

មជ្ឈមណ្ឌលឯកសារកម្ពុជា

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Looking to the Future Justice and Reconciliation in Cambodia

As my plane touched down in Cambodia almost a month ago, I was prepared to witness the detrimental affects that genocide had imposed upon the country. Two weeks of classes previous to my arrival had allowed me to expect the worst. Ready to walk into a Cambodia circa 1979, I imagined Phnom Penh just as I had seen it in pictures; a desolate city with blank, desperate expressions upon the faces of all of its war weary inhabitants, bodies lying on the side of the road, bomb shells littering the countryside. My head was stuck in the past, and yet I found myself landing in Cambodia's present. Phnom Penh was a noisy, bustling city packed with people and motorcycles speeding by. It was vibrant, living, breathing, heaving with life. People flooded the streets, most of them looked happy, with their families and loved ones enjoying an evening ride. Although poverty is visible and omnipresent the city seems to overcome this factor with the bustling activity of its inhabitants and the continuous smiles painted upon their faces. I knew then that I was no longer in a country enveloped in a culture of fear and constant war; it was clear to me then that a new dawn had set upon the country of Cambodia, and that the youthful and motivated population were ready to pick up the pieces of the shattered past.

Although Cambodia has come a long way since the nightmare of the Khmer Rouge, it still faces many issues that continue to be a hindrance to its development as well as the vitality of its population. One of the many problems that Cambodia faces today is how to continue the transition towards justice and reconciliation in a post-genocidal society. Thirty years after the complete obliteration of modern Cambodian society and the death of a fourth of the population, Cambodia is just now facing the past and looking hopefully towards the future. After talking with those who survived the genocidal regime of Pol Pot on my visit to Cambodia, it became clear that in order to move forward, the country must adopt two models of transitional justice, namely, restorative as well as retributive justice. While the definition of retributive justice in this case may only include the criminal prosecution of a handful of top Khmer Rouge officials, it is still an important step to take in order to ensure that the key factor of accountability is dealt with. It is also crucial to address that the main issue with a large commitment to retributive justice is the difficulty in identifying those who are criminally responsible for the actions taken between 1975-79. Due to the overwhelming culture of fear that encompassed every aspect of life under the Khmer Rouge it is difficult to define perpetrator from victim. In his memoir *Survival in the Killing Fields*, Hang Ngor describes the pervasive apprehension and terror that was everyday life under the Khmer Rouge;

“The Khmer Rouge’s greatest strength was propaganda. They knew that a small lie can be caught and that a big lie is easier to get away with. Their system was so different from anything we had known before, and so complete, that we gave in without really knowing how to resist. Even if we had been allowed to speak out

publicly, which we weren't- and if we did, they tied us up and marched us away- there was something inadequate about trying to counter their words with arguments of our own. It just didn't help.”¹

The system of identifying enemies during this time also lent to the culture of fear. According to official Khmer Rouge document D01791, an “Enemy” is everything which is non-revolution and against the revolution.”² This broad definition for identifying potential enemies of the state points to the idea that anyone, regardless of whether they were a “new” person or a Khmer Rouge cadre, could at any point be deemed an “enemy” and acting against the revolution, and thus no one was safe from imprisonment and death. Therefore, while retributive justice must take its course, pursuits of restorative justice should be the main focus for the future of Cambodia due to the effect that the genocide had on *all* members of Cambodian society.

According to the International Center for Transitional Justice, transitional justice “is a response to systematic or widespread violations of human rights.”³ The center has highlighted several approaches which can aid in this transitional process and which can be adopted and applied on a case by case basis. These include; criminal prosecution, memorialization efforts, truth commissions, reparations programs and security system reform. When examining different approaches towards transitional justice it is important to outline what these options are as well as which ones will be effective in Cambodia. There are currently large memorialization efforts taking place in Cambodia as well as a trial that will carry out the important task of criminal prosecution. The other three

¹ Ngor, Haing. *Survival in the Killing Fields*. Constable & Robinson Ltd, 2003. Pg.

² Document D01791. Number 138: 12 September 1977 Work with committees in all Units. BS—37. Referenced from the Documentation Center of Cambodia.

³ International Center for Transitional Justice. <<http://www.ictj.org/en/tj/>> 2008.

approaches, however, have yet to be implemented in Cambodia, and it is not sure whether or not they will be successful in the future. While it is apparent that each of these factors would help in the healing process, it is not certain whether they will be financially possible or realistically feasible in the current state of Cambodia.

