

# មជ្ឈមណ្ឌលឯកសារកម្ពុជា

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## BETTER LATE THAN NEVER: DELIVERING LONG OVERDUE JUSTICE TO THE CAMBODIAN PEOPLE

Thirty years after the end of the murderous Khmer Rouge regime, significant efforts are finally being made to give justice to the victims and survivors of the genocide. But the question still remains of how to best serve those victims and how to best provide peaceful reconciliation and justice for all parties involved. This paper addresses the current state of Cambodia, the history of genocide and suffering, and the possible approaches for dealing with its aftermath. Additionally, it offers suggestions for how to best achieve justice for the Cambodian people after three decades of waiting. After conducting extensive research, it appears that a combination of retributive and restorative approaches, both formal and informal, would best serve the interests and needs of the survivors of the Khmer Rouge.

### Cambodian Context

It is important to examine the current situation within Cambodia in order to more fully understand the issues of justice and reconciliation within the country. The post-genocide Cambodia has experienced political unrest, a struggling economy, poor standard of living,

expanding health crises, a broken education system, and a fractured social structure for much of the past three decades. After the decimation of the Khmer Rouge regime, the country has been struggling to regain its footing. According to the World Health Organization (WHO), the past 30 years of conflict have left Cambodia “desperately impoverished...with a per capita income of less than US\$ 300 per year.”<sup>1</sup> The UN Human Poverty Index ranks Cambodia 73<sup>rd</sup> out of 78 developing countries with some of the worst human development indicators among Southeast Asian nations. Cambodia experienced multiple periods of political upheaval and subsequent slowing of economic growth throughout the 1980s and 1990s. These inconsistencies in leadership and economic development patterns have negatively impacted the overall development of the country.

As a result of much of the historical unrest and political and economic “reforms” of the past few decades, an environment of all-encompassing corruption has developed in the country. According to a report by USAID/Cambodia, “survival corruption is a way of life for the poor, and a succession of medium and large-scale corrupt acts are the ticket to wealth for the politically powerful.”<sup>2</sup> This pattern of corruption extends into every area of society, including students paying unofficial daily fees to public school teachers/administrators, supplemental payment to doctors/health care workers to secure access to public health services, and police officials demanding small bribes for any number of excuses. Transparency International’s Corruption Perceptions Index (2008) ranked Cambodia’s corruption among the highest in the world at 166 out of 180.<sup>3</sup> The judicial system in Cambodia is also widely viewed as corrupt and

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<sup>1</sup> “WHO Country Cooperation Strategy (CCS): Cambodia.” *World Health Organization*. April 2001: 1-11

<sup>2</sup> Calavan, Michael M., Sergio Diaz Briquets, Jerald O’Brien. “Cambodian Corruption Assessment.” *USAID/Cambodia*. May-June 2004: 1-2

<sup>3</sup> “Cambodia Fact Sheet.” *The Common Language Project*. 1 Jan. 2009. 24 June 2009. [http://www.clpmag.org/article.php?article=Cambodia-Fact-Sheet\\_5](http://www.clpmag.org/article.php?article=Cambodia-Fact-Sheet_5)

weak. Indeed, the situation within the country is “exacerbated by an extremely weak judiciary and the absence of the rule of law.”<sup>4</sup> The number of competent legal professionals is inadequate, judges often give in to political pressures, and court rulings are essentially being put up for sale. A proven state of impunity has development, and most Cambodian citizens distrust the legal system, the police forces, and other enforcement bodies. Even entry exams for skilled professions, such as medicine, engineering, accounting, and the judiciary, are up for sale. The corruption is unavoidable, and those without the necessary resources to buy their way through the system inevitably become the victims of it.

The health care system in Cambodia is also failing to meet the basic needs of the people as well. According to the latest figures, life expectancy in Cambodia is 59 years for males and 65 years for females.<sup>5</sup> While still low, these figures are an improvement from those reported in 1999 (52.2 for males and 55.4 for females<sup>6</sup>). Treatable and/or preventable diseases are some of the leading causes of premature death in developing nations. In 1999, Cambodia had one of the most rapidly growing HIV/AIDS epidemics in Southeast Asia, with an estimated prevalence of 3.75% in the sexually active population. However, the epidemic seemed to have reached its peak in the late 1990s and has slowly decreased since then. Thanks to successfully implemented public health campaigns with the assistance of international aid, estimated prevalence rates among adults (ages 15-49) fell below 1% in 2007. But HIV/AIDS-related causes still accounted for about 10% of all deaths in Cambodia in 2002. Tuberculosis accounted for an estimated 8% of all deaths, followed by diarrhoeal diseases (7%), perinatal conditions (7%), and lower respiratory infections (5%). Malaria accounted for about 2% of overall deaths.<sup>7</sup> Under-5 mortality rates are

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<sup>4</sup> Calavan 2.

<sup>5</sup> World Health Statistics 2008

<sup>6</sup> “WHO CCS: Cambodia.” 1-11

<sup>7</sup> “WHO Mortality Country Fact Sheet.” *WHO Statistical Information System*. 2006.

another key development indicator, and in 2004, WHO estimated an average of 141 under-5 deaths per 1,000 live births (compared with an estimated 31 per 1,000 live births in the Western Pacific region). The leading causes of these deaths include neonatal causes (30%), diarrhoeal diseases (17%), and pneumonia (21%).<sup>8</sup> Most of these causes are associated with adverse living conditions, poor nutrition, and lack of access to vaccines.

The lack of an effective and reliable health care system has contributed to the difficulty in treating and preventing disease and other health crises. Three key reasons for slow progress in government sponsored public health care reform have been identified. The first is insufficient funds, staff, and accountability for financial staff and management. The second is low levels of remuneration and thus little incentive for health workers to do their jobs well. The third is poor quality and exploitative private health care, as the government has struggled to enforce new legislation meant to resolve these issues. But efforts are being made to improve access to health care, including new legislation, programs, and funding from outside sources.

