

## TRANSCRIPT

# "The Collapse of Cambodian Democracy and the Khmer Rouge Tribunal"

*A conversation with Putsata Reang, Heather Ryan, and David Tolbert*

*Moderator: Jim Goldston*

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## **ANNOUNCER:**

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## **JIM GOLDSTON:**

I'm Jim Goldston with the Open Society Justice Initiative, and we're very pleased to welcome you to this evening's-- (MIC NOISE) discussion on the collapse of Cambodian democracy and the Khmer Rouge tribunal. We have with us three great-- panelists who are gonna be looking at-- what has been happening in Cambodia and-- what has been the impact of the Extraordinary Chambers in the Courts of Cambodia-- in operation now for a decade. To my-- immediate right is David Tolbert, the president of the International Center for Transitional Justice, the former special expert to the U.N. secretary general on the E-triple-C, if I can call the Extraordinary Chambers that. And David brings, of course, a diverse range of experiences dealing with mass crimes in lots of places around the world.

To his right is-- Putsata Reang, who is an author and journalist who's followed closely the work of the E-triple-C, and also broader developments-- in Cambodia. And to Putsata's right is Heather Ryan, a consultant with the Open Society Justice Initiative who has-- was based in Phnom Penh for quite some time, and has also monitored the court very, very closely. So we really have people who know what they're talking about, which is a good start for a great panel.

Now, 20 years ago when the discussion was happening about, "Gee, this horrific set of crimes had happened in Cambodia and there had been not a shred of accountability-- for-- for those crimes," it was a very different time in the world and perhaps in Cambodia as well. The international justice movement was on an upswing. There was momentum which, in 1998, which result in the adoption of the Rome Statute and a few years later the creation of a permanent international criminal court.

There were new courts seen being created to deal with-- the crimes in the former Yugoslavia and Rwanda and in other places. Human rights was not a bad phrase, a bad term. (COUGH) And there was hope among some that democ-- that democracy-- would flower in places like Cambodia, and that-- that country would be able to recover from the horrific violence which it endured for so many years.

We're now ten years into the functioning of the Extraordinary Chambers, the court that was ultimately created. And-- we'll be looking at the-- the performance of that tribunal. But we'll also be noting that just in recent months the situation in Cambodia in general has really-- deteriorated significantly. Just yesterday-- several dozen-- organizations, civil society organizations both based in Cambodia and internationally, sent-- a public letter to the-- conveners of the 1991 Paris Peace Conference on Cambodia-- asking that the Paris Conference be reconvened in light of the extraordinary deterioration and political conditions (COUGH) in Cambodia.

And just noting that the letter said that since July of this year the royal government of Cambodia has embarked upon a severe crackdown against the political opposition, against civil society organizations and independent and critical media, (SNEEZE) as well as individuals exercising their fundamental freedoms.

The severity of this crackdown is unprecedented in the post-1991 era, and poses an existential threat to Cambodian democracy, the letter says. So one of the things I'd like to explore is, what's the relationship between the deterioration of democracy and human rights in a country, and whatever we can say about the performance of this extraordinary Chambers in the search for accountability for these horrific crimes by the Khmer Rouge?

So maybe, Putsata-- if I can start with you-- to-- to kind of set the stage a little bit. And maybe if you could remind us, some folks here, I'm sure-- know very well-- the situation in Cambodia, and-- and about the court, and some may be less familiar. But maybe p-- t-- put us all on the same page. Just remind us why-- why the court came into existence, what it was intended to do. Who was it gonna serve?

## **PUTSATA REANG:**

So the-- (MIC NOISE)

(OFF-MIC CONVERSATION)

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## PUTSATA REANG:

This court came into existence-- really to do something that had not happened in Cambodia before, which was-- in fact to administer justice. Just-- a bit of context here, for those of you who are not as familiar with Cambodia. When the genocide occurred under-- the Khmer Rouge Communist regime between 1975 and 1979, 2 million people-- died under the regime of starvation and-- and torture.

What that left was-- 7 million people who then had to live the last 40 years-- with the scars and with the memories of the hardships and the memories of burying their dead, and the trauma of their experiences. There was no justice for them. And so this court-- was founded-- on the belief and in the idea that justice needed to be served in the country.

And also-- just a little bit of context for Cambodia-- prior to the existence of the ECCC, there really was no sense of rule of law in the country. There's something that-- we in Cambodia came to know as the people's court, which is to say that the judicial system in Cambodia-- was so broken and the populace distrusted the system-- so much because it didn't work, it was-- corrupt-- that-- people literally took matters in-- matters of-- crime and punishment into their own hands.

And-- there was this-- what turned out-- what turned into an epidemic of mob rule in Cambodia-- which was that-- anytime a crime happened, a usually petty crime, let's say somebody had stolen a chicken or a motorbike, if that-- thief was caught-- villagers would surround-- this young man. Usual-- usually-- it was a man-- and-- literally beat the man-- to unconsciousness and sometimes to death.

And so I think that-- the role of the ECCC-- coming into existence-- served to address-- at least to bring some sort of minimal standards for what justice means in Cambodia, and some process and protocol-- surrounding that. I know that just in-- in recent years I have not seen the same level of mob rule incidents-- as was happening in the late 1990s and early 2000s. I can't say that-- we should be crediting the ECCC for that, but I can say that this is part of-- this is part of the picture.

## JIM GOLDSTON:

And-- Heather, maybe-- just turning to you briefly-- some of the purposes of the-- of the E-triple-C, if I recall, were to (MIC NOISE) provide a mo-- a modicum of accountability for these horrific crimes, and to-- demonstrate what a functioning court that worked-- in accordance with basic fair trial standards would look like, is that right?

## HEATHER RYAN:

Yes, that's correct. And that points up one of the-- sort of conundrums that the court

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has always faced. When the international community wanted to have a court in Cambodia and was interested in supporting Cambodia having a court, there was a feeling that the Cambodian justice system was so corrupt and so sort of-- not-- it didn't have the knowledge, the sophistication, the background to conduct trials of the kinds of crimes that were committed by the Khmer Rouge.

The international community initially was supporting a international tribunal, like the one for the former Yugoslavia. But the Cambodian government was adamant. Hun Sen, who's currently the president, at the time and his government was adamant that this be a domestic (COUGH) court. So it was this conundrum where we wanna help build the camo-- Cambodian domestic judicial system, and do that by supporting it with its efforts to try these horrendous crimes.

But on the other hand, if the United Nations and other countries are gonna participate in this endeavor, it's essential to them and to all of us who support international justice that the c-- that the tribunal operate consistent with international standards of fairness and impartiality, respect for the def-- (COUGH) rights of defendants, transparency, and lack of corruption.

So there's always been this tension between the domestic part of the court, which is inf-- infected with political interference and corruption and things like that, and these attempts, then, to bring it up to international standards.

And so the court's been challenged in that regard, and in some ways it's succeeded and in other ways (MIC NOISE) it hasn't. But it has managed to complete three trials of three accused, and-- and done so in a manner whi-- while not perfect, certainly I think in general can be regarded as-- as meeting (MIC NOISE) basic international standards, and in meeting standards that are by far much better than the standards in the average courts in Cambodia. So it does serve as an example of-- of a different level of justice than Cambodians are used to seeing in the normal domestic courts.

## **JIM GOLDSTON:**

Would you say, then, Heather, that the court has achieved-- what it was meant to accomplish?

## **HEATHER RYAN:**

I think it has in some respects, and it has not in other respects. In terms of demonstrating a certain level of accountability for gross atrocities, it has ats-- chieved that standard. Three people have now been tried and-- convicted, and are in prison. And there are still proceedings ongoing.

And in addition to that, I think it's had a very important impact on Cambodians more generally, and on civil society specifically in Cambodia. And Putsata can probably talk more about this, but many of-- there's been many developments in Cambodia over

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the last several years that have been very positive that I think are directly related to the presence of the court there, even though they're not particularly judicial related-- issues.

