

# មជ្ឈមណ្ឌលឯកសារកម្ពុជា

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## **The Path To Reconciliation In Cambodia**

Thirty years ago the people of Cambodia endured a nightmare that lasted for about 45 months. This nightmare was orchestrated by the Khmer Rouge. During these dark and terrifying months more than three million people lost their lives under the rule of Pol Pot (7). Under his rule, Cambodia was stripped of its various ethnicities and become one race with two distinctions. Within this race if you were considered to be “pure” Khmer you would be classified as “old”. All other minorities and educated people were considered to be “new” and were the enemies of the state. People were forced into manual labor and the only functioning sector was the agricultural sector. Imagine living a life where every day you woke up to a world where you could not show emotions, where you could not practice your religion, where you were separated from your family, where you could not eat or live or walk as you please, where people were tortured and executed for no apparent reason and where your race determined your fate. This is the reality that thousands had to face during those 45 terrifying months. Thirty years later justice is being sought. There have been many attempts made in order to promote justice for this horrendous genocide. On a national level there are several approaches that the government of Cambodia can take in order to achieve transitional justice. These include memorializational efforts, reparation programs, criminal prosecutions, truth commissions and security system reforms (4). Some of these approaches appear to be more fruitful than others. One must always remember that each

country, each crisis is unique and therefore it is important to take cultural, societal, economical and political factors into consideration. And after careful consideration of all these factors I believe that a combination of criminal prosecutions, such as the Extraordinary Chambers in the Courts of Cambodia, memorializational programs and reparation programs will provide the most successful path towards national reconciliation. I believe that this combination would not only promote reconciliation at a national level but also at an individual level. In order for a country to move on, its people have to move on first. I believe that my prescription of methods of transitional justice along with the practice of religion will help people to heal on their own and thereby promoting reconciliation.

When attempting to identify which mode or modes of transitional justice would be the most applicable to a nation, one is drawn to this notion of retributive justice versus restorative justice. Retributive justice is the pursuit of justice through criminal prosecution and punishment (1). In a very traditional sense one can view it as an eye for an eye approach. In contrast restorative justice mainly seeks reconciliation through processes, such as victim empowerment and mitigations, which will help heal a society from societal wounds such as anger and desires for vengeance from the victims (1). In his article *“Restorative Justice, Political Forgiveness and the Possibility of Political Reconciliation”*, Mark R. Amstutz identifies a few key assumptions of retributive justice. It is believed, by those advocate retributive justice, that the most effective way to obtain justice is by punishing those who are legally responsible for the crimes (1). I believe that this would only be true if all the victims view justice merely from a legal point of view and not from an emotional standpoint. While retributive justice in the form of trials like the Extraordinary Chambers in the Courts of Cambodia (ECCC) has its benefits and is essential to the process of reconciliation, retributive justice on its own has shortcomings. It fails to take into

account the healing process of the victims (1). One simply cannot assume that a trial can help take away the pain and can answer all the questions they may have about their lost ones. In a land such as Cambodia where financial resources are not in abundance one may argue that would be far more beneficial to Cambodia to utilize what it does possess towards the development and the future of the nation instead of pouring it into a trial about the past (1).

Retribution justice attempts to draw a line between those would be considered to be perpetrators and those who would be seen as the victims of the Khmer Rouge. During my interviews I came to the conclusion that it is hard to clearly identify who the perpetrators were and who the victims were. Everyone was affected by those dark years of the past. Every one lost a loved one. There does not appear to be a clear line that distinguishes between the victims and the perpetrators especially in regards to the lower level cadres. After the examination of Document DO1791 of the Khmer Rouge, found at the Documentation Center of Cambodia, I came across a statement made by the Khmer Rouge which states that the enemy “is everything which is non-revolution and against the revolution”. This clearly illustrates how a Khmer cadre would not have a choice on certain occasions but to follow orders. We must not forget that these cadres were in fear for their lives as well during the Khmer Regime. So instead of attempting to make a distinction between those who would be viewed as perpetrators and those who would be viewed as victims I believe that the best way of achieving transitional justice and reconciliation is through a combination of retributive justice and restorative justice. In order for an individual to move on there needs to be a social movement that provides the tools necessary for one to heal. Such tools are elements of restorative justice and have the power to bridge divided communities.

Restorative justice focuses on the healing of the community and reconciliation at a human level. Having had a horrendous past which included genocide there has to be institutions

in Cambodia that promote the concept of national unity while respecting the different ethnicities. During the Khmer Regime, people were stripped of their identity and were forced to ignore their respective cultures. Restorative justice will therefore enable people to get back to their previous lives while mending the wounds of the society. Through programs where victims can have their voices heard and their questions answered the victims can come to terms with their past. Restorative justice provides a path for those who would be viewed as perpetrators to “confront their humanity” (1). The Documentation Center of Cambodia conducts many interviews and publishes many magazines and video productions that provide victims with answers about their past. These answers come from the questions of those deemed as perpetrators. For some, justice is finding out what happened to their loved ones and restorative justice provides these answers. While it may be too much to ask from the victims to forgive the perpetrators, restorative justice provides the tools necessary to bridge the gap between the two; to heal and come to terms with ones past and to move towards national reconciliation (1).