According to a demographic study conducted in 2000, nearly 6% of the total population is age 60 and older, with approximately one out of every four households containing an older adult.<sup>9</sup> There are a highly disproportionate number of older women than older men, which may be a result of more men being killed in both in combat and by the Khmer Rouge. The majority of older adults in Cambodia live with at least one adult child. Overall, Cambodia has a very young demographic, with more than 60% of the population under the age of 25.<sup>10</sup> Thus, the majority of

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22 June 2009. [http://www.who.int/whosis/mort/profiles/mort\\_wpro\\_khm\\_cambodia.pdf](http://www.who.int/whosis/mort/profiles/mort_wpro_khm_cambodia.pdf)

<sup>8</sup> “WHO Mortality Country Fact Sheet”

<sup>9</sup> Zimmer, Zachary, John Knodel, Kiry Sovan Kim, Sina Puch. “The Impact of Past Conflicts and Social Disruption on the Elderly in Cambodia.” *Population and Development Review* 32.2 (2006): 333-360

<sup>10</sup> National Institute of Statistics. “Cambodia Inter-Censal Population Survey.” *United Nations Population Fund*. (2004): 13-14. 26 June 2009.

[http://cambodia.unfpa.org/docs/CIPS\\_2004\\_General%20Report.pdf](http://cambodia.unfpa.org/docs/CIPS_2004_General%20Report.pdf)

the population did not experience the atrocities of the Khmer Rouge period. Additionally, a large portion of the population is in need of jobs, education, access to public health care, and other social services that, as of now, are struggling to respond to basic demands.

Approximately 95% of Cambodians identify as Buddhist, but “*institutional religion* seems to play a relatively minor role in people’s lives.”<sup>11</sup> Animistic practices, including belief in spirits, still play a large role in Cambodian culture. Generally speaking, Buddhism serves more as a cultural force than a religious one. It serves a major role in defining the Khmer identity, as many consider themselves Buddhist because they are Khmer—or that to be Khmer is to be Buddhist. The Buddhist wat can be considered the “hub of social organization and exchange in traditional Khmer society.”<sup>12</sup> Most villages have their own wat, and larger communes may have numerous wat. They serve as the planning and organizational centers for communal projects, including infrastructure construction such as roads, bridges, and drainage systems. They are gathering places for local villagers and children, as well as the site of multiple festivals—both those with Buddhist origins, such as commemorating Buddha’s birth, and those without Buddhist ties, such as the New Year in April and the Festival of the Dead in September/October—that are celebrated throughout the year. The most commonly recognized Buddhist teachings are those about karma: when bad things happen to someone, it is believed to be a result of his/her sins or wrongdoings in a previous life, and if someone commits wrongdoing in this life, he/she will have to face the karma in the next life. Likewise, blessings in this life result from goodness in previous lives, and so on. Buddhist doctrine also has much to say about justice and reconciliation. In Buddhism, justice is not considered “necessary” so long as the offenders “hold the ‘right

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<sup>11</sup> “Cambodia Fact Sheet.”

<sup>12</sup> Thompson, Ashley. “Buddhism in Cambodia: Rupture and Continuity.” *Buddhism in World Cultures*. Ed. Stephen C. Berkwitz. Santa Barbara, CA: ABC-CLIO, Inc., 2006. 149-150

intentions' to correct their mistakes."<sup>13</sup> If the offenders come forward to admit the truth of their actions and then seek to correct them, Buddhist doctrine says they should be forgiven. But this "right action" must be voluntary. Additionally, Buddhism teaches "vindictiveness is not ended by being vindictive."<sup>14</sup> Seeking personal revenge is not accepted, and victims are to forgive the offenders if they exhibit "right action," or otherwise let karma deal with the offenders. Thus, Buddhist teachings focus on peace and forgiveness rather than retribution.

Traditionally, Buddhism has also served as a source of legitimacy and power, particularly for political leaders. Powerful people within Cambodia are sometimes called *neak mean bon* ("people with merit"), as they are considered to have been "born to privilege because they have large stores of accumulated merit from past lives."<sup>15</sup> However, *moral* legitimacy comes through exercising one's power properly, in ways that follow religious notions of "righteousness and proper world order."<sup>16</sup> Historically, Buddhism played a central role in defining cultural morality and providing legitimacy and power to leaders, particularly those considered just and honorable. But the unrest of the past several decades and today's new cultural tide of economic liberalization, democratization, and aid donation have challenged Buddhism's influence in these areas. Instead of leaders submitting to and being guided by Buddhism, today's elites now try to wield Buddhism for their own gain and power. According to social anthropologist Alexandra Kent, today's "morally depleted and subservient Buddhism may still be helping secure the power of today's elite as monks are co-opted by them," but it may be less capable of slowing down

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<sup>13</sup> Gellman, Mneesha. "No Justice, No Peace?: National Reconciliation and Local Conflict Resolution in Cambodia." *Asian Perspectives* 32.2 (2008): 37-57

<sup>14</sup> Linton, Suzannah. *Reconciliation in Cambodia*. Cambodia: Documentation Center of Cambodia, 2004. 145-146

<sup>15</sup> Kent, Alexandra. "Reconfiguring Security: Buddhism and Moral Legitimacy in Cambodia." *Security Dialogue*. (2006): 350. 24 June 2009.

<http://sdi.sagepub.com.libproxy.usc.edu/cgi/reprint/37/3/343>

<sup>16</sup> Kent 351.

their brutality or despotism as it had in the past.<sup>17</sup> Thus, as with every other aspect of Cambodian life, Buddhism has been deeply, perhaps irrevocably, damaged by the years of abuse under the Khmer Rouge and the instability that followed.

### Crimes of the Khmer Rouge

The Khmer Rouge (KR)/Communist Party of Kampuchea (CPK) was led by Saloth Sar, also known as Pol Pot. Though the KR forces held control of the Cambodian countryside in the early 1970s, the CPK officially came to power in Cambodia in 1975, after years of fighting U.S.-backed Lon Nol forces. Upon seizing power, Pol Pot immediately began implementing radical Communist policies aimed at creating a utopian agricultural society. On April 17, 1975, Khmer Rouge forces order civilians to evacuate the capital city of Phnom Penh under the guise of U.S. bomb threats. Hundreds of thousands of people were forced to evacuate to the countryside. They were told to bring nothing with them. This event marked the beginning of what Pol Pot called “Year Zero.”<sup>18</sup> Cambodia was to start over, to become purified and new.

