



World Chronicle

UNITED NATIONS

PROGRAMME: No. 993 recorded 8 November 2005

GUEST: **Helen Jarvis**
Cambodian Task Force on Khmer Rouge Trials

JOURNALISTS: **Jessica Jiji**
UN News Service

Thalif Deen
Inter Press Service

MODERATOR: **Tony Jenkins**

“Khmer Rouge Trials”

Thirty years ago, more than one fifth of Cambodia's people were wiped out by the Khmer Rouge regime through executions, starvation and forced labor. What happened to the people who planned and perpetrated this genocide? Will the Khmer Rouge trials finally bring them to justice in 2006? Can the UN ensure that these trials meet international legal standards, and will the process finally bring closure to this painful chapter of Cambodia's history? These are some of the questions asked in this special edition of **World Chronicle** featuring Helen Jarvis, a top advisor to the Cambodian Task Force for the trials.

WORLD CHRONICLE is produced by the News & Media Division, Department of Public Information, United Nations, New York, NY 10017, U.S.A.

Duration: 28:00"
Executive Producer: Michele Zaccheo
Director: Dave Woodie
Production Assistant: Devi Palanivelu

ANNOUNCER: From the United Nations in New York, an interview programme on major global issues. This is **World Chronicle**. And here is the host of today's **World Chronicle**.

JENKINS: Thirty years ago, one fifth of a nation's people were wiped out through executions, starvation and forced labor. It happened in the South East Asian nation of Cambodia, where the Khmer Rouge, the Communist Party of that country, ran one of the most violent and lethal regimes of the 20th century. But what happened to the people who planned and perpetrated this genocide? Will the new Khmer Rouge Tribunal finally bring them to justice? That's what we'll be talking about today in this special edition of World Chronicle. Our guest is Helen Jarvis, a top advisor to the Cambodian Task Force for these trials. Helen, three decades is a really long time to wait before bringing people to trial. And by now many of the Khmer Rouge, the original Khmer Rouge, leaders are dead. What took so long?

JARVIS: That would take us a very long time to answer. It's a terribly complicated problem but I suppose I could reduce it to one word and say politics – geopolitics and the ramifications of that over a long period of time. You are right. Even the most believed to be arch perpetrator himself, Pol Pot, has been dead since 1998.

JENKINS: So is it still worth having then?

JARVIS: I believe so and consistently 80 per cent of the Cambodian people say so whenever they are asked the question in surveys after surveys for 10 years or more. And that's their position but, of course, everyday of delay and every month of delay makes it more vulnerable. People do pass away like those who perpetrated the crimes and those who can stand in court as witnesses. And also the evidence itself is disappearing.

JENKINS: Well, joining us in the studio today are Thalif Deen of the Inter Press Service and Jessica Jiji of the UN News Service. Jessica...

JJI: I'm interested to know. I think this trial has been closely watched because so many Cambodians have been so affected by this genocide whether it's three

decades later or right in the moment. And what's the mood right now as the Cambodians observe this process?

JARVIS: Well, I think impatience really and a certain amount of expectations certainly. And a little bit apprehension too. But really everybody wants to get it started and probably also want to get it finished.

JJI: So is it right to start it right away or is it better to get it right and be prepared when you start?

JARVIS: We got to do it right. We won't have a second go and it has got to be done well. And that's what has taken at least the last six years of negotiations, which has been excruciating at times for its delays but it was like sailing in uncharted waters. The Cambodian mixed tribunal was the first of its type and so it is not surprising that it has been difficult to work through.

DEEN: You mentioned that the tribunal was the first of its kind. There's a question that keeps cropping up and that is, you know, a couple of years ago, the international community with much political fan-fare created the International Criminal Court (ICC). Why didn't the Cambodians go to the ICC rather than create a Tribunal of their own?

JARVIS: Well the problem is that the timeframe because the ICC does not have a retrospective power. So these crimes were committed between 1975 and 1979, so it wasn't possible for them to go to the ICC even though Cambodia was a founding state party of the ICC. There could have been another international ad-hoc tribunal as in The Hague for the Former Yugoslavia and for Rwanda. Or there could have been a domestic tribunal but the decision was to go for this new beast - a mixed or hybrid tribunal.

