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Cambodian Lawyers' Participation: DC-Cam Summary Report on Special Forum, "Placing the ECCC within the general development of ad hoc tribunals since Yugoslavia"

By: Dacil Keo
Public Affairs Officer
DC-Cam Response Team

On Monday November 20, 2006 Cambodian lawyers attended a lecture by two American political science professors, Dr. Lilian A. Barria and Dr. Steven D. Roper, at the Buddhist Institute on the topic of the Khmer Rouge tribunal and past ad hoc tribunals in other countries. The tribunal, its formal name the Extraordinary Chambers in the Courts of Cambodia (ECCC), is set to begin in 2007; the investigation process is currently underway. News on the tribunal is frequent in newspapers and radio. Many in Cambodia have mixed reactions; they are excited, suspicious, critical, overjoyed, and hopeful. Cambodian lawyers in particular are reacting strongly to the "mixed" tribunal where the majority of judges are Cambodian but foreign judges have veto power. The Special Forum, organized by the Documentation Center of Cambodia (DC-Cam) with the cooperation of the United States Embassy and the Bar Association of the Kingdom of Cambodia, gave Cambodian lawyers the chance to listen to two experts from America evaluate the ECCC and also educated them on ad hoc tribunals globally. The venue was provided by the Buddhist Institute, located near the Royal Palace in the capitol, Phnom Penh. Nearly all 40 lawyers who were invited participated in the Monday forum. Deputy Director of DC-Cam, Mr. Vanthan P. Dara, and several DC-Cam staff members were also present. US Embassy Public Affairs Officer Mr. Jeff J. Daigle also attended as well. A total of 54 persons, including DC-Cam staffs, a reporter from Free Asia Radio, a reporter from the Cambodian Daily, translator Mr. Chey Intero, and another translator from the US Embassy, were present at Monday's forum which can be considered a success. Below is a summary report of the special forum.

The forum began fifteen minutes later than expected at 2:15pm to allow time for as many Cambodian lawyers as possible to join the forum. Since the special forum was held during the weekday on Monday and during working hours, it was expected that certain lawyers would have difficulty attending the forum on time or even attending at all. As it turned out however, there were 43 lawyers who participated. A few who were invited did not attend due to scheduling complications, but those that did attend brought colleagues with them making the total number of Cambodian lawyers 43. The forum began with a welcoming and introduction from Mr. Vanthan P. Dara (in Khmer) and Ms. Dacil Keo (in English). Next, a power point presentation was given by the two professors.

Dr. Lilian A. Barria and Dr. Steven D. Roper are political science professors from Eastern Illinois University. They recently co-authored a book titled, *Designing Criminal Tribunals: Sovereignty and International Concerns in the Protection of Human Rights*. Dr. Barria was first to present. Her lecture was a comparison of the ECCC with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Prior to the comparison, Dr. Barria gave a summary on the context that created the ICTY and ICTR. She then compared the tribunals with the ECCC, focusing on several issues such as jurisdiction of the courts and the structure and makeup of the courts. Dr. Roper's lecture compared the ECCC with the Special Court for Sierra Leone. He covered several areas of similarity and differences between the two tribunals including the matter of child soldiers and the three-year timetable of both courts. The Cambodian lawyers were

engaged in both presentations by Dr. Barria and Dr. Roper as evident from their note-taking and many whispered comments among each other concerning the material that was presented to them. At approximately 3:10pm, the presentations concluded and all attendees were directed outside the room where tables were set up with coffee, pastries, and fresh fruit.



Dr. Lilian A. Barria present to an audience of approximately 40 lawyers from the Bar Association of Cambodia at the Buddhist Institute, Phnom Penh.

might have been times when miscommunication occurred. Nevertheless, both Dr. Roper and Dr. Barria were understanding of the situation and did their best to answer all questions. Some of the questions asked concerned superior order or the “obeying orders” defense; Ta Mok’s death; the mixed composition of judges; Khmer Rouge leaders still at large and those living abroad; the defense of insanity; the dilemma of apprehending those indicted; and whether old age and the poor physical health of the defendant was grounds for the defendant not standing trial. One lawyer posed an interesting question about a hypothetical situation and how it would be dealt with under the laws of the ICTY. His question was: under the rules and laws of the ICTY, if Mr. C, who is a Cambodian national, is accused and uses the defense that he was following orders of Mr. D, who is a citizen of another country, will Mr. D be brought to court. The question was taken to be one about superior order and thus answered accordingly. Although the special forum was attended by mostly male lawyers (as there are more male lawyers in Cambodia than female), questions were asked by both men and women.

The forum ended at 4:35pm with closing remarks from Mr. Vanthan P. Dara and Ms. Dacil Q. Keo. They thanked everyone who attended, the US Embassy, the Bar Association of the Kingdom of Cambodia, and gave special thanks to Dr. Steven D. Roper and Dr. Lilian A. Barria. A lawyer from the crowd stood up to thank the two professors as well. Positive informal comments from the Cambodian lawyers, Dr. Barria, and Dr. Roper after the forum confirm that despite complications due to translation, both sides enjoyed the forum and found it useful. DC-Cam staff members and deputy director Mr. Vanthan P. Dara also found the forum both interesting and informative. After the session was over, two lawyers requested to be photographed with Dr. Barria and Dr. Roper.

In conclusion, two important remarks from Dr. Roper and Dr. Barria will be mentioned. The first is that the domestic Cambodian legal system can be strengthened by having a tribunal which incorporates international law and contain rules and procedures which are of international standards. Cambodian judges, prosecutors, investigators, and lawyers can gain valuable knowledge and experience from working with foreign judges, prosecutors, investigators, and lawyers. The second point they highlighted is that it takes more than a tribunal to heal a nation.

From their research and analysis on ad hoc tribunals globally, they found that tribunals alone cannot offer justice and reconcile a nation that has been devastated by war and genocide. They emphasized that legal justice delivered by the courts is only part of the solution; other mechanisms such as a truth and reconciliation commission must also be part of the formula.



Dr. Steven D. Roper and Dr. Lilian A. Barria pose with DC-Cam Deputy Director, Mr. Vanthan P. Dara (farthest left) and three Cambodian lawyers at the Special Forum on Monday