Amstuz introduces two different ways of viewing reconciliation. One can view it as a process or a condition (1). He states that that “as a process, reconciliation is viewed as a tool to heal broken relationships by replacing anger and enmity with empathy, tolerance and trust.” In my opinion this sums up exactly what I would view restorative justice to be about. He then states “as a condition, reconciliation is conceived as a state of peaceful, harmonious relationships and as an environment where former enemies express mutual trust, demonstrate cooperation, and work out disagreements peacefully.” I believe that this process would lead to the condition and such a condition would further enhance the reconciliation process. According to Elizabeth Kiss there exist four elements of restorative justice. These are “the restoration of victims’ human dignity, accountability for offenses, restoring respect for human rights, and the promotion of

reconciliation” (1). These four elements include elements present in restorative justice which I believe are crucial to reconciliation. It will enhance the process of understanding and will lead Cambodia to achieving the conditions of reconciliation. In addition I believe that through a combination of memorializational efforts, criminal prosecutions and reparation programs Cambodia will be able to achieve reconciliation. I believe that such a combination includes the elements of restorative justice that Elizabeth Kiss brings to our attention and is the most applicable and appropriate to Cambodia.

Memorializational efforts or programs are crucial to the bringing together of a nation. I believe that such programs have a greater effect on an individual level and a societal level rather than on a national level. I believe that this approach shows much promise. In Cambodia there are several programs underway and such programs are run mainly by the people of Cambodia. And I have faith that such programs will only increase by number due to the dedicated work of NGOs such as the Documentation Center of Cambodia. Museums and memorial sites such as Toul Sleng provide spaces where people can convene and mourn for the lost souls. When people convene together it gives them strength to know that they are not alone and that the memories of their loved ones will not be forgotten. Memorial sites like Choeung Ek, which used to be a killing field during the Khmer Regime, provided those departed souls with some form of a burial site where their loved ones may come to in order to feel close to them. During an interview with Norng Chanphal, a survivor from Tuol Sleng which used to be a former prison, I was informed that after 1979 he would visit Toul Sleng, as a child, in order to try and remember his past. Facing the past bravely is one of the initial key steps in reconciliation and in moving on. Also such memorial sites give dignity and respect to those who were deprived of such luxuries in their deaths. Today these physical spaces have become tourist destinations and thereby helps increase

international awareness. While many survivors are attempting to move on with their lives, most of them do not want their loved ones to be forgotten. Norng Chanphal states that he “believed that it is very important to educate the youth of today about the past especially since this was an incident where Cambodians killed other Cambodians” (5).

Memorializational programs are not limited to the building and maintenance of physical sites but can also involve special days that are memorialized in honor of the victims of the Khmer Rouge. May 20<sup>th</sup> is honored as the “Day of Hatred” in memory of those who were killed by the Khmer Rouge. This year approximately 2000 people gathered at a Choeung Ek, a former killing field, where students reenacted the brutal torture and killings (6). Such events bring communities together and have the ability to educate people on a larger platform. Currently the majority of the population in Cambodia is born after the Khmer Regime and therefore knows very little of its brutal past. Therefore such events, especially those which involve the youth of Cambodia, have the power to not only maintain the memory of those departed souls but has the ability to educate a large group of people who belong to varying age groups. While memorializational efforts can be presented to the public in many forms, all efforts ultimately serve the same purposes. They initiate the healing process, they educate others about the past and initiate crucial steps necessary for national reconciliation.

Reparation programs are programs aimed at rebuilding and repairing the damage caused. According to the International Center of Transitional Justice reparation programs “are state-sponsored initiatives that help repair the material and moral damages of past abuse” (4). However I would like to discuss the significance of programs that are initiated by nongovernmental organizations (NGOs) because I believe that such programs carry more hope and promise in Cambodia given its past success. I believe that if the government was to be solely

in charge of all the projects, bureaucracy and other governmental politics would intervene thereby inhibiting the success of these programs. One such NGO that has proven to be a success in regards to reparation programs is the Documentation Center of Cambodia. From my experience at the center I have found all those who work in the Documentation Center to be passionate people who deeply care for its causes and go the extra mile to reach more people. They are not here for the monthly pay checks and are merely driven by humanitarian reasons rather than financial reasons. Furthermore all the staff members are Cambodian and speak Khmer fluently. It is clear that the Documentation Center's staff is the key to their success; in reaching people and getting them to open up. Reparation programs are essential to increasing victim empowerment through victim participation, to which the Documentation Center has dedicated an entire unit to, and awareness through media, publications and victim outreach programs. The programs of the Documentation Center of Cambodia are perfect examples for other NGOs in Cambodia to follow. They publish magazines, go on various field trips to the provinces to interview survivors, provide various publications to the public and have a range of projects that educate and increase awareness of the genocide. They also hold key documents of the Khmer Rouge which are proving to be helpful to the Extraordinary Chambers in the Courts of Cambodia (ECCC). These programs help people find answers to the questions they have about their loved ones and about their past. Without the efforts of such NGOs to find out and record information about the past, these answers would never be found.

