

Ou Virak Interview, Part II

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Harvard Human Rights Journal continues its interview initiative with Ou Virak, President of the Cambodian Center for Human Rights and recipient of the Reebok Human Rights Award. In this three-part interview, conducted this past summer, Virak provides his frank and honest assessment of the prospects for political and media freedoms in Cambodia, the issues facing the Khmer Rouge Tribunal, and larger issues of the human rights framework within Southeast Asia.

In this second part, Virak discusses how the work of the Khmer Rouge Trials is affected by issues of politicization, corruption, and respect for rule of law.

Interviewer: James Tager, J.D. '13

A lot of the CCHR's recent work focuses on advocacy for augmenting political will for the Khmer Rouge Trials. Is there enough political will pushing forward the work of the ECCC today?

[Cambodian Prime Minister] Hun Sen has made it clear, and simple, and public, that he does not want Case 003. Period. Not only does he not want this case to go forward, he has said that he will never allow it. This is something that Hun Sen said to Bank Ki-Moon during Ki-Moon's visit to Cambodia. The message from the government is for the Court to pack its bags and go home.

Look at the judges on the Cambodian side of the Court. Many of them are political appointees: they were appointed there because of their connections. They were appointed because the government can trust them to take on government positions, to defend the positions of the government and to make decisions in accordance with government policy. And this is obvious: You see Hun Sen making a speech and the next day Chea Leang, the Cambodian Prosecutor for the ECCC, will make a similar speech advancing similar arguments and even using the same citations.

Beyond this, the decisions of the Court have always been so predictable. All of the decisions, indeed all of the statements, made by the Cambodian side of the court—the co-prosecutor, the co-investigating judge—are basically a restatement of the government line.

I really doubt that Case 003 will go forward, given that even the co-investigating judge from the international community, Siegfried Blunk, has been making the same statements as the Cambodian government. I don't know the reasons behind his statement, but we suspect that it's either because he is under political pressure, that he's not professionally able, or that this is just reflective of his actual opinions. If it's the third option, I have to conclude that the UN knew about his opinions before selecting him for the job.

So, in other words, does the co-investigating judge believe in not investigating properly, and does that idea originate with him, or was this decision made at the UN level before hiring him? That's the question. If this decision was made at the UN level, then the issue is far more serious than it appears. The UN originally said it would allow the co-investigating judge the freedom and independence he needed to perform his work, but if you hire someone who has already told you that they have every intention of closing the book on crimes committed by the Khmer Rouge, then the blame for such an action rests with you. So I believe that it's the UN itself that ultimately should be held to account for its failure to investigate properly.

And honestly, I really do think Judge Blunk was probably selected with the understanding that he was the candidate who favored closing the book. I've also heard troubling reports of a toxic atmosphere at the ECCC, which cause me to question whether he is professionally able.

[Editor's Note: In October 2011, Judge Blunk resigned from his role at the ECCC, after continuing pressure from civil society and advocacy groups for his resignation].

The work of the CCHR also focuses on encouraging a grassroots demand for rule of law and respect for human rights. What does that process look like?

This is the mistake that many people in the government make. They want to see a quick fix to the problem of creating a stable democracy, to the problem of advancing rule of law and human rights. They're not going to get it. The only sure way of having a stable democracy is for the people themselves to want it, to desire it, to understand what it is and what it looks like. And then the people will become the force to push for reforms. At which point, it is the political powers which will have to adapt, to change their ways, or they will be pushed out by the people. And that is the only sure way to—not just change things, but to ensure that the change will take a strong foothold.

I think that right now a lot of people accept the idea that a statement for democratic reform by a top-ranking leader is the greatest victory for advancing democracy. It's not. Two days after such a statement, everyone forgets about the statement and goes back to Square 1. That has always been the case. I have witnessed so much enthusiasm and cheering by different governments in the international community because of the rhetoric used by top officials. And this is sad, because the rhetoric is written by consultants for donor governments and donor organizations, and our government officials are simply parroting this language. So the result pleases the donors, but it promotes a sentiment that the public does not truly understand, and therefore the public will never hold its leaders to account. With such a system, why would the public officials ever change their ways?

Do you think the ECCC's proceedings are a positive or negative influence on how the people perceive and understand the development of rule of law?

