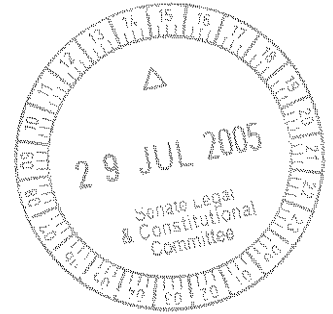


25th July, 2005



The Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament house
Canberra ACT 2600.

Dear Committee Members,

I have been visiting detainees in Villawood Detention Centre on a weekly basis for the past four years.

The majority of detainees during that period were deported back to the country they had fled because of witnessing family members murdered. In other cases they themselves were tortured, flogged (have witnessed the criss cross of scarring on the back). Others because they were Christians in non-Christian countries I have witness the extreme fear on the faces of detainees. There have been detainees who never went to Court because they could not afford to or we could not find a 'pro bono' lawyer because there were too many detainees and so few 'pro bono' lawyers.

Throughout the four years I have hoped that some day the truth would be revealed, can that hope ever be realised?.

I have enclosed factual material on the Cambodian husband and wife to give you an idea of what detainees are up against when the Immigration Caseworkers decide what people have done without listening to the detainees.

I keep in constant contact with Lam & Nary, they have given me permission to put forward whatever will help to save the future lives of those still in detentions.

Yours truly,

A handwritten signature in cursive script that reads "Moya Turner".

Moya Turner. RM; RN; WC; JP.

Unwanted – so it's hello, France

Cynthia Banham

Lam Khi Try boarded a Malaysia Airlines flight in Sydney bound for Paris yesterday afternoon with two pieces of paper in his hands.

One, a "laissez-passer", from the French Government, gave the 38-year-old Cambodian journalist and his wife the right to depart Australia unimpeded, and the promise of permanent refuge in France.

■ The other document was a bill from the Australian Government for \$260,000 for the three years the couple have spent in the Maribyrnong and Villawood detention centres.

■ The bill will go unpaid, for Lam and his wife Nary Thong will never return to Australia.

■ Lam fled Cambodia in 1998 after writing several articles critical of the Hun Sen Government in the *Angkor Thom* newspaper. A series of threats to his life followed.

■ First his newspaper received a threatening letter from the Government, known in Cambodia as a "red letter".

■ Then Lam received a number of phone calls warning him to stop writing about corruption. He also noticed he was being followed. Then his editor died in suspicious circumstances.

■ So Lam and his wife went into hiding, leaving their two children with their grandparents and fled on false papers to Australia.

■ At first the couple, who spoke no English, lived in the community, where they made a claim for asylum – on bad legal advice – initially using their assumed identities.

■ They were picked up by immigration authorities in 2001



Lam Khi Try, his wife Nary Thong, and a French consulate staff member.

and put into detention, where they remained until flying out of the country yesterday.

■ With the help of a number of supporters – including the global writers' organisation International Pen, which took on Lam's case – the couple have made many applications and appeals for refugee status without success.

■ Despite evidence from organisations such as Human Rights Watch of the authenticity of Lam's case, the Australian Government refused to accept his story, and the Refugee Review Tribunal decided there was no reason the couple could not safely return to Cambodia.

■ However, France came to a different conclusion after an appeal from Lam's aunt, who lives in Paris.

■ Three weeks ago the French consul in Sydney got word from Paris that Lam and his wife had been granted long-stay visas. They will also be able to take

their children – who they have not seen for more than five years and are still in hiding – to France.

■ Lam, speaking to the *Herald* from Villawood before his departure, said he felt very happy to be leaving Australia because "I stay here long time in Villawood".

■ His greatest sadness was for his children, for the problems he had caused them in trying to act for the good of his countrymen. "This one my fault," he said.

■ "I do good about people in my country, talk about the Government, but after that I have problem. No good for my children."

■ The French deputy consul-general, Claude Annonier, would not comment on Australia's conduct regarding the couple yesterday saying only that France accepted Lam was a refugee and that, if it granted the visas, it meant "the French authorities were convinced he had a case".

MIGRATION REVIEW TRIBUNAL – 27-1-2004

Q. THEY HAVE REMAINED UNLAWFULLY IN AUSTRALIA SINCE 24-12-98

A. On the 14th February, 98 Lam Khi Try arrived in Melbourne unable to understand or speak English. Lam's Uncle arranged for a Cambodian Sam Bo Chan who spoke Khmer & English, to make the necessary arrangements with the Immigration Dept so that Lam could stay in Australia

Bo initially took \$3,000 from Lam in order to obtain the necessary Visa.

Bo assured Lam that the Immigration Department was allowing him to stay in Australia for 2 – 4 years, but Bo never showed Lam any evidence to support this statement, it was simply verbal

YOU HAVE ATTEMPTED TO MISLEAD DEPT. OFFICERS SINCE BEING LOCATED ON 28TH FEBRUARY 2001

Bo instructed Lam never to reveal the true circumstances of why he fled Cambodia, that if he did the Australian Govt would send him back. He had to remain Kim Chan Nee & say nothing more.