That includes teaching about the Khmer Rouge history in grade school and-- and high school. It includes a much more sophisticated understanding of mental health issues related to things like post-traumatic stress disorder. It includes just much more discussion within communities and families about what happened personally to people in Cambodia and what happened to their country. And hopefully in terms of what's going on now, it raised a kind of understanding and expectation about impunity. That you can't get away with just anything. At some point there are mechanisms to bring people to account.

Now, it hasn't been as good as it could have been, and we can maybe talk about that a little bit later, some of the problems. We all wish it would have done more and done better. But I think it's-- it's definitely true that it has achieved some of its goals-- to a measure that's significant for the people of Cambodia.

## **JIM GOLDSTON:**

Great. Putsata, I'm gonna come back to you, but first I wanna ask David to introduce another element to this story. This was-- a tribunal that was deeply important to Cambodia and Cambodians, but it was also important to the international community, right? And-- and-- and yet there was-- not a great deal of consensus around its creation.

If I recall, the leading United Nations experts, bureaucrats who were tasked to look into the possibility of accountability-- came back and recommended initially that-- the U.N. not go forward with the tribunal because they couldn't get the conditions from the Cambodian government they felt would be necessary to ensure independent and impartial justice. What happened, and-- have they been-- h-- h-- how would you assess the U.N.'s role in this process, given that it started with such difficulty there?

## **DAVID TOLBERT:**

Yeah. Yeah. Do you mind if I make-- I wanna just make a comment on what Heather said, and then-- and then--

## **JIM GOLDSTON:**

Of course. Of course.

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## DAVID TOLBERT:

--go into your question, Jim. Because I-- (CLEARS THROAT) I do think that if we look at the impact of the-- of the-- Extraordinary Chambers-- one of the-- one of the most important elements, I think, of any transitional justice mechanism, and I would (NOISE) broadly put the Extraordinary Chambers in that category, is how does it impact the society?

And I think some of the examples that Heather has given, and I saw this myself-- I-- first, I-- I must make a little bit of disclaimer. I was the-- special expert-- a number of years ago when I had much darker hair and s-- I guess it was 2008, 2009. So-- I come from a slightly different-- point of view on this. But-- the-- the-- the impact of the tribunal, I don't think, should be measured simply in the number of cases tried.

At the end of the day, we see changes in the textbooks, we see changes in the narrative, we see engagement by civil society. Now, a lot of that's probably at risk with the crackdown of the government. But these are really important achievements from a kind of transitional justice point of view.

And I mean, I saw this-- myself, and I th-- I think Heather's reported on this. So I think that it's important to bear that in mind-- because as a judicial mechanism, it is-- you know, it's the work of drunken sailors. I mean-- the-- the-- the hybrid court that was put together with the supermajority system was enormously difficult to manage. It has produced-- it has-- it has rej-- it has-- ended up with extremely long trials and a lot of other difficulties.

And part of that goes back to what you said in the-- in your question, Jim. And that is-- there was a lot of disagreement originally about how to address this. And-- there were not the circumstances-- at least the-- the experts did not think they were the circumstances for a national court.

There were then political negotiations that led to a court that was-- a hybrid, but-- was composed of the supermajority-- component. Essentially a political compromise to have some kind of form of justice. And the-- the judicial difficulties and the difficulties that we see in the implementation of the Extraordinary Chambers are baked into the agreement and baked into this political compromise with a supermajority system, and with the Cambodian side having-- control-- really exclusively of their side, and the internationals having control over their side. This led to endless headaches regarding corruption, regarding management, and a whole arrange (SIC)-- array of other issues that I'm glad to-- dig into. You look like you want to ask me another question, though, so. (BACKGROUND VOICE) Okay. (LAUGH)

So when I-- when I-- when-- when I was the first special expert on this-- we were dealing with a corruption crisis-- a deep kickback cris-- a deek (SIC)-- k-- kickback situation on the national side. And-- frankly on the international side, the U.N. had no-- no power over the national side, and our-- the reputation was being risk.

I'll tell you over a couple of drinks how we were able to resolve that. But it-- I had to

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go to the deputy prime minister and have a long negotiation, and there was a kind of - a face-saving device. The person who was in-- who was taking the kickbacks exited. I won't-- I won't say that the situation was perfect after that, but it certainly-- it certainly helped.

But even (CLICK) the very makeup of the court, you had the national sitting on one side of the building and the international sitting-- sitting on the other side. It is exactly opposite of how a hybrid is supposed to work, because a hybrid is supposed to be teams working together and come capacity-building-- and sharing of information and knowledge. So this was very much a political compromise.

It would not have worked without enormous support from the U.N. and from a number of states that continued to support the-- the-- the court-- financially and to some extent politically. Obviously I think we're reaching, potentially, a real crossroads with the changes in the political dynamics in the country which are, like this country-- not exactly in the same way, but-- going in the wrong direction. So-- I'm glad to go into all of that. But those are some of the issues that-- I would identify.

## **JIM GOLDSTON:**

(MIC NOISE) And-- just to clarify, when we-- when we say supermajority, if I understand it correctly we're saying that precisely because the-- Cambodian government negotiated a majority of its judges on the court, in contrast to some other-- hybrid tribunals, the-- international community demanded and won-- an agreement that in order for most decisions to take effect, you would have to have not just a single-- a simple majority, but a supermajority, majority plus another judge to ensure that decisions would require not only the agreement of Cambodian judges but at least one international judge. Is that right?

## **DAVID TOLBERT:**

Yeah. Essential-- essentially (MIC NOISE) the-- one international judge or one international prosecutor or one in-- international investigating judge or magistrate could block. And-- and this could only be overturned if-- if you had a international join the national side.

So it was an ultimate check to ensure that even though the majority was Cambodian, that the international si-- you would have to at least convince one international judge to go along with a particular decision. And so-- and a very messy compromise, (NOISE) but one that was essential for the functioning of the court, yeah.

## **JIM GOLDSTON:**

(MIC NOISE) Putsata, I remember when I was-- in Cambodia on a number of

occasions-- (MIC NOISE) hearing some folks who were very enthusiastic about the court, but others saying, you know, "We have lots of problems in this country. And you know, here come these international donors, and they're spending tens of millions of dollars supporting judges, prosecutors, trying one, two, three people. Yes, they did bad things. But is this really the priority for us?" So I'm just wondering if you could just-- share, to what extent was justice in this form a priority for Cambodian people? And to what-- w-- what your-- what's your sense of-- of-- of-- of how people feel it's done so far, and what it means to them now?

## **PUTSATA REANG:**

(MIC NOISE) You might have been talking to my very relatives-- who-- who-- I've often talked to me about and expressed those very sentiments that, boy, \$300 million could sure build a lotta schools and a lotta hospitals for Cambodia's broken health care system, and for an education system that continues to be lacking.

But I think that, you know, it's important for us to-- to put the-- the court-- into some context here, and-- and I think I can try to answer your question-- in a little bit of a roundabout way. I wanna just-- to re-emphasize something that Heather mentioned, which is that-- at the end of the day, at a very basic level, three indictments-- were made in this case. And-- what does that mean for Cambodia? Yeah, it was three, to the tune of \$100 million-- per-- per indictment.

But what does this ultimately mean for Cambodia? It means that-- that there is justice in a country where there had not been. And there are international standards there. And I think that it's important to-- to keep that in mind as we continue the discussions, because-- ultimately, I mean, the-- the fact of the matter is that-- the courts and the judicial system-- did not work in Cambodia before the ECCC. The courts and the judicial system don't work today.

But at least we can say three people have been indicted. Three people have been held to account. What that means is that cam-- Cambodian people like my relatives, they can have hope. They can see what's possible. And I think that when you see what's possible, and when you see that justice is possible-- that is where people can begin to have hope for-- for the country. A little bit of context for the court itself that I think is really critical here is that ten years ago when the courts-- began to get established, Cambodia was facing a really-- unique moment in time with its young people.

