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Nationality and the Jarvis debate

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Does the Khmer Rouge tribunal need a Victims' Unit chief who was born in Cambodia?

During a press conference Wednesday that touched on concerns prompted by the appointment of Helen Jarvis as head of the Khmer Rouge tribunal's Victims' Unit, court officials did not address one question that has recently been raised by several observers: Does it make sense to appoint as head of the unit someone who was not born in Cambodia?

While most criticism of the appointment, which became official June 1, has centred on Jarvis's political leanings or alleged conflicts of interest, several observers have emphasised that they believe an ethnic Cambodian would be better suited for the role.

"I myself - and I am a victim - I would want a Cambodian person to represent me," said Youk Chhang, director of the Documentation Centre of Cambodia (DC-Cam). He added that he believed other Cambodians who lost family members during the Khmer Rouge years or were otherwise victimised by the regime felt the same way.

Ou Virak, executive director of the Cambodian Centre for Human Rights, said he viewed having a Cambodian in the position as "desirable but not necessary", though he said he doubted that Jarvis, who is from Australia, would be able to effectively reach out to Cambodian victims.

"The victims themselves need to be comfortable," he said. "There's nothing hidden about the fact that Cambodians tend to look up to the West and tend to feel inferior. I'm not sure that having a Western person there would help encourage Cambodians to participate."

But others said Jarvis's ethnicity would have little bearing on her job performance, with some describing suggestions that it might as inherently discriminatory.

Court spokesman Reach Sambath said he believed the concerns were unfounded.

"I think it's an unfair criticism," he said. "I think it's racist. It's discrimination."

He noted that Jarvis holds dual Australian-Cambodian citizenship, having obtained Cambodian citizenship three years ago, and added that she speaks fluent Khmer.

Carla Ferstman, director of Redress, a London-based organisation that helps victims of torture and related crimes "obtain justice", said the question of ethnicity was less relevant than Jarvis's ability to serve as "an effective interlocutor" between victims and the court.

"I would say it's not here nor there, necessarily, whether she was born in Australia," Ferstman said. "What's important is whether victims see her as someone who can serve their interests."

Some defence lawyers who criticised Jarvis' appointment on other grounds said they viewed the ethnicity argument as something of a distraction.

Michael Karnavas, international co-lawyer for Khmer Rouge foreign minister Ieng Sary, said via email: "I would not place too much emphasis on having a Cambodian at the head of the Victims' Unit. I would insist on having an experienced and qualified individual."

Andrew Ianuzzi, a legal consultant for the defence team of former Khmer Rouge leader Nuon Chea, which has argued that Jarvis's political leanings could compromise her work at the court, said he didn't "see a problem" with the fact that she was not originally from Cambodia.

"If the person is qualified and is able to do the job, we don't care about nationality," he said.

For her part, Jarvis, when asked to respond to Youk Chhang's stated concerns, said Thursday, "I would say that many Cambodians hold nationalities in other countries, and I would hope that they would be given full rights in those countries."

The work of the unit

The tribunal Web site states that the Victims' Unit is responsible for informing victims "about their rights relating to participation and reparations, and enables them to file complaints and civil party applications to the [court] if they wish to do so". Its duties include helping victims obtain legal assistance, updating victims on the status of their complaints and civil party applications and ensuring "that the role of the unit and the rights of Victims are explained in outreach events throughout Cambodia".

Jarvis, who said an "overwhelming" majority of the unit's 35 to 40 staffers would be Cambodian, said she expected to have a hand in every aspect of the unit's work.

Youk Chhang expressed concern about the communication duties central to the unit's charge, saying Cambodian victims would be less likely to take seriously their interactions with the unit if they saw that it was run by someone who did not look Cambodian.

"Cambodians generally and culturally are not familiar with the difference between nationality and ethnicity," he said, responding to the argument that Jarvis holds dual citizenship.

Norman Pentelovitch, a legal associate for DC-Cam, seconded this point, saying via email: "I find it hard to believe that many Cambodians are aware of the fact she holds Cambodian citizenship, so to the extent her Cambodian citizenship is not widely known, I would say that most Cambodians ... will be unaware of her status."

Youk Chhang said a broader issue raised by the appointment was whether it would detract from Cambodia's sense of ownership of the court.

Pentelovitch, who emphasized that his concerns with the appointment had more to do with Jarvis's past work at the tribunal than with her ethnicity, nonetheless said it was "vitally important" for a Cambodian to be "at a minimum the co-director" of the unit.

But Reach Sambath described Jarvis as the "perfect candidate" for the job.

"She enjoys working with the people of Cambodia and she likes them and she has been involved in the issue for years, since before the beginning," he said. "She has so many ideas about what to do for the Khmer Rouge victims."