The Khmer Rouge viewed anyone in opposition to their policies and goals as enemies and a threat to their success. They were determined to eliminate all enemies from the country and to purify the Khmer people. The KR leadership identified several key “enemies” of the party, including: ethnic Vietnamese, ethnic Chinese, Cham Muslims, the educated/intelligentsia, Capitalists, urbanites, former Lon Nol soldiers or supports, etc. “Old people” or “base people” were viewed as the ideal members of society—they were peasant farmers who lived in the countryside, worked the land, were uneducated, and poor. The “new people,” identified primarily as former city-dwellers who were forcibly relocated, were enemies. If the “new people” could

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<sup>17</sup> Kent 357.

<sup>18</sup> “Cambodia Genocide (Pol Pot).” *United Human Rights Council*. 26 June 2009. [http://www.unitedhumanrights.org/Genocide/pol\\_pot.htm](http://www.unitedhumanrights.org/Genocide/pol_pot.htm)

not adjust to peasant life, they were either killed or died of disease and starvation. The Khmer Rouge often said “to keep you is no gain, to kill you is no loss.” People were expendable, and it was always safer to kill a potential enemy than to let him live free. Everyone was put to work, harvesting and planting rice and other crops, cooking for the communes where they were now forced to live, etc. Children were separated from their parents and placed in different communes.<sup>19</sup> Food was scarce, as most of the harvested rice went towards to country’s stockpile in order to fulfill the KR’s economic goals for Cambodia. Workers were forbidden from eating the food they harvested or the fruits growing in the trees—all of these things belonged to the “Angkar,” meaning abstractly “the organization.” People lived in a constant state of fear. Many quickly began dying of disease, starvation, and execution. In order to achieve his goal of purification, Pol Pot began ordering purges throughout the country. Anyone who was suspected of “anti-Angkar” activities would be arrested or killed immediately.

Tuol Sleng prison, also known as S-21, was the main site for housing, interrogating, and torturing perceived political enemies. An estimated 14,000 men, women, and children passed through Tuol Sleng, and were later murdered (“smashed”) by the Khmer Rouge. The head of S-21 was Kang Keck Ieu, also known as Brother Duch: “According to Duch, torture helped to loosen a prisoner’s memories... ‘Beat him until he tells everything, beat him to get at the deep things.’”<sup>20</sup> Prisoners were taken to “interrogation rooms,” where they were brutally tortured in order to extract confessions. Depending on the prescribed level of interrogation (“mild,” “hot,” or “rabid”), the victim would be put through any number of cruelties:

“Typically, the victim was asked a battery of questions that had no correct answer.

Torture came in a variety of forms: beatings with fists, feet, sticks, or electric wire;

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<sup>19</sup> “Cambodia Genocide (Pol Pot).”

<sup>20</sup> Maguire, Peter. “Angkar Is More Important to Me Than My Father and Mother.” *Facing Death in Cambodia*. New York: Columbia University Press, 2005: 58

cigarette burns; electric shock; force-feeding feces; needle jabbings; ripping out fingernails; suffocation with a plastic bag; and a variety of water tortures.”<sup>21</sup>

The victims were instructed to confess their betrayals and to give up any names of other traitors and enemies they knew of. Often times, the victims simply listed off every name they could think of, simply to stop the torture. Some confessions were forty pages long, others 2 or 3 pages. After a name was given up, it was investigated, and the individual was often arrested and taken to prison. After the prisoners had been tortured and Duch was satisfied that they had confessed every name, they were designated to be “smashed.” Choeng Ek, located approximately 15 kilometers from S-21, was the primary killing site for the victims. Prisoners were transported to Choeng Ek, processed, and then taken to the killing site. They were lined up on the edge of pits and struck on the head or neck with iron bars that were nearly a meter long.<sup>22</sup> Their bodies were thrown into the pits and several hundred were buried together. Young children, who were often brought to the prison with their parents, were killed at Choeng Ek as well—guards would hold them by their ankles and beat them to death against a tree, then bury them in mass graves. Such mass graves were discovered all across the Cambodian countryside, as such atrocities occurred everywhere under Pol Pot.

An estimated 1.7 million people, or over 20% of the population, died at the hands of the Khmer Rouge between 1975 and 1979. It is estimated that 100% of all ethnic Vietnamese were killed or forced out of the country, 40% of Cham Muslims were killed, and 50% of ethnic Chinese. Youk Chhang, director of the Documentation Center of Cambodia (DC-Cam) asserts that every survivor lost at least one friend or family member, though it seems that most lost many more. According to a study of Khmer Rouge survivors aged 60 and older conducted in 2004,

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<sup>21</sup> Maguire 59.

<sup>22</sup> Maguire 65.

more than 43% of respondents experienced the death of at least one child under the KR, more than two-thirds of which were due to violence.<sup>23</sup> The former KR leadership (including Ieng Sary and his wife Ieng Thirith, Nuon Chea, and Duch) has officially been charged with crimes against humanity, murder, and/or war crimes by the ECCC. Specific charges of genocide have not been brought due to controversy over whether or not the Khmer Rouge's actions meet the legal qualifications of genocide. Many scholars have argued for the case of genocide charges, but thus far such charges have not been added.

### Introduction to Restorative Justice

Restorative justice aims for the establishment of lasting peace after conflict and preventative problem solving through the active participation of victims, offenders, and the overall community in reconciliation processes. It is dependent upon personal involvement and participation of these groups, and it requires that the conflict be viewed within its particular social context. The *objectives* of restorative justice are as follows: to fully meet the victims' needs (material, financial, emotional, and social), to "reintegrate offenders" into the community, to enable offenders to actively assume responsibility for their actions, to form a "working community" that actively prevents crime and supports the rehabilitation of victims and offenders, and to avoid "the escalation of legal justice" and accompanying costs/delays.<sup>24</sup> Thus, restorative justice is centrally concerned with providing restoration of damage to the victim and the community and with restoring the offenders to "law-abiding lives."<sup>25</sup> Ideally, these processes should take place in conjunction with the proceedings of recognized justice agencies.