There were a lotta Cambodian-- youth who did not believe that the genocide happened. This is because the country was shrouded in complete silence about the holocaust in Cambodia. And parents and grandparents were too traumatized to speak of the past. Plus you have the Buddhist religion that basically says you don't look back, you keep moving forward. There's no point in-- pondering about the past and-- and thinking about it.

And so I think that the court came about at such a critical moment in Cambodia's



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history in the sense that-- for the first time people were hearing in the news-- throughout the country of the court's existence. And it was sparking a level of discussion and dialogue and openness among-- a lot of Cambodians, including among my own relatives, to actually share what happened during the genocide.

These were the first murmurings of what happened in the genocide that I had heard from my own family members. And-- I think that-- I can un-- I can't underline just how significant-- that is for Cambodian people to finally-- have some sense of-- of motivation or somebody asking them.

And-- I can't help but think to-- one young woman in particular when-- the-- the court-- the very first day of the court happened, somebody who was in the audience, when I was-- working as a journalist in Cambodia-- I lectured at the Royal University de Phnom Penh's Department of Media and Communications. And there was a young woman sitting in the front row who-- was very eager to hear-- what it was like to be a journalist in America, and to hear the history of, you know-- our free press in this country. And-- on the very first day of-- the opening day of the Extraordinary Chambers, I felt this tap on my shoulder. Well, it was this young woman, Kunila (PH).

It was the middle of the morning, so she was clearly skipping class-- which I asked her about. But she was skipping class for a good reason. She said that she had heard about the tribunal happening through the news-- in the news. And she had heard about this genocide, but she didn't really understand what the genocide was about.

And so she went to court that day. She went other multiple days. And eventually she worked up to-- going home and asking her mother if her mother had experienced-- what her mother had experienced in the genocide. And for the very first time, her mother told her stories about surviving the Khmer Rouge and her struggle. And-- I think that-- that these kinds of anecdotes, I-- I think of Kunila, and I think of how many dozens and hundreds of-- of people are like Kunila, whose families for the first time heard these stories. If we talk about history not repeating itself, well, we have to know our history in order to not repeat that history. And I think that the-- the courts play that critical role.

## **JIM GOLDSTON:**

Thank you very much, Putsata. David, did you wanna come in on that?

## **DAVID TOLBERT:**

(MIC NOISE) No, we should just hire you for ICTJ, because that's exactly-- (LAUGH) that's exactly what we think. And I-- I-- I think I'd just expand a little bit on that. (COUGH) Because-- this idea of outreach or telling the story of what's happened in the courtroom-- it began in the Yugoslavia tribunal-- mostly under Gabrielle

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McDonald, who was the president. I worked on that extensively.

But I think that it was done in a way that is extremely effective with the ECCC in Cambodia. S-- the-- the c-- the setting was very-- was very bad. They put the courtroom way outside of Phnom Penh. It was a long ride. But many, many schoolchildren went and watched the proceedings.

There was a great deal of commitment by-- by the-- by the prosecutors, by the judges, by other members of the court to go out t-- to affected communities and talk about what the-- the-- Extraordinary Chambers was doing. And it, I think, had an impact much greater than a lot of the other courts that I've-- worked with or seen in terms of in those affected accu-- communities and across the-- across the country-- despite the government's resistance to that, despite a lotta pushback. And I think it compares quite favorably to other tribunals'-- efforts to (COUGH) reach the public and to have outreach.

And one of the things that concerns me about the whole outreach phenomena-- is that it tends to sorta become a kind of check-the-box-- approach that, well, we need a bit of outreach. We've got a court or a truth commission or some sort of process.

And what I-- what I think's so important about what happened in the-- in Cambodia is that story then got into the textbooks. People like Youk Chhang and others ensured that-- that the truth or the-- the-- the-- the-- the mass killings and the Khmer Rouge were in the textbooks. And this has an enormous impact for the future generations.

And so I-- this is one of the reasons I think, despite the bad design, despite all of the failures that occurred in the-- in the Extraordinary Chambers, and we can-- we can make a long critique of that, that there has been an impact on the society in a way that-- I've seen other tribunals not, for example, who-- I've worked at several tribunals that I felt like have failed to make much of an impact in any community. And because of, I think, the commitment of the leadership (MIC NOISE) to some extent, the commitment of your organization-- OSJI, and others, that story has been-- able to-- to-- to-- to get out-- (COUGH) well beyond the boundary-- the premises of the court (NOISE) into-- into community, so that it actually makes a difference and makes "never again" more real to people, young people and others. So thanks.

## JIM GOLDSTON:

(MIC NOISE) Really, very heartening to hear. If I can-- play devil's advocate, however-- and ask Heather to get a little into the weeds. I mean-- you know-- looked at from one perspective, yes-- three people have-- have been convicted. Very, very serious crimes.

But they're all people who-- Prime Minister Hun-- Hun Sen said from the very beginning, "Yep, those are the people we want to be tried here. And essentially nobody else." And-- that's, in fact, the way it's worked out. The tribunal, at least viewed from one perspective, has simply served the interests of a government which

is deeply partisan, and as we said at the beginning and talk about more, has been increasingly ruthless in-- in not tolerating any independent voice or any opposition.

Heather, maybe you can just s-- just talk a little bit about-- the-- there are other cases, other investigations beyond the three that have been completed, which-- some folks believe-- would demonstrate, if they were to be completed-- the capacity for truly independent justice. Because the government has made clear it doesn't want those cases to go ahead. What's the prospect for that? Where does that stand?

## HEATHER RYAN:

Jim, you've identified the basic flaw in the operation of the court is this fundamental problem: that it appears at this point, ten years into the court, that we can say that the trials of the people that the government is willing to let be tried and-- and tried to judgment have gone ahead with little interference by the government and essentially fair trials. But when we get to other cases where the government, for whatever reason, and we're not sure exactly why that is, cases that the government does not wanna go forward, those case have h-- cases have been stymied. And in-- in significant ways.

Now-- as we talked about, there's three cases that have gone to judgment. One is on appeal now. Not on appeal. There's-- the trial court has-- finished a third case, and they're writing the judgment now. But three people have been tried and convicted and sen-- and their appeals are finished, and they're spending the rest of their life in jail.

There are f-- there are four other people that are under investigation in two cases that we call the 003 and the 004 case. The investigating judges in those-- in one case have agreed to dismiss one of those people, a woman named Im Chaem. So she has been dismissed. They said, "She's not senior enough for us to try in this tribunal."

There's three remaining accused persons, and th-- those cases, the investigation has been included-- concluded, (TAP) and we're waiting for the process to go forward. And the next step will be, we will get either an indictment from the investigating judge, or a dismissal of those cases.

Now, as Jim said, there are two investigating judges, one Cambodian and one international. And the judges have not been cooperating in the investigation. The Cambodian judge, consistent with the statements of Hun Sen, refuses to investigate those cases. He says those cases should not go forward. So they're only being investigated by the international investigating judge. And it's likely that the process of appeals and the-- the procedural process to get those cases to the trial chamber, even if there is an indictment issued, will at some point be stopped.

For instance, I-- I sort of fantasi-- there's lots of scenarios about how this could happen, but if there's an indictment issued by the international investigating (COUGH) judge, then the case, after a few intermediate steps, goes to the trial

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chamber. And in the trial chamber you have three Cambodian judges who say, "These should not proceed. There's no jurisdiction to proceed with these cases." And two international judges who say, "We wanna proceed." You can't go any further. The cases would get dismissed at that point.

And so I think, because of the lockstep action of the Cambodian judges at the court, with respect to these three cases, it's unlikely that ultimately they'll go to trial. But we hope they go through the process in a transparent way so that we can see what happens to them, and that some of the investigation work that has been done may become public if there is an indictment issued. And that will generate some additional information.

Now, my-- and this is-- this is very bad for the court, to see-- have a court where, you know, the-- the government essentially can choose who gets indicted, and if they wanna protect someone they can. That's the essence of non-independent judiciary.