The Khmer Rouge Trials (KRT) are interesting: it is an opportunity to explain to the public what the rule of law should be. In discussing the rule of law with the people we can come up with hypothetical examples, or we can try to discuss larger themes. But without concrete examples, it's very difficult for the people to understand. Today, we have a trial that mesmerizes the public. The public wants to see what's going on. Now, to be fair, the public has little interest in the process. Their interest lies in the outcome. But because of their interest in the outcome, the people are also paying attention to the process. So there is an opportunity for the judicial process to be done properly, and with it an opportunity to demonstrate to the public what rule of law, what proper application of the law, should look like. *This* is what the right to a fair trial should look like, we can say.

So the ECCC represents a great opportunity. Has it been seized? Somewhat. Not to the level that I would be happy with. And of course, the ECCC should be held to a higher standard than what is being accepted in Cambodia today. Today, Cambodians are accepting even improper conduct in their judicial system. Just because we accept it, doesn't mean it's good enough. So I believe the KRT needs to be held to a higher standard, an international standard. Sadly, that standard has not yet been achieved. Somehow . . . somehow, the UN has failed to see the significance that a proper process could have in Cambodia.

Eventually, hopefully, the Cambodian public will see the flaws and problems with the domestic courts. The political interference, the corruption. Notably, the ECCC has been accused of exactly these same problems: political interference and corruption. That's what upsets me the most. Corruption is present in Cambodia, and every Cambodian knows it. Kickbacks are so widespread here that every Cambodian talks about it. And for the UN to take so long to realize that corruption could be a problem in the creation of the ECCC, that in and of itself is problematic.

There is a barter system for jobs in Cambodia: whoever makes the highest bid gets the job. And for the UN to take so long to realize that this system would affect the integrity of the Court doesn't make any sense to me. The UN was dealing with a country that is ranked in the bottom 20 on the Corruption Index. They could have put in place a system, prior to the Court's operation, to protect the integrity of the Court. How could they not have thought about this?

For readers who will be unfamiliar, can you elaborate on how the system of kickbacks functions?

The gap in wages between employees in international organizations and the local market, as I've mentioned previously, is massive. The ECCC is no exception; employees at the ECCC are being paid at least 10 times higher wages as workers in equivalent positions in the local market. This means that if you receive a staff position at the ECCC, you can give 50% of your wages to the person who got you the job, as a kick-back, and you are still far better off than if you were employed by the local market. This applies as equally to lawyers and administrators as it applies to drivers. Cambodians haven't seen anything seriously wrong with this, because it is a normal practice in domestic courts: you pay your way into the position of being a judge.

So the formula of paying such high wages for the ECCC is creating a situation that is begging for kickbacks and corruption. So if you want to pay high wages, you should put in place mechanisms to prevent this. Again, given the track record of Cambodia being one of the most corrupt countries in the world, and given this high salary compared to the local market, these are predictable outcomes.

This is another example of a missed opportunity to show the Cambodian people how a proper court should function. This corruption issue has tainted the court, so that it's very difficult to ask the public to look at this court as a model. Of course, there have been many other procedural problems as well. But Cambodians look at this court and see corruption. They see kickbacks. People look at the court and see political interference.

In looking at the influence of corruption on the ECCC, one comes away with a bleak picture of how the Court can encourage understanding of the rule of law among the Cambodian populace. Are there other examples that may paint a more encouraging picture?

Well, we could look at the right to a fair trial for example. One of the issues the CCHR has highlighted is how the Court reduced 5 years out of the sentence of Kaing Guek Eav ("Duch") because the government illegally detained him. This event triggered a societal conversation. The event goes to show that, regardless of the crimes of which you are accused, your rights will be legally protected. Your right to a fair trial will be legally protected. The right not to be illegally detained is legally protected. That was one occurrence we did highlight, and we said that it was the right thing to do, even though in saying that, we were speaking in defense of a man who was one of the most evil in the world. This is a man who tortured and killed many innocent Cambodians.

I think it's important when we, as a well-known organization, speak out for the rights of even this evil man, a man who everybody wants to hang. It's not the most popular statement. But the unpopular statements can be the more important ones.

I do think that we can use this court, this trial, to demonstrate the right to a fair trial and rule of law, so that Cambodians come to demand the same rights from domestic courts.

The next section of HHRJ's interview with Ou Virak will look at the difficulties in forming a national human rights institution as well as the relationship between ASEAN and the human rights framework. The complete interview series is available [HERE](#). For more information on the Cambodian Center for Human Rights, visit their website at <http://www.cchrcambodia.org/>.

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