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<sup>23</sup> Zimmer 347.

<sup>24</sup> Marshall, Tony F. "Restorative justice: An overview." *A Restorative Justice Reader*. Ed. Gerry Johnstone. Devon, UK: Willan Publishing, 2004: 29

<sup>25</sup> Marshall 30.

Howard Zehr, a proponent of the restorative justice movement, contends that “victims have many needs...yet few, if any, of them will be met in the criminal justice process.”<sup>26</sup> Victims need the opportunity to give voice to their feelings, to receive restitution, to get answers to their questions, to experience restoration of power after the offender has taken that power away. They need an experience of forgiveness. Additionally, Zehr argues that the criminal justice system is also failing offenders. As evidenced by rates of repeat offenders, the “system” is not preventing new crimes. Indeed, the process of punishment and imprisonment may be encouraging criminal behavior rather than discouraging it—offenders are not being healed or helped. Moreover, criminal proceedings do not demand accountability from the offenders. Rather than letting offenders acknowledge the committed offense and the need to make amends, criminal proceedings focus on purely legal arguments. Thus, the goal of justice gets lost in battles over legal definitions of “guilt,” procedural technicalities, possibilities for avoiding punishment, etc. Just as victims need the experience of forgiveness to heal and move forward, so too do offenders need healing through repentance and conversion. But the criminal justice system is failing both victims and offenders alike.

For Zehr, the failures of the criminal justice system arise from the core assumptions and definitions about justice. Society has defined justice as “the *establishment of blame* and the *imposition of pain* all administered according to right rules.”<sup>27</sup> And the legal system defines crime as an offence against the state—that is, the state is legally the violated party. Thus, the victims are excluded from the process because by legal definition they are not part of the offence. Based on these core assumptions and definitions, it is no wonder the system is failing to achieve effective healing for victims and offenders alike. But restorative justice challenges these

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<sup>26</sup> Zehr, Howard. “Retributive justice, restorative justice” *A Restorative Justice Reader*. Ed. Gerry Johnstone. Devon, UK: Willan Publishing, 2004: 68-69

<sup>27</sup> Zehr 71.

ideas. Accountability no longer means simply accepting the punishment for the wrongs committed—within the context of restorative justice, accountability means “taking responsibility for what has been done and taking action to make things right.”<sup>28</sup> Victims and offenders are brought in from the periphery and placed at the center of the process. Behavior must be viewed in its full moral, social, economic, and political context. In short, it allows for—perhaps even requires—the establishment of new assumptions and a new framework for justice.

### Introduction to Retributive Justice

Retributive justice seeks to settle conflict by imposing supposedly proportional punishments for specific offenses. The traditional view in retributive theory asserts that “punishing a person is morally justified if and only if the person committed an offense for which he deserves punishment.”<sup>29</sup> More recently, supporters of the retributive theory have revised this traditional view. From a legalistic perspective, offenses that “deserve punishment” are those that break the law. In a slight variation of this, some supporters also argue that punishment is morally justified only if the offender commits a *moral offense* in breaking the law. For others, the argument now states that for punishment to be morally justified, it is *generally* necessary for the offense to deserve punishment, but not always.

Retributive justice is based upon the contention that it is the “wrongness of the criminal act that justifies the imposition of punishment on the offender.”<sup>30</sup> But, as Deirdre Golash points out, retributive theory is based on a paradox. Each crime is considered an immoral/unethical offense, and it is assumed that each crime has an equivalent (and opposite) moral/ethical punishment. But punishment inevitably involves acts that are considered unacceptable or even

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<sup>28</sup> Zehr 80.

<sup>29</sup> Sterba, James P. “Retributive Justice.” *Political Theory* 5.3 (1977): 350

<sup>30</sup> Golash, Deirdre. “The Retributive Paradox.” *Analysis*. 54.2 (1994): 72-78

criminal in any other context (ex: paying a fine/surrendering property as punishment for theft, or the death penalty as punishment for murder). So proponents of retributive justice must show that not only is the crime wrong and the punishment right, but that “the [punishment] is right *because* the [crime] is wrong.”<sup>31</sup>

According to Zehr, retributive justice is what is wrong with the current system, because everything is viewed in purely legal terms. Though retributive justice attempts to restore order through delivering *deserved* punishment for breaking the rules, the punishments do not always fit the crime. Moreover, retributive justice does not seek peace—for victims or for offenders. Instituting punishment in order to discourage further rule breaking or to influence behavior does little to rehabilitate offenders or provide reconciliation for the victims. Rather than promoting healing and restoring offenders to lawful society, punishment can increase anger, resentment, and alienation from society, making offenders more likely to commit another crime. Retributive justice on its own does not serve the interests of peaceful reconciliation.

#### The Extraordinary Chambers in the Courts of Cambodia (ECCC)

Established in 2003 after the Cambodian National Assembly passed a law for its creation (in 2001), the Extraordinary Chambers in the Courts of Cambodia (or ECCC) was created to prosecute the crimes committed during the Khmer Rouge regime (1975-79). It is a mixed tribunal jointly created by the Cambodian government and the United Nations, though it is meant to be independent of both. It is a “Cambodian court with international participation that will apply international standards.”<sup>32</sup> Cambodia outlawed the death penalty in 1989, so it will not be

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<sup>31</sup> Golash 72.

<sup>32</sup> “Introduction: ECCC.” *Extraordinary Chambers in the Courts of Cambodia*. 26 June 2009 [http://www.eccc.gov.kh/english/about\\_eccc.aspx](http://www.eccc.gov.kh/english/about_eccc.aspx)

available in sentencing if the defendants are convicted, though many survivors have expressed preference for such punishment.

