

**COMMENT ON THE PROPOSED EXTENSION OF IMPORT RESTRICTIONS ON ARCHAEOLOGICAL MATERIAL FROM CAMBODIA**

*Submitted by the Documentation Center of Cambodia  
To the United States Cultural Advisory Committee  
February 5, 2013*

“The loss of culture is the thread [that leads] to the destruction of a nation” – Cambodian saying

The Documentation Center of Cambodia (DC-Cam) thanks the United States Cultural Advisory Committee for this opportunity to comment on the proposed extension of import restrictions on archaeological materials from Cambodia. We are grateful for the creation and ongoing renewal and expansion of these restrictions to date, and hope and expect that the Committee will vote to continue to restrict the importation of Cambodian archeological matter. Our comment seeks to highlight the importance of cultural property to Cambodia’s ongoing reconciliation efforts, in which the DC-Cam has played a central role.

This comment proceeds in five parts: (1) recounting Cambodia’s rich cultural history; (2) describing the Khmer Rouge regime’s targeted destruction of cultural property; (3) discussing efforts to address the crimes of the Khmer Rouge and the DC-Cam’s role in these efforts; (4) explaining the importance of cultural heritage to reconciliation; and (5) highlighting the applicability of the Convention on Cultural Property Implementation Act (CPIA) to Cambodia.

**Cambodia’s rich cultural history**

Cambodia has a long and vibrant cultural history, with human artifacts dating back to 4200 B.C. The Angkorean period, between 802 and 1431 A.D., is known as the golden age of Khmer civilization. It was during this time that Angkor Wat and other major temple complexes were built, and much of the archeological material needing protection was created.<sup>1</sup>

These architectural treasures have played a central role in a much broader cultural life in Cambodia. Since the Angkorean era, Cambodia’s ornate temples have hosted prayer sessions accompanied by graceful and distinctive traditional dances as well as rhythmically complex chanted poetry and abstract orchestral music.<sup>2</sup> Before the rise of the Khmer Rouge regime, Cambodia’s architectural past was preserved in splendid museums, and its cultural future was created in rigorous art schools and displayed in lively art galleries.<sup>3</sup>

**The Khmer Rouge regime’s targeted destruction of cultural property**

The Khmer Rouge regime came to power in 1975, perpetrating mass killings through starvation and torture for the next four years. The Khmer Rouge deliberately targeted Cambodian cultural

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<sup>1</sup> See generally, DAVID CHANDLER, A HISTORY OF CAMBODIA (1996)

<sup>2</sup> See generally, United Nations Educational, Scientific, and Cultural Organization, *World Heritage List: Angkor*, available at <http://whc.unesco.org/en/list/668> (visited February 5, 2013).

<sup>3</sup> See, e.g., United Nations Educational, Scientific, and Cultural Organization Office in Phnom Penh, *Reinforcing National Capacity for the Conservation of Cultural Monuments: The Project of Assistance to the Royal University of Fine Arts*, available at <http://www.unesco.org/new/en/phnompenh/culture/tangible-cultural-heritage/reinforcing-national-capacity-for-the-conservation-of-cultural-monuments-the-project-of-assistance-to-the-royal-university-of-fine-arts> (visited February 5, 2013).

resources, destroying temples, forbidding traditional dances and music, and leaving no space for cultural expression beyond propaganda for the regime. As the quote above suggests, this cultural devastation left Cambodians unmoored, deepening their suffering from the loss of their loved ones and significantly complicating their attempts to reconstruct Cambodian society.<sup>4</sup>

### **Accountability for the crimes of the Khmer Rouge**

Since the Khmer Rouge fell from power, Cambodia has made several efforts to hold the regime legally accountable for its crimes. The first such attempt was the 1979 People's Revolutionary Tribunal, which was not internationally recognized nor in strict conformity with fair trial standards. Almost thirty years later, in 2006, the government of Cambodia and the United Nations established a hybrid tribunal known as the Extraordinary Chambers in the Courts of Cambodia (ECCC) to try the senior leaders of the Khmer Rouge.<sup>5</sup>

In addition to these legal mechanisms, Cambodia has taken other steps to address its past. These include days of remembrance, such as Day of Victory on January 7 and Day of Anger on May 20, and the construction of memorials nationwide dedicated to those who lost their lives to the DK regime. While the legal justice process has become a focal point for Cambodian and international stakeholders in recent years, few efforts have been made to address the past trauma from the perspective of culture and the arts.

Since 1995, DC-Cam has been at the forefront of documenting the atrocities of the Khmer Rouge era and teaching the Cambodian public about that tragic era. Highlights of our work include: collecting nearly one million pages of documents relating to the crimes of the Khmer Rouge and maintaining, with Yale's Cambodian Genocide Program, the world's most extensive database on Khmer Rouge history and providing documents and other information to the Khmer Rouge Tribunal, including our interview transcripts from thousands of former Khmer Rouge cadres and their family members.<sup>6</sup>

### **Cultural heritage and reconciliation**

In the wake of conflict, cultural heritage is often overlooked in favor of urgent needs such as food, shelter, and medical care. Yet the psychosocial need for social repair through cultural continuity and societally relevant forms of expression remains powerful. Societies place great symbolic value in cultural artifacts ranging from buildings and museums to the dances and music performed in those spaces.<sup>7</sup> "In crisis, people turn to cultural references for support; it is cultural

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<sup>4</sup> See, e.g., Ang, SamSam. *Preserving a Cultural Tradition: Ten Years After the Khmer Rouge*. 14:3 CULTURAL SURVIVAL QUARTERLY (1990)

<sup>5</sup> See, e.g. Ciorciari, John and Anne Heindel, eds., *ON TRIAL: THE KHMER ROUGE ACCOUNTABILITY PROCESS* (Phnom Penh: Documentation Center of Cambodia, 2009).