DEEN: And that decision was made by the General Assembly?

JARVIS: Yes, in the end. Yes indeed.

JENKINS: There's another issue about these tribunals is that they can cost an awful lot of money at least in Cambodian terms. I think it's something like \$56 million. Cambodia is a very poor country and could spend that money in a rather different way. Do you think this is really going to make a difference in the lives of the people

who were affected by the genocide? After all at the end of the day, I think you're only trying a dozen or even less of the reminiscence of the Khmer Rouge leadership?

JARVIS: Well, some people ask me that and they say - how many dollars will it be for one person to be tried? I think you can certainly measure it in those terms but you can look at how many dollars for each person killed. And in your introductions, you referred to a fifth of the country. I think the figures are actually quite higher than that. Probably a quarter or even more.

JENKINS: And what does that mean in absolute numbers?

JARVIS: Probably the best guess is about 1.7 million out of 8 million at that time. So it was an enormous crime, series of crimes and the Cambodian people are still paying. Those who survived are by no means were exempt from that impact, even those who were born afterwards are still paying the price because the country is missing its knowledge, its older generation, its wisdom and the price is still being paid. And I think that the Cambodians believe that this has been left unresolved and needs to be dealt with. People know what happened but there has been no legal accountability on this. And that's what they want.

JENKINS: Are you saying that psychologically you can't heal the nation's wounds without these trials? That the \$56 billion is worth it and will help liberate them from the past and usher in a brave new era.

JARVIS: Well, I wouldn't be so grand about it. I think Cambodia will have problems for a long time to come and this is going to be no panacea but I think without the judicial accountability, without people being brought to book for such crimes... it's very hard to ask other people to go to court for stealing a motorbike or doing something else. So I think it's really important. I think also this question of the money - that \$56 million is not just on the table to say - what would you like to do with it? It's money that had been given specifically for this purpose. It's not coming out of Cambodia's development funds.

JJI: I think we all can appreciate that the money is well spent. But my question is since you're talking about something that is unprecedented in terms of being a mixed

tribunal. Is there any tension between the international personnel and the Cambodians?

JARVIS: I think that it's hard to imagine any mixed process that doesn't have any tension. I think most of them even the international ones have their own tensions. As human beings, they tend to have their own agendas.

JENKINS: For our viewers it's important to explain what we mean by a mixed tribunal. What do we mean?

JARVIS: Well, we had some fine pieces of legislation – some words, some legislation, some grand human rights instruments in the late 40s but nothing happened. Crimes were committed and as I said before geopolitics of the Cold War really prevented a lot of things from moving forward. And it was only really in the 1990s that these notions that we could have international crime trials and that people can be personally responsible for crimes committed under the leadership of a government. So we had the International Criminal Tribunal setup for the Former Yugoslavia and Rwanda. Sort of classical what they call an ad hoc international tribunal, where the country itself plays a very little role if at all. Now this was recommended, of course, by the group of experts that the Secretary-General appointed in 1998. But the Cambodian government said that they didn't agree with the recommendation.

JJI: Were they afraid that the tribunal would touch on them?

JARVIS: I don't believe so. I think the reason was they said that they wanted to be involved. They didn't want it taken out of Cambodia's hands. They said that it wasn't right, that the crimes were committed in Cambodia, on Cambodian people by Cambodian people and they think they shouldn't be tried by other people in a faraway place. And they thought it would have more meaning for Cambodians if it was in Cambodia. But they wanted assistance both financial assistance but also international participation. And that's what they asked for and this is what we mean by a mixed tribunal.

DEEN: When you speak of Khmer Rouge officials being brought to trial. Isn't Hun Sen also former Khmer Rouge official? Will he be brought to trial as well? The present Prime Minister?