There has been chronic controversy over the ECCC, primarily focused on the misappropriation of funds and reports of corruption—specifically of Cambodian administrators requiring kickbacks and bribes from Cambodian judges/prosecutors in exchange for their roles in the court. Though officials have denied any reports of misconduct or corruption. Other criticisms have included complaints about rising costs of the trials. The ECCC was originally estimated to cost about \$60 million over three years (or about \$20 million per year). However, in early 2008, the estimated cost was increased to \$30 million per year, and costs are expected to continue rising.<sup>33</sup> Many people have also expressed discontent with the amount of time it took to establish the courts, prepare for and begin the trials, and now to make it through the proceedings. The trial is presented in three languages (English, French, and Khmer) for the public, and the translation processes have undoubtedly delayed the proceedings. The court's *modus operandi* also inevitably results in delays, as there are multiple prosecution lawyers, judges, defense lawyers, and lawyers for civil party groups, who all want a chance to investigate, ask question, offer objections, and point to various evidentiary documents.

The ECCC incorporates aspects of traditional retributive justice by seeking a conviction and subsequent punishment (retribution) for wrongs committed. However, it also seeks to incorporate aspects of restorative justice through outreach and victim participation programs. Through these programs, survivors from around the country are brought to witness the court proceedings. Outreach materials, including information booklets, pamphlets, posters, t-shirts, stickers, etc. have also been distributed in the provinces. These materials provide information

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<sup>33</sup> “FAQ.” *Extraordinary Chambers in the Courts of Cambodia*. 26 June 2009  
[http://www.eccc.gov.kh/english/about\\_eccc.aspx](http://www.eccc.gov.kh/english/about_eccc.aspx)

about the court and the trial proceedings and aim to raise awareness about the ECCC and encourage victim participation. Survivors are also given assistance in filing official statements/complaints with the court, if they so desire. Additionally, speaking events, village meetings, as well as interviews with radio programs like Voice of America (VOA) have been organized to increase public awareness and attention.

### Survivor Perspectives

#### *Nhim Savath: Former Lon Nol Soldier & Victim of the KR*

Nhim Savath is a 69-year-old male and lives in Kok Kruos Village, Preytaom, Kompont Ro. He was a student and then served as a Lon Nol soldier from 1972 until 1975. He married one of his cousins in 1967, and together they had two children in the early 1970s. When the “KR liberation army” started to gain power, Savath said he felt “very unhappy because [he] had already experience so much war with the French and the Vietnamese...[he] felt that the KR was just going to be another war.” After April 17, 1975, Savath was evacuated by the KR as a prisoner of war and then moved to another province three months later to work on building a dam. He was reunited with his wife at one of the work camps. He had two children more children with her during this period. When asked to describe everyday life under the Khmer Rouge, Savath responded:

*“We never got enough food to eat—in some places, people were given a full cup of rice per day. But where I was, people were only given one spoonful of rice per day. I worked from 6 or 7 am until 11 pm, with one break and “dinner” at 6 pm each evening. There were 32 people living in one house with me, so space was limited and cramped. Everyone, including myself, was very thin and skinny. We did not even have time to wash our clothes—the bugs were awful and my skin itched so badly. It was so itchy.”*

Savath lost all four of his children during the KR. His two older children both died of disease, most likely chicken pox—they were unable to get medicine and they had never received vaccinations. His two younger children died of malnutrition. His wife was also forced to work, and she was not given enough food. She was unable to produce enough breast milk for the children, and they slowly died of starvation. His own life was constantly threatened, and he was beaten as he worked. In 1976, he was imprisoned in Preytaom for 6 months on accusations of treason for his previous role as a Lon Nol soldier. When asked how he survived the KR, he explained: “The most important thing was to work and to keep quiet—to not say anything. Don’t draw attention. And you had to have patience.” When the Vietnamese liberated him in 1979, he and his wife set out on the road and walked back to their home village. He started a new life without any cattle, equipment, tools, etc. He managed to find fishing tools to catch fish in the river, but it was very difficult to completely start over and build a new life from nothing.

Nhim Savath lost so much under the Khmer Rouge, but like many others, he found solace in knowing that he was not the only one who suffered. Thinking about others who had lost their children, family, and friends helped him to move forward and heal. On the topic of healing, Savath offered the following insight:

*“Unity between the people is important for helping the country move on. It is the unity that will help them. For example, I joined the local committee to rebuild the pagoda in this area. Having a common goal of focus—having unity—is important...Religion is also a very important aspect of healing. After all, religion is one of the three things named in the country’s motto: ‘Nation, Religion, and King’ ...People should share the same ideas, like uniting with the goals of the government in order to create the unity needed for healing. We just need unity.”*

Savath was told about the Khmer Rouge Trials (the ECCC) earlier in 2009 through one of DC-Cam's "Living Documents" projects in his area. He believes the courts can decide what to do with Duch, Ieng Sary, Nuon Chea, and others, and he hopes that the judges are fair and capable so that they can bring justice to Cambodia. When asked what he would do if he were the judge, Savath confided that he would "execute the people on trial...put the KR leadership to death." However, he believes that only the top KR leaders should be prosecuted and condemned. The lower level cadres "were only following orders from their superiors." Ultimately, the judges will determine the outcome of the trial, but he hopes it will bring justice. He agrees that the trials are one way for the Cambodian people to unite—and thus to heal—because the law gives them unity. Savath also believes that it is vital to teach future generations about what happened under the Khmer Rouge. He wants to see children educated about the history of the KR "to prevent it from happening again."

*Chea Mao: Former KR Child Soldier & S-21 Prison Guard*

Chea Mao is a 59-year-old male and lives in Kampong Chhang province. He was forced to join the Khmer Rouge liberation army as a child soldier when he was 12 years old, and he was taken away from his home in 1973. He tried to escape twice early on, but each time he was brought back to the battlefield. He finally decided that he would stay and fight with the KR against the Lon Nol forces, believing that if the country found peace, his family would be better off. He never saw his family again, and in 1979 he learned that they had died of starvation under the KR. Only his younger brother survived with him.

