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BREAKING THE SILENCE

**ACHIEVING JUSTICE AND RECONCILIATION IN POST-
GENOCIDE CAMBODIA**

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INTRODUCTION

It has taken the international community 30 years to begin trying the perpetrators of the genocide that is responsible for the deaths of 1.7 million people;¹ the UN-sponsored Extraordinary Chambers of the Court of Cambodia (ECCC) opened on February 17, 2009 and has since charged three individuals with war crimes.² Even more stunning is that—in a world marked by the unprecedented globalization of information—until this year, Cambodian textbooks directed limited attention to the Khmer Rouge, the political regime that systematically executed people during Democratic Kampuchea,³ which prevents Cambodia's youth from learning about what happened in their own country between 1975 and 1979. This is particularly grotesque in a country where 68 percent of the population is 29 years old or younger,⁴ suggesting that a supermajority of Cambodians have only heard about the crimes committed by the Khmer Rouge from those who lived through the starvation, endless back-breaking labor, and constant fear of death that victims were forced to accept as a reality of the period.

The regime responsible for these atrocities, called the Khmer Rouge or the Communist Party of Kampuchea (CPK), used a horrific combination of propaganda, political indoctrination, secrecy, and terrorization to stay in power, while later avoiding responsibility by blaming the killings on the Vietnamese to the international community. Redistricting Cambodia into zones and placing the entire population into work camps that separated husbands from their wives, children from their parents, and monks from their monasteries, the Khmer Rouge, led by the

¹ Ben Kiernan, Genocide and Resistance in Southeast Asia Documentation, Denial, and Justice in Cambodia and East Timor (Africana Studies) (New York: Transaction, 2007) 223.

² "Highlights :," Extraordinary Chambers in the Courts of Cambodia, 19 June 2009 <http://www.eccc.gov.kh/english/news.list.aspx?attribute=doc_subject&selector=charge>.

³ Alexander Laban Hinton, Why did they kill? Cambodia in the shadow of genocide (Berkeley: University of California P, 2005) 1.

⁴ Phuong Pham, Patrick Vinck, Mychelle Balthazard, Sokhom Hean, and Eric Stover, A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia, So We Will Never Forget, Jan. 2009, Human Rights Center, University of California, Berkeley, 2.

exceedingly paranoid and distrustful Pol Pot, detrimentally and unforgettably changed the socio-cultural, political, economic, and religious landscape of Cambodia for the Khmer people. In an attack on religious and cultural institutions, the Khmer Rouge abolished money, free markets, private property, normal schooling and religious practices, and deprived everyone of their basic rights,⁵ including the freedom to choose whom to marry.⁶ No one was safe under the Khmer Rouge, as the Khmer Rouge discriminated against racially-mixed Khmers as well as pure Khmers for a variety of reasons.⁷ People lived in fear that Angkar—translated literally to mean *the organization* and used to reference to the Khmer Rouge leadership, whose identities were secret—would take them away next on suspicion of treason; a reasonable fear when almost nothing is legal, save for following commands, and the government treats its citizens as expendable, demonstrated by slogans such as “To keep you is no gain; to lose you is no loss.”⁸

Given the appallingly brutal murders by Khmer Rouge regime, the severely delayed onset of a genocide trial that is deeply mired by corruption, the victims’ perceptions of justice from the trial as increasingly elusive, and first-hand field research, this paper questions: which model or models of transitional justice—retributive justice or restorative justice—would be most appropriate and effective in providing justice to the Cambodian victims of the Khmer Rouge regime and facilitate individual, communal and national reconciliation in post-genocide Cambodia; and to what extent the UN-sponsored ECCC tribunal might be able to provide justice to the victims and bring about national and communal reconciliation in Cambodia. In order to analyze the bringing of justice in such a fractured society, this paper examines the legacy of the Khmer Rogue period, describing the CPK’s rise to power, its socio-economic platform, and the

⁵ Kamboly DY, David Chandler, and Wynne Cougill, *A History of Democratic Kampuchea (1975-1979)* (Phnom Penh: Documentation Centre of Cambodia, 2007) 2.

⁶ Kamboly, 32.

⁷ Kamboly, 2.

⁸ Kamboly, 31.

affect of this platform on the population at the time, as well as its continuing effects on the current Cambodian population which complicate the bringing of justice to the KR's victims. In the first section, the history of the Khmer Rouge is examined, emphasizing the formation and rise to power of the CPK; Pol Pot's Four-Year Plan for Cambodia; and the regime's effects on Cambodia's socio-cultural, political, economic, and religious structures. The second section focuses on the concept of justice; its relation to forgiveness; the differences between restorative and retributive justice and their respective problems; the individual, communal, and national levels of reconciliation; and the concept of transitional justice and how it applies to the Cambodian genocide. The third section examines the struggle to bring justice to Cambodia; various models to bring such justice to the Cambodian victims of the Khmer Rouge, including the ECCC; and, finally, analyzes the (potential) effectiveness of and domestic responses to these models. This paper concludes by offering policy prescriptions to aid in providing the victims with justice as well as to facilitate and nurture multi-level reconciliation within Cambodia, given the aforementioned conditions and complications of the Cambodian genocide that make providing justice for the victims so problematic.

HISTORY OF THE KHMER ROUGE

The Khmer Rouge was born out of a progression of Cambodian communist parties, beginning with the Khmer People's Revolutionary Party (KPRP) in 1951.⁹ Aided by Vietnamese communists, Saloth Sar—who became known as Pol Pot—helped establish a legal party called the People's Party out of the KPRP, and also helped formulate the party's organization and political program.¹⁰ After winning only 3 percent of the National Assembly's seats in 1955,

⁹ Khamboly, 6.

¹⁰ Khamboly, 7.

however, the KPRP had little momentum, and by the beginning of 1960, only two rural party branches remained fully functioning.¹¹ At the end of September, 1960, a secret KPRP congress was held to reorganize the party, changing its name to the Workers' Party of Kampuchea and establishing a new political line.¹² When the party's secretary disappeared in 1962, an emergency congress was held that elected Pol Pot as its new secretary while Noun Chea, another member of the CPK's Central Committee during the Khmer Rouge regime, remained deputy secretary.¹³

In 1966, Pol Pot changed the party's name to the Communist Party of Kampuchea (CPK) in an attempt to lessen Vietnamese influence from the Cambodian communist movement and to strengthen Cambodia's relationship with China.¹⁴ According to Etcheson, the CPK developed their revolutionary organization in the jungle as they "geared up for a full-scale war to overthrow Sihanouk and his Kingdom of Cambodia regime."¹⁵ Subsequently, "Marshal Lon Nol and his pro-American associates staged a successful coup to depose Prince Sihanouk as head of state"¹⁶ in March of 1970, and the Khmer Rouge—a name given to the CPK by Prince Sihanouk in the 1960s¹⁷—took control of much of the country. The Khmer Rouge drew support from thousands of Khmer who disliked Lon Nol's American-backed Khmer Republic government, and who joined the CPK to help return Prince Sihanouk to power.¹⁸ From exile in China, Prince Sihanouk formed the National United Front of Kampuchea and a government in exile, called the Royal

¹¹ Khamboly, 8.

¹² Ibid.

¹³ Ibid.

¹⁴ Khamboly, 9.

¹⁵ Craig Etcheson, After the Killing Fields: Lessons from the Cambodian Genocide (New York: Praeger, 2005) 6.

¹⁶ Khamboly, 10.

¹⁷ Khamboly, 1.

¹⁸ Khamboly, 10.

Government of the National Union of Kampuchea, whose membership included CPK members.¹⁹

With Vietnamese aid and training, the Khmer Rouge began to defeat Lon Nol's Khmer Republic forces.²⁰ Support for the Khmer Rouge grew even further as the Khmer Republic government, with assistance from the United States, bombed communist supply lines and bases, killing as many as 300,000 people solely between the months of January and August of 1973,²¹ and prompting many Cambodians to join the CPK's revolution.²² By early 1973, the Khmer Rouge controlled around 85 percent of Cambodia's territory, but U.S. assistance prolonged the civil war between Lon Nol's Khmer Republic government and Pol Pot's CPK for another two years.²³ In total between 1969 and 1973, the tonnage of bombs dropped on Cambodian soil was over three times the tonnage dropped on Japan during World War II, with almost half of it dropped in 1973.²⁴

As Alexander Hinton describes in *Why Did they Kill?*, "it was only after the Vietnam War intensified and Sihanouk was overthrown that [the Khmer Rouge] began to gain the legitimacy and support that would bring them to power."²⁵ A significant factor in this legitimacy was Sihanouk's backing of the Khmer Rouge soon after his overthrow in 1970, since the CPK had been his party's political opposition in the 1955 election,²⁶ "Sihanouk's speech galvanized large numbers of peasants to follow their beloved, charismatic, fatherly king in joining the

¹⁹ Ibid.

²⁰ Khamboly, 11.

²¹ Ibid.

²² Khamboly, 12.

²³ Ibid.

²⁴ Alexander Laban Hinton, *Why did they kill? Cambodia in the shadow of genocide* (Berkeley: University of California P, 2005) 8.

²⁵ Ibid.

²⁶ Hinton, 7.

Khmer Rouge movement”²⁷ by projecting the Cambodian people’s trust in Sihanouk onto the Khmer Rouge regime. As Hinton describes, the Khmer Rouge came to power after “a period of extreme socioeconomic upheaval... As their lives were torn apart, tens of thousands of Cambodian peasants—particularly the extremely poor and the young—joined the Khmer Rouge in order to restore their king to power, to seek vengeance against the corrupt ‘oppressors’ who were responsible for their impoverishment and for the bombings of their homes.”²⁸ After five years of political, economic, and social instability, Cambodians were optimistic on April 17, 1975, when Khmer Rouge cadres entered Cambodia’s capital city of Phnom Penh – the capital’s residents “crowded on the roads, cheering and waving white cloths.”²⁹

This date, however, marks the beginning of Cambodia’s terrorization by the Khmer Rouge regime, a time characterized by exceedingly inhuman brutality, constant fear for one’s life, and the mass murders of Khmer by fellow Khmer. The prospect of returning to pre-war life was almost immediately dashed from Cambodians’ hopes, as the Khmer Rouge “soon declared over the radio that they did not come to talk to anybody,”³⁰ and that the political and military leadership of Lon Nol’s Khmer Republic would be executed.³¹ The Khmer Rouge “immediately ordered the urban population to evacuate the cities ‘for a few days’,”³² forcing Phnom Penh’s two million residents—inflated from a pre-war population of 600,000 by an influx of Cambodians displaced by the bombings who sought refuge in the capital³³—into the rural countryside to perform agricultural work.³⁴ The evacuation had no exceptions, clearing out

²⁷ Hinton, 8.

²⁸ Hinton, 282.

²⁹ Khamboly, 13.

³⁰ Ibid.

³¹ Ibid.

³² Hinton, 8.

³³ Hinton.

