

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 on the country. Two weeks of classes prior to my arrival made me expect the worst. Ready to walk into Cambodia circa 1979, I imagined Phnom Penh 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. To my surprise, Phnom Penh was a noisy, bustling city packed with people and motorcycles speeding by. The people on those motorcycles mostly looked happy, with their families and loved ones enjoying an evening ride. Although poverty is all around, the city seems to overcome this with the bustling activity of its inhabitants and the fixed smiles painted on their faces. I realized that I was no longer in a country enveloped in a culture of fear and constant war; it was clear to me that a new dawn was rising in Cambodia, and that the youthful and motivated population were ready to pick up the pieces of its shattered past.

Although Cambodia has come a long way since the nightmare of the Khmer Rouge, it still faces many issues that continue to hinder its development and the vitality of its people. One of the major issues facing Cambodia 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 one-fourth of the population, Cambodia must strike a balance between facing the past and looking hopefully towards the future. After talking with several survivors of Pol Pot's genocidal regime, it became clear that in order to move forward, the country must adopt two models of transitional justice: restorative and retributive justice.

According to the International Center for Transitional Justice, transitional justice "is a response to systematic or widespread violations of human rights."¹ 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.

In terms of criminal prosecution, the Extraordinary Chambers in the Courts of Cambodia has the jurisdiction to put the most senior Khmer Rouge officials on trial. It has taken thirty years and countless obstacles to bring about a process of criminal prosecution in Cambodia, and yet, despite the delay, it seems that there is broad public support for the ECCC. According to Craig Etcheson in *After the Killing Fields*, public opinion surveys show "strong majorities of from 75 to 85 percent of respondents favoring a tribunal for the Khmer Rouge leadership."² 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, were in favor of criminal prosecutions, believing that they would help provide justice of some sort. After examining the interviews of the other

¹ International Center for Transitional Justice. <<http://www.ictj.org/en/tj/>> 2008.

² Etcheson, Craig. *After the Killing Fields*. Praeger Publications, Westport CT. 2005. Pages 149-150.

teams, it is also apparent that many Cambodians are apprehensive about the success of the trials as well as how long the process will take. Although there are mixed responses towards the ECCC, the majority of those interviewed thought 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. Looking back at the different forms of transitional justice outlined above, the ECCC will be able to provide the Cambodian people with three of those forms; criminal prosecution, truth commissions and reparations. While the Court does not formally function as a state sponsored truth commission or a financial reparations program, the trial proceedings will also allow for elements of each to take place in a public setting.

While the ECCC performs criminal prosecutions, 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. While viewing the trial proceedings, it was evident that apart from establishing Duch's guilt, the Tribunal also endeavors to inform the public about what exactly happened under the DK regime (April 1975 and January 1979). A former commune cook, Nao Okn, said during his interview that he believes justice is the full truth, being honest. When it comes to the ECCC, he believes it will bring truth out of the top DK leadership.³

The Court also explicitly covers reparations. A passage in the introductory 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 service that is intended for

³ Interview of Nao Okn. June 4, 2009. Svey Rieng Province. Interviewed by Alexis Hay.

the benefit of victims.”⁴ 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 wrongdoings. While we were attending the Duch trial, he mentioned several times how sorry he was for what he had done. While this may satisfy some survivors, there are others 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.”⁵

Disappointment with the trial process has also been expressed in reference to two major complications: corruption and the length of the process. In a pamphlet distributed at the ECCC to all visitors, former UN Secretary General Kofi Annan wrote a message declaring 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 “beacon”⁶ 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 DK regime in the Eastern province of Svay Rieng, expressed her disappointment with the Court. She said, “I believe justice will be achieved, but I have doubts [about the trials] because they are

⁴ An Introduction to the Khmer Rouge Trials. Third Edition. Public Affairs Section. Extraordinary Chambers in the Courts of Cambodia. Page 17. 2008.

⁵ Interview of Kung Suor. June 4, 2009.