Something that has been hugely successful in Cambodia to date has been the efforts to document and remember the atrocities committed under the Khmer Rouge regime, or so called memorialization efforts. Visits to the killing site of Cheung Ek and the former S-21 prison at Tuol Sleng allowed me to see for myself the efforts put forth to preserve the mass graves that claimed thousands of lives and the actual rooms in which the torture of victims took place. There were museums at each location with information about the Khmer Rouge regime and the horrific effects of the massive labor, famine and execution that was imposed upon Cambodia. Non-governmental organizations such as the Documentation Center of Cambodia, or DC-Cam, have been extremely active in documenting and uncovering the truth about what took place during the time of Democratic Kampuchea, as well as educating the public and youth about the past in order to prevent its recurrence in the future. There has been a huge focus on genocide education in Cambodia recently, and hopefully this trend will continue and allow for the next generation of Cambodians to learn from the past and look towards a brighter future. A program that I found especially inspiring was called “Breaking the Silence,” which is a program envisaged by DC-Cam and includes a play written by staff members and performed in villages in order to encourage people to talk about their experiences during the Khmer Rouge regime and facilitate the sharing of stories within families and villages in order to aid in the reconciliation process. I found this performance to be a true key to

reconciliation and healing in Cambodia since very few people seemed to be telling their stories or allowing the past to come into the present, which is an important step in overcoming the wounds that the Khmer Rouge have impressed on Cambodian society.

In terms of the current criminal prosecution taking place in Cambodia, The Extraordinary Chambers in the Courts of Cambodia is the title given to the trials of the remaining top five Khmer Rouge officials which began in June 2007. It has taken thirty years and countless obstacles to bring about the process of criminal prosecution in Cambodia, yet despite the delay it seems that there is an overwhelming majority of public support behind the trials of the ECCC. According to Craig Etcheson in his work, *After the Killing Fields*, the results of public opinion surveys have shown “strong majorities of from 75 to 85 percent of respondents favoring a tribunal for the Khmer Rouge leadership.”⁴ During my time in Cambodia, my team members and I were lucky enough to interview both survivors and perpetrators of the Khmer Rouge. Our interview process revealed that all of those we interviewed as a group, either victim or perpetrator, thought the trials were a good thing, and that they would help provide justice of some sort. After examining the interviews of the other teams, it is also apparent that many Cambodian citizens are apprehensive about the success of the trials as well as how long the process continues to take. Although there is a mixed bag of responses towards the ECCC, the majority of those interviewed thought that the trials could bring a sense of hope to the population. It is also the intention of the courts to provide varying forms of justice to the people of Cambodia that expand beyond the boundaries of retributive justice. In looking back to the different forms of approaches towards transitional justice outlined above, it is my observation that the ECCC will be able to provide the Cambodian people with three

⁴ Etcheson, Craig. *After the Killing Fields*. Praeger Publications, Westport CT. 2005. Pages 149-150.

of those forms; criminal prosecution, truth commissions and reparations. While the courts do not formally function as a state sponsored truth commission or a financial reparations program, the trial proceedings will allow for elements of each to take place in a public and formal setting.

While the ECCC is a form of criminal prosecution, it also has the means to serve as a truth commission and provide reparations in terms of apologies and explanations by the accused for those affected by the genocide. The way in which the tribunal is organized allows for the questioning of the accused by several prosecutors and civil parties as well as seven judges. While viewing the trial proceedings, it was evident that in addition to the main goal of proving Duch guilty of the crimes he is accused of, a second goal of the trial is to provide information about what exactly happened between April 1975 and January 1979, in essence, uncovering the truth. A former cook in a commune, Nao Okn said during his interview that for him justice is the full truth, being honest. When it comes to the ECCC, he believes this will bring truth to the top leadership⁵. Many of those who lived through the Khmer Rouge period such as Nao Okn are simply looking for the answer to the question, *why?* Why did these horrible things happen to them? Why were their family members killed? Why were people starved to death? Hopefully the trial may provide honest answers to those unanswered questions once and for all.