<sup>6</sup> See [www.dccam.org](http://www.dccam.org).

<sup>7</sup> See, e.g. International Center for the Conservation and Restoration of Cultural Property, *Cultural Heritage in Post-war Recovery* (Nicholas Stanley-Price, ed., 2007), available at [http://www.iccrom.org/pdf/ICCROM\\_ICCS06\\_CulturalHeritagePostwar\\_en.pdf](http://www.iccrom.org/pdf/ICCROM_ICCS06_CulturalHeritagePostwar_en.pdf) (visited Feb. 5, 2013) ; Jan Pronk, Special Representative of the United Nations Secretary General in Sudan, *Wisdom, Devotion, and Modesty*, Speech to the Conference on Cultural Emergency Response, Prince Claus Fund, the Hague, Sept. 5, 2006, available at <http://www.janpronk.nl/index263.html> (visited Feb. 5, 2013).

practices and values that help individuals and communities survive through calamities and cope with tragedy.”<sup>8</sup>

To this end, the DC-Cam is working with the Cambodian Ministry of Culture and Fine Arts and the National Museum of Cambodia to identify, protect, and preserve Cambodia’s cultural heritage. Plans are already in place to develop robust heritage museums across the country, increase local skills and resources needed to undertake archaeological projects and promote reconciliation through cultural heritage.

### **The applicability of the Cultural Property Implementation Act**

Cambodia cannot preserve its cultural heritage on its own. The Import Restrictions Imposed on Archaeological Material from Cambodia play crucial role in preserving Cambodia’s architectural and artistic heritage. The four factors laid out in the Cultural Property Implementation Act, 19 U.S.C.A. §2602(a)(1), are instructive.

*(A) that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party;*

Cambodia’s archaeological materials are in ongoing jeopardy from pillage, as recent arrests and court cases demonstrate.<sup>9</sup> What is perhaps less well known is the extent of the damage already done and the speed with which Cambodia’s remaining cultural patrimony is disappearing. While significant progress has been made in protecting the Angkor temple complex, this is only a small part of the whole. Cambodia is dotted with important archaeological sites. Many of these sites have already been subject to extensive looting. As each new site is desecrated, the value of those that remain increases, as does their importance to reconciliation and societal rebuilding.

*(B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony;*

Cambodia currently ranks 139<sup>th</sup> out of 181 countries on the human development index. Yet, despite a severe lack of resources, Cambodia has made great strides in protecting its own cultural patrimony. Angkor Wat is one such success story, as is the recent arrest of smugglers on the Thai border. In addition to criminal enforcement, the Ministry of Culture and Fine arts is working closely with civil society, including DC-Cam, to promote cultural preservation at the village level and to educate Cambodians about the value of their own cultural patrimony.

Unfortunately, there are far more archaeological sites in Cambodia than there are resources to protect them. In a country where the more than 50% of people live on less than \$2 a day, incentives to sell artifacts are high. Efforts are underway to generate income at the village level through cultural tourism, but such initiatives will take years to implement.

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<sup>8</sup> Rama Mani, *Women, Art, and Transitional Justice*, 11 INTERNATIONAL CRIMINAL LAW REVIEW, *Special Issue in Honor of Judge Patricia Wald on Women and International Criminal Law* (Diane Marie Amann, Jaya Ramji-Nogales, and Beth Van Schaack, eds., 2011).

<sup>9</sup> See, e.g., Ralph Blumenthal and Tom Mashberg, *Officials are set to seize antiquity*, N.Y. TIMES (Apr. 4, 2012).

*(C) would be of substantial benefit in deterring a serious situation of pillage, and (ii) remedies less drastic than the application of the restrictions set forth in such section are not available;*

The Extension of the Import Restrictions will support the preservation of Cambodia's cultural patrimony in two ways. First, many of the buyers of these artifacts reside in the United States. Moreover, other buyers are discouraged from investing in stolen antiquities that they cannot resell in the U.S. Second, the Import Restrictions send a clear message that the United States will not tolerate pillage of cultural artifacts in Cambodia. Many have pointed to the Import Restrictions as playing a significant role in the preservation of Angkor Wat and the surrounding complex.

Given the value of Cambodia's cultural artifacts and the crisis of their preservation, "less drastic" measures will be insufficient to protect our cultural heritage.

*D) consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.*

The United Nations Educational, Scientific, and Cultural Organization has designated both Angkor Wat and Preah Vihear as UNESCO World Heritage sites. UNESCO lists nine additional archaeological sites on its tentative list of property needing World Heritage protection.<sup>10</sup> Cambodia is a significant source of cultural property, boasting the largest religious complex in the world. The protection of the import restrictions will enable Cambodia to engage in exchanges of cultural property with other nations and to welcome international visitors seeking to learn about its rich cultural history.

For all of these reasons, and particularly the importance of cultural heritage to reconciliation efforts, we hope that your committee will renew the import restrictions on archeological material from Cambodia.

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<sup>10</sup> See generally, United Nations Educational, Scientific, and Cultural Organization, *States Parties: Cambodia*, available at <http://whc.unesco.org/en/statesparties/kh> (visited February 5, 2013).