After 1975, Chea Mao served as a soldier near the Vietnam border until 1977, when he was moved to Phnom Penh. He was a member of a special fighting force unit known as Division 703. Later, he was assigned as a guard outside the walls of Tuol Sleng prison to provide security.

He claims he “did not know about what went on inside the prison...[he] just provided security protection along the wall and on the street...[His] target was just as a security guard, so [he] did not know about those who died” inside the prison walls. However, he did witness the death of a foreigner—a white male—who was burned to death by other KR cadre outside the wall. He reiterated several times that he was simply a guard, that he patrolled the fence, and that if he guarded carelessly he would be sent to prison. He witnessed several fellow cadres being arrested, though he never knew the reason:

*“When they were arrested, [the officers said] they were sent to another place to work, but really they were sent to death. I knew that because those arrested were in the same group as me...I saw that they were handcuffed when they were put into the car and taken away. I knew that they were going to be killed, and I knew what my destiny would be if I got into trouble...”*

Chea Mao believes that the victims of the Khmer Rouge deserve justice. He considers himself a victim, rather than a perpetrator, and asserts that he was simply following orders. When he heard about all of the victims who died under the KR, he “tried to compare the severity of the crimes against them to [what happened to his] family...Maybe they were mistreated in the same way.” He also finds peace in having the freedom to grow his own food and the live on his own land. He says he does not want to take revenge, that “vindictiveness is not good.” Even when he had the chance to seek revenge, he says he chose not to. When asked about what justice would look like for Cambodia, Mao explained:

*“The people who died did so with dignity, but those who survived do not have dignity because they keep thinking about those who died. There is no dignity in surviving. I keep thinking of every person who died during the Khmer Rouge...I still dedicate food to my parents at the pagoda. I think about it every day...[As for the KR trials], from a legal*

*perspective, I do not care—let [Duch] face the trial because he did something bad. But from the Buddhist perspective, let him face the karma...The people who did the bad things will face the same consequences in the next life.”*

As shown in this statement, Mao adopts a Buddhist perspective on justice and reconciliation. He had little information about the trials and, for the most part, seemed uninterested in the proceedings. He is mainly concerned for the present state of his life. He says he does not have peace of mind because he is still in poverty—that he cannot have peace until he no longer lives under the poverty line. Justice, trial proceedings, reconciliation efforts, and the international community are thus irrelevant.

*Mayane: Former Community Leader & Victim of the KR*

Mayane is a 65-year-old woman and lives in Phnom Penh. She was born in the capital city, and she married in 1972. In 1974, her husband traveled to the United States to be trained as a pilot, while she worked as a primary school teacher until 1975. She and her husband were evacuated from Phnom Penh on April 17, 1975. They were told not to bring any of their belongings with them because they would be returning in three days. But Mayane tried to take a cooking pot with her, and the KR cadres threatened to kill her if she did not surrender the pot. Somehow she managed to defy their orders and keep the pot with her. The day before the evacuation, Mayane had fallen ill. When she arrived in the countryside with the other evacuees, she asked for medicine, was given good food, and managed to recover. She was later evacuated to another province:

*“Initially, I was assigned to do light work, peeling potatoes and such...but later I had to get up at 3 am to get to the rice field by 4 or 5 am, where we worked until 11 pm. During the day, I was allotted one small break and then dinner at 5 pm. I only got 3 hours of*

*sleep each day, and I suffered from sleep deprivation. The schedule was the same throughout the year, even during the rainy summer season...*

Mayane's husband and older brother were eventually arrested, and she was told that they were being taken somewhere to be "re-educated." She waited for them to return, and whenever she asked about their whereabouts, she was told that the education process was very long. But after awhile, she knew they had been killed, though she continued to lie to other people, telling them that her husband and brother were away being educated and would return. She continued with this lie because she feared being accused by the KR of being an enemy due to her connections with people who had been arrested. Mayane never dared to act against the KR because she was afraid. She witnessed two people being "killed and then dragged through the village after they were caught stealing two corn...it was an example to others."

When asked how she survived the KR, Mayane said it was simply her luck that helped her. Her friend who was present for the interview added that Mayane was well liked in the village where she worked—if she had disappeared, then people would have asked too many questions and it would have caused a disruption. The KR could not get rid of her without causing a commotion. Mayane added: "In the morning, people were happy to have survived the night. But in the evening, they began to grow worried again."

After the Vietnamese gained control of the territory in 1979, Mayane moved to an area 6 km from Phnom Penh. There she helped set up a new village with a school and a hospital. She took care of the other survivors by taking those in need of medical attention to the hospital in the mornings, and then bringing them back again in the afternoon or evening. The Vietnamese saw her playing such an active role in the community, and they asked her to join the new government less than a year later:

*“There was a rumor going around that people returning to Phnom Penh were being killed, so people were afraid. I had to continue returning to the village to disprove this...I was trained in politics and then joined the Women’s Association within the government. At first, I had no idea what I was supposed to be doing. I asked [the mayor] of Phnom Penh, but he didn’t know either...I ended up starting a school. When it was running smoothly, I became the chief of the Women’s Association...During my time in the government I refused to accept bribes. I didn’t want to be a part of that.”*

Mayane’s work in the government kept her busy and focused on the future. She says all of this activity helped her to heal. It allowed her to direct her attention toward moving forward instead of thinking about the past. Like other survivors, she tries to think about what happened to her and compare her suffering to that of others—remembering that others suffered more helps her find peace. She lost her “property, diamonds, and but...but those things, material things, can be replaced. They don’t matter.” She never remarried or had children.

Mayane admitted that she has been watching the ECCC proceedings on television, but she does not know whether to say the trials are a positive or a negative. Before the trials, people did not focus on the Khmer Rouge anymore. But now that the trials are taking place, it seems to her that people are thinking about the genocide and the past more. She is dissatisfied with the slow progress so far. At this point, the trials are so far removed from the genocide that it makes it difficult to feel like justice is being served. Mayane says the trials would have been much more helpful had they taken place immediately after the Khmer Rouge period. But for now, she wants to see future generations educated about the genocide. Parents should tell their children about the past: “Everyone’s experience is different. Each family should write down its own history to tell its own story.”