JARVIS: Well, the jurisdiction of the court indeed would allow anybody who falls as a senior leader of Democratic Kampuchea who committed crimes. It's the senior leaders and the ones most responsible for serious crimes which are numerated. Now Hun Sen was by no means a senior leader of Democratic Kampuchea. He was a regional level military leader but he himself had said that if he's called to the court he would go. And it will be up to the court and the judges themselves to interpret who are the senior leaders and those who are the most responsible. So there's no number, when you say twelve, we don't know. We are expecting that it'll be under that figure, probably.

JENKINS: Thalif...

DEEN: Let me, do you expect any role at all for the UN at the trials, even as observers?

JARVIS: Certainly, the mixed nature of the trials will be the judges nominated by the Secretary-General taking part. And the Deputy Director of the Office of Administration is a United Nations staff member. And there will be a number of United Nations staff throughout every section of the court.

JENKINS: This is World Chronicle and we're talking about the Khmer Rouge Tribunal -- to try those most responsible for genocide in the killing fields of Cambodia.

VIDEO AND AUDIO IN

Interview with Michele Lee, Deputy Director of the Office of Administration, UN Assistance to the Khmer Rouge Trials

LEE: There are many, many challenges ahead of us both of the UN and the Cambodian government. We are now in the final stage of preparation; we need to really finalize all those preparation work in order to start functioning as soon as possible. And once the process starts then we have to work together to ensure that timelines are kept. This trial not a UN entity and has a very definite period of operation so I mentioned earlier, they have a very clear definition of who is to do what. So Cambodian government will provide the premises and for instances, they will provide overall security for the personal who are involved in the trials. What the UN will be

responsible for is to ensure security within the premises, within the court, which is being established according to the UN standards. In addition, we'll also be responsible, from our part of the budget to provide all the IT equipment, the communication, the network. So the intention is to make sure that we'll be able to start the process and to finish it within the prescribed or anticipated three years period.

VIDEO AND AUDIO OUT

JENKINS: Jessica...

JJI: You said that these were crimes committed by the Cambodian people against the Cambodians. But obviously there wasn't an international component in the 1970s in Cambodia. Again going back to my previous question about the tension between the international personnel in the court and the Cambodians. We are talking about something that was held up for six years over politics. How do you reconcile all of these tensions?

JARVIS: Well, I think we have to look at why we didn't have a trial that was recognized internationally in 1979 when the government overthrew Pol Pot. The present government was setup and they actually did hold what was the world's first genocide trial in Cambodia in August 1979. But politics of the day prevented that from being recognized and the government of the day was not recognized and, in fact, I'm sorry to say but the Khmer Rouge sat in the General Assembly for a whole decade after that. After the crimes were actually known. So I think the six years have been long enough but we also have to say what held things up for over a decade before that. It's very difficult but there's nothing for it but to go ahead. I don't think we are going to gain anything by not holding the trials. I'm not going to say it's going to be easy and those tensions will be there.

DEEN: Do you have a timeframe for the trial? How long do you expect for the trials to go on. And I'm asking this question specifically for one reason – because some of the leaders that they plan to try might be dead by the time the trials get going because they are in their 70s and 80s.

JARVIS: Absolutely. There is urgency. There's no question about it. We are in the final stages now of setting things up and getting the funding that's necessary. But that's not all in yet so we still got a task ahead of us on the Cambodian side of the budget. The international side is full but the Cambodian side is still in need. But we are hoping that this will be completed before the end of 2005 and we would expect that the first prosecutions and investigations will take place in early 2006.

DEEN: Funding for a three-year period, right?

JARVIS: The estimate is for three years.

JENKINS: You know earlier, we were talking about the international tribunals in the Former Yugoslavia and in Rwanda. Have those experiences been useful? How do you judge the success of it? Were they successful, these tribunals? I see you smiling there...

JARVIS: I think there's a lot of criticism and there's also a lot of, I don't suppose one could say, satisfaction. At least there's a feeling that something at last is being done - that people are facing their day in court instead of feeling that just because you're a leader of a country, you could do what you would like to your own people. I think those days have come to an end. But it's hard work, I think.

JJI: You talked about you can't hold someone in for stealing a motorbike if you let someone else get away with genocide. How do you think these trials will impact the long term view of the Cambodian people, of the justice system, which is widely viewed as corrupt and lawless?