YOU ATTEMPTED TO HIDE FROM OFFICERS AT THE TIME OF LOCATION

When the Police were entering the house around 6am Lam & Nary panicked, it reminded them both of stories about police in Cambodia. Lam told Nary to hide in the wardrobe. Lam expected the police would kill him, he wanted Nary to have a chance to live. There was no interpreter with the police to explain what was happening. A policeman handed a mobile to Lam indicating for Lam to speak to whoever was on the line. Lam was too afraid to reveal information to a voice.

REFUSED TO PROVIDE DETAILS INCLUDING YOUR IDENTITY,

The police took Lam and Nary to separate interview rooms. An interpreter was present. It would appear the Interviewer cross examined telling each what the other supposedly said – Both were too scared to tell the Interviewer why they had come to Australia.

PRESENTING CONTRADICTIONARY INFORMATION REGARDING YOUR HUSBAND Lam believed that if he told officials Nary was not his wife it would save her being implicated & punished.

REFUSED TO SIGN TRAVEL FORMS They were afraid to sign anything as they did not understand what they were expected to sign.

YOU DID NOT ATTEMPT TO LODGE AN APPLICATION FOR A SUBSTANTIVE VISA UNTIL AFTER BEING DETAINED

Bo had told them he did all the necessary paperwork for them, that they were free to be in Australia, so there was no reason for Lam to approach authorities especially as he could not speak English at that stage.

But when detained & an interpreter was present to explain they had no legal right to be in Australia – Lam then revealed to the Immigration Authorities the whole truth

SINCE 1995 YOU HAVE DISPLAYED INTENTION TO RESIDE IN AUSTRALIA & YOU HAVE BEEN RECORDED AS STATING THAT YOU DO NOT WISH TO DEPART.

That statement is correct. In 1995 because of the number of executions to people who opposed the Govt & the fact that they were under Communist Rule, Lam's Aunt living in Springvale Melbourne wrote to the Immigration Dept. offering to sponsor the family to Australia. Lam & Narey can see that Australians do not live in fear of torture & execution as the people in Cambodia do under an oppressive regime.

During the 37 months in detention they have learn't our language to the extent that there is no problem with communication when basic English is spoken.

IT IS NOTED THAT A RELATIVE HAS OFFERED A SECURITY OF \$10,000 FOR THEIR RELEASE, HOWEVER THERE IS NO EVIDENCE BEFORE THE TRIBUNAL IN RELATION TO WHETHER THIS MONEY IS AVAILABLE. Lam's Uncle LIM SUY PAUL living in Melbourne has placed the \$20,000 to cover their Bond in a separate Savings Account with the Westpac Bank in MALVERN, GLEN IRIS I have his mobile No.0411354928, ((also his Bank No.733059 & a/c No.660001))

THE DEPARTMENT PREVIOUSLY FOUND THAT AN AMOUNT OF \$20,000 WOULD BE REQUIRED FOR THEIR RELEASE.

I have presented to the Court a letter from two people offering \$10,000 each towards the Bond. There is also a letter of confirmation from the Credit Union with proof that such an amount is present in a TERM DEPOSIT.

THERE IS NO INDICATION OF WHEN YOUR JUDICIAL REVIEW WILL BE FINALISED WHICH SUGGESTS THAT YOU MAY REQUIRE FINANCIAL SUPPORT FOR A PROLONGED PERIOD OF TIME. FURTHER TO THIS, YOUR DETENTION COSTS OWED ARE EXTREMELY LARGE

The day to day financial needs for Lam & Narey will be met

A medical doctor living a few houses away in Neil Street has offered his services in assisting Lam & Nary back to health. His wife visits the couple weekly when possible.

The Detention costs are unavoidable as they have been locked up in Villawood Detention Centre for 37 months to date, They did not have money to pay their Uncle for accommodation & basic needs after being fleeced by Bo & other persons.

A FURTHER ISSUE FOR THE TRIBUNAL IS THEIR INTENTION TO DEPART AUSTRALIA, IF THE PENDING FEDERAL COURT MATTER IS NOT DECIDED IN THEIR FAVOUR.

This statement has never been voiced by Lam or Nary, they want to stay in Australia but if the Federal Court brought down a negative decision against them, then their supporters would be placed in a position of trying to find another country that is willing to accept refugees.

BUILD BRIGHT UNIVERSITY

DECLARATION

Writing a warning letter in red color is very rare in Cambodia. However, it is completely fear and shock to a person who receives it by reflecting Cambodian culture and political environment. This red warning letter is a vital threat to many people and has negative impact on their family and business life. To my understanding and experience during civil war in Cambodia and especially in Khymer Rouge Regime, this letter poses a great danger, and clearly is an order to kill a person who has controversy ideas with their management system

By reflecting Cambodian culture writing a letter in red color does not give a great impression at all, but it does show untruthful relationship. If one person working in the government or civil society has been removed for his, or professional work, the red sign meant his/her work has been dropped out. I hope that this expression has been written could support other cross-cultural countries and court decisions and is my private explanation only

