to trial the surviving senior leaders of Democratic Kampuchea (Cambodia's name under Pol Pot) and those most responsible for committing atrocity crimes (genocide, crimes against humanity, and war crimes). Since the ECCC began work in 2006, five people have been indicted. Kaing Guek Eav (known as Duch), who ran the Tuol Sleng prison camp in Phnom Penh, was convicted of crimes against humanity and grave breaches of the Geneva Conventions of 1949 and is serving a life sentence in a Cambodian prison. Ieng Thirith, former minister of social affairs and Pol Pot's sister-in-law, was found unfit to stand trial due to dementia. Ieng Sary, former minister of foreign affairs and Ieng Thirith's husband, died in March while his trial was under way. Both the prosecution and the defense have presented their cases and closing arguments are scheduled for October in the trial of Nuon Chea, former deputy secretary of the Communist Party of Kampuchea and second in command under Pol Pot, and Khieu Sampan, head of state in Democratic Kampuchea. A judicial investigation against several more unnamed suspects is ongoing.

"While other courts were established as international criminal tribunals, Cambodia's situation required a different approach," Scheffer said. "Years of negotiations resulted in establishing a national court that was 'internationalized' by a treaty between the United Nations and the government of Cambodia." The ECCC requires participation of Cambodian judges, prosecutors, and administrators who work side by side

DOCUMENTING THE ECCC'S WORK

The *Cambodia Tribunal Monitor*, an award-winning website, reports on the Extraordinary Chambers in the Courts of Cambodia in Phnom Penh and provides legal analyses for the world community. The *Monitor* observes and documents ECCC proceedings with a daily blog, often written by a Northwestern Law student or recent graduate who is present in the courtroom.

"Students have extraordinary access to this process," said Christine Evans (JD '03, LL.M. IHR '11), until recently the *Monitor* senior editor. "With at least 15,000 visitors per month from around the world, the website has been the main source for people looking for information about the Khmer Rouge trials. In addition to trial blogging, every day the *Monitor* assembles news articles about the tribunal and reports by NGOs and government organizations, and it provides commentary and legal analyses of the proceedings."

Erica Embree (JD-LL.M. IHR'15) traveled to Phnom Penh during the summer of 2012, where she spent a month writing daily trial blogs for the *Monitor*. "Observing the ECCC enriched my understanding of the practice of law, both the role of law in society and being an advocate," Embree said. "Reporting the proceedings enhanced my ability to take a fair and balanced view. Objectivity is a highly valuable skill for a lawyer."

Evans said she hopes that "historians down the road will be able to come directly to our website to understand what happened under the Khmer Rouge and what transpired in this unique court."

The *Monitor's* funding has been made possible for many years with generous grants from the J. B. and M. K. Pritzker Family Foundation, although that funding ended in September 2013. The *Cambodia Tribunal Monitor* can be found at: www.cambodiatribunal.org. ■





One of only a handful of survivors from the secret Khmer Rouge prison S21 where at least 12,273 people were tortured and executed, Chum Mey (top) holds up copies of the Duch verdict on August 12, 2010. The first trial judgment of the Extraordinary Chambers in the Courts of Cambodia, the Duch verdict was made widely accessible to the people in Cambodia, as the ECCC printed 10,000 copies of the verdict (450 pages) and 17,000 copies of the summary (36 pages) and distributed the documents throughout 1,621 communes in Cambodia as well as in libraries, schools, and other public institutions. Kaing Guek Eav, alias Duch, was the first person to stand trial before the ECCC; he was found guilty of crimes against humanity and war crimes on July 26, 2010.



with a smaller number of international counterparts. One of the co-investigating judges is a Cambodian and the other UN-nominated foreigner; the same is true of the two lead prosecutors. In each of the three chambers, the majority of judges are Cambodian. To ensure due process, a supermajority vote is necessary. For example, if all of the Cambodian judges decide to convict, then the vote of at least one international judge is required. “For the evolution of international criminal law, the ECCC represents a significant collaboration of a national political and legal system with the UN, out of which has been developed a novel, albeit controversial, structure of criminal law and procedure,” said Scheffer. (An unfortunate side effect of this unique structure is that—unlike some UN-created international criminal tribunals that are automatically funded by member countries—the ECCC is voluntarily funded. Every year tens of millions of dollars must be raised to carry on its work.)

CENTER FOR INTERNATIONAL HUMAN RIGHTS

As the director of the Bluhm Legal Clinic’s Center for International Human Rights (CIHR), David Scheffer leads a group of faculty that provide a range of courses on international human rights, criminal, and humanitarian law, as well as unique clinical experiences that focus on the protection of global human rights and international criminal law, that together form an extraordinary set of interconnected opportunities for Northwestern Law students.