The courts also explicitly cover the topic of reparations. A passage in the introduction pamphlet explains, "...the judges may award collective and moral reparations such as an order to publish the judgment in any appropriate news or other media at the convicted person's expense, or an order to fund any non profit activity or

⁵ Interview of Nao Okn. June 4, 2009. Svey Rieng Province. Interviewed by Alexis Hay.

service that is intended for the benefit of victims.⁶” While the court will not provide individual financial reparations for each person affected by the genocide, they are dedicated to funding organizations that can further the reconciliation process, such as the Documentation Center of Cambodia and other NGO’s in the field. The court also hopes to provide reparations in the form of formal apologies from the accused and explanations for their wrong doings. While we were visiting the trials of Duch, he did mention several times how sorry he was for what he had done, and while this may put satisfy some survivors, there are still those such as Kung Suor who believe that, “the trials seem to have given people like Duch another way out by allowing them to blame their superiors for their crimes.⁷”

Disappointment with the trial process has also been expressed in reference to two major complications of the trials; corruption and the length of the process. In a pamphlet distributed at the ECCC to all visitors, former UN Secretary General Kofi Annan has written a message that declares the existence of the ECCC as, “signaling that the sinister culture of impunity is, indeed, being replaced by a culture of accountability.” Yet it seems that even this proclaimed, “beacon in the region,⁸” has fallen prey to charges of corruption. Unfortunately, the corruption within the administration is affecting the legitimacy of the trial process and causing many to lose faith in its ability to provide justice. Ang, a female survivor of the Khmer Rouge in the Eastern province of Svay Rieng, talked about her disappointments in the courts, “I believe justice will be achieved, but I have doubts [about the trials] because they are taking a long time without any

⁶ An Introduction to the Khmer Rouge Trials. Third Edition. Public Affairs Section. Extraordinary Chambers in the Courts of Cambodia. Page 17. 2008.

⁷ Interview of Kung Suor. June 4, 2009.

⁸ *An Introduction to The Khmer Rouge Trials. Third Edition.* Public Affairs Section. Extraordinary Chambers in the Courts of Cambodia. 2008.

concrete results, and the accused are still trying to find ways to go free—I look behind you at [those] skulls, evidence of what they did.”⁹

One of my team members interviewed a former Khmer Rouge soldier who was imprisoned for three months in Chilone prison. His name was Sanhim and he came to see the trial of Duch. He expressed some disappointment with the trials on the day he visited, explaining, “Today there is not enough said during the trials,” and “that there are still so many more details that go unstated and unheard.”¹⁰ The legal process can seem confusing and drawn out to many Cambodian citizens who come to view the trials. Translation issues with documents and other pertinent legal files are also stalling the process because of the trials international component which requires that proceedings take place in three different languages; Khmer, English and French. While they know that the trials will take time, there is a sense of urgency among the Cambodian people who see that it has taken thirty years for this process to begin, and thus they do not want to waste anymore time. Khmer Rouge survivor and former monk Kung Suor expressed in his interview the problem with the timing of the trials, explaining that he would like the tribunal to speed up the already delayed trials because even if there are reparations, they are not meaningful to victims dying every day because they are old, and they want to see schools and pagodas built.¹¹

Despite the courts failings, it is important to also examine *why* the ECCC works and is successful in the context of Cambodian reconciliation. According to one of the survivors we interviewed, Norng Chanpal, there is a belief that the trial is providing a

⁹ Interview of Mom Saroeun “Ang”. June 4, 2009. Svay Rieng Province. Interviewed by Savannah Wiseman.

¹⁰ Interview of Sanhim. June 9, 2009. Interviewed by Alexis Hay.

¹¹ Interview of Kung Suor. June 4, 2009. Svay Rieng Province. Interviewed by Savannah Wiseman.

means for all those affected by the Khmer Rouge to come to terms with their past. In his interview, the Tuol Sleng survivor stated that, “the trials give the survivors spirit to live and they can start new lives.¹²” He said that he had been trying to avoid all journalists until he heard about Duch’s trial and that he decided to speak to journalists because he wants to provide information and wants to see Duch in jail. It seems that the ECCC has provided many survivors and perpetrators alike with a purpose to tell their stories. Many former Khmer Rouge cadres are coming forward to record their story, and some are even testifying in court against Duch. Stories hidden for decades are now being told because they know that the information they provide will assist in the prosecution of those they hold criminally accountable. This is an important part of the healing process and also facilitates societal reconciliation.