I think the Cambodian people are very aware of exactly what's going on, you know? And nobody is being fooled by this. And so we don't have the Han Sen government adopting the lessons we hoped it would about how a judiciary operations independently. And that perhaps is the biggest disappointment-- of this court, and the-- and the biggest lost opportunity in this court.

## **JIM GOLDSTON:**

(MIC NOISE) So-- Putsata, if-- if-- if-- Heather just said that one of the hopes is that however these cases end, it's done transparently and it-- and at least through the participation of people observing (COUGH), civil society and others, there'll be fulsome discussion about what the judicial process has meant. But we're in a period of complete collapse of the possibility for democratic space for discussion, yes? So what's likely to transpire?

## **PUTSATA REANG:**

(MIC NOISE) Absolutely. And you bring up such a critical point, Jim. We're in some very trying times in Cambodia right now. It's been really disheartening as a Cambodian-American-- on this side, and in kind of my safe bubble in Seattle, to be watching what's going on-- back in the country where I was born. But at the moment-- just to give a little bit of context for-- what is happening-- th-- there will be-- general elections in July of next year. In July 2018.

And-- well in advance of those elections-- the prime minister-- has taken an opportunity as-- he's-- wont to do in advance of-- every general election-- prior to this upcoming one-- to really ratchet-- the screws-- on-- on dissent. And how that has played out in the country is that-- media has been targeted. International organizations have been targeted. And the opposition party itself-- is a prime target

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of the prime minister.

And-- this is-- as I mentioned, this is really a cycle of-- Hun Sen, and-- part of his tactics that-- prior to any general election-- in the years intervening, he'll allow a certain measure of democratic space to exist. Journalists-- can enjoy writing about controversial topics including illegal logging and land grabbing. But then just prior to a general election-- that's when we really see-- the hammer come down, when he's-- when the prime minister himself is feeling under threat.

What's particular about this particular-- what's particular about this instance of a crackdown, and what's really disheartening, is the severity of the crackdown. This is the first time that-- the prime minister has targeted international media. The *Cambodia Daily*, which has been-- sort (?) of (?) considered really-- the most independent source of news in Cambodia for-- upwards of 24 years-- was forced to-- close down under-- under legal threat and under-- a sham-- accusation that it needed to pay \$6.3 million in back taxes.

National-- Democratic Institute, an international NGO-- or excuse me, national-- yeah, that's right, NDI-- which has been-- serving in Cambodia-- working in a political context-- again, more than 20 years-- NDI was kicked out. And then Kem Sokha, the president of the opposition party the CNRP, Cambodian National Rescue Party-- has been imp-- has been imprisoned.

And-- and so-- so there's a real severity to what's going on, which I think speaks to the desperation and the panic and the anxiety of the prime minister, that the-- that the voices of dissent and disillusionment and displeasure--regarding his rule-- that that's growing. And that he needs to do something to ensure that-- that-- the opposition-- doesn't grow any further, as he saw back in tw-- the 2013 elections, where there were unprecedented-- protests in the streets.

That was met with-- you know, a very bloody end. Several-- people were killed-- when those protests were-- were violently suppressed. My biggest worry is that 2018 is either going to be a repeat of-- of 2013 or possibly worse-- in that regard. And so I think that what this-- what this means-- given the context of-- of what's happening with the ECCC, I can't help but think of the incredible irony and complete dysfunction of Cambodian society at this moment. That on the one hand, we could have-- former Khmer Rouge leaders who-- are partly responsible for the deaths of 2 million Cambodians-- be brought to justice.

So that-- so that-- these-- basically m-- men would not get away with murder, while at the same time we have a prime minister who literally is getting away with murder-- whether literally or-- or-- or not-- vis a vis extrajudicial killings that happen prior to-- elections. Whether-- he's-- he's involved in them, or whether his lack of investigating them, he's part and parcel to the problem.

I mean, let's not forget that though this spate of recent activity within-- within the past few months of this crackdown has happened. Just a year ago an opposition leader-- Kem Ley was gunned down while having coffee. And-- he was considered,

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you know, kind of-- a very hopeful figure for Cambodians who've been disillusioned by the current-- the current CPP, Cambodian People's Party rule.

## JIM GOLDSTON:

(MIC NOISE) I do wanna-- open this up to the colleagues in the audience for discussion. Before doing so, David, I just wanna ask you, if I could, to reflect, given your vast experience not only in Cambodia but elsewhere, and you know, in light of the powerful and very sad picture that Putsata has painted about the current situation-- you know, what would you say to international donors-- about, you know, for how long they should be supporting-- the court? You indicated earlier we're at a crossroads, (COUGH) as it were. Is-- is it time to give up? Should they be continuing to-- to invest in this project? Does it still have life? (MIC NOISE)

## DAVID TOLBERT:

Well, I think you're pretty c-- you're very close if not on the line right now. And I think that the international donor community and others need to s-- be sending a very strong signal that if you go any further, if this is the path you're going down-- and I don't think it's just the court, I think it's a whole array of steps and signals in terms of international development assistance-- and other support-- that-- you know, international support is gonna dry up and-- we're gonna take a hard stand.

I don't think you can tolerate extrajudicial killings. I don't think you can tolerate the closing down of newspapers for political means and the manipulation of elections. Because if you-- if-- I-- I-- I-- I think you undermine what the court has achieved and can achieve if you allow these-- antidemocratic-- and massive human rights abuses, what looks like may be happening.

So I think a very strong shot across the bow is needed to the government to-- to Hun Sen and his-- and his cronies. And it has to be delivered in a serious way. I-- we've seen them back down in other circumstances. So now is the time to be really resolute. And if you-- you know, at the end of the day-- you know, you-- you'd hate to lose the court process, but a number of things have been achieved.

And it's not going to be achieved-- going forward if the press is shut down, if-- if-- if the rule of law is completely off the card. So I think now's really the time for international donors and political actors on the outside to begin to draw a line and make it very clear that this is not gonna be acceptable.

I mean, closing the *Cambodian Daily* is an outrage. I mean, it's-- (TAP) and that's been ma-- if-- if-- I don't think that they'll stop there, unless there-- there's a really strong pushback. And if that pushback doesn't work, I think you probably have to-- you have to go forward with your threats. That's what-- that'd be my assessment.

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## JIM GOLDSTON:

(MIC NOISE) Putsata, please, yes. And then Heather, if you wanna add to that. And then we'll-- then we'll open up to the crowd, yeah--

## PUTSATA REANG:

Okay. I really appreciate-- what David has said-- regarding the shuttering of the *Cambodia Daily*. I take it personally as a journalist. And I find it particularly disturbing not only because I'm a journalist, but because of what this means for democracy in my country.

And-- really, what it means is-- that no information is-- getting out to people. Because-- in addition to the *Cambodia Daily* closing right around the same time the government shut down 15 radio stations that carried-- *Voice Of-- Democracy--* or excuse me, *Voice of America*, or *Radio-Free Asia*. Keep in mind that a majority of Cambodians in rural Cambodia get their news via radio. And so they're really missing out on opportunities to be informed.

And I just wanna-- to-- make a comment about how critical and how dire of a situation is-- this is. If we look back to the Khmer Rouge 40 years ago-- Cambodia back then was in an information blackout. It was in complete darkness. No news got into the country, very little news got outta the country. And therefore these atrocities, this massive human slaughter was allowed to unfold within that darkness.

And the international community was not watching what was going on in Cambodia. You know, Cambodians themselves within the country-- had no information. And to me, I-- I feel like-- a lot of what's happening now with media being targeted, it-- we're just kinda reeling back to those Khmer Rouge days. I'm not suggesting that another genocide is going to happen, but this is-- this is certainly disturbing to see what is going on. (MIC NOISE)

## HEATHER RYAN:

Add one thing that I think is deeply troubling with respect to the ECC is that-- Hun Sen is using the domestic courts in his-- as a tool of repression. And so-- so-- so what's going on now really does have an impact on people's perceptions of justice, and on justice, you-- you know, as it is. And-- and-- and that's hugely problematic. And I agree with everything David said, that it's absolutely necessary that civil society, the international community and-- and everyone be as active as possible in condemning what's going on now.