Truth commissions are also useful tools in revealing secrets of the past for the survivors. It provides a forum where people can come and confess about their offenses as well as shed light onto a troubled and murky past of a nation that has suffered human rights violations. After careful examination of the Truth and Reconciliation Commission (TRC) in South Africa, one can

identify several benefits that truth commissions can bring to the reconciliation process in Cambodia (1). Since past perpetrators are given amnesty from their confessed crimes, I believe that they will be more open to telling the truth. And therefore those who have lost loved ones and merely want to know about what really happened can confidently believe what they heard from those who confess. In South Africa the TRC was able to bring the community together and due to widespread media coverage it was able to raise awareness at a significant level (1). While truth commissions has the potential to reveal the buried stories of the past that will help people reconcile with the loss of their loved ones, I believe that it cannot serve its true purpose in the existence of the Extraordinary Chambers in the Courts of Cambodia. It seems highly unlikely that there would be adequate support from the government, media coverage, public support and financial resources to hold such commissions while the ECCC is in session.

The Extraordinary Chambers in the Courts of Cambodia were put into being by the government of Cambodia and the United Nations in order to bring the senior most members of the Khmer Rouge to justice. His Excellency Sok An, Deputy Prime Minister of Cambodia, stated that “it is a Cambodian court with international participation that is applying international standards” (7). It has the power to only try offenders for crimes committed during the time period from the 17<sup>th</sup> April 1975 to 6<sup>th</sup> January 1979 (7). The sentence for a crime ranges from five years imprisonment to life and there is no death penalty (7). While some survivors would like there to be a death penalty I think the lack of one is crucial to educating the future leaders that murder and execution are not the answer. Five people have been detained by the ECCC to be put on trial. They are Duch or Kaing Guek Eav, former chief of S21, , Nuon Chean, previous leader of the Democratic Kampuchea National Assembly,, Ieng Sary, former minister of foreign affairs of Democratic Kampuchea,, Ieng Thirith, former minister of social affairs of Democratic

Kampuchea, and Khieu Samphan, former head of state of Democratic Kampuchea (7). Duch and Ieng Thirith are charged with crimes against humanity (7). The other three are charged with crimes against humanity and war crimes (7).

Pol Pot, the leader of the Khmer Rouge, died in 1998 and therefore could not be put on trial (7). There have been mysterious circumstances regarding his death and the true cause of his death will be mystery forever since he was cremated before an autopsy could be conducted. There have been previous trials and they were known as the People's Revolutionary Tribunal. These took place in 1979 and it found Ieng Sary and Pol Pot guilty of genocide (7). However they did not appear in court and did not serve any sentence (7). These courts are the first real attempt of national justice. It has the power to unleash the truth to a huge audience since these information about the proceedings are being televised, played on the radio and can be accessed on line (7). Furthermore several attempts are made to educate the youth about the courts and in doing so they are educating them about its past (7). It also presents a model of law proceedings that could be considered to be fair since those convicted are tried in an open court (7). There is hope that this court will "strengthen" the Cambodian law and its legal proceedings (7). It helps the victims to reconcile with their past because they can view the trial of the perpetrators and know that something is being done after all these years. They can try to find peace knowing that someone is going to be held accountable or that there is at least an attempt to do just that.

But just like the ECCC is a shining light in a country that was plagued by those dark years of the Khmer Regime, the trials has its shortcomings. From my own experience at the trials, I believe that certain offices of the court are not prepared and this causes delays. Information is not always ready and the entire process of translating the court proceedings into three languages causes further delays. People have been waiting for more than thirty years for a proper form of

justice and therefore such delays must not be tolerated. While there appears to be a lot of media coverage, a lot of those who live in provinces that are away from the capital are not completely aware of the proceedings. There are several attempts made by various NGOs such as the Documentation Center of Cambodia to get the word out about the trials and such attempts need to be increased. The location of the trial itself can be considered to be a downfall to its success. The trial takes place just outside of the capital, Phnom Penh, in the Dangkor District. It is not easily accessible to all especially by those living in the provinces that are away from the capital. This problems need to be dealt with. Anyone who is above the age of 18 can watch the court proceedings with their own eyes for free and it is a shame that its location is an inhibiting factor to the attendance rate.