³⁴ Khamboly, 14.

everything from hospitals and religious institutions and killing those who resisted.³⁵ Evacuees died by the thousands while on the road from a variety of ailments: many pregnant women died while giving birth without medical services; the sick died without medicine; the very young and elderly died from the trek alone.³⁶

Kong Suor, who was a Buddhist monk in Phnom Penh before the Khmer Rouge came to power,³⁷ and Dr. Haing Ngor, who was a part-time doctor for the Lon Nol regime before the Khmer Rouge came to power,³⁸ were both in Phnom Penh at the time of the Khmer Rouge's evacuation of the city on April 17. Kong Suor recalled how he and his fellow monks had not thought that the evacuation would apply to them, but after being ordered to evacuate their pagoda twice in three hours, Khmer Rouge cadres told the monks that they could leave the pagoda or stay where they were and be killed.³⁹ In *Survival in the Killing Fields*, Dr. Haing Ngor recalled how he was evacuated from a hospital in the middle of an operation, and described the behavior of the Khmer Rouge cadre who evacuated his operating room, saying: "There was something excessive about their anger. Something had happened to these people in their years in the forests. They had been transformed. They were not like the Cambodians I had known, shy and a bit lazy and polite."⁴⁰

The evacuations of Phnom Penh and Cambodia's cities were the CPK's first actions to "achieve a 'super great leap forward' into socialism that would be unprecedented and would supposedly create, as a May 1975 radio broadcast announced, 'the cleanest, most fair society ever known in our history'."⁴¹ This 'leap' was the goal of Pol Pot's Four Year Plan that was

³⁵ Khamboly, 15.

³⁶ Ibid.

³⁷ Kong Suor, "Interview with Survivor Kong Suor," personal interview, 4 June 2009.

³⁸ Haing Ngor. and Roger Warner, *Survival in the Killing Fields* (New York: Carroll & Graf, 2003) 57.

³⁹ Suor.

⁴⁰ Ngor, 86.

⁴¹ Hinton, 8.

hastily written in 1976 to be implemented from 1977 until 1980 and which demonstrated the Khmer Rouge's determination to "turn the country into a nation of peasants and workers in which corruption, feudalism, and capitalism could be completely uprooted."⁴² The Four Year Plan called for the collectivization of all private property,⁴³ and aimed to use the money earned by exporting agricultural products—primarily rice and secondarily other resources such as cotton—to buy machinery that would allow the CPK to build light industry, followed by medium and then heavy industry. 'Three tons per hectare' became a national slogan,⁴⁴ calling for an average national yield of three tons of unhusked rice per hectare.⁴⁵ This was an "impossible task,"⁴⁶ because it had never been accomplished before and the country was now "devastated by war, lacked tools, farm animals and a healthy work force."⁴⁷

The Four Year Plan was deeply flawed due to the "unreality and sloppiness of most of its proposals,"⁴⁸ which expected this immediate rice production increase to be a result of "a collectivized revolutionary will and the transferability of military zeal into the economic sphere,"⁴⁹ rather than by increased technology or material incentives. The plan includes no explanation of how light industry would be constructed, let alone how the increase in rice production would procedurally be accomplished.⁵⁰ For example, factories producing thousands of irrigation pumps were expected to come into being, but "Where the material to make the pumps would come from or how the funding and labor were to be acquired was not specified."⁵¹ The Khmer Rouge was able to maintain power largely by hiding their communist party and

⁴² Khamboly, 16.

⁴³ Khamboly, 26.

⁴⁴ David P. Chandler, Brother number one: a political biography of Pol Pot (Boulder, Colo: Westview P, 1999) 120.

⁴⁵ Khamboly, 26.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Chandler, 115.

⁴⁹ Chandler, 116.

⁵⁰ Chandler, 118.

⁵¹ Ibid.

directing their radical economic goals through the mysterious Angkar. This secrecy and paranoia, however, eventually led to the demise of the CPK, as the Khmer Rouge were “too impatient to try to win popular support and too cynical, [and] they became tyrants [who] ruled through terror.”⁵²

Tellingly, the Four Year Plan was never promulgated;⁵³ even the existence of the CPK was kept secret until September 27, 1977, when Radio Phnom Penh played a five-hour speech delivered by Pol Pot. The party was most likely only announced due to pressure from China, one of Cambodia’s few allies and a major financial backer of the CPK, as China’s new leadership was “unhappy that the Cambodian Communists continued to conceal the party’s existence and to claim independence from the international Communist movement.”⁵⁴ Such influences from other states demonstrate the Cold War’s influence on the political dynamics in Cambodia – the United States had backed the Lon Nol regime, China backed the CPK, Russia backed Cambodia’s rival, Vietnam. The relationship between Cambodia and Vietnam became a proxy war of the then-recent split between Russia and China, despite Vietnam’s influence in establishing the Cambodian communist movement.

The CPK wanted to make their state of Democratic Kampuchea (DK) both economically and politically independent,⁵⁵ and labeled the Vietnamese as one of DK’s enemies to unite the Khmer people against. As David Chandler describes in *Brother Number One*, when the Khmer Rouge created the state of Democratic Kampuchea, they “declared their independence from Vietnam, expunging Vietnam from party histories and making brutal raids across the frontier. The evidence suggests that Cambodia’s leaders had always resented Vietnamese patronage. With

⁵² Elizabeth Becker, When the war was over Cambodia and the Khmer Rouge revolution (New York: PublicAffairs, 1998) 209.

⁵³ Chandler, 123.

⁵⁴ Chandler, 135.

⁵⁵ Khamboly, 27.

victory, they considered themselves invulnerable because of the purity of their revolution and because of Chinese and Korean support.”⁵⁶ Vietnamese living in Cambodia were expelled when the Khmer Rouge came to power in 1975, and in 1977 and 1978 the Khmer Rouge began to systematically kill the small number of Vietnamese who had remained in Cambodia.⁵⁷ Once again representing Cold War dynamics, the CPK’s enemies were generically “labeled as CIA, KGB, or Vietnamese.”⁵⁸

One of the most significant characteristics of the Khmer Rouge was its secrecy, present in every facet of the regime from the hidden identities of the CPK’s Central Committee members to the limited information provided to the Khmer people.⁵⁹ As Dr. Haing Ngor recalled of the years before the CPK came to power, “There wasn’t much information available anyway, except for propaganda. The Khmer Rouge had a clandestine radio station, but its broadcasts didn’t tell us what the guerrillas were really like or what they really wanted.”⁶⁰ Nuon Chea—who was President of the People’s Representative Assembly in DK in addition to his position as Deputy Secretary of the CPK, and who was known as Brother Number Two to Pol Pot’s moniker of Brother Number One⁶¹—described the purpose of this secrecy to a Danish delegation visiting DK. As Chandler describes, “Chea suggested... that ‘secret work is fundamental’; he added that ‘the leadership apparatus must be defended at any price... as long as the leadership is there, the Party will not die.’ ‘Secret work’ included moving unexpectedly to different houses, using

⁵⁶ Chandler, 139-140.

⁵⁷ Khamboly, 44.

⁵⁸ Chandler, 142.

⁵⁹ James A. Tyner, Killing of Cambodia geography, genocide, and the unmaking of space (Burlington, VT: Ashgate, 2008) 142.

⁶⁰ Ngor, 76.

⁶¹ Khamboly, 22.

messengers, living under guard, testing food for poison, and so on. To illustrate the importance of anonymity, Nuon Chea, unconsciously perhaps, fails to mention Pol Pot.”⁶²

This secrecy is a symptom of the CPK’s, and Pol Pot’s, extreme paranoia; while visiting China in October 1977, Pol Pot even cited needing to break up an “enemy spy organization”⁶³ as the reason for the evacuation of Phnom Penh on April 17, 1975.⁶⁴ The interrogation operations at Tuel Sleng demonstrate the massive and systemic nature of the CPK’s paranoia. Also known as S-21, Tuel Sleng was a high school converted into a prison by the Khmer Rouge, and was described by factory workers located nearby S-21 as “the place [where people] went in and never came out.”⁶⁵ Interrogators at S-21 extracted thousands of confessions to crimes against the CPK by torture. As Chandler explains, “The primary value of the documents *en masse* is as evidence of the continuing phobias of the party’s leaders. Taken as a whole, the confessions are a bleak testimony to the extent which the [Khmer Rouge] were riddled with brutality and distrust.”⁶⁶

The Khmer Rouge identified the difficulties with “building the local infrastructure necessary to indoctrinate the masses,”⁶⁷ as ‘the problem with cadres,’ which was demonstrated at the frequent mandatory political meetings during which local cadres recited the CPK’s various slogans, often in an unconvincing manner as most of these uneducated cadres did not understand the party’s political tenets.⁶⁸ As Hinton explains, “Unable to inspire the populace, such cadres used fear and force to ensure compliance.”⁶⁹ These meetings took place in the cooperatives, which were established as a part of the CPK’s attempt to “abolish private ownership and

⁶² Chandler, 150.

⁶³ Khamboly, 16.

⁶⁴ Ibid.

⁶⁵ Chandler, 124.

⁶⁶ Chandler, 150.

⁶⁷ Hinton, 12.

⁶⁸ Ibid.

⁶⁹ Ibid.

capitalism, and to strengthen the status of workers and peasants.”⁷⁰ Hinton further describes, “Collectivization strongly undermined three key features of traditional peasant life: the family, whose members jointly engaged in economic production and consumption; the village, which was composed of friends and relatives who shared a sense of identity and sometimes assisted one another; and Buddhism, which provided a social, moral, and educational locus for everyday life.”⁷¹ The extreme collectivization present in the cooperatives, especially communal eating, severely restricted family life, and was seen as unpleasant and cruel because Cambodian families had eaten together for thousands of years.⁷²

The Khmer Rouge classified people in their new and supposedly classless society as either ‘new people’ or ‘old people,’ based on their occupation before the Khmer Rouge came to power in 1975: ‘old people,’ also known as ‘base people,’ were those who lived in rural areas under CPK control before April 17, 1975; ‘new people,’ also known as ‘17 April people,’ were those evacuated from the cities and towns in April, 1975, although many had lived in the countryside and had moved to escape the bombings.⁷³ These classifications dehumanized those classified as oppressors, by portraying them as less than fully human beings.⁷⁴ These oppressors were one of many classifications of the CPK’s enemies, which included both external and internal enemies. Those classified as internal enemies were the ‘new people,’ those whose status was classified as capitalist or feudalist or who were not ethnically Khmer, including: officials of the Khmer Republic government, minority groups, Cham Muslims, Vietnamese, ethnic Chinese, intellectuals, and alleged traitors.⁷⁵ External enemies referred to “the US and its allies such as

⁷⁰ Khamboly, 30.

⁷¹ Hinton, 26.

⁷² Khamboly, 30.

⁷³ Ibid.

⁷⁴ Hinton, 284.

⁷⁵ Khamboly, 42.

Thailand and some socialist countries, especially Vietnam and the Soviet Union,”⁷⁶ which the Khmer Rouge felt “attempted to invade Cambodia and make it their colony.”⁷⁷ These external enemies demonstrate the paranoia of the CPK leadership as well as the affect on the country of previous foreign influences such as Cambodia’s colonial domination by France and the Vietnamese political influence in the wake of Cambodia’s independence from France.