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

taking a long time without any 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.”⁷

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 Duch’s trial. 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.”⁸ The legal process can seem confusing and drawn out to many Cambodians. 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 therefore do not want to waste any more time. Khmer Rouge survivor and former monk Kung Suor expressed this frustration, 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 the victims who are dying every day because they are old, and want to see schools and pagodas built.⁹

Despite the Court’s shortcomings, it has been relatively successful in promoting reconciliation. According to one of the survivors we interviewed, Norng Chanpal, there is a belief that the trial is providing a means for all those affected by the Khmer Rouge to come to terms with their past. In his interview, this Tuol Sleng survivor stated that, “the

⁷ Interview of Mom Saroeun “Ang”. June 4, 2009. Svay Rieng Province. Interviewed by Savannah Wiseman.

⁸ Interview of Sanhim. June 9, 2009. Interviewed by Alexis Hay.

⁹ Interview of Kung Suor. June 4, 2009. Svay Rieng Province. Interviewed by Savannah Wiseman.

trials give the survivors spirit to live and they can start new lives.”¹⁰ He said that he had been trying to avoid all journalists until he heard about Duch’s trial and then decided to speak to journalists because he wanted to provide information to ensure that Duch ends up in jail.

The trials are also addressing the idea of criminal accountability. When I asked Nong 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 senior leaders who are scheduled for trial. During an interview, former Khmer Rouge soldier Sok Phat stated that he “agrees 100 percent that the top five who are being tried are enough for justice.”¹¹ He said it is important to try those at the top; low-level perpetrators, who were often coerced into performing criminal acts, are useful for providing information to bring top officials to justice. On the other hand, survivor Ang expressed a desire to try more perpetrators. She said that she disagrees that an expansion of the trial would destabilize Cambodia and argued that the top leaders’ accomplices should be tried. She added that no one in her village should be tried, noting that she would have dealt with anyone within her own village after [the liberation] if they were responsible.¹² In all, 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 low-level perpetrators brought to justice.

While retributive justice may be limited to the criminal prosecution of a handful of top Khmer Rouge officials, it is still an important step towards ensuring accountability

¹⁰ Interview of Norng Chanpal. June 3, 2009. Boeng Chumpun, Cambodia. Interviewed by Kiel Stroupe.

¹¹ Interview of Sok Phat. June 2, 2009. Kampong Chhang Province, Cambodia. Interviewed by Anne Vaz.

¹² Interview of Mom Saroeun “Ang.”

through the rule of law. It may be difficult, though, to identify 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 distinguish 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.”¹³

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 anyone who is non-revolution and against the revolution.”¹⁴ 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 be deemed an “enemy”. Therefore, while retributive justice must take its course, pursuits of restorative justice should be the main focus due to the effects that the genocide had on *all* of Cambodian society.

Memorialization efforts have been hugely successful in Cambodia to date. Visits to Cheung Ek and the former S-21 prison at Tuol Sleng allowed me to examine the

¹³ Ngor, Haing. *Survival in the Killing Fields*. Constable & Robinson Ltd, 2003. Pg.

¹⁴ Document D01791. Number 138: 12 September 1977 Work with committees in all Units. BS—37. Referenced from the Documentation Center of Cambodia.

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 (DC-Cam) have been extremely active in documenting and uncovering the truth about what took place during the Democratic Kampuchea (DK) era, 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 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 play written by DC-Cam staff members and performed in villages. Its purpose is to encourage people to talk about their experiences during the Khmer Rouge regime and facilitate the sharing of stories within families and villages to assist in the reconciliation process. I found this performance very effective in promoting reconciliation and healing in Cambodia, as those in the audience seemed to have few other opportunities to share recollections of their painful past.

It is my belief that Cambodia will continue to move in the right direction towards a more prosperous 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 in a relatively peaceful country. 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 in Cambodia know what it is like to be stripped of the things that others 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 the Khmer Rouge leadership. After such a drastic reversal of all aspects of modern life 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 overcome the wounds of the past. I believe that Norng Chanpal expressed the sentiments of many fellow Cambodians when he stated that time is the only real answer to achieving reconciliation. In a moment of touching candor, 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 they need to be preserved in order to record and document what happened during the DK era. Although the past carries with it horrific scenes of death, fear and desperation, the new generation has begun to heal these wounds through processes of education and a constant search for the truth. It is my deep hope that both truth and lasting peace will come to Cambodia.

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