There have been several corruption allegations which could threaten the integrity of the court and its noble goals. There have been allegations that certain court officials have received financial resources in exchange for jobs in the court (2). The defense lawyers have been using this information as evidence that their clients are not being fairly tried since the judges could be involved in this corruption scandal (3). I would call for an “independent” body to investigate this issue and resolve this matter as soon as possible so that the defense lawyer cannot use this as a means to deter a just a sentence towards the accused (3). Financial resources are another constraint. Cambodia is not wealthy and the ECCC is creating a significant financial burden to the nation. I propose that international pressure be placed on ASEAN to play a role in the ECCC and provide financial support or any support for that matter. But despite such shortcomings I believe that the ECCC holds much promise and is a very big step towards national reconciliations. Kofi Annan states that “The success of the Extraordinary Chambers will stand as a beacon in the region, signaling that the sinister culture of impunity, is indeed, being replaced

by a culture of accountability.” And I believe the ECCC represents a fresh chapter in Cambodian history and will provide the platform and the foundation that is essential for the nation to move on.

From my own experience in Sri Lanka I have seen the power of religion to heal those who have endured years of suffering. From my own experience in Cambodia I have seen the importance of religion in this nation as well. Theravada Buddhism is the most practiced religion in Cambodia and the thousands of pagodas are proof of this. This religion teaches compassion and forgiveness. It teaches one that by doing good deeds you can “win over” the bad deeds (8). It teaches how to overcome the horrendous past by doing good to all and helps propel people away from the desire of vengeance. The Documentation Center of Cambodia conducted a survey through a magazine they published (8). 712 individuals participated in this survey (8). One of the individuals states that “We suppress vindictiveness by not being vindictive”. The Buddhist teachings advocate a fair trial and this will further enhance the public acceptance of the ECCC as a tool of justice. Suzannah Linton, in her book titled “Reconciliation in Cambodia” discusses the effect that Buddhism has on reconciliation. She presents various quotes from many spiritual leaders of Cambodia. The following quote describes how the principles of Buddhism are aligned with proceedings of a fair trial; “When the accused are charged with their crimes, people will be happy and stop worrying and accusing each other. Only then will Cambodians begin to think about long-lasting peace and national reconciliation, befriend one another, have pity on each other, and rebuild the country towards prosperity” (8). But it is not just Buddhism that will help the people of the nation to come to terms with justice and the past. Cambodia is home to the practicing of many other religions such as Islam. All religions teach similar principals of peace, forgiveness, tolerance and compassion. This entire nation was radically changed and people were

forced to forgo their identity, religion and culture during the Khmer Regime. But now people can practice the religion they wish to and can embrace their culture. And by embracing their religion, culture and identity, they are taking one huge step away from those dark years of the Khmer Regime. Religion has the power to fill in the blanks when people have un answered questions about their past and their family. It helps in initiating the healing process.

In this paper I have discussed many approaches and I have proposed a combination of methods of transitional justice because I recognized that what works for some does not work for all. While some may seek justice through truth commissions, other may feel that justice is served in a prison sentence. While some may reconcile with their past by speaking out, others may find reconciliation in the practice of religion. What I am proposing is not a quick solution for national reconciliation. I am proposing that a combination of the ECCC, memorialization efforts, reparation programs and the personal practice of religion would be the most successful in obtaining reconciliation at a personal and at a national level. The results of the survey, which was previously mentioned, showed that 70.19% of 712 respondents would like to see a trial which involves the participation of the United Nations and I myself have seen the benefits of NGO initiated reparation programs via my participation at the Documentation Center of Cambodia (8). This combination would also help achieve justice and peace for Cambodia in the short run and as well in the long run. We need to build institutions that are not temporary. Once the ECCC is not in session any longer, memorializational efforts and reparations will continue to promote reconciliation. When discussing the proposed methods, I have stressed on the role that each method plays in educating people about the past. I believe that educating the youth of today about the Khmer Regime is crucial for the future of Cambodia. By educating the youth about the past we can make sure this does not happen again. And the opinion of the public is similar to

mine. 73.87 %, of those individuals in the previously mentioned survey, think that it important to educate people about the Khmer Regime (8). And also I believe that is important to get the youth involved. It was only this year that textbooks about the genocide were distributed. This is just the first step and should not be the last. If Cambodia is to achieve national reconciliation as a condition then I believe it depends on the passion of the people. In order for a nation to achieve any goal, its people need to desire it. We need to educate the youth of today, we need to make them passionate about justice and reconciliation and we need to teach the youth of Cambodia to become just and fair leaders. Education is the key to this. The youth of Cambodia is the treasure chest with the potential to make Cambodia into a prosperous nation. We need education to unlock the potential of the youth. The future of Cambodia lies with the youth of today.

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