It's a troubling question to think, "Well, what does that mean for (MIC NOISE) the ECCC?" I come out right now feeling that, and hoping that the ECCC can still be a positive-- force in Cambodia because it is perhaps still one example where impunity

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isn't totally rampant. Now, that's-- that's undercut a little bit by the problems we talked about earlier. And so it's not-- a totally, you know, clear issue.

But-- but-- but I worry that maybe Hun Sen would be somewhat vindicated and would-- in fact like it if the international community pulled out of the court. And in that respect, I think the court hopefully, at least for now, and things change so rapidly, can-- can still provide some role-- as-- as a positive-- example of-- of s-- a level of justice that isn't available in the domestic courts.

## **JIM GOLDSTON:**

Great, thank you very much. So I'd like to open this up for-- for colleagues to participate. And-- Jonathan, do we-- (CLICK) are people just gonna speak, or do we have a mic? What's the--

(OFF-MIC CONVERSATION)

## **FEMALE VOICE:**

Hi. Oh, can you hear me? Yeah. Hi. I'm a student at Columbia Law (?) School. I have a question. Thank you very much for this-- fascinating and timely discussion about-- the tribunal and its future. It seems to me that-- if the U.N. was to withdraw-- in the near future, for example-- before the upcoming general election in July-- that would coincide with-- the-- the closure of the-- the final-- cases that are under investigation.

So my question is-- if the U.N. closes, will that be only motivated by a concern for democracy and human rights? Or-- or that the-- long-- lasting difficulties-- in-- related to the case-- three and four, that would be part of the equation. Yeah, that's my--

## **JIM GOLDSTON:**

Great. So--

## **FEMALE VOICE:**

That's a great--

## **JIM GOLDSTON:**

--(MIC NOISE) do we want-- we wanna get into the mind of the U.N., which is always interesting. (LAUGHTER) Let's-- let's just take a couple more, if we can, and then we'll-- then we'll come back to the panel.



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**MALE VOICE:**

(UNINTEL PHRASE). (RUSTLING) Be the first person (COUGH)-- (CLEARS THROAT) thank you. I'm curious--

**JIM GOLDSTON:**

Can you just identify yourself, please, (UNINTEL)--

**MALE VOICE:**

Yes, my name is Bruce Rosen. I'm curious if there is any impact that you're aware of, of the-- broader regional condition in the other ASEAN states, (UNINTEL) the winds that are buffering the democratic process there-- including, obviously-- a lot of-- violence about minority-- groups over there, how that impacts on and-- and sets a standard for the-- the-- the government in-- in Cambodia for what it does. And who would be the one, then, to in effect come to the rescue if the-- the region is so problematic?

**JIM GOLDSTON:**

Excellent. Thank you very much. And let's take one more. We've got--  
(OFF-MIC CONVERSATION)

**FEMALE VOICE:**

My name's (UNINTEL). I (?) come from Cambodia. So I have a couple of questions to-- all of you. My first question (UNINTEL) (MIC NOISE) what is your sa-- what is your definition of the tri-- the tribunal (?), and the condition (UNINTEL PHRASE)? They said, like, the purpose of this (UNINTEL) is to bring to trial the (UNINTEL PHRASE) of the (UNINTEL PHRASE), and those who was responsible for the (UNINTEL) incident (?) and serious (UNINTEL) of Cambodia.

And my second question is, does this (UNINTEL) of the case 003 and 004 and the principle of human rights? If yes-- what (UNINTEL PHRASE) do you see (UNINTEL PHRASE)? If not, what could (?) we (?) have done to (UNINTEL)-- by (UNINTEL) case 003 and 004? (UNINTEL PHRASE) the law. Thank you.

**JIM GOLDSTON:**

Great. Thank you very much. So please, anybody who wants to engage on these, what

would motivate the U.N. to pull out? If it did so, would it be concerned about democracy? Would it be concerned about the court? How is what is happening related to the situation b-- more broadly in the ASEAN region? And what, if anyone-- what can the rest of the region do to help? And then you've got these questions about the law now, so anybody wanna res-- take any of those on?

## HEATHER RYAN:

I might-- maybe (MIC NOISE) I'll-- I'll start with the last one, and then have a comment about the first one. I mean, the Khmer Rouge Law is a law that was passed by the government of Cambodia to establish the court. So there's two basic instruments that the court functions under. One is the Khmer Rouge Law, which you referenced. The other is an agreement between the government of Cambodia and the United Nations. And those mesh pretty well. But they're-- they're slightly different. And-- the-- you bring up a really important point about cases 003 and 004. The-- the tribunal law and the agreement provides that the court can only try people who are senior leaders of the Khmer Rouge or persons most responsible for atrocity crimes.

Now, the people in cases 003 and 004 are-- they're not the most senior people. They probably don't qualify under any standard as senior leaders. And so the inves-- they're being investigated as persons who are most responsible for serious violations under the Khmer Rouge-- or under the international law.

And that is a decision, in the first instance, for the investigating judges to make. These cases were presented to them by the prosecutors, and they're charged, then, with investigating those decisions and making a decision based on the law and the facts about whether these people are (COUGH) persons most responsible, and that's kind of-- a difficult term to-- define, and-- and if they are, whether the facts support-- the charges for crimes against them.

And so I think that we're still going through that process now. And we-- we-- we don't know what the international investigating judge is gonna say about that. Because those decisions on these (COUGH) last three cases will come out early next year. And then we will know whether there is a disagreement between the international side of the court and the Cambodian side on whether they're persons most responsible. And that's the way the law should work.

And I think that relates to your question about whether, if the U.N. becomes concerned about the court, you know, what is the basis for concern? These difficulties in case 003 and 004 have been ongoing since 2009 when these cases (TAP) first began. And I think that the position of the U.N. is, "We want the process to proceed through the legal channels that are established by the agreement and the law. And even though there are concerns about political interference, the cases are proceeding through the steps that are provided in the law."

And so I don't see any change in that-- from the U.N. perspective, that they would

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pull out for that. I think the U.N. is legitimately concerned about the democratization issues, and-- and what their feelings on that are, you know, I'm not sure. (MIC NOISE)

## **JIM GOLDSTON:**

Pu-- Putsata, you wanna add anything? And then David?

## **PUTSATA REANG:**

I-- I was about to tackle the ASEAN question, but if you--

## **DAVID TOLBERT:**

Sure. No, you go first.

## **PUTSATA REANG:**

Oh, okay. Let-- let me try to tackle that. I think-- was it-- was it Bruce-- who you asked about that? I think it's such-- an important thing to look at what's happening regionally right now as well. I think throughout ASEAN and in-- in particular countries-- we're seeing a lot of leaders-- feel particularly emboldened to mistreat-- its-- citizens.

I think we can see the beginnings, the stirrings. Or in fact, we can even just call it what it is, genocide happening in Myanmar at this moment with the Rohingyas. And-- that's especially disturbing given h-- the proximity to Cambodia. And it goes back to that issue of, you know, are we letting history repeat itself-- just in another-- nearby country?

So geopolitics are-- are-- really fascinating what now. And-- what I-- what I will say about that is that while it's disturbing that-- leaders throughout ASEAN-- countries are feeling emboldened-- to-- really operate in very authoritative ways-- unfortunately a lot of these leaders are getting their cues from-- us here in America with the current administration.

I was-- really startled to see Hun Sen-- compare himself-- to-- Trump-- earlier this year, for example, as far as-- the adversarial relationship that Trump has with the media here. And-- I think that you can see with-- Duterte in the Philippines-- and-- military leaders in Myanmar-- that-- there is sort of-- this aping of-- our president here in the U.S. And I-- and I think that that's-- I find that more disturbing than just what's happening-- in that isolated area. Those ten countries that make up-- ASEAN.