JARVIS: There's every hope and that is one of the points that has been made repeatedly by the government as to the motivation for having these trials is to setup a... what might be seen as... a pilot court. A model court that will indeed have a knock-on effect. Not only the judges and lawyers, who actually work in the court, will have direct experience of the type of justice that we hope is indeed superior to now in Cambodia but also the procedures, the equipment, way of organizing a court, hopefully speedy attention to matters whereas in the Cambodian court go on and on and on. The formality, the need to comply with clear procedures, guidelines we hope will do a lot to improve the current justice system.

JENKINS: How many lawyers were left after the genocide? There can't have been many, were there?

JARVIS: Six is the figure.

JENKINS: So presumably today there are trained officers throughout the country? You're saying that you hope that this process is going to leave some seeds that is going to help that sector?

JARVIS: Certainly, that's the hope and it better because the Cambodian justice system does need great improvement. But as you say it was coming from year zero in 1979 and there wasn't a single judge, there was one magistrate and another five people with some element of legal training.

JENKINS: All the rest have been wiped out or fled?

JARVIS: Yes...

DEEN: China has been a very close ally of Cambodia and has China been very supportive of the trials? I don't think that China has made many contributions to the funds?

JARVIS: No, they haven't but they did support the motion in the General Assembly to establish the trials but I don't think I can speak for the other countries. There are a number that haven't yet contributed. We hope that they will come forward.

DEEN: But do you expect China to contribute?

JARVIS: I really don't know.

JIVI: We are talking about very old crimes but the emotions must still be raw. Is there any security component? Any question of threat?

JARVIS: There certainly is concern and will have to be taken quite seriously. Both in terms of protecting the witnesses and protecting the defendants because people's passions and emotions will most likely be reawakened by the testimony. So both sides, those who speak against the Khmer Rouge and the Khmer Rouge leaders themselves have to be protected. The hope and expectation is that it won't be a spark to civil war again in the country. And then would be an absolute disaster and certainly...

JENKINS: Now that you had mentioned it, is there a possibility?

JARVIS: I don't think so. It's a risk. The whole process is a risk.

DEEN: Do the Khmer Rouge leaders have the right to bring international lawyers to defend themselves?

JARVIS: Yes, certainly. They have the right to lawyers of their choice. And one would imagine that they would do so.

DEEN: There will be more international lawyers than Cambodian lawyers I presume when the trial begins.

JARVIS: I don't know about absolute numbers but I would think there would be more Cambodian lawyers but it's only a guess really. Certainly I'm sure everyone will have one of each in their team.

DEEN: Hopefully it'll start let's say by early next year, the trials?

JARVIS: Yes.

JENKINS: Yeah, Jessica was saying earlier that how can you prosecute someone for stealing a motorcycle if you haven't prosecuted somebody for genocide. Is there a culture of impunity in Cambodia? If so, how does one see it? How do you touch it?

JARVIS: It's a difficult matter. There's inconsistency in application of the law. There are problems of the laws themselves. Conflicting laws from different regimes over time. Some of the laws are very good on paper; some of the protections are very good on paper but it's a country that is extremely poor. And a country where people have crawled back or climbed back from this year zero difficulties. Yes, a lot of people feel that they don't have much confidence in the legal system.

JENKINS: This is World Chronicle – and we are talking about how to bring some measure of justice to more than one and a half million people killed by Khmer Rouge in Cambodia.

VIDEO AND AUDIO IN

Youk Chhang, Director, Genocide Documentation Center of Cambodia

CHHANG: So they tie me up and hit me four or five big guy. I was a skinny boy of around 14 years old. They hit me and the way they torture me I didn't cry, I remember clearly I did not cry, because I endure the pain. But what they did that I could not

forgive them until 25 year later is that they did this in front of my mother. And they force her not to cry, because crying was a crime. So I was very confused because I ask my mother for help and she walk away. And at the same time they were torturing me so I don't know, I was lost, I was a lost boy.