*Him Huy: Former Head of the Special Unit at S-21*

Him Huy is a 54-year-old male from Kbal Chroy village. Up until 1972, he was a student at the local school and helped his parents with the farming. In 1972, he was conscripted into the revolutionary army. Initially, he was simply a soldier. Then in 1973, he was recruited into a special force to serve and protect the government in the “special zone” of Phnom Penh. In 1974 and 1975, he was sent to the infantry battalion and protected the city in the southwest zone. He described everyday life:

*“It was simply a soldiers’ life. We were trained to fight the enemy. If we didn’t fight we suffered the consequences. After a fight at the front line we would go back to the base for political training and military strategy. We went back and forth from the base. Life was terrible fighting the Lon Nol troops. We were in trenches, it was terrible, there were insects, we couldn’t eat or sleep. I fell very ill [with malaria] and I was allowed to go to the hospital in 1974. After the hospital I was sent back to the front line near Phnom Penh... we were killing many Lon Nol soldiers there. In that same year I was sick a couple more times...when I was in the hospital I was scared. I thought about my life. When I saw my family I did not want to go back to the fighting, but the village chief pressured so I went back.”*

At the end of 1974, Duch’s deputy named Hor accepted Him Huy for a special fighting force called Division 703. Her served on the intelligence unit and was responsible for gathering information on the enemy forces so they could be captured effectively. On April 17, 1975, he served in one of the prongs en route from Cheoung Ek to Phnom Penh. He claims to have captured an artillery and a Lon Nol Colonel, whom he had an opportunity to kill “but [he] did not kill him.” His unit had a confrontation with a group of Lon Nol soldiers who refused to surrender, and Huy was seriously injured. His unit found him the next morning. He had severe

injuries from shrapnel in his back and legs. His unit took him to the hospital, and he remained there until he recovered.

In 1976, he was told he was being transferred to the Navy, but he was actually taken to Tuol Sleng with a group of other cadres. They remained at S-21 for several days, and then they began to establish prison guards, divided into units: "After all of the units were established, many prisoners from Division 703, our offices, and even staff at Tuol Sleng were arrested and questioned. Purification started in 1977." Huy was assigned to the guard unit, and he was responsible for counting prisoners, receiving new prisoners as they arrived, and collecting their information. Duch was ordering every unit to be cleansed of possible enemies, and Huy was appointed Deputy Chief in charge of receiving prisoners. Huy asserts that he did not know the details of the torture or interrogation that took place at S-21. He was aware that prisoners were tortured, but it took place in a separate building and he was "[not allowed] to talk to the interrogation unit." From time to time, Hor instructed Huy to patrol the prison buildings at night to see if the guards were sleeping on the job:

*"It was hard for me to climb the stairs because of my previous injury...and I hated the smell of the prison...they only cleaned the buildings once every three days. [There were no bathrooms,] and the prisoners couldn't shower. It smelled so, so bad...The rules were no talking amongst [the prisoners] and no talking to the guards...Sometimes at night, I heard prisoners crying and screaming."*

Him Huy insisted that he hated working in the prison and requested to be sent back to the frontlines to fight at the Vietnam border. He also claimed to have developed a plan with Hor and others to revolt against Duch. He revealed the details of the plan and talked of a split that occurred between Hor and Duch. These claims were new information and have not been verified, but Huy went into extensive detail about his planned rebellion. He also said that the plan was

never carried out because “Hor was the only one who could make [it] happen,” so he himself was not at fault.

Huy’s unit was often in charge of transporting prisoners from S-21 to Choeng Ek, where they were killed and buried in mass graves. Upon arriving at Choeng Ek, he was in charge of recording every name and then taking the list back to Sous Thy at S-21. When prompted, he confirmed that some of the cadre raped the women at Huy denied taking part in the actual killings, though other reports contradict this statement. He admits to one situation, in which Duch approached him and asked “Comrade, would you dare to kill? Are you absolute?” There was only one prisoner remaining, so Huy grabbed the iron bar and clubbed him to death, “then threw down the bar and walked away.” Other sources indicate that he took part in numerous killings, though Huy continues to deny these reports when questioned. When asked if he feels responsible for his actions under the KR or if he regrets anything, he responded:

*“No, I don’t feel responsible. I had a plan [for rebellion]. I did the best I could. When [the plan] failed, my hope left. You could ask me, ‘Did I have a choice?’ But no, I had no choice...During that period I regret all the things that happened. It is always in my heart and in my mind. It was really bad. I never thought that I would survive the regime.”*

After the Vietnamese gained control of Cambodia, Him Huy returned to his home village. His entire family survived, and they still had gold hidden, “so [his] family had a life.” He married in 1981 and now has nine children and three grandchildren, and says he hopes to have more. He even joked that he wanted more children, and “just imagine how many children [he] could have had if the war had not happened!”

Him Huy says that the memories of the past “are just like yesterday” for him. When asked about the KR trials, he remarked that he believes he will find peace after Duch is tried by the court, because Duch “tried to have [him] killed.” He repeatedly insisted that he and the other

cadres had no choice, that they were just following orders, and that they could not be held responsible for what happened—according to Huy, only Duch should be responsible, and only Duch is at fault for the crimes committed. He agrees that future generations should be educated about the KR: “I think it is important—education is the only way out. Being uneducated leads to darkness. I want my children to know.” When asked about what he would need in order to find personal peace, Him Huy responded:

*“It is a painful memory, what happened at Tuol Sleng...There were so many times that I wanted to commit suicide...But I knew that if I pulled the trigger they would go after my family and kill them, too...There is no way for me to feel at peace unless [people] stop asking me questions. Just stop asking me questions. Then I will have peace.”*