All of the aforementioned ‘enemies’ were systematically persecuted by the Khmer Rouge regime, including religious establishments. In destroying all roots with the past as part of the CPK’s revolutionary struggle to create “the first real communist society”,⁷⁸ the Khmer Rouge abolished religion, prohibiting religious worship.⁷⁹ Buddhism, which had served as the basic source of Khmer identity,⁸⁰ was seen as a threat to the revolutionary struggle for a homogenized population, because it was seen “as ‘civilizing’ and contributing to the ‘social evolution’ of the peoples.”⁸¹ Survivor Sen Osman recounts how “[The CPK] said religion is treachery, treason against the revolution, against the Leninist line, a feudal system. So it was no good, and had to be abolished.”⁸² Buddhism specialist Chanthou Boua describes the impact of the Khmer Rouge on Buddhism, saying that Buddhism “was eradicated from the face of the country in just one year.”⁸³ Under the Khmer Rouge, monks like Kong Suor were de-robed, pagodas were destroyed, statues of Buddha were smashed, and “of a total of 2,680 Buddhist monks from eight of Cambodia’s 3,000 monasteries only seventy monks were found to have survived in 1979.”⁸⁴

⁷⁶ Khamboly, 45.

⁷⁷ Ibid.

⁷⁸ Ben Kiernan, Genocide and Resistance in Southeast Asia Documentation, Denial, and Justice in Cambodia and East Timor (Africana Studies) (New York: Transaction, 2007), 212.

⁷⁹ Ben Kiernan, Pol Pot regime race, power, and genocide in Cambodia under the Khmer Rouge, 1975-79 (New Haven, CT: Yale Nota Bene, 2002) 274.

⁸⁰ Charles Keyes, "Buddhism and Revolution in Cambodia," *Cultural Survival Quarterly* 14 (1990)

⁸¹ Ben Kiernan, Conflict and Change in Cambodia, ed. Caroline Hughes (New York: Routledge, 2006) 96.

⁸² Kiernan, Pol Pot Regime, 274.

⁸³ Ben Kiernan, Genocide and Resistance in Southeast Asia, 274.

⁸⁴ Kiernan, Genocide and Resistance in Southeast Asia, 217.

The Khmer Rouge has been said to have committed “autogenocide”⁸⁵ because many Cambodians fell under the categories of the CPK’s ‘enemies,’ creating a situation in which Khmer were killing Khmer people. The crimes Khmer Rouge cadres committed ranged from mass executions to cannibalism; Khmer Rouge cadres would often eat the livers of their victims,⁸⁶ and torture was considered to “help loosen a prisoner’s memories”⁸⁷ at the Tuol Sleng interrogation center. Many of the cadres were brainwashed youths who had been separated from their families by the Khmer Rouge, and taught that “Only Angkar deserved to be children’s parents.”⁸⁸ School-aged children were “manipulated and forced to join the KR revolutionary armed forces,”⁸⁹ and were trained to carry out brutal and cruel orders.⁹⁰ Angkar became a term indicative of severe panic and insecurity for one’s own life, as Angkar was said to have “eyes like a pineapple,”⁹¹ able to see everything that everyone did at all times. This was a horrifying concept given the paranoia of the CPK’s leadership, and people often ‘disappeared,’ were ‘relocated’ or were ‘reassigned’ when Khmer Rouge cadres suspected someone of treason against Angkar, either in the form of stealing or because of one’s former position in society before the CPK came to power.⁹²

No one was safe under the Khmer Rouge regime, including those who were Khmer Rouge cadres. Youth cadres assigned to guard prisoners at S-21 were scared for their lives just as the people working at cooperatives were. Prak Khan, a former prison guard and torturer at S-21,

⁸⁵ Hinton, 15.

⁸⁶ Hinton, 290.

⁸⁷ Peter Maguire, Facing Death in Cambodia (New York: Columbia UP, 2005) 58.

⁸⁸ Ibid.

⁸⁹ Jorge D. Veneciano and Alexander Hinton, eds., Night of the Khmer Rouge: Genocide and Justice in Cambodia (New Jersey: Paul Robeson Gallery, 2007) 26.

⁹⁰ Veneciano, 30.

⁹¹ David P. Chandler, The Tragedy of Cambodian History Politics, War, and Revolution since 1945 (New York: Yale UP, 1993) 260.

⁹² Hinton, 9.

recalls how superior Khmer Rouge cadres “oppressed us in every respect,”⁹³ and how he was scared not to work well or hard enough because “[He] was afraid I might be accused as internal enemy... It was a terrifying situation when one by one my colleagues disappeared every day.”⁹⁴ One S-21 guard was even killed for yelling “the house is on fire” in his sleep.⁹⁵ This demonstrates the paradox of perpetration: those committing crimes on behalf of the Khmer Rouge were often doing so on pain of their own lives, such that cadres often killed their victims in order to keep themselves alive. This was the case for one of Hinton’s interviewees named Lor, who worked at S-21 and explains that he killed a few people “so that others wouldn’t accuse me of being unable to cut off my heart... When my boss asked me to do this, if I didn’t do it [pause]... I couldn’t refuse.”⁹⁶ As another former Khmer Rouge cadre described, “We fought the Vietnamese and they killed us for not fighting the Vietnamese.”⁹⁷

The Khmer Rouge regime continued to terrorize the country, creating a society “characterized by unrelenting work, malnutrition, starvation, illness, familial rupture, the loss of Buddhism, a lack of rights, brutality, terror, and death,”⁹⁸ until January of 1979, when Vietnamese forces invaded Cambodia and the CPK leadership fled into exile.⁹⁹ The Vietnamese initiated a new regime in Phnom Penh called the Peoples Republic of Kampuchea (PRK) that would govern Cambodia until 1990 when Vietnamese forces withdrew from Cambodia, and under which Cambodians began to rebuild their lives¹⁰⁰ – a concept hard to consider when a Documentation Center of Cambodia (DC-CAM) study found that 89.42 percent of respondents

⁹³ Prak Khan, "Prak Khan at Toul Sleng/S-21 Prison Camp Walk & Talk Interview," interview, 2.

⁹⁴ Ibid.

⁹⁵ Maguire, 60.

⁹⁶ Hinton, 3.

⁹⁷ Chandler, 147.

⁹⁸ Hinton, 12.

⁹⁹ Chandler, 156.

¹⁰⁰ Khamboly, 61.

lost relatives during the Khmer Rouge period.¹⁰¹ Youk Chhang, Executive Director of DC-CAM, uses the metaphor of a broken glass to describe himself and other victims as “broken persons living in a broken society,”¹⁰² in that even though “you try to glue it back together... Nothing can be the same.”¹⁰³ After the Vietnamese liberation, individual Cambodians faced the loss of family members and the psychological effects of living through extreme trauma, while often living nearby former Khmer Rouge cadres.¹⁰⁴ Local communities were also faced with the promotion of reconciliation and the rebuilding of both Buddhism and village life.¹⁰⁵ Cambodia as a whole faced the deaths of at least two million people and a demolished infrastructure. As Linton describes, “The devastation of traditional life and values during the Khmer Rouge rule has meant a loss of the frameworks and rituals that governed how society functioned, and has left individuals and wider society without structured ways of coping with tensions and anxieties.”¹⁰⁶

DEFINING JUSTICE & RECONCILIATION

Given the paradox of perpetration and the horrific nature and variety of crimes committed by the Khmer Rouge, bringing justice to the victims and reconciliation within Cambodia are two massive hurdles that have appeared—and to many survivors still appear—elusive. Justice and reconciliation have been gravely delayed by both national and international political complexities at the expense of the Khmer people. Throughout Cambodia, people are still suffering and many have yet to overcome the emotional trauma of having lived through Democratic Kampuchea, and both the government and justice system are severely mired by

¹⁰¹ Suzannah Linton, *Reconciliation in Cambodia* (Phnom Penh: Documentation Center of Cambodia, 2004) 57.

¹⁰² Youk Chhang, "Youk Chhang Interview, Head of Documentation Centre in Cambodia and survivor of the Cambodian genocide," interview, 7.

¹⁰³ Ibid.

¹⁰⁴ Veneciano, 16.

¹⁰⁵ Ibid.

¹⁰⁶ Linton, 59.

corruption. A study by the UC Berkeley Human Rights Center found that “Respondents showed little confidence in the national criminal justice system...Less than half of respondents (44%) agreed with the proposition that Cambodian justice is for everyone... Eighty-two percent said going to court was too expensive and required bribing judges (82%) or the police (77%).”¹⁰⁷

Internationally, Cambodia had initially been caught in the cross-fire of Cold War politics and is now in the cross-fire of establishing a precedent for international law and its enforcement. After the Khmer Rouge regime was overthrown by the Vietnamese liberation, the UN Credential Committee voted to allow the CPK’s state of Democratic Kampuchea retain Cambodia’s seat in the UN General Assembly by a vote of six to three.¹⁰⁸ A senior U.S. official explained the U.S. decision to support the CPK, saying “The choice for us was between moral principles and international law. The scale weighed in favor of law because it served our security interests.”¹⁰⁹

Justice for the victims can be split into the categories of retributive justice and restorative justice. Retributive justice focuses on the legal and procedural conception of justice, providing the victims with a verdict of the perpetrators’ guilt. Restorative justice emphasizes the emotional components of justice, highlighting the processes of forgiveness and reconciliation. Restorative justice therefore takes a “victim-centered approach...which stresses that victims deserve to tell their full story before a decision maker who is perceived as neutral, honest and attentive.”¹¹⁰ These two categories represent the two dimensions of justice for the survivors of the Khmer Rouge regime, demonstrating the necessity for both legal ramifications and emotional reconciliation among those who survived. Retributive justice and restorative justice are inextricably linked, however, and a search to fulfill one may prevent the fulfilling of the other.

¹⁰⁷ Pham, 4.

¹⁰⁸ Maguire, 67.

¹⁰⁹ Ibid.

¹¹⁰ Linton, 90.

This is especially true of retributive justice's assumption that wrongdoing must be prosecuted and punished to sustain a humane political community, and that the state is therefore obligated to give justice to victims and to identify perpetrators, holding them legally accountable for their actions.¹¹¹ This perspective complicates the actualization of restorative justice for two central reasons. First, it emphasizes punishing perpetrators, but "how far down the chain of command to go is not at all clear,"¹¹² which has hindered reconciliation because of the paradox of perpetration, where many perpetrators of violence were terrorized themselves by superior Khmer Rouge cadres and committed crimes out of fear for their own lives. This problem is solved largely by the ECCC and the Hun Sen government's indictment of only the top leadership of the Khmer Rouge, which aids reconciliation by not classifying perpetrators as either guilty or innocent, acknowledging the grey area involved in the paradox of perpetration. The UC Berkeley study also found that "67% [of respondents] believed that [the ECCC] would help promote national reconciliation,"¹¹³ further putting to rest fears that the ECCC will hinder reconciliation.

