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## INTERNATIONAL CRIMINAL LAW

# Je Me Sens Mal Dans Ma Peau<sup>1</sup>



by  
Kepler B.  
Funk

While identifying Southeast Asia on the globe, I was explaining the history and purpose of the tribunal to my 12-year-old son. At the same time, a very successful, intelligent, 40-something friend of mine listened. She said, "I had no idea that happened. That's terrible. Why didn't they stop it?"

Too many of us in the United States, this author included, are under-educated and over-apatetic to world events. The "Never Again" promise of the 1940s, to the surprise of many well-intentioned Americans, has been difficult to honor. See Rwanda, Bosnia, East Timor, Northern Iraq and Darfur, to name a few. In the late 1970s, this failure also occurred in a Southeast Asian country called Cambodia.

First, a little history. From April 1975 until January 1979, the ultra-Communist Khmer Rouge regime controlled all of Cambodia. It was then



Skulls of young female victims at Choeung Ek

known as Democratic Kampuchea. The Khmer Rouge was led by Saloth Sar. He was better known by the nom de guerre, Pol Pot. During his regime, between 1.5 and 2 million Cambodians were killed. At the time, this represented approximately 20 percent of the entire Cambodian population. These innocent people were either outright murdered or died from disease, malnutrition or torture. Many of the Cambodians who perished ended up in various "killing fields" that can be found scattered across the country. These killing fields were places of execution and dumping grounds for the dead bodies.

The Choeung Ek Memorial stands in a killing field that was the site of the brutal execution of more than 17,000 men, women and children. Most of the 17,000 first suffered through interrogation, deprivation and torture in the infamous Toul Sleng (S-21) Prison. Choeung Ek is now a historical site with a memorial stupa containing thousands

of skulls, surrounded by the fields of mass graves. The skulls are arranged by age and gender. There is no shortage of women and children's skulls on display.

### TOUL SLENG PRISON

Prior to 1975, Toul Sleng was a high school. The Khmer Rouge converted it into the S-21 prison and interrogation facility. "Inmates" were systematically tortured and then brought to the killing fields of Choeung Ek. Of the 17,000, less than a dozen survived. Today, Toul Sleng serves as a genocide museum and a memorial. The memorial has been left in the original state it was in when the

Khmer Rouge abandoned it in January 1979. The Khmer Rouge kept detailed records, leaving thousands of photos of the victims. As a result, many photographs of victims are displayed at the prison.

Many of the classrooms were divided into crude, tiny cells. Barely able to fit my shoulders inside, I immediately noticed the chain that connected an ankle shackle to the concrete floor that "controlled" prisoners. Those kept in large mass cells were shackled to each other and a large iron bar affixed to the floor. The conditions were unimaginable.

## EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

The Extraordinary Chambers in the Courts of Cambodia (ECCC) purpose, according to Chapter 1, Article 1 of the Law on the Establishment of the Court, is to bring to trial those senior leaders who were most responsible for crimes of Cambodian law, international humanitarian law and custom and international conventions recognized by Cambodia, that were committed during the period from April 17, 1975 to January 6, 1979. This establishes the temporal jurisdiction of the court and provides the answer to the question of why the International Criminal Court is not charged with handling these cases. The crimes prosecuted include genocide, crimes against humanity, grave breaches of the Geneva Conventions, destruction of cultural property during armed conflict per the Hague Convention (1954) and crimes against internationally protected persons pursuant to the Vienna Convention of 1961 on Diplomatic Relations. The maximum penalty is life in prison. At least they got that right.

In 2001, the Cambodian National Assembly passed a law to create a court to try the crimes committed during the Khmer Rouge regime. The government of Cambodia insisted that the trial be held in Cambodia, using Cambodian lawyers, staff and judges. There is no doubt that it is a Cambodian Court with

window dressing of international participation. This participation is an effort to boost its world-wide credibility.

Unfortunately, in Cambodia, justice is hard to find and payoffs and corruption are the norm. The ECCC, as most ad hoc tribunals, has been set up as a political showpiece. The ECCC courtroom itself is in a theatre-like setting, with stadium seating for about 200. The audience sees the semi-circle court through huge floor-to-ceiling glass and



Victims at Ioul Seng prison

listens through a movie-like speaker system. It appears to be a stage, not unlike one you find on Broadway. This is my worry.

The Court has begun investigations and prosecutions of five men. Pol Pot died in 1998. As a result, the ECCC focused on Kang Guek Eav, a.k.a. Duch. He ran the S-21 prison camp and has been indicted for crimes against humanity.

Duch has not pled "not guilty." In this court, one does not plead one way or the other. There will be a trial, period. Duch doesn't deny being the chief of S-21. He has stated that he is prepared to reveal all of the crimes of the Khmer Rouge. If Duch has confessed, is cooperating with the prosecution, wants to take responsibility for his actions and wishes

to assist the survivors and the people of Cambodia to heal, he is powerless. The show, you see, must go on with a world-wide audience "seeing" justice prevail without regard for the victims' wishes. Incidentally, you and I pay for this show. U.S. Deputy Secretary of State John Negroponte visited S-21. During his visit to Phnom Penh, he announced that the U.S. would contribute. In September 2008, he said, "The State Department intends to work with Congress to make

available an initial contribution of \$1.8 million this year to support the tribunal. We expect to be active among donors to the tribunal to ensure that it continues to improve its management and addresses the issue of corruption." One such item, not mentioned by Negroponte, is that Duch has been in Cambodian military custody since May 10, 1999. The rules of procedure allow for a maximum of three years of temporary detention for crimes against humanity. Further, the International Covenant on Civil and Political Rights provide for detention for "a reasonable time or release." As you would expect, his counsel has asked for his release due to

the length of his detention without a trial. This, of course, was denied.

Four other men are sitting in the detention facility, located in the shadow of the court as well as in the shadow of the museums dedicated to the victims of the very crimes they are accused of committing. These four men are all in their 70s and 80s, living on borrowed time given that the life expectancy of a person born in Cambodia today is only 55. Given their medical status, advanced age and the snail-like pace of the investigating judges, some will die before their trials commence. Some may die before they are formally indicted.

All defense lawyers should monitor, speak out and help ensure that an adequately funded, experienced, independent and zealous defense is