Issued in Phnom Penh, Saturday 20 of September, 2003
Vice Rector of the Build Bright University
Assoc. Prof. Veng Heong



PROFESSOR MAURICE EISENBRUCH

Centre for Culture and Health

Brigadier Patrick Gowans
Refugee Review Tribunal
Level 29, Pacific Power Building
201 Elizabeth Street, Sydney NSW 2000

Fax 9951-5988

Re: Asylum application of Mr Lam Khy Try

Dear Brigadier

I write in support of the application for asylum by Mr Lam Khy Try. I am Professor of Multicultural Health and Director of the Centre for Culture and Health at University of New South Wales. During the early 1980s, I worked with Southeast Asian refugees while at the University of Cambridge. While at the Department of Social Medicine and Health Policy at Harvard Medical School, I worked with Cambodian refugees. During the 1990s, I taught at the University of Paris and led a Research Operation at CNRS (National Centre for Scientific Research) in Paris, focusing on Cambodia. I was Honorary Professor of Clinical Psychology and Anthropology at the Royal Phnom Penh University in Cambodia, and have been a member of the Buddhist Institute in Cambodia. I have worked with Cambodians around the world and in Cambodia for more than twenty years. I have held consultancies with WHO, European Union, UNESCO and UNFPA, on projects carried out in Cambodia. I have served on numerous international committees such as the World Psychiatric Association, World Federation for Mental Health, and American Academy of Child Psychiatry, where my expertise on Cambodian people has been deployed.

Cases such as that of Mr Lam Khy Try are familiar to me. People in Cambodia, including journalists, have been intimidated and not infrequently murdered, or reprisals taken against other family members, for even slight embarrassment of the government. This has not changed since the holding of elections – indeed, intimidation is associated with the election.

A letter was received by the family from the highest levels of government – in itself highly unusual. The letter (which I have read in Khmer as well as English) can be paraphrased to state ‘you can complain, but what have you done about the situation?’. To a Western reader this is seemingly not a direct threat. To the Cambodia, this ‘red ink letter’ is a dire threat. There are two aspects in decoding this threat.

One: Red ink letter:

THE UNIVERSITY OF
NEW SOUTH WALES



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One: Red ink letter:

Red ink is a well-known sign, dating from the Khmer Rouge time, of torture and execution. The international authority, Professor David Chandler, in his book *Voices from S-21 - Terror and History in Pol Pot's Secret Prison* (Publisher: University of California Press, Berkeley, CA 94720 ISBN: 0 520 22247 4), reports about Duch, the Commandant of the top Khmer Rouge execution centre: 'Duch's neatly written queries and annotations, often in red ink, appear on hundreds of confessions. They frequently correct and denigrate what prisoners confessed, suggest beatings and torture, and urge interrogators to unearth the buried "truth" that the prisoners are hiding'. Every living Cambodian survivor has etched into their mind the memory and the fear of those times and of those signals of death.

These signals continue to be used today by those in power. Here is a more contemporary citation, set in the context of the democratic election, confirming the threat of red ink. 'Staffing the party office in Kampot a month after its opening was a FUNCINPEC member who had formerly been a district chief in Kampot but who had fled to Thailand after the coup. The U.N. High Commissioner for Refugees (UNHCR) repatriated him to Cambodia on January 23, but he did not feel safe enough to return to Kampot until the party office opened. As of early April, he had still not returned to his home district. "Recently my district sent me a letter inviting me back, but I'm afraid to return," he said. "I worry because a section of the letter was written in red ink [a warning symbol in Cambodian culture], stating 'this is your last invitation' [to return to my old position]." - Human Rights Watch interview with FUNCINPEC member, Kampot town, April 1, 1998-Cited in Human Rights Watch. Available http://www.hrw.org/reports98/cambodia/#N_16

Two: the indirectness of the threat

The lay observer would conclude that the end of the civil war and the apparent democratic processes in contemporary Cambodia. This is not correct. Current research carried out by myself and other international colleagues demonstrates why there is a recent upsurge of violence and intimidation in Cambodia. The younger generation, who were born after the fall of the Khmer Rouge, were brought up by parents themselves survivors of the Khmer Rouge brutality, and who were a generation robbed of love and security. Their children carried those scars. They saw that authority figures got their way at the point of a gun and, in this way, could overturn the decision of democratic elections e.g. in 1997. The consequences, however, are that some of this younger generation, now coming of age, appear to have developed an impunity to committing violence. This impunity can be recruited in the service of 'good government'. All that is needed is for a 'big man', an authority figure, to make the softest allusion to retribution. The 'big man' can recruit these younger willing henchmen to act on his behalf. The henchmen will eliminate any target without needing explicit orders. Persecution in this way can be signalled through the most indirect channels, in ways that would escape the scrutiny of the average non-Cambodian observer.

It is my professional opinion that Mr Lam Khy Try has a well-founded fear of persecution. I would be pleased to provide further information.

Yours sincerely

Professor Maurice Eisenbruch
MD, MPhil, MEdSt, BS, DPM, MRCPsych, FRANZCP, AFBPsS, MAPS, MACE
4 October 2003