Second, as March Amstutz describes in "Restorative Justice, Political Forgiveness and the Possibility of Political Reconciliation," "Since retributive justice emphasizes justice as a precondition for reconciliation, it allows little room for forgiveness."¹¹⁴ Therefore, by focusing on the punishment of offenders, the retributive justice model "neglects the rehabilitation of victims and the restoration of communal relationships,"¹¹⁵ ignoring the pervasive social disconnect between those survivors who wish to bury the past and move on and those who wish to see the perpetrators brought to justice.

¹¹¹ March R, Amstutz "Restorative Justice, Political Forgiveness, and the Possibility of Political Reconciliation," Ch. 6 in Politics of Past Evil Religion, Reconciliation, And the Dilemmas of Transitional Justice. ed. Daniel Philpott (New York: University of Notre Dame P, 2006) 165.

¹¹² Tom Fawthrop and Helen Jervis, Getting Away with Genocide? Elusive Justice and the Khmer Rouge Tribunal (New York: UNSW P, 2005) 150.

¹¹³ Pham, 40.

¹¹⁴ Amstutz, 165.

¹¹⁵ Amstutz, 166.

As Amstutz describes, restorative justice “emphasizes the renewing of relationships through reconciliation based in part on truth telling, contrition, and even forgiveness.”¹¹⁶ Therefore, reconciliation is deeply entrenched in the existence of forgiveness, which is often only considered in light of religion and is considered a “new field in academia.”¹¹⁷ The importance of forgiveness in relation to multi-level reconciliation is also identified by Linton, who writes that “Forgiveness was a particularly strong feature when respondents considered the meaning of national reconciliation and unity and how to get there.”¹¹⁸ In a study on forgiveness by DC-CAM, Research Director and Deputy Director of DC-CAM Kok-Thay Eng accepts Enright’s definition of forgiveness as “a willingness to abandon one’s right to resentment, negative judgment, and indifferent behavior toward one who unjustly hurt us, while fostering the undeserved qualities of compassion, generosity, and even love toward him or her.”¹¹⁹ This definition aligns with Amstutz’s description of restorative justice’s emphasis on the “transformation of subjective factors that impair community such as anger, resentment, and desire for vengeance.”¹²⁰

Given the involvement of forgiveness in the process—and the condition—of reconciliation, it is necessary to accentuate the aspects on which forgiveness is dependent. Although Kok-Thay Eng describes various forms of forgiveness and from whom an offender can be forgiven, Amstutz isolates five components that forgiveness is dependent on, which better serves the purpose of analyzing what method of transnational justice is more effective and efficient for the Cambodian environment. The first factor is a consensus on truth, specifically

¹¹⁶ Amstutz, 153.

¹¹⁷ Kok-Thay Eng, Forgiveness: Is it Possible to Forgive and Can Forgiveness be Taught? Documentation Center of Cambodia, 1.

¹¹⁸ Linton, 157.

¹¹⁹ Ibid.

¹²⁰ Amstutz, 167.

that those responsible for crimes need to be able to acknowledge their offenses.¹²¹ The second is remorse and repentance on the part of the offenders, which Amstutz describes as involving contrition and a transformation of commitments such that the offender promises never to commit such offenses again.¹²² The third factor is a renunciation of vengeance on the part of victims.¹²³ The fourth factor is empathy, in that the victims and offenders must be able to cultivate compassion and empathy for one another in order to accept one another as humans worthy and respect.¹²⁴ The final factor is a mitigation of punishment, in the form a debt reduction resulting from victims' responding to offenders' repentance and remorse.¹²⁵ While a retributive justice model can aid the first two factors, the latter three factors relate solely to the restorative justice model and are highly significant in establishing or furthering reconciliation. However, Linton discusses that the trials can contribute to reconciliation in the affected communities.¹²⁶

Reconciliation occurs on three interconnected levels: national, communal, and individual. While individual, communal and national reconciliation may appear to have distinct, individual characteristics, according to Cambodian public opinion, each form of reconciliation is unachievable without the other. For Cambodians, reconciliation “is about coming to terms with one’s own experiences, memories and negative feelings; learning as individuals and a society to co-exist with each other; and then working together towards a common future.”¹²⁷ Therefore, while individuals must come to terms with their own experiences and learn to co-exist within communities, and the nation as a whole must work together for a common future, each of these steps require cohesion of the steps at the other levels, and appear to have foundations at the

¹²¹ Amstutz, 157.

¹²² Ibid.

¹²³ Amstutz, 158.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Linton, 68.

¹²⁷ Linton, 227.

individual level. The prospects for reconciliation in Cambodia are complicated by the social context, such that “Reconciliation in Cambodia encompasses at the very least relations between town and city folk, former combatants on opposite sides, victims and perpetrators – whether those who willingly participated, the ‘unwilling’ perpetrators who were forced to commit crimes, or bystanders who aided through their moral support and silence – within families, within communities.”¹²⁸

Because the Khmer Rouge committed systematic human rights abuses, any justice brought to the victims falls under the category of transitional justice, which is “justice adapted to societies transforming themselves after a period of pervasive human rights abuse.”¹²⁹ According to the International Center for Transitional Justice (ICTJ), transitional justice seeks “recognition for victims and to promote possibilities for peace, reconciliation and democracy.”¹³⁰ The ICTJ suggests six initiatives that establish basic approaches to transitional justice, five of which are especially relevant for Cambodia. These are criminal prosecutions, truth commissions, reparations programs, security system reform, and memorialization efforts.

THE STRUGGLE FOR JUSTICE IN CAMBODIA

Some of these initiatives have already been attempted, however ineffectively. This is largely because of the clashes within and between the interests of domestic actors, as well as international actors who have become interested in Cambodia’s affairs over the past three decades, which has created a complex political dilemma that it yet to be solved.¹³¹ For example, in August 1979, the new Vietnamese-backed PRK government established the People’s

¹²⁸ Linton, 14.

¹²⁹ "What is Transitional Justice? -." International Center for Transitional Justice. 21 June 2009 <<http://www.ictj.org/en/tj/>>.

¹³⁰ Ibid.

¹³¹ Kiernan, Genocide and Resistance in Southeast Asia, 142.

Revolutionary Tribunal to try Pol Pot and Ieng Sary for genocide.¹³² The trial, which had a ten-person jury, tried both members of the Khmer Rouge leadership *in absentia* and heard a variety of dramatic and gruesome testimonies. Although the court found Pol Pot and Ieng Sary guilty and sentenced them to death, the trial's convictions of the two leaders were never recognized by the international community.¹³³ Furthermore, because Ieng Sary was serving as the international representative of the still-recognized state of Democratic Kampuchea, the trial became recognized as merely a 'show trial,' which gave the impression of "primitive political justice."¹³⁴ The tribunal's legitimacy was further mired by the lack of a fair trial; according to McGuire in *Facing Death in Cambodia*, the opening statement of Pol Pot and Ieng Sary's court-appointed defense lawyer "offered little in the way of a defense and instead delivered a cliché-filled monologue."¹³⁵ Hence, the domestic trial not only proved to be an ineffective top-down approach to reconciliation, but it also exhorted people to "forgive and forget" the past, without any provision of justice for the victims since the perpetrators were not held accountable for their crimes.¹³⁶

The Royal Government's previously ineffective and continuously unwilling efforts to provide justice highlight a predominant problem of impunity that affects the provision of reconciliation in Cambodia on all three levels. A report conducted by Human Rights Watch notes that "The problem ranges from the failure to prosecute former Khmer Rouge leaders such as Ieng Sary and Ke Pauk – implicated in the killings of millions of Cambodians in the 1970s – to hundreds of more recent unpunished crimes committed by current government authorities."¹³⁷

¹³² Maguire, 64.

¹³³ Linton, 41.

¹³⁴ Maguire, 66.

¹³⁵ Ibid.

¹³⁶ Etcheson, 171.

¹³⁷ Adhoc, Licadho, and Human Rights Watch, Impunity in Cambodia: How Human Rights Offenders Escape Justice, Rep. no. 3, vol. 11, C (Human Rights Watch, 1999) 7.

This illustrates that Cambodia's culture of impunity has been deeply embedded in the country for decades as well as the fact that it is present is within the highest levels of the Royal Government.¹³⁸ Allowing criminals to escape justice is extremely problematic because according to Etcheson, "the disease of impunity impacts the way Cambodians look at everyday life and their relationship to society and has especially corrosive effects on the socialization of the young."¹³⁹ The problem of impunity has not only consistently been a substantial impediment to bringing justice to Cambodia over the past three decades, but it is also a problem that has been particularly worsened by the involvement of international actors.

For example, despite the atrocities they committed, the CPK's leaders avoided responsibility for the crimes because of international support and recognition of "the government in exile of Democratic Kampuchea as the lawful representative of the Cambodian people...permit[ting] them to occupy Cambodia's seat at the General Assembly until 1991."¹⁴⁰ Since the CPK's leaders were recognized by the UN, and were therefore "legitimate," leaders of the state of Cambodia, they had the ear of the international community. Not only did the international community fail to hold the Khmer Rouge accountable for the genocide, but during the Stockholm International Kampuchea Conference in 1979, a small number of Western countries accepted Khieu Samphan's (President of Democratic Kampuchea) claim that the Vietnamese were responsible for the deaths of one million Cambodians.¹⁴¹

By the late 1980s, four factions had emerged in the Cambodian conflict, some of which were in alliance with each other: the Vietnamese-backed PRK; the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC); the Khmer Rouge;

¹³⁸ Etcheson, 170.

¹³⁹ Ibid.

¹⁴⁰ Linton, 41.

¹⁴¹ Maguire, 67.

and the Khmer People's National Liberation Front (KPNLF).¹⁴² On October 23, 1991, the Paris Peace Agreement was signed, giving the UN Transitional Authority in Cambodia (UNTAC) the jurisdiction to supervise a ceasefire and to hold a democratic election.¹⁴³ According to Linton, although the Paris Peace Accords were designed to end international involvement, "the reality was that the motor behind the process was international pressure rather than a desire for genuine national reconciliation."¹⁴⁴

Bringing justice to Cambodia appeared almost entirely impossible up until 1997 when the UN had finally acknowledged in a General Assembly resolution that genocide had in fact occurred in Cambodia in the 1970's.¹⁴⁵ The issue of justice was debated on both domestic and international levels. Thomas Hammarberg, the Special Representative of the Secretary General for Human Rights in Cambodia at the time, put forth the idea of having a 'mixed tribunal' because he felt it appropriate that the "UN experts should assist Cambodia in drafting the legislation to ensure that it would meet international standards."¹⁴⁶ This idea was received with alarm and skepticism by various members within the ruling party, and Hun Sen, the Prime Minister of the Royal Government of Cambodia, particularly opposed a joint tribunal of predominantly international jurists because he felt it was an "affront to Cambodian sovereignty,"¹⁴⁷ and that Cambodia's goal "must be to rebuild, not to dredge up the conflicts of the past."¹⁴⁸

Cambodia's problem of corruption was highlighted during the debates over the format of a mixed tribunal. As a result of domestic and Chinese pressure to discontinue negotiations, Hun

¹⁴² Linton, 41.