Victims is just like a glass that we drop on the floor and broken, and you try to glue it back together. That's what we are, broken person living in a broken society. Nothing can be the same. That's something that as a victim you accept. And that can never be the same and that no one can come and say what we have lost, that's impossible.

You have to confront, you have to face this. And it is one of the most difficult thing to do is to face this. It's the only way you can have a closure or move on, you'll have to pass through this process and the tribunal is one of them. That's why I anticipate that it's going to be difficult for all of us but if we don't face this, if we don't confront this, it's going to be difficult for us to live on with our lives.

VIDEO AND AUDIO OUT

JJI: You have talked a lot about the nature of... you have raised the specter of civil war. Short of that, can we expect some political instability if these trials touch on some powerful figures in the country?

JARVIS: Well, I don't think so. I think that, as I said before, people are impatient and really want to have the trials. And I think that certainly the Prime Minister has said that he's willing to face the trial and that nobody is above the law so the pledge is there from the government that nobody will be protected from appearing. But I think it's the very government, for instance Hun Sen himself, who was one of the main leaders involved in overthrowing Pol Pot... certainly not many people have done more than he has in bringing an end to the Khmer Rouge regime. He says he has nothing to fear. He's willing to stand. So I don't think we'll be entering a period of instability at all or civil war and I certainly didn't mean to give that impression at all. Far from it.

DEEN: What will be the ultimate punishment to those found guilty? Do they have the death penalty in Cambodia?

JARVIS: No. Under the constitution, the death penalty is outlawed. So the maximum penalty is life imprisonment.

JENKINS: I would like to ask you a little bit about how you got involved. You are a strange beast, if I may say so, an Australian with a Cambodian passport. Can you explain that?

JARVIS: Yes, I'm one of the generations of Australians who have grown up believing that my country is closely related to Asia. Happens to be sited there and lived my life with an Asian orientation rather than a European one. I studied Indonesian at university and lived my life working in and on South East Asia. I first visited Cambodia in 1967 when I was a student and I went back in '87. So for 20 years during the bombing, the American bombing, the Vietnam War, through the Khmer Rouge period, through the civil war, I was outside but I followed events and I went back in '87 and was working with the national library - helping to reconstruct and work with the staff there. And then, I was invited to be a part of the Cambodian Genocide Programme to document what had happened. So from the mid-90s I've been involved in looking at the genocide and then in '99 the current deputy Prime Minister, Sok An, asked me to come back and work with the Cambodian government to help them because it was clear then that the process was going to go forward.

JENKINS: The reason I ask is because as some of your critics say that you're very knowledgeable, very well-intentioned, widely respected expert who is being used by the Cambodian government as a way to perhaps conceal their own shortcomings.

JARVIS: No, I haven't heard that... I'm just giving what I can to a process that I think needs to be done. I think I've long called for the trials to take place. I could hardly say no when I was asked to work on it.

JJI: We have talked a little bit about drawing lessons from the other criminal tribunals. Do you think in the future the International Criminal Court will be able to draw lessons from your experience?

JARVIS: Yes, very much so. It seems to me really, this goes back to the other question about why a mixed tribunal. We can't afford to have a big international tribunal setup for every instance of human rights violation. It's going to be up to the

countries to do it themselves with, hopefully, some assistance internationally. I think it's more realistic.

JENKINS: On that note, we are out of time. Thank you for being with us on this edition of **World Chronicle**. Our guest has been a top adviser to Cambodia's Khmer Rouge Tribunals – Helen Jarvis. She was interviewed by Thalif Deen of Inter Press Service and Jessica Jiji of the UN News Service. I'm Tony Jenkins, inviting you to be with us for the next edition of **World Chronicle**.

ANNOUNCER: Electronic transcripts of this programme may be obtained free of charge by contacting **World Chronicle** at the address on your screen:

World Chronicle
United Nations, Room S-827
New York, N.Y., 10017.
Or by email at: palanivelu@un.org

This programme is a Public Affairs Presentation from United Nations Television.

The views and opinions expressed on this programme are those of the participants, and do not necessarily reflect the official statements or views of the United Nations.