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## DAVID TOLBERT:

Just a couple of comments. Really (?) the same questions. Yeah, I-- I-- I think the-- in terms of withdrawal and-- and so forth-- part of it, I think-- will relate to the geopolitics in (MIC NOISE) the region. And-- China's a pretty big player there. And the U.N.-- and I worked for the organization for 15 years, not anymore, but-- it's not usually a very quick-footed or-- or-- organization. I suspect that-- it'd be s-- a little surprising if there'd be a withdrawal unless great powers really wanted to see a withdrawal. So I think-- we'd keep an eye on that.

With respect to ASEAN and the region, again, I don't think ASEAN is a partic-- is not a particularly strong regional organization. I think we can see that what's going on in Myanmar-Burma-- is horrific, and no one is doing anything much. Certainly-- no regional organization or otherwise.

So I don't-- would not expect much from them. I think it's probably-- a question of how the U.N.-- maneuvers in this game with the Cambodians. And I am concerned that the cam-- the Cambodian government and Hun Sen usually kind of get their way. I think that's one of the reasons meetings like this are so important, because international civil society and civil society in these countries and in the region need to be-- bring pressure for the right things to happen. I'm not saying what the right thing to happen here is, because it's complicated. But-- the voices of civil society can make a difference. And being here at the Open Society is the perfect place to talk about that. Thanks. (MIC NOISE)

## JIM GOLDSTON:

Thank you, David. I just wanna-- I wanna ask you, if I may, before going back to the-- to the audience-- any of you who want to address this. So you've all spoken very powerfully-- about varying kinds of positive impacts that this flawed tribunal has generated in a deeply problematic political environment.

We've also recalled that at the very inception-- the leaders of OLA and other senior U.N. officials were deeply skeptical, and were really pushed into this by-- by the United States, by France, by other governments-- against their better judgment.

So I-- I guess my question is, the world has changed a lot since this-- this tribunal was created. In light of-- of the positive things you say you see and hear about what it has generated, but also its shortcomings, what do you recommend for the international community when future conflicts, you adverted to a few in that region, but one could also think about Syria or other places. In the search for accountability in those places, what did the lessons of Cambodia teach us about how the international community should approach the search for accountability in those places? Anybody who wants to--

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## HEATHER RYAN:

(MIC NOISE) Well, I say a couple things. I mean, one of the keys to having an accountability mechanism that is a hybrid or domestic mechanism is true political will on the part of the leadership to really follow through with independent justice that meets certain minimal standards. And in the case of Cambodia, that was always a concern.

And the international community sort of took a leap and-- and stepped forward beyond where it happened done before by-- by partnering with a government that had-- that expressed the political will to have really true accountability, but had sort of mixed motives there, and wanted the international cache that went along with supporting a tribunal, and-- and was certainly willing to support the trial of certain people, but-- but had a line that it wasn't willing to go across in terms of-- of judicial independence and-- and impunity.

And-- and so that-- (COUGH) you know, that may be a lesson. That you can't-- you can't drag a country where there's not political will into a tribunal. It d-- it-- it doesn't work. The second thing that I think is-- is an issue with-- or a lesson for all of international justice, and-- and this is a personal (LAUGH) sort of thing that-- that bothers me, is that if-- if international criminal justice, which was, as Jim said at the beginning, on the rise 20 years ago, now is greeted with skepticism in very many-- corners of the world and in very many quarters of-- of-- all over the world.

And I think if we're going to sort of revive this-- this dialogue so that there really is a future, we've gotta figure out ways to be more-- efficient and effective with these tribunals. You can't have a tribunal that tries three people and costs \$300 million and takes 12 years, and expect to be able to replicate that everywhere it's needed.

There just isn't the-- the resources (NOISE) or the patience to do that. So certainly there are many lessons, and there's been a lot written about how the-- the Cambodia tribunal could have and should have-- could have maybe been streamlined, and things not to do again, and-- and-- and-- and structural issues.

But I think it isn't just the structural problem on the Cambodian court. It's-- it's-- it's generally, you know, these courts get so complicated, and-- and so-- huge that-- that people start becoming cynical about them. And-- and if we can't sort of figure out a way to do it more efficiently, then we're gonna-- we're gonna lose some of the-- the following that international criminal justice had garnered-- over the last 20 years.

## JIM GOLDSTON:

Yeah. Da-- Putsata, David, do you want to--

(OFF-MIC CONVERSATION)

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## PUTSATA REANG:

Let me just make-- a comment-- about just the-- the second part of-- Bruce's question-- which kind of piggybacks off of what Heather just said as well. And-- he asked who comes to the rescue. And-- wow, that's such a loaded question, and such-- it's such a complicated one.

But-- I think at the end of the day, as-- Jim had mentioned, we do live in different times now. We know what's happening in Syria. We are getting information and news about it. We know what's happening in Myanmar and Burma. We are getting information about it.

I don't think that we as an international community can afford to turn our backs this time the way that it happened in Cambodia. I don't think that we can afford-- to let the atrocities go on so that-- we do get to a point where maybe there necessarily needs to be a trial down the line 20 or 40 years from now in Myanmar. Let's not go-- let's not get there. I think that we have an opportunity to-- to do-- something-- which-- David has articulated-- a f-- a few of those as well. And you know, I wanna say in terms of who comes to the rescue-- yes, it's-- it's the international community, but I also think that-- you know, in places like Cambodia, it's the Cambodian people as well.

I think that the country is ripe for-- some major shift. Two thirds of the country are under the age of 30. These are-- you know, the country has never been-- the population in Cambodia's never been more well educated. And I think that for too long, countries like Cambodia have sort of-- been-- s-- sustaining itself-- on the aid of the international community. And I think that-- I think that it ti-- it's time that there's a shift, where-- Khmi people themselves-- do something about what's happening-- in the country, and not rely on the international community.

## DAVID TOLBERT:

(MIC NOISE) I think there's a kind of fundamental issue that-- that's difficult to avoid. I mean, where countries go through transitions and address the past, I mean, if you think of Argentina, if you think ab-- about a whole array of countries which have had deep political changes, it's driven by civil society forces, it's driven by victims, it's driven by affected communities.

And accountability is best driven from below, I think. And national processes. So one of the-- you know, one of the issue that we confront, and of course we wanna see accountability, is the creation of either international courts-- which I worked on, for example, in the former Yugoslavia, the ICC, or hybrid tribunals-- and other international processes that do not necessarily have roots in that country, or they're not the product of-- a political imperative in that country.

So I think whenever you're tackling, and of course I support what the International

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Criminal Court is doing, E-triple-C and others. W-- I think we have to realize that there's a pretty big gap. That (?) something's missing. And that is the national drive for accountability (TAPPING) and the political drive for that.

And I think this one of the reasons that these processes are so difficult. If you don't have the buy-in, or you-- you don't have the drive of civil society in those countries and/or the-- and/or the political openings, you're d-- you're bound to run into more difficulties, and you need more political support from outside, and you need to develop the driving force that civil society and victims' groups will provide.

So I-- I think we're-- you're-- whenever the international community intervenes and creates mechanisms, that unless there is support from below, you're gonna run into these kind of issues. And I think it's a little bit of a conundrum-- because-- the places where they're most effective, they're driven from below, not from the U.N. or from outside forces. It's important, I think, in some cases to have an outside intervention. But you have to, at the same time, I think, find ways to support groups on the ground, victims on the ground to buy into this process and support the process.

And to-- to some extent, the uneven track record of international justice, I think, is a result of this kind of messy-- imperfect kind of approach, that, you know, ultimately we support but we realize is dri-- is-- is-- is-- is just flawed in a number of respects, and produces some of the difficulties we're talking about today.

That doesn't mean we shouldn't do it, but we should be more cognizant of the-- the problems, and-- perhaps some of the remedies for parachuting in or creating international-- processes that are rooted in the local communities. (MIC NOISE)

## **JIM GOLDSTON:**

Excellent. Thank you very much. So we've got time for a couple more comments or questions. And again, if you could please identify yourself. (MIC NOISE) Thank you.