¹⁴³ "Paris Peace Agreement: Annex 1 UNTAC Mandate," Khmer Institute, 22 June 2009
<<http://www.khmerinstitute.org/docs/PPA1991.htm>>.

¹⁴⁴ Linton, 41.

¹⁴⁵ Fawthrop, 155.

¹⁴⁶ Ibid.

¹⁴⁷ Taylor, 258.

¹⁴⁸ Taylor, 247.

Sen appeared to lack honesty due to comments he made to pacify both these and international pressures. At a Central Committee meeting of the ruling party, the Cambodian People's Party, in February 2000, Hun Sen "reassured anti-tribunal cadres that there was no need to worry about the tribunal because he had successfully stalled progress on the negotiations for 3 years, and would continue to stall them until the key suspects had died of natural deaths."¹⁴⁹ Unknown to other international actors involved in the negotiations, Hun Sen was offered increased bilateral aid and development assistance from China, which had been the "principal ally and patron of the Khmer Rouge for several decades"¹⁵⁰; these offers were intended to pressure the Prime Minister into derailing the tribunal.¹⁵¹ Hun Sen was thus faced with a double-edge sword, because even if he could have been persuaded to accept the proposal on the table, China could still veto any tribunal resolution in the UN.¹⁵²

Nevertheless, a framework for bringing the Khmer Rouge leaders to justice was finally established; an agreement was reached between the Hun Sen government and the UN after the United States presented a new proposition that included a majority of Cambodian judges.¹⁵³ Although the Cambodian National Assembly had passed a draft law ratifying the new proposal on January 2, 2001, underlying strains between the Cambodian government and the UN were still present. After a meeting of the state cabinet, Hun Sen announced that he wanted the UN to stay out of Cambodia's affairs and "leave Cambodia to work on this."¹⁵⁴ This attitude caused the international community to question whether Hun Sen was trying to "push through an agreement on tightly controlled trials to enhance his image before communal elections in 2002 and national

¹⁴⁹ Kiernan, 163.

¹⁵⁰ Etcheson, 154.

¹⁵¹ Fawthrop, 234.

¹⁵² Fawthrop, 157.

¹⁵³ Taylor, 258.

¹⁵⁴ Taylor, 259.

elections in 2003.”¹⁵⁵ As a result, the UN expressed concerns about the tribunals “independence, impartiality and objectivity,”¹⁵⁶ and discontinued negotiations with the Cambodian government. Although the possibility of a Cambodian Joint Tribunal was dashed, negotiations between the two actors resurrected in December 2002, and a final agreement was reached on March 17, 2003.¹⁵⁷

THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

ECCC & Justice

The new agreement detailed the involvement of the international community and the UN in assisting a tribunal that would be set up under the Cambodian judicial system. The court was named the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, abbreviated to the Extraordinary Chambers or the ECCC,¹⁵⁸ and holds its trials in a large courtroom erected on the outskirts of Phnom Penh in the Dangkor district.¹⁵⁹ The ECCC’s subject matter jurisdiction includes genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, and other crimes.¹⁶⁰ The court can only try crimes committed in Cambodia between April 17, 1975 and January 6, 1979,¹⁶¹ and limits its prosecutions to the senior leaders of Democratic Kampuchea “who planned or gave orders, as well as those most responsible for committing serious crimes.”¹⁶² The court is also granted the responsibility to “decide exactly who was a

¹⁵⁵ Taylor, 260.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Secretariat of the Royal Government Task Force, Office of the Council of Ministers, Kingdom of Cambodia, An Introduction to the Khmer Rouge Trials, brochure (Phnom Penh: Author, 2004) 2.

¹⁵⁹ Secretariat of the Royal Government Task Force, 9.

¹⁶⁰ Pham, 16.

¹⁶¹ Secretariat of the Royal Government Task Force, 8.

¹⁶² Secretariat of the Royal Government Task Force, 6.

‘senior leader’ and who was ‘most responsible’ for the crimes committed by the Khmer Rouge.”¹⁶³

This format of a mixed tribunal was intended to pacify both international interests of promoting international legal norms and Cambodian interests of having ownership of the process that would bring perpetrators to justice.¹⁶⁴ Because of the “undertrained, underfunded, and underdeveloped”¹⁶⁵ nature of Cambodia’s judicial system, the compromise benefits Cambodia by helping establish a just Rule of Law by international standards, and Taylor identifies that “ingraining the rule of law in Cambodia may have the further effect of instilling confidence in international investors – thus leading to more economic development, as the Cambodian government wants.”¹⁶⁶ Hence, the mixed trial format ensures that Cambodian sovereignty remains safe—a Cambodian preoccupation given its history of foreign occupation and involvement—while the assistance of foreign judges and prosecutors in the trials “may help to develop Cambodia’s judicial system, thereby improving the chances that future domestic trials might also be conducted in line with international norms of due process.”¹⁶⁷ Another benefit for Cambodia of a domestic trial is the coverage the trials would garner by the local press, which could increase the impact of the trial simply by informing the citizenry of what occurs at the trials. ¹⁶⁸This possibility was supported by the fact that several interviewees in rural, impoverished villages responded that they had heard about the trials on the radio.

The court is divided into two levels: the Trial Chamber, which will hear the cases and deliver verdicts,¹⁶⁹ and the Supreme Court Chamber, which will hear appeals on the verdicts

¹⁶³ Ibid.

¹⁶⁴ Taylor, 262.

¹⁶⁵ Etcheson, 171.

¹⁶⁶ Ibid.

¹⁶⁷ Taylor, 264-5.

¹⁶⁸ Ibid.

¹⁶⁹ Secretariat of the Royal Government Task Force, 13.

delivered by the Trial Court.¹⁷⁰ The Trial Chamber has five judges, three of whom are Cambodian judges and two of whom are international judges,¹⁷¹ while the Supreme Court Chamber has seven judges, four of whom are Cambodian judges and three of whom are international judges.¹⁷² Any conviction must be made by a ‘super majority’ of judges, which requires agreement from four of the five Trial Chamber judges, and agreement from five of the seven Supreme Court Chamber judges on an appeal decision.¹⁷³

At the first introductory submission of suspects in July, 2007, Kaing Gue Eav (alias Duch) and Ieng Thirith were charged with crimes against humanity, while Nuon Chea, Ieng Sary, and Khieu Samphan were charged with crimes against humanity and war crimes.¹⁷⁴ By the end of 2007, all five suspects were detained under “provisional detention at the ECCC.”¹⁷⁵ The maximum sentence the court can deliver to those convicted is life in prison, while the minimum sentence is five years in prison; the death penalty will not be exercised because the court is under the jurisdiction of the Cambodian justice system, which considers the death penalty unconstitutional.¹⁷⁶ All trials are open to the public, except to those under the age of 18 or “in special circumstances when the judges decide that the public must be excluded to protect the identity of witnesses or victims.”¹⁷⁷

While the primary purpose of the trial is to provide justice to the Cambodian people, the trial also seeks to educate younger generations in order to prevent anything similar from occurring in the future, and to strengthen the rule of law in Cambodia by holding fair and open

¹⁷⁰ Secretariat of the Royal Government Task Force, 10.

¹⁷¹ Secretariat of the Royal Government Task Force, 9.

¹⁷² Ibid.

¹⁷³ Secretariat of the Royal Government Task Force, 13.

¹⁷⁴ Secretariat of the Royal Government Task Force, 8.

¹⁷⁵ Ibid.

¹⁷⁶ Secretariat of the Royal Government Task Force, 7.

¹⁷⁷ Secretariat of the Royal Government Task Force, 11.

trials.¹⁷⁸ These secondary goals arise out of the belief that “By supporting and learning about justice, we can all contribute to the reconstruction of our society.”¹⁷⁹ These secondary goals of the ECCC are more contentious than the goal of providing justice to the victims and survivors of the Khmer Rouge regime for many reasons. First, it is questionable how much the ECCC has done to educate the youth of Cambodia; most initiatives seem to be born out of DC-CAM activities, including the provision of textbooks dedicated to teaching school children about Democratic Kampuchea, which students had previously not been taught. When questioned about how he learned about Pol Pot and the Khmer Rouge, Sreng Sroeur, a 20-year-old high school student, replied vaguely that his teacher had told him some things about it and that he had heard some things from people in his village, but he was never formally taught about the regime.¹⁸⁰ While the ECCC has not done much outreach, however, the trials can still have educational value by providing moral lessons to future generations and breaking cycles of violence.¹⁸¹ These moral lessons, however, may conflict with the actualization of retributive justice, as Linton highlights a conflict in the purpose between these two aspects: “when trials are used as platforms for moralizing or forums for educating, the process becomes no longer one of determining innocence or guilt.”¹⁸²

At present, the ECCC is unlikely to strengthen the rule of law in Cambodia because this would require a complete overhaul of the judicial system, which the culture of impunity is ingrained in. This is demonstrated by the UC Berkeley study’s aforementioned finding that 82 percent of respondents said that going to court was too expensive and required bribing judges or

¹⁷⁸ Secretariat of the Royal Government Task Force, 5.

¹⁷⁹ Ibid.

¹⁸⁰ Sreng Sroeur, “Interview with Student Sreng Sroeur,” personal interview, 8 June 2009.

¹⁸¹ Linton, 165.

¹⁸² Linton, 166.

the police (77%).¹⁸³ Therefore, such a security system reform, as suggested by transitional justice initiatives, is unlikely to occur solely from the retributive justice that the trials seek to provide. Furthermore, while a well-conducted trial could have a “‘demonstration effect’ on Cambodia’s judicial system,”¹⁸⁴ the tribunal is seen by Cambodians as “a case of belated but better late than never justice.”¹⁸⁵ According to Etcheson, the extent to which the trial is able to have a beneficial impact on Cambodia’s culture of impunity is entirely dependent on how the trial is conducted.¹⁸⁶ While Etcheson states that bringing criminals to trial and forcing them to an answer to their crimes “would certainly bring an end to their long-standing personal impunity as individuals,”¹⁸⁷ he notes that the tribunal could potentially reinforce the culture of impunity “unless the trials are conducted strictly under the Rule of Law, and unless this Rule of Law eventually becomes institutionalized in the structures of the government and internalized in the hearts and minds of the people.”¹⁸⁸ On the other hand, the tribunal could “help establish a factual record of what took place helping to prevent Cambodia’s culture of denial and impunity.”¹⁸⁹

The primary goal of the ECCC, however, has its fair share of problems, because the concept of justice means a variety of different things to different people. In terms of transitional justice, the ECCC functions as a criminal prosecution initiative, and functions as a minor reparations initiative by producing statements of remorse and apology, such as those of Duch (*more on this to follow*). The ECCC also fulfils the primary purpose of retributive justice models, by identifying perpetrators and holding them accountable for their crimes in order to provide their victims with justice. Whether or not the ECCC is successful at holding these perpetrators

¹⁸³ Pham, 47.