Among the CIHR’s many projects is the JD-LLM in International Human Rights (JD-LLM IHR), a four-year joint degree that provides students with the opportunity to gain a comprehensive foundation in international human rights and criminal law. Northwestern is the only school in the country to offer a degree like this.

“Our joint degree program provides law students with a unique opportunity to undertake in-depth study of the norms and mechanisms of international human rights

law, without shortchanging their JD studies of American law,” said clinical professor of law Bridget Arimond, director of the LLM Program in International Human Rights. “As our graduates seek jobs throughout the international system, the LLM IHR credential will place them on par with top law graduates from the many countries where an advanced degree in law is more commonplace than it is here in the US.”

In addition to classroom work, students in the joint program are required to complete a semester-long externship with an international criminal tribunal, supreme court, or human rights organization. “Upon their return to campus, our joint degree students have, without fail, described the externship experience as a high point of their legal studies,” said Arimond.

Clare Diegel (JD-LLM IHR ’13) spent spring 2013 in Phnom Penh as a legal extern in the Office of the Co-Investigating Judges. One of only two Americans on the

international staff of approximately 12, she was “constantly challenged by complicated legal issues, most of which incorporated elements of both common and civil law systems.” She now has lasting relationships with lawyers across the globe who are on the “cutting edge of international human rights law.” In addition to providing incomparable professional experience, being in Cambodia transformed Diegel personally as well. “Every day, I was blown away by the astounding resolve of the Cambodian people, and I was so proud to be working at a court seeking to bring this country justice.”

Northwestern Law also offers an LLM in International Human Rights for students with American JDs or law degrees from other countries who wish to undertake a comprehensive study of the norms and methods of international human rights law and their implementation by international courts and organizations and in domestic legal systems. The program has

Outreach and information gathering have been essential objectives of the ECCC in partnership with the Documentation Center of Cambodia (DC-Cam). “It is imperative that a new generation of Cambodians understand what happened under Pol Pot,” said Scheffer.

Until a few years ago, no textbooks in secondary schools included information about the atrocities. Students learned about their own history through family members, if at all. DC-Cam is committed to maintaining

the world’s most comprehensive databases on Khmer Rouge history, and one of its projects is the publication of new textbooks.

As part of the education process, buses drive all night so villagers can witness courtroom proceedings. More than 200,000

Cambodians have attended—more observers than all of the other modern war crimes tribunals combined. DC-Cam and court officials also meet with villagers to provide updates on the courtroom proceedings and encourage them to share their own stories.

“The justice that is being explored and rendered in these courtrooms, along with the involvement of the Cambodian people, will be the true legacy of the ECCC,” said Scheffer. “Because the trials are taking place in Cambodia instead of in

“BECAUSE THE TRIALS ARE TAKING PLACE IN CAMBODIA INSTEAD OF IN THE HAGUE, THE ECCC WILL ESTABLISH WITHIN CAMBODIA A PRECEDENT FOR THE DEFEAT OF LEADERSHIP IMPUNITY.”

—DAVID SCHEFFER

The Hague, the ECCC will establish within Cambodia a precedent for the defeat of leadership impunity. Tribunals such as the ECCC show the world that atrocity crimes no longer will be tolerated and that leaders will be held accountable for their actions under international law.” ■

welcomed students from the United States and more than 30 countries, including Chile, India, Belgium, Lebanon, Yemen, Canada, the United Kingdom, Guinea, Panama, Spain, Eritrea, Mexico, Ghana, Bulgaria, the Philippines, Brazil, Cameroon, Cambodia, Kenya, Uganda, Ethiopia, Italy, Tanzania, South Africa, Belarus, France, Turkey, Thailand, Japan, South Korea, Iraq, Indonesia, China, Taiwan and Pakistan.

CIHR faculty members supervise students in clinical work as well. Students under faculty supervision have assisted with the preparation of filings before federal courts, international criminal tribunals, and human rights bodies, and some of them have gone on to work on the International Criminal Tribunals for the Former Yugoslavia and Rwanda, the Extraordinary Chambers in the Courts of Cambodia, and the International Criminal Court.

In 2012, the Center was granted special consultative status with the United

Nations Economic and Social Council. Northwestern is one of only two law schools to be granted such status. Stephen Sawyer, clinical associate professor of law and the Center’s director of curricular projects, led the effort to achieve this status because it affords students the opportunity to gain first-hand insights into the deliberations of that body, as well as the chance to directly contribute to the UN’s important work on international human rights.

“The Center for International Human Rights has a long reach—from The Hague to Phnom Penh, they are bringing the instruments of justice and due process around the world,” said Dean Daniel B. Rodriguez. “Back home in Chicago, our students benefit enormously from the incomparable experiences this work makes available to them.”

Additional information about the Center for International Human Rights can be found at: www.law.northwestern.edu/legalclinic/humanrights. ■



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