The trials are also addressing the idea of criminal accountability. Another question that continues to be unanswered is; who was responsible for the actions taken under the Khmer Rouge? When I asked Noug Chounpal who he felt was responsible for the loss of his family members he stated that he believes that those who were considered to be the top leadership, like Pol Pot, should be brought to justice. Many of those interviewed shared this belief, and in fact few people felt the need to try anyone besides the five who will be tried. During an interview, former Khmer Rouge soldier Sok Phat stated that he, “agrees 100 percent that the top 5 who are being tried are enough for justice.¹³” He said it is important to try those at the top; perpetrators are useful for information to bring top officials to justice, but that they were coerced into their actions. On the other hand, survivor Ang expressed a desire to try more people. She said that she

¹² Interview of Norng Chanpal. June 3, 2009. Boeng Chumpun, Cambodia. Interviewed by Kiel Stroupe.

¹³ Interview of Sok Phat. June 2, 2009. Kampong Chhang Province, Cambodia. Interviewed by Anne Vaz.

disagrees that an expansion of the trial would destabilize Cambodia, and agrees that more people should be tried. She said that the top leaders' accomplices should be tried, but that no-one in her village should be tried. She said that she would've dealt with anyone within her own village after [the liberation] if they were that destructive or responsible¹⁴. So once again it seems that there are varying opinions on who is responsible, and while most will find peace with the trial of the top officials, others yearn to see the low level perpetrators brought to justice.

Although an important aspect of the trial is access to the public, none of those we interviewed had actually attended the trials, the exception being Sanhim, who we talked with following the morning trial proceedings. The form used most frequently for viewing the trial proceedings was television, as was used by survivors Norng Chanphal and Mayane, but for those who did not have access to a television outside the city, they could only hear about the trials through word of mouth and publications distributed in the villages by organizations such as DC-Cam. The trials can also be followed online using the Cambodia Tribunal Monitor, but once again internet access is very scarce in the country. Access to the trial proceedings is a main priority and it is my hope that as the trials progress more people will make the trip to Phnom Penh in order to see the proceedings taking place with their own two eyes and witness the criminal prosecution of those who should be held accountable.

Despite the large efforts being put forth to bring about criminal prosecution and memorialization efforts in Cambodia, security system reform has yet to be addressed. The rule of law is an issue that continues to plague Cambodian society. In a developing country such as Cambodia, rampant corruption is not unheard of or unexpected, but it is

¹⁴ Interview of Mom Saroeun "Ang."

something which needs to be addressed if the people of Cambodia are to have any faith in the court system or government officials in the future. It is my hope and observation that the ECCC may assist in this process, even while working against allegations of corruption. Security system reform is essential to ending corruption in Cambodia and will help assist with societal reconciliation. Perhaps if enough international pressure is put upon the ECCC to deal with the corruption, a model will be set for dealing with other corruption cases in the future. A message can be sent to Cambodian officials that corruption is not acceptable and perhaps it will allow for the citizens of Cambodia to stand up to corruption and fight for a free and fair system of law in the future.

It is my fervent belief that Cambodia can continue to move in the right direction towards a more prosperous and thriving future. While there are many aspects that hold back Cambodia developmentally, I have seen that the people of the country seem happy to just be living a peaceful life once again. They are content to be living in a home with their family, tending to their animals and rice fields, conversing with neighbors, and showing affection to the ones they love. The simple things in life hold so much meaning, because many know what it is like to be stripped of the things that many take for granted. After half a decade of genocide and two more decades of war, Cambodia is finally at peace and ready to remain there. The foundations of Cambodian society were shaken to the core and almost completely eliminated by the ruthless social experiment of Pol Pot and his fellow Khmer Rouge leadership. After such a drastic removal of all aspects of modernism from Cambodia from 1975-1979, it is only natural that it has taken time for the infrastructure of the country to build up once again and for the Cambodian people to forget the wounds of the past. I believe that Norng Chanpal expressed the sentiments of

many of his fellow Cambodians when he stated that time is the only real answer to achieving reconciliation. It was certainly a tear jerking moment when he said quietly that the memories of the Khmer cadre beating and kicking his mother will be hard to forget.¹⁵ Memories cannot be erased, and at this point they are even being preserved in order to record and document what happened during the time of Democratic Kampuchea. Although the past carries with it the horrific scenes of death, fear and desperation, a new generation has begun to heal these wounds through the processes of education and a constant search for the truth. It is my deep hope that both truth and lasting peace will come to all the citizens of Cambodia.

¹⁵ Interview of Norng Chanpal. June 1, 2009. Boeng Chumpun, Cambodia. Interviewed by Kiel Stroupe.