¹⁸⁴ Etcheson, *After the Killing Fields*, 172.

¹⁸⁵ Fawthrop, 241.

¹⁸⁶ Etcheson, *After the Killing Fields*, 174.

¹⁸⁷ Etcheson, *After the Killing Fields*, 171.

¹⁸⁸ Etcheson, *After the Killing Fields*, 174.

¹⁸⁹ Linton, 140.

accountable for their crimes is mired by politics—King Norodom Sihanouk granted Ieng Sary amnesty in 1996—and is dependent on whether the ECCC can overcome these complications for the sake of the victims of the Khmer Rouge period.

The ECCC has an even more complicated task at hand in the delivery of restorative justice. While the ECCC does help create a historical record, and the UC Berkeley study found that “71% believed the ECCC would help rebuild trust in Cambodia,”¹⁹⁰ it falls short of the explanations many victims seek regarding what really happened and why the Khmer Rouge killed their own people.¹⁹¹ Because the trials will not produce clear and complete historical records, according to Taylor, “the Cambodian people’s goals of knowing the truth and potentially forgiving the perpetrators are not likely to be well served by trials.”¹⁹² Furthermore, the trials are likely to disappoint those who expect that those Khmer Rouge leaders on trial will confess to all of their crimes and tell the whole truth.¹⁹³

Nonetheless, putting the leaders of the Khmer Rouge on trial is vitally important to the victims of the Khmer Rouge because it signifies that the perpetrators cannot evade justice.¹⁹⁴ This is because forcing the perpetrators to be held legally accountable for their actions can give the victims a sense of closure and allow them to move on.¹⁹⁵ Dr. Nou Leakhena describes how putting the leaders of the Khmer Rouge on trial can be the first step to a healing process because “it would show that people’s suffering has not been ignored.”¹⁹⁶ Although the ECCC may not offer immediate answers to questions that ask why such atrocities occurred and why the perpetrators committed them, the trials could have the “effect of stimulating a broad national

¹⁹⁰ Pham, 40.

¹⁹¹ Fawthrop, 144.

¹⁹² Taylor, 262.

¹⁹³ Fawthrop, 144.

¹⁹⁴ Ibid.

¹⁹⁵ John D. Ciorciari, ed., *The Khmer Rouge Tribunal*, ser. 10 (Phnom Penh: Documentation Center of Cambodia, 2006) 157.

¹⁹⁶ Fawthrop, 142.

discussion of the issue... and consequently generate some answers in the aftermath of the tribunal,”¹⁹⁷ leading to further national reconciliation.

While the ECCC may indirectly provide some restorative justice in the form of national reconciliation, it does even less to help individual victims forgive the perpetrators, undermining much of the process of forgiveness deemed necessary to achieve reconciliation in the restorative justice model. As discussed earlier, forgiveness is dependent on five factors: consensus on truth, including the acknowledgement of crimes by offenders; remorse and repentance by the offender; renunciation of vengeance by the victim; empathy, such that the victim and offender can cultivate compassion for one another as humans worthy of respect; and mitigation of punishment, resulting from victims’ response to offenders’ repentance and remorse. It is possible for the first and second factors to be supplied by the trials, as demonstrated by Duch’s statement during his trial on June 9, 2009, in which he acknowledged his guilt and his acceptance of responsibility, saying: “Every time I recall the past, I am still touched by the remorse that I had...and will not let my remorse fade away... when I bow my head in this court, it is to be tried for the crimes I committed. I will not put the entire blame on my superiors and will not blame my subordinates as well.”¹⁹⁸ The latter three factors, however, involve individuals’ emotions and cannot be actualized by a mass statement, highlighting the personal nature of reconciliation due to its relationship with forgiveness and the necessity of the individual level of reconciliation in order to establish multi-level reconciliation. Hence, while Duch’s testimony may serve the creation of a more clear and precise historical record, it is unlikely to fully actualize reconciliation, because reconciliation implies some level of forgiveness by the victims, and this forgiveness is contingent on the feelings of the individual victims themselves.

¹⁹⁷ Etcheson, *After the Killing Fields*, 150.

¹⁹⁸ Meredith Deane, “Personal Notes taken at ECCC,” 9 June 2009.

Domestic Responses

This analysis of the ECCC's capability to provide justice, in all aforementioned forms, is supported by primary field research and numerous surveys examining Cambodian public opinion on the trials, justice and reconciliation in the wake of the Khmer Rouge regime. The domestic responses to the trials and to social reconstruction illustrate a discrepancy between international and Cambodian conceptions and expectations of justice. Most of these disparities arise as a result of the lack of a Rule of Law in Cambodia; while internationally accepted conceptions of justice include provisions of due process, a fair and timely trial, and even 'double jeopardy,' Cambodian conceptions of justice include bribery and often the expectation of unequal treatment.¹⁹⁹

Because no rule of law exists domestically in Cambodia, the concept of a fair trial for the leaders of the Khmer Rouge seems unfair to many victims who did not experience the same due process under the perpetrators' leadership, nor do they currently. For example, Kong Suor felt angry with the defense attorneys for "protecting the accused and saying they're not guilty when they know what the accused have done and that the villagers tell the truth."²⁰⁰ He also said that the "trials seem to have given people [like Duch] another way out by allowing them to blame their superiors for their crimes."²⁰¹ Mom Sareoun, whose husband was killed by the Khmer Rouge and who lost both of her children under the regime, also supported this view, saying she felt that "the accused are still trying to find ways to go free—[but] I look behind you at [those] skulls, evidence of what they did."²⁰² She also believed that the trial's provision of justice seems elusive because the accused are evading their crimes.²⁰³

¹⁹⁹ Pham, 4.

²⁰⁰ Suor.

²⁰¹ Suor.

²⁰² Sareoun.

²⁰³ Ibid.

Another manifestation of this disparity appeared in interviewees' understanding of the time the trials have taken, both to be established and to try the leaders of the Khmer Rouge. Also demonstrated by the complications in bringing the ECCC to fruition, the trials themselves have been bogged down by the extremity of their political correctness in an attempt to provide a demonstration of the internationally accepted Rule of Law. As Etcheson described during a recess at the ECCC, "Cambodians are used to (points) 'You're guilty,'"²⁰⁴ making it hard for many Cambodians to understand (what could be considered) the 'pomp and circumstance' necessary to assure that the trial is fair. As Mom Sareoun said, "I believe justice will be achieved, but I have doubts [about the trials] because they are taking a long time without any concrete results."²⁰⁵ Kong Suor was similarly frustrated, and said that while he thinks that the trials can bring justice, he is "not happy that the trial is taking so long and costs so much."²⁰⁶ As one of the older survivors (he was born in 1919), Kong Suor was particularly concerned by the delay because "even if there are reparations, they are not meaningful to victims dying every day because they are old, who want to see schools and pagodas built."²⁰⁷ Nouchhay, who was a farmer in the Central Province and experienced less cruel conditions as an 'old person,' similarly expressed his hopes that the international community can speed up the prosecution of the criminals.²⁰⁸

All of the interviewees from this paper's authors' first-hand field research felt that the leaders must be tried by the ECCC for there to be justice in Cambodia, consistent with the study conducted by UC Berkeley that found that nine out of ten respondents said that members of the

²⁰⁴ Craig Etcheson, "Interview with Craig Etcheson outside of the ECCC," personal interview, 9 June 2009.

²⁰⁵ Sareoun.

²⁰⁶ Suor.

²⁰⁷ Ibid.

²⁰⁸ Nouchhay, "Interview with Survivor Nouchhay," personal interview, 3 June 2009.

Khmer Rouge should be held accountable for their crimes.²⁰⁹ The study further found that faith in the trials' capability to bring justice was also high: "Almost three quarters (74% of all the respondents) agreed with the statement that the ECCC would bring justice to the KR victims and/or their families. Most respondents had defined justice as establishing truth (43%) and being fair (37%)."²¹⁰ These definitions of justice demonstrate another disparity between international and Cambodian standards of justice; many Cambodians appear to look at the trial as more than just a criminal prosecution and expect answers in the manner of those that would be searched for in what is considered a truth commission in models of transitional justice. For example, Fawthrop and Jarvis describe that "One of the great expectations of the Cambodian people is that the tribunal will be much more than a simple court of law... and instead seek answers that have long weighed them down [such as]: how could such a regime commit such bestial atrocities?... These questions are far deeper than mere legal problems of proving the guilt of the accused beyond a shadow of a doubt."²¹¹ Linton elaborates on these expectations, explaining that Cambodians appear to be seeking "a public coming to terms with the past, a symbolic formal act played out in the courtroom, where the Khmer Rouge and their philosophy will be brought into the open through trials of the leaders."²¹²

Overall, however, the interviewees seemed to believe that the trials could bring justice and help healing, consistent with findings by UC Berkeley's study that "67% believed that the ECCC judges would be fair and the court was neutral, 68% believed the ECCC would have a positive effect on the victims of the Khmer Rouge and their families."²¹³ Belief in the fairness of

²⁰⁹ Human Rights Center University of California Berkeley, "National Survey Reveals Most Cambodians Want Trials of the Khmer Rouge; But Few Are Aware of the Court Established for that Purpose," press release, 21 Jan. 2009, 1.

²¹⁰ Pham, 40.

²¹¹ Fawthrop, 249.

²¹² Linton, 26.

²¹³ Pham, 3.

the ECCC judges is especially important because, as mentioned above, the study also found that many respondents defined justice as establishing truth. It is also significant in contrast to respondents' lack of confidence in the national criminal system, as discussed in the UC Berkeley survey, such that less than half of respondents agreed with the proposition that "Cambodian judges treat everyone equally (40%)," and only 37 percent trust Cambodian judges.²¹⁴ This juxtaposition suggests that the ECCC could transfer some of its practices and consequential credibility to Cambodia's judicial system, if the ECCC's credibility is not mired by allegations of corruption (*more on this later*).²¹⁵

Interviewees also stressed the importance of education in order to prevent such atrocities from occurring in the future. According to a DC-CAM survey, "73.87% of respondents felt it was important to learn the truth about the Khmer Rouge regime... Painful as the memories are, the majority of respondents want to talk and learn more in order to try and understand what went wrong and make sure things never happen again... What they wanted was for the experience of the Cambodian generation that lived through the Democratic Kampuchea era to be widely known and never forgotten."²¹⁶ While all of the interviewees felt that education was important so that future generations would know what took place under the Khmer Rouge regime, Nouchhay elaborated that he wanted his grandchildren to know so that they wouldn't be complacent if such a situation ever occurred in the future.²¹⁷

Many interviewees approached the issue of justice through the lens of Buddhism, using Buddhist values and precepts to at least partially handle their experiences under the Khmer Rouge. Despite the CPK's extermination of religion and desecration of Buddhist objects and

²¹⁴ Pham, 4.

²¹⁵ Ibid.

²¹⁶ Linton, 27.