## **FEMALE VOICE:**

My name is Lauren Crothers. I'm a journalist, and I was based in Cambodia for seven years, up until July, actually. The first four of those years I spent as a reporter at the *Cambodia Daily*, so it's been-- an unfortunate couple of weeks, watching from afar at what's happened to my old newspaper. (SNIFF)

Look, I'm no expert in Cambodia, but I don't think-- you have to have looked at the region for very long to see that-- I think it's pretty obvious that the influence of the West there has been waning financially and also in terms of Hun Sen feeling that need to curry favor with the West. Because behind it all, you have China, which is a massive benefactor in the region, which has been pumping money into, you know, different infrastructure projects and roads and railways.

And the thing is, is that while there probably are strings, they're of a different sort. And in that sense I see it as less of a strings attached kind of relationship. And I wonder if you guys might be able to comment on that waning influence, and-- and (SNIFF), you know, how this-- influence of China is going to affect Cambodia moving forward in terms of the-- the shrinking space for free and independent media, and beyond the next round of elections. Which I mean, if the CNRP is shut down, and it really looks like that's gonna happen, you lose all semblance of even trying to have a facade of democracy. So I'm-- I'm interested to know what you think about-- Cambodia beyond 2018.

## JIM GOLDSTON:

Great. Thank you very much. Another comment?

## MALE VOICE:

Thank you very much. (CLEARS THROAT) My name Sifarid (PH). I'm Cambodian living in New York. I have-- a zillion questions to you, but just (UNINTEL) to one only. But just before the question, I have one thing. The-- the-- it has been raised here that what ha-- what would happen if the U.N. withdraw from the E-triple-C.

This question occur simultaneously with the-- one statement that the prime minister (UNINTEL)-- Cambodia said couple days ago, that-- the Paris accord is dead. So it's-- the-- the coincidence, it's very, very-- very, very, very, how do you call that? Very uncoming (?)-- or-- voluntary. But my ques-- my-- my point is that no matter what it is, the U.N. will not close it, because if the U.N. close, close the ECC, it go-- will go into the history that Mr. Guterres is cannot handle-- an international agreement.

So the point is that why this question has been raised now. Just ask the peacemake-- peace-- the 1991 peace accord celebrated the 26th-- anniversary-- twen-- on the 23rd of October. So somewhere along the line, (NOISE) there might be an idea say, "Let's test-- let's test this issue." Because somebody in Cambodia might be afraid that if something happen in the future, ECC might be transformed into another (?) type (?) of (?) tribunal-- (LAUGH) for-- for further-- for, like in Yugoslavia, whatever it is, for the-- to-- to try the-- vi-- violation of human rights on (?).

But that is my comment. My question is, (CLEARS THROAT) this relate to all of you who had said right at the beginning that the installation, the setup or the negotiation (UNINTEL) the creation of the E-triple-C was-- one of the issue to help Cambodia establish a kind of justice system that they-- that it never know before. Fine.

Now, f-- 12 years la-- later, what do we see? We see in Cambodia, in the territory of Cambodia, there are two justice system. One is the C-triple-C, which follow every rule of law possible. Whereas (?) the other one is justice or (?) injustice. My question is, has ever been under your stewardship or the stewardship of the ECC any kind of



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negotiation or comments they say, "Look, we walk (?) this way. Why just our neighbor next door walking (?) the other way around?" Thank you so much.

### **JIM GOLDSTON:**

Thank you very much for your comment and question. Alas, we have time for one more, I think, Jonathan.

### **MALE VOICE:**

My name is Juergen Gafke from the United Nations. Just-- because it was raised several times, I mean, the U.N. has repeatedly said that we are committed to continue the trials in accordance with the agreement-- with the Cambodian government. So there is no talk about withdrawal from the U.N.-- in the U.N. at this moment, just to-- to emphasize that. And as-- as David has said, I mean, the-- the process of withdrawal in the U.N. is-- is usually a lengthy process. I mean, and the process of getting into-- the tribunal is based on-- decision of the general assembly.

And it's not that an individual in the U.N. would saying, "Okay, we-- we pull out." It would be decision of the member states of the U.N. So it would have to go through the general assembly. And there's no, even-- proposal in this regard. So the secretary general has repeatedly written, also, to Cambodia-- committing the-- the-- continuing of the agreement from the U.N. side, and that we are fulfilling our responsibility. So there's no talk about that we are withdrawing in any way. Just to confirm that.

### **JIM GOLDSTON:**

Thank you for that helpful clarification. Good to know. All right, so I s-- I see another comment back there, and I-- can we make it brief, please? And we got one there, yeah. (LAUGH)

(OFF-MIC CONVERSATION)

### **MALE VOICE:**

Thank you very much. My question will be very brief. Eric Shavor (PH) from the European Union. We belong to the principal donor group because we are one of the main contributors to the E-triple-C. My question is the following-- do you think that the-- slowness of the-- of the E-triple-C is due to the nature of the crimes which are prosecuted? Or do you think that it's due to the-- rules of-- of-- of evidence-- (FOREIGN LANGUAGE), we say in French. Do-- do you think that a more inquisitorial system com-- compared with a accusatory system would have been more

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efficient? And it's a question which is valid for all the international tribunal. Thank you.

## **JIM GOLDSTON:**

Absolutely. Great. (MIC NOISE) Thank you very much. You-- last one, right there. Thank you--

## **MALE VOICE:**

Okay. (LAUGH) G-- I'm Ray Mendoza. I-- I'm-- 'm not from-- Cambodia. I was interested in Cambodia just-- just-- just-- the established of the ECCC, I think, is an accomplishment enough in many ways. There was a time when-- many countries did not want to put this-- the Khmer Rouge into-- it was the center of the Cold War.

And-- there was a time when senior members of the Khmer Rouge sat in the U.N. general assembly as-- as representatives of-- of Cambodia. The t-- trial-- there were many roadblocks. (UNINTEL PHRASE) states w-- did-- did not want to, you know, open. What th-- th-- their involvement with the Khmer Rouge and India in the war.

So again, there were many issues. Like, for example, the issue of genocide. Is it really a genocide? And why-- why-- why the Khmer Rouge? Why not states? Why not put them also into accountability? Af-- af-- after all, I believe a lot of countries had-- have to apologize to Cambodia for destroying it-- j-- in the '70s and in the 19 ni-- 1980s. And then later on-- so-- so I think the ECC, that itself is, in spite of its flaws, is an accomplishment. But on the other hand, it is deeply flawed.

On the one hand, the-- for example, why only seven? There are so many Khmer Rouge members in Hun Sen's cabinet. There's-- there's just-- there's just-- why only seven? And-- again, some critics would say that-- the ECC is-- was meant to whitewash the guilt of Western countries because of what happened. And even (UNINTEL) will say it's comical. B-- because you only have three. And death with over-- death will, or certainly (?), or might overtake justice.

So again, what I'm saying is perhaps we have to temper our expectations of the ECC. It may not be able to accomplish much. And again, for me a historian, I believe the-- the-- the role of the ECC really may not be here today, but in the future. In history. To put a closure, even symbolically. And I-- to-- to-- to-- and-- I-- I believe withdrawing from the ECC is-- a bad decision. It will play into Hun Sen's hands.

## **JIM GOLDSTON:**

Great.

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## MALE VOICE:

Because ever since he was not really interested in putting these persons into account. Thank you very much.

## JIM GOLDSTON:

Thank you very much. (MIC NOISE) So please, last-- last shot, panelists. Any and all, or w-- whatever you'd like. So Cambodia beyond two-- 2018, influence of China, declining influence of the West, dual justice systems, there's the triple-C and everything else. Anything else you wanna take on, please.