### Final Analysis

A common theme present in the interviews mentioned previously was that of shared experiences. Nearly all of the interviewees mentioned—and others not mentioned in this paper—voluntarily spoke of finding solace in remembering that they were not alone in their suffering, and that others around them had suffered the same or worse. Thus, as expressed by Mayane in her interview, sharing one’s experiences with others is key creating an open environment that allows for building peace through fellowship. DC-Cam helped to initiate one such program through the dramatic play called “Breaking The Silence.” The play tells the stories of different survivors of the Khmer Rouge, ranging from a young girl raped by KR cadres, to child soldiers conscripted into the KR, to a son desperate to find where his father was buried. The play also incorporates traditional Cambodian songs, mixed in with the different stories and interactions between characters. Performances are organized and presented before local communities. It is a way to encourage dialogue about the genocide and individual experiences. It allows the audience

to look at the past through the eyes of multiple people with different histories, roles, and reactions to the past. But it also encourages the audience members to own their personal experiences, or those of their families. These performances should continue to be expanded, presented to more audiences, and perhaps changed to include more characters and perspectives. Helping communities facilitate open forums after the performances to allow people to discuss their reactions or share their own stories with others could also prove beneficial.

According to Suzannah Linton's conclusions on a study conducted by DC-Cam in 2002, "Cambodians want to be reconciled with the Khmer Rouge/CPK and move together towards a better future...Forgiveness is very important; it is key for reconciliation."<sup>34</sup> But as the study revealed, forgiveness does not mean forgetting what happened. Rather, it seems that forgiveness means finding some resolution to one's own experiences, "putting aside the negative and destructive feelings," and then moving forward towards a healthy existence.<sup>35</sup> This perspective seems to be widely accepted among Cambodians, as it is based in Buddhist teachings. It is important to note that this perspective does not necessarily conflict with commonly held feelings of anger or hatred towards the Khmer Rouge, results from past experiences and current attitudes towards the KR. That is, individuals may experience feelings of anger towards the KR on a daily basis while also recognizing the need to forgive. Additionally, it is possible for survivors to forgive *individual Khmer Rouge* that caused them harm while still maintaining hatred towards the leaders or the Khmer Rouge violence in general.<sup>36</sup> Survey respondents also recognized reconciliation as a multi-faceted process that involves both personal healing and a collective effort to live peacefully together and work towards a common future. The ideas and beliefs

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<sup>34</sup> Linton 226-227.

<sup>35</sup> Linton 227.

<sup>36</sup> Pham, Phuong, Patrek Vinck, Mychelle Balthazard, Sokhom Hean, Eric Stover. "So We Will Never Forget." Human Rights Center, UC-Berkley, January 2009. 29

expressed by respondents through this survey closely align with the ideology of restorative justice. However, most respondents also agreed that people must take responsibility for the wrongs committed—“and most respondents equated this with individual criminal responsibility in a court of law.”<sup>37</sup> But 71.24% of respondents also viewed the lower-ranking KR cadres as some kind of victim: 29.95% viewed them as purely victims, 23.89% viewed them as purely perpetrators, and 41.29% viewed them as a mix of both.<sup>38</sup>

In a study conducted by UC-Berkley, respondents were asked about what they felt needs to happen before they can forgive the top KR leaders. Of the respondents who lived under the KR, 41.8% said the leaders must be punished, 23.9% said they can never forgive the leaders, 12.3% said the leaders must confess and tell the truth, and 5.4% said the leaders must apologize.<sup>39</sup> Of the respondents who did not live under the KR, 33.1% said the leaders must be punished, 19.9% said they could not be forgiven, 10.9% said they must apologize, and 10.0% said they must compensate survivors. Based on the study, it seems that Cambodians want to see the former Khmer Rouge leaders held accountable for their crimes, and that (for many respondents) some form of punishment must precede forgiveness. Most respondents wanted to see accountability taken by those who committed violent acts, specifically killing, starvation, forced labor, and torture. The largest number of respondents (48.9%) said they would like to see those responsible put on trial; 22.8% said they want to see them punished; 12.4% want them put in prison; and 12% want them to be executed.<sup>40</sup>

Based on these results, it appears that the most effective approach to justice and reconciliation efforts would be through a combination of restorative and retributive justice

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<sup>37</sup> Linton 227.

<sup>38</sup> Linton 153-154.

<sup>39</sup> Pham 30.

<sup>40</sup> Pham 32.

practices, similar to the current ECCC efforts underway. However, it would be beneficial to expand the current efforts so as to incorporate a broader base of Cambodians, particularly those who fall outside the groups wanting some form of punishment as justice. Increasing restorative justice programs is essential to providing effective resolutions for more people. It is important to remember that no one program or approach will be able to serve everyone. Thus, a plan that integrates multiple approaches will be better able to serve the needs of a diverse population. So in addition to the hybrid tribunal, facilitating some forums for discussion specifically between victims and perpetrators could help encourage reconciliation and peace, especially for those individuals who expressed desires to see former perpetrators confess and/or apologize for their roles. Additionally, such interactions may help foster greater understanding between victims and perpetrators and allow each party to feel compassion for the other's experiences—particularly in the cases where offenders fall into the categories of both victim and perpetrator.

As Mayane and Nhim Savath both noted, having something to work for/towards, something to redirect focus onto the future, can help individuals and the community as a whole to build a new peace. Common goals can unite former enemies and bring together people with otherwise very different beliefs. Organizing community projects, such as revitalizing infrastructure or creating communal welfare programs or rebuilding pagodas, are one way to create goal-oriented cooperation. Cambodians could also take it upon themselves to increase awareness of the Khmer Rouge history through recording their own stories (as suggested by Mayane), participating in the survivor outreach programs with the ECCC, or organizing memorial/remembrance events for the community. In areas like Siem Reap that rely on tourism, information about the Khmer Rouge could be incorporated into guided tours of major sites. For instance, tour guides could educate visitors on how Angkor Wat was protected during the KR, the impact the violence had on surrounding areas, etc. Most major tourist sites in Europe will

provide information about what happened to the site during World War II or display pictures of the damage sustained from bombings. The KR touched every corner of Cambodia, and visitors should know what the country has been through, give voice to the survivors' stories, and increase awareness so that it may never happen again.