²¹⁷ Nouchhay.

places of worship, 95% of Cambodians currently consider themselves Buddhist,²¹⁸ and many victims have searched for justice through Buddhism. Chea Mao identifies this concept by distinguishing between the legal repercussions Duch faces for his crimes, while he says that Duch faces Karma from a Buddhist perspective; he further elaborates that Karma *is* justice, because the consequences of a person's bad deeds will follow them into the next life.²¹⁹ As a former monk, Kong Suor used the precept that "vindictiveness is ended by not being vindictive" to help him accept what had been done to him and to prevent him from hating those who committed crimes against him.²²⁰ Like Kong Suor, Mom Sareoun recited Buddhist principles to help her come to terms with the injustices done to her, and to keep her from seeking her own justice by doing something to the perpetrators who hurt her. For example, when she was very ill during the Khmer Rouge regime a medic claimed she wasn't physically sick, but rather that she was only emotionally depressed over her husband's death. Although this woman still lives in the same village as her, Mom Sareoun sees the woman and thinks of the Buddhist saying "don't bite a leech back."²²¹ She further asserted that people must keep Buddhist principles in mind when thinking about the Khmer Rouge.

While these examples demonstrate how several interviewees were able to control their vengeance through Buddhism, this is a step involved in forgiveness and therefore reconciliation, yet does not apply to the justice that these individuals still seek. Although the aforementioned pretext teaches Cambodians compassion and forgiveness, their faith may also instruct them to want to forget the past, causing some to want to leave the Khmer Rouge issue alone, and

²¹⁸ "Khmer Culture from The official Tourism of Cambodia Site," The official Site for Tourism of Cambodia, 10 July 2009 <http://www.tourismcambodia.com/culture/religion_and_beliefs/?PID=buddhism>.

²¹⁹ Chea Mao, "Interview with Chea Mao," personal interview by Christina Carey, 4 June 2009.

²²⁰ Suor.

²²¹ Sareoun.

therefore deal with their trauma in silence.²²² Moreover, Linton notes that “in Buddhism it is very important to acknowledge that one did something wrong. But there is no theological requirement for expression of remorse such as “I am sorry,” and many Cambodians acknowledge that there is an inability to apologize in their society that contributes towards feelings of resentment by those harmed.”²²³ These remaining feelings of resentment were evident when Mom Sareoun explained that she could begin to heal if the perpetrators on trial are penalized, but that otherwise it will be hard for her to get over her anger.²²⁴ Similarly, Kong Suor has accepted what has been done to him by perpetrators, but he also anxiously awaits a conviction of guilt from former Khmer Rouge leadership.²²⁵ Buddhism can therefore be conducive to the reconciliatory aspects absent from the ECCC’s actualization of retributive justice, by providing a justice of its own while simultaneously promoting forgiveness and reconciliation. Linton further indicates that, “many of Cambodia’s spiritual leaders have spoken about how a fair judicial process is consistent with the teachings of the Buddha, and some even link it with national reconciliation.”²²⁶ This suggests that Buddhism can be used by some victims to supplement the ECCC’s legal efforts to provide justice, maintaining a pressure on the ECCC to conduct fair trials that can provide justice and therefore allow cycles of vindictiveness to be broken.²²⁷

The ECCC faces several problems, most significantly a lack of domestic knowledge about the trials and corruption resulting from the pervasive culture of impunity. The UC Berkeley study found that 85 percent of those surveyed had little or no knowledge about the ECCC.²²⁸ Without widespread knowledge of the trial, it is unlikely to effectively provide the

²²² Linton, 23.

²²³ Linton, 23.

²²⁴ Sareoun.

²²⁵ Suor.

²²⁶ Linton, 77.

²²⁷ Linton, 149.

²²⁸ Human Rights Center University of California Berkeley, 1.

effects of justice or reconciliation, no matter how successful the trial is at achieving these ends. Several interviewees mentioned that they had heard about the trials, but did not pay much attention to them or did not know much about them. For example, Chea Mao said that he had not paid much attention to the trials because he is busy with his farm.²²⁹ Sreng Sroeur, who had only heard about the trials through people living in his community and through casual conversation with his teacher at school, had very little knowledge about the Khmer Rouge period and was unfamiliar with the trials themselves.²³⁰ Thus indicating that information about the trial is poorly disseminated, especially to those who live in rural areas without access to a radio or television.

Finally, as a result of Cambodia's widespread corruption and impunity, which have become embedded in Cambodia's culture, Cambodian people have questioned the legitimacy of the trial itself.²³¹ Most Cambodians don't trust their domestic courts because they are largely in the hands of poorly trained judges and lawyers.²³² Nouchhay identified corruption as "the biggest problem for Cambodia,"²³³ and demonstrated the pervasive nature of the culture of impunity by giving an example of a relative in the coal business who must pay off the police in order to sell his products. The UC Berkeley study found that "There was some ambiguity among the respondents about the court's objectivity and integrity. One-third said the court was not neutral and, among them, 23 percent felt it was corrupt."²³⁴ The danger of these corruption allegations to mitigate the perceived legitimacy of the court should not be underestimated, as the perception of the court's legitimacy is vital to the victims' perceptions of acquiring justice from them.

²²⁹ Mao.

²³⁰ Sroeur.

²³¹ "Khmer Rouge Tribunal Part II, Publications, Cambodia Office, Konrad-Adenauer-Stiftung e.V." Konrad-Adenauer-Stiftung - Policy Expertise Worldwide. 10 July 2009 <http://www.kas.de/proj/home/pub/17/2/year-2009/dokument_id-16579/index.html>.

²³² Fawthrop, 148.

²³³ Nouchhay.

²³⁴ Pham, 3-4.

Conclusion of the ECCC's Effect on Justice and Reconciliation

While the ECCC appears capable of providing retributive justice, it is likely to be ineffective given the current lack of information disseminated to the general population. The national judicial system is also a threat to ECCC's provision of justice because it could project its associations with corruption and impunity onto the ECCC. The ECCC is also threatened by a cultural divide between Cambodian and international expectations for justice, as much of the population does not understand the delays and practices of the ECCC related to the court's infusion of due process and the Rule of Law into a legal system where such concepts are foreign.

The ECCC is less capable of providing restorative justice because its jurisdiction focuses on hold the perpetrators accountable for the atrocities committed by the Khmer Rouge, and as such does not focus on the individual victims and their suffering, but rather on the concepts of "strengthening" the Rule of Law and helping to create a historical record for educational purposes as secondary concepts to the court's primary goal of providing justice. While the ECCC can provide reparations of "collective, symbolic, and moral—but not financial—nature,"²³⁵ this is unlikely to occur in the near future given the court's preoccupation with the first of its trials, and the complications involved in prosecuting leaders of the Khmer Rouge who have both been indicted by the ECCC and who have received amnesty by King Norodom Sihanouk.

As a result of the ECCC's minimal focus on restorative justice, any level of reconciliation is solely aided inadvertently if and when victims hear statements by the perpetrators of remorse and apology given within the proceedings. These statements can aid in the process of forgiveness on an individual level, and as such may begin the process of individual healing and reconciliation. The existence of the trials may also bolster restorative justice, multi-level

²³⁵ Pham, 4.

reconciliation and social reconstruction by validating the suffering of the victims of the Khmer Rouge by responding to the crimes of the Khmer Rouge, leading to personal healing and the individual level of reconciliation, and by honoring those who did not survive Democratic Kampuchea. The historical record produced by the trials may not be clear and complete, but nonetheless may aid in the process of national reconciliation. Because the individual, communal, and national levels of reconciliation are interconnected and act as a funnel for positive change in either direction, it can be concluded that the ECCC could potentially help bring about multi-level reconciliation in Cambodia, even if the ECCC's active help is minimal.

OTHER INITIATIVES FOR JUSTICE

The Documentation Centre of Cambodia (DC-Cam)

The Documentation Center of Cambodia (DC-Cam) was established in 1995 as the field office for Yale University's Cambodian Genocide Program (CPG), and in 1997 became an independent research institute that is now recognized as the "world's largest repository of Khmer Rouge related documents."²³⁶ The organization's main objectives are to establish a historical record of the genocide that preserves the memory of those lost and to help bring justice to Cambodia in the aftermath of the atrocities committed by the Khmer Rouge. As a result, DC-Cam has sought to collect, document and catalogue the history of the Khmer Rouge regime for future generations, assembling information that may serve as evidence in the prosecution of Khmer Rouge leaders. These objectives are believed to aid the promotion of memory as well providing the victims a sense of justice.²³⁷

Although DC-Cam's main objective focuses on assembling material related to the Khmer Rouge regime, the non-governmental organization pursues a number of projects that emphasize

²³⁶ Dacil Q. Keo, Documentation Center of Cambodia (DC-Cam), brochure (Phnom Penh: Author, 2008)

²³⁷ Linton, 37.

“research, outreach and education.”²³⁸ Among the DC-Cam’s educational outreach projects is their monthly magazine, *Searching for the Truth*, which publicizes DC-Cam’s work while facilitating discussion on issues related to the Khmer Rouge.²³⁹ Education initiatives also include DC-Cam’s Student Outreach program that “promote[s] youth volunteerism, educate[s] the youth about the Khmer Rouge period, and facilitate[s] conversation between the survivor generation and its children about the genocide.”²⁴⁰ As part of its educational endeavor, DC-Cam published the first ever textbook of the Khmer Rouge in April 2007 and has distributed over 3,000 copies to schools, libraries and governmental ministries.²⁴¹

Encouraging victim participation is also a major feature amid DC-Cam’s projects, such as Cham Muslim Oral History, which records experiences of Cham Muslims during the DK period while empowering Cham Muslim women to speak about their traumatic experiences during that time, and DC-Cam’s Victim Participation Project (VPA) aimed at assisting “at least 10,000 victims of Democratic Kampuchea in filing victim participation requests (either criminal complaints or civil party applications) with the Extraordinary Chambers in the Courts of Cambodia during 2008.”²⁴² Due to the meager amount of psychologists in the nation—there are fewer than 30—Victims of Torture was established to deal with the mental health problems of survivors. By working with the Transcultural Psychosocial Organization (TPO), the project has identified hundreds of victims and perpetrators suffering trauma in the aftermath of the genocide and has offered them treatment through government and TPO clinicians.²⁴³

²³⁸ Keo.

²³⁹ "Magazine Project: Searching for the Truth," Documentation Center of Cambodia (DC-Cam), 23 June 2009 <http://www.dccam.org/Projects/Magazines/Magazine_Searching.htm>.

²⁴⁰ Keo.

²⁴¹ Ibid.

²⁴² "Victim Participation Project (VPA)." Documentation Center of Cambodia (DC-Cam), 23 June 2009 <http://www.dccam.org/Projects/Tribunal_Response_Team/Victim_Participation/Victim_Participation.htm>.

²⁴³ Keo.