## HEATHER RYAN:

I'm gonna take, which I regard as the easiest one-- (LAUGHTER) dual justice systems. You know, this is a problem. The hope of all of these courts is that they will improve and rise the domestic justice system. We did-- and when-- there's books out there that talk about this-- series of interviews we did of legal professionals in Cambodia in two-- the interviews were done in late 2012.

So these were people who had worked in the ECCC, hopefully gained some increased competence and understanding of international standards and the importance of-- accountability and judicial independence and all of those things that we hope would-- would bleed into the Cambodian system.

And I think there was some real enhancement to their capacity. But almost without exception, they said when they got back to the domestic system, they weren't allowed to do that. You know, the-- the-- the current regime simply refuses to change with respect to the independence of the judiciary. And-- and so it's-- that's not the court being ineffective, that is a court operating in a system that has no political will to develop and ad-- advanced its legal system in that regard.

So I think you're right that there are two systems. And the only thing we can hope is that at some point there will be an opening where those people who did learn those increased skills are able to use them in-- in a more-- effective way.

## JIM GOLDSTON:

Great, thank you. And I neglected, I-- the question as well from our colleague from the E.U. about, is it endemic to the nature of trials for these crimes, if-- if either-- any of you want to address that, that it's so slow? Or can we do better?

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## HEATHER RYAN:

And I would just say real briefly on that, I think it-- it's sort of endemic to these crimes that it's slow. But the-- the ECCC is-- goes well beyond that. And the cumbersome nature of the court is-- is, I think, responsible-- I-- for huge delays. I mean, this court would have been completed, I think, in (CLAP) five years if it hadn't been for this cumbersome, cumbersome process.

Although you have to add, too, that there were delays because of the fact that we're trying cases for crimes that occurred 35 years ago. And that causes huge delays. So many witnesses are vague. You have to-- it's hard to get evidence. People don't remember things the same way. It's-- it's-- that's hugely complicated things as well.

## JIM GOLDSTON:

(MIC NOISE) Great. Putsata, any last word?

## PUTSATA REANG:

I'd like to speak to Lauren's question about-- China's role and-- what we see beyond 2018. It's scary, and China is scary in terms of what kind of influence it wields not just in Cambodia but regionally throughout Southeast Asia at the moment. My concern is that-- increasingly we in the West have lost our leverage with Cambodia, as well as in the-- not just the West, but the international community.

Used to be that-- that-- the prime minister-- in Cambodia-- was a lot more amenable to-- observing-- certain-- levels of-- human rights and-- and-- upholding-- key tenets of democracy. That's no longer the case with-- Cambodia increasingly-- relying on China. And as you mentioned, Lauren-- with-- some strings attached, but not in the-- the kinda way that-- the U.S. sets them.

And so-- my big concern is that-- increasingly looking beyond 2018 as-- as-- Cambodia pivots-- more toward-- China as the months and years go by, that-- we do-- as the *Cambodia Daily's* last headline so aptly pointed out, descend into-- pure dictatorship. And-- that's-- that's the real threat here. It's-- I don't think that-- it's just-- it's just talk. I think that-- I think that there-- (TAP) it really could go this way. And then I wanted to lastly-- speak to the gentleman in the back-- historian's comments about the fact of the mere existence of the ECCC being an accomplishment in and of itself.

Look, the-- the odds were-- couldn't have been stacked higher in Cambodia for this kind of-- tribun-- tribunal to exist, the prime minister himself being a former Khmer Rouge-- commander. And I think that if we're going to-- talk about numbers in the way that I've heard-- some-- criticism of the ECCC being talked about in terms of how many indictments happened in Rwanda, in the former Yugoslavia and Sierra Leona

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versus-- Cambodia's-- three very paltry-- indictments, let's look at another set of numbers.

Let's look at the 535,000 Cambodians who got to witness live-- justice being meted out. Who were in the courtrooms of the ECCC. That is a phenomenal number. To get half a million Cambodians engaged in a process that is completely foreign to them. Let's talk about the-- more than 2,000 civil parties who were part and parcel of cases 002 and 003, Khieu Samphan and-- Nuon Chea who-- their own testimer-- testimony provided evidence-- for the Khmer Rouge, and again, a level of engagement never before seen in Cambodia.

And let's keep in mind, finally, that there are-- names and faces behind these numbers. There are Kunila Cues (PH) out there. Students who are sitting in the audience. And so-- I think that there's-- there's both sides here that, despite the flaws of the court-- let's look at-- h-- just how widespread the positive impacts have been.

## **JIM GOLDSTON:**

(MIC NOISE) Thank you. David?

## **DAVID TOLBERT:**

Couple of-- final closing-- (MIC NOISE) remarks. Just picking up on your last point-- which relates a little bit to a point that I made earlier. I think it's important to look at the impact of the court. And I-- now, I-- I compare it to-- I spent a little time with the special tribunal for Lebanon, which cost \$50 million a year, mostly with in abstent (SIC)-- all with in abstentia (SIC) trials, and I think a number of them involving journalists. And I-- so I think if you-- if you do some comparisons-- the impact of the E-triple-C-- outweighs-- and-- and if you look at the do-- the-- each dollar spent-- it certainly outweighs what happened at the STL and some other places.

On the question of the slowless (SIC)-- the slowness of the proceedings, I think it's endemic in international criminal justice, and I think there are a lot of reasons for that. I could probably go on for th-- 20 or 30 minutes. I'll just say, you have entirely too many judges who have not run a courtroom properly.

You know, I don't think states take the responsibility seriously enough. And in-- we've seen a number of judges whose first trial was (LAUGH) in an international war crimes-- court. There are, in t-- in terms of the various systems-- there's been a lot of work about trying to bring the different systems together. The inquisitorial and the common law system.

Some of it is just the nature and the difficulty of showing either command responsibility or making connections up-- the hierarchical route. I think it's-- yeah, there-- there may be some advantages to one system or the other, but these are long, difficult cases and they're not like proving a murder. You're-- many of them very

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intensely involving documentation, insider witnesses-- and a lot of proof difficulties. And I think if you're going to have trials of the most responsible for the most serious crimes, you're probably gonna have long trials-- regardless. And-- I wish that wasn't the case, but I-- I think it is. I would also just have-- a comment. I think the-- the-- the question about China is apt-- particularly apt. I think it's not just China and the West. (LAUGH) You know, I-- we have the absence of American leadership. Leadership has fallen into a void overnight.

The U.K. and Brexit-- European-- leadership-- not as strong as it w-- as it once was. So despite the deep flaws of a number of these countries, there was at least some commitment to human rights. That is now deeply in question across the board. And China is rising.

And we d-- we've-- we've-- we see that the fight against impunity has lost steam on the state level. And this is one of the reasoned, you know, might call for-- an emphasis on broader social movements, and for civil society be picking up the steam. I was last week-- in Nuremburg where we were-- reviewing our-- celebrating's the wrong term, but-- commemorating the tenth anniversary of the Nuremburg Declaration on Peace and Justice. I'll be glad to share you my-- share the speech with you. I'm deeply concerned about the lack of leadership of-- of countries across the board that have historically, at least in some sense, sup-- supported-- human rights. So I think it's a big problem in-- in the Asia region. But I think it's across the-- the-- the world.

And so we've got a much bigger task than we had just a few years ago. And-- people-- I-- I don't want to make a call to arms here, but people like people in this room, we have to be much more committed to ensuring that accountability happens and that the-- it's-- it's going to ultimately be-- a much broader social movement, because you cannot count on some of the governments that we have historically counted on. And that's-- that's true in Asia, and that's true across the planet. And on that very dire warning, I will close.

## **JIM GOLDSTON:**

(MIC NOISE) Well, no, thank you. It's funny but it's true. And it's a somber note, and-- I think we at Open Society feel that quite keenly. This is a point of inflection in the world, and requires some rethinking-- and new action. So we look forward to further discussion with you all. Thank you, please, to our panelists, and thank you all very much. (APPLAUSE)

\* \* \*END OF TRANSCRIPT\* \* \*