While DC-Cam's documentation projects act as a catalyst in the process of retributive justice especially in relation to the ECCC, the greater part of their work provides restorative justice to the Cambodian people. First, by giving victims a chance to tell their stories—and publishing some of these accounts in their aforementioned magazine—DC-Cam's victim-centered projects act as healing mechanisms for those still haunted by the genocide. Also, the discussion of their experiences is believed to help victims and perpetrators come to terms with the past and focus towards a brighter future. By preserving the history of Democratic Kampuchea through the voices of those who survived, the Cambodian peoples' yearning for the truth could become less of a vision and more of a reality. Furthermore, while the VPA helps ordinary Cambodians to participate in the process of bringing the Khmer Rouge leaders to justice, the project is also considered a reactivation of the informal 'truth commission' that began in the early 1980's.²⁴⁴ Lastly, through their educational projects, DC-Cam is incorporating generations that were not alive during Democratic Kampuchea in the process of national healing and reconciliation by educating the youth on what took place under the Khmer Rouge regime. By educating the youth, these programs also seek to prevent these atrocities from happening again.

DC-Cam's repository of historical records relating to the Khmer Rouge is extremely instrumental in the process of retributive justice and promotion of accountability. By including victims and perpetrators in this process (through interviews etc.), while simultaneously having developed programs that focus on outreach and education, reconciliation is also attained at the individual and communal levels. Hence, through their combination of top-down and bottom-up approaches to reconciliation, DC-Cam has provided plausible and effective mechanisms to bringing both retributive and restorative justice to the Cambodia. These mechanisms could

²⁴⁴ "Victim Participation Project (VPA)." Documentation Center of Cambodia (DC-Cam). 23 June 2009
<http://www.dccam.org/Projects/Tribunal_Response_Team/Victim_Participation/Victim_Participation.htm>.

therefore be incorporated and utilized as models of transitional justice that facilitate individual, communal and national reconciliation in post-genocide Cambodia.

The ‘Renakse Petitions’

Following the Vietnamese liberation of Cambodia in January 1979, the Salvation Front—a faction of the PRK—established a Research Committee to investigate the crimes of the Khmer Rouge Regime.²⁴⁵ The Research Committee’s aims were to “collect evidence that could be used to persuade the U.N. to deny recognition to the Khmer Rouge as Cambodia’s representative to the U.N. and to convince the U.N. or other countries to recognize the suffering of the Cambodian people and bring the Khmer Rouge leaders to justice.”²⁴⁶ After having traveled to 19 provinces throughout Cambodia, the Research Committee collected a total of 1,250 handwritten petitions, “signed by or bearing the fingerprints of over one million people.”²⁴⁷ Despite the Committee’s goals, the petitions were not presented to the UN, nor to countries that were powerful enough to influence international recognition of the PRK government.²⁴⁸

While the petitions did not serve their particular purpose at the time they were collected, Amy Gordon suggests that there are several roles the petitions could potentially play in the ECCC as well as within the process of reconciliation. These roles include: a source of information for investigations; a means of identifying potential witnesses; a means of identifying victims; as evidence at the trial; and could function in a future truth commission and have a use

²⁴⁵ Amy Gordon, "The Renakse Petitions: Background and Suggestions for Future Use," *Khmernews*, 4 Mar. 2008, *Rasmei Kampuchea*, 23 June 2009 <<http://khmernews.wordpress.com/2008/03/04/the-renakse-petitions-background-and-suggestions-for-future-use/>>.

²⁴⁶ *Ibid.*

²⁴⁷ Gordon, Amy. *The Renakse Petitions: Background and Suggestions for Future Use*. Jan. 2007. DC-Cam, 2.

²⁴⁸ Gordon, Amy. *The Renakse Petitions: Background and Suggestions for Future Use*. Jan. 2007. DC-Cam, 4.

in restorative justice approaches.²⁴⁹ Etcheson notes that the collection of the petitions by the Committee and the work that it performed acted partially as a classic truth commission, yet he acknowledges two problems with this association.²⁵⁰ First, since only a handful of Cambodians are aware of the so-called ‘truth commission,’ “the main goals of such a mechanism—publicizing information in an attempt to ensure that all of society knows about the past—was not fulfilled.”²⁵¹ Second, he indicated that the Committee’s work was “relatively one-sided” because the petitions did not appear to have obtained testimony from Khmer Rouge cadre.²⁵² Nevertheless, if activities are established that aim to increase the overall awareness and relevance of the Renakse Petitions, they could serve as functions in a future truth commission, be used as part of a historical record of the Khmer Rouge regime and generally promote reconciliation and recovery in Cambodia.²⁵³

POLICY PRESCRIPTIONS

Given the domestic responses and surveys related to transitional justice and social reconstruction, this paper advocates the following policy prescriptions:

Reforming the ECCC

The ECCC must address three problems mitigating its provision of retributive justice to the victims of the Khmer Rouge. The first problem is the lack of public knowledge about the trials, especially in younger generations; the UC Berkeley study found that “Nationally, 39% of respondents had no knowledge of the ECCC, while 46% had only limited knowledge.

²⁴⁹ Amy Gordon, "The Renakse Petitions: Background and Suggestions for Future Use," Khmernews, 4 Mar. 2008, Rasmei Kampuchea, 23 June 2009 <<http://khmernews.wordpress.com/2008/03/04/the-renakse-petitions-background-and-suggestions-for-future-use/>>.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid.

Respondents who did not live under the Khmer Rouge regime reported more frequently having no knowledge of the ECCC (50%) compared to those who lived under the Khmer Rouge regime (35%).”²⁵⁴ The solution to this shortcoming is to greatly expand and improve the outreach efforts of the ECCC,²⁵⁵ and should be accomplished in collaboration with the Cambodian government and NGOs such as DC-Cam, which has already begun outreach initiatives, such as organizing transportation to the trials for victims eager to see them. By expanding such initiatives as those that facilitate victims to visit the trials, the notion of the trials as providing retributive justice can be demonstrated to the masses of citizens who do not feel the trial has done anything to this end yet. An expansion of these programs could include offsetting the cost to those who would like to visit the trials from rural, impoverished communities who, according to Etcheson, feel that their jobs have a higher priority, and who often don’t have access to transportation to the trials, which are inconveniently located.²⁵⁶

The government and NGOs should enlist the news media to publicize the availability of these opportunities, especially over the radio, which the UC Berkeley study found to be the main source of information concerning the trial for 80.2 percent of respondents.²⁵⁷ The government should also establish a local channel solely to broadcast the ECCC trials and other ECCC-related programming, since the UC Berkeley survey also found that “Approximately 98% of respondents said they would watch the ECCC proceedings if they were broadcast live on TV.”²⁵⁸ Such outreach efforts coupled with media attention could potentially lead to increases in victim participation in the ECCC proceedings, which is incredibly low. This is demonstrated by the fact that none of the UC Berkeley study’s respondents reported that they had been contacted “by any

²⁵⁴ Pham, 36.

²⁵⁵ Pham, 5.

²⁵⁶ Etcheson. “Interview with Craig Etcheson outside of the ECCC.”

²⁵⁷ Pham, 38.

²⁵⁸ Ibid.

organization to participate in the ECCC proceedings... [and that] less than 1% of the population has been contacted by the ECCC or nongovernmental organizations.”²⁵⁹ To support the ECCC proceedings, NGOs should “Ensure [a] wide dissemination of information about the proceedings... legal services for victims and perpetrators, a witness protection program, more widely publicized public meetings... and forensic projects.”²⁶⁰ NGOs could also support the ECCC by acting as a trial-monitor, and should “...develop and implement ways to support the process at the ECCC as well as be its stringent watchdog without having conflicts of interest.”²⁶¹ The mitigating factor of these initiatives is a lack of funding, which can be garnered with help from the media and transnational civil society (*more on this later*).

Furthermore, the ECCC should capitalize on its opportunity to simultaneously educate Cambodia’s younger generations and embed the ECCC’s demonstration of a fair trial and the Rule of Law in the memory of these generations, which could help establish such concepts within the domestic judicial system for posterity. This can be accomplished by expanding outreach efforts to incorporate secondary schools with the help of the Ministry of Education and NGOs. For example, DC-Cam’s Student Outreach program could be expanded or used as a model to include younger generations in the trial process by facilitating and funding class trips for those interested in visiting the trials, or by distributing materials on the ECCC to secondary schools as supplements to the textbook on the Khmer Rouge that DC-Cam has been—and is currently still—distributing to secondary schools throughout Cambodia.

Such programs as described above not only proliferate information about the ECCC for the sake of retributive justice, but they also promote restorative justice by fulfilling aspects of the Fundamental Concepts of Restorative Justice, as described by the National Institute of Justice

²⁵⁹ Pham, 42.

²⁶⁰ Linton, 250.

²⁶¹ Ibid.

(NIJ), an agency of the US Department of Justice. The NIJ describes victims' needs for "information, validation, vindication, restitution, testimony, safety and support"²⁶² as the starting points for justice, and ECCC outreach programs, especially those focused on educational initiatives, provide information and testimony of the Khmer Rouge regime's crimes, as well as validate the suffering of many victims. Hence, by increasing and expanding the outreach efforts of the ECCC, not only is its primary purpose of providing a legal (retributive) justice furthered, but the ECCC is also capable of furthering the actualization of restorative justice.

The second problem that the ECCC faces is a double-sided pressure regarding time; while Duch's defense lawyers claim the trial is unfair in limiting time for questioning on certain subjects,²⁶³ there was an overwhelming sense among interviewees and in surveys that the trials are taking too long to bring justice to a genocide that is already 30-years removed. To solve this problem, the ECCC should work with NGOs and the Cambodian government to assure that the trial remains fair, while increasing efforts to help those who feel the trial's justice has been delayed understand why the trial appears to move so slowly; specifically, that the trials are just and fair, rather than allowing those on trial to get away with their crimes. The Cambodian government and NGOs can establish outreach programs in a discussion format for those interested to help explain why the lengthiness of the trial ensures that it is fair and why the perpetrators deserve this fairness, which can help bridge the discrepancies mentioned earlier between the Cambodian and international conceptions of legal justice. For this understanding to spread significantly, however, the ECCC must enlist the news media to proliferate these concepts, such as the importance of a fair trial, which should reassure defense attorneys that their

²⁶² "Fundamental Concepts of Restorative Justice | National Institute of Justice," Office of Justice Programs, 01 July 2009 <<http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/fundamental-concepts.htm>>.

²⁶³ Robbie Corey-Boulet, "Time limits on questioning unfair, Duch defence argue," Phnom Penh Post [Phnom Penh] 17 June 2009.

clients are administered a fair trial. It should be noted, however, that defense attorneys may continue to make such allegations for the sake of creating a platform on which to appeal their clients' verdicts.

The third problem consists of allegations of corruption and lack of transparency at the ECCC. For the ECCC to retain its reputation of fairness and integrity, it must deal with these allegations.²⁶⁴ The Cambodian government should establish an internal investigation into these allegations comprised of unbiased citizens who are not already on the government or justice department's payrolls to avoid further allegations of corruption, and should eradicate what corruption it finds or dispel the rumors having reassured the public with the investigation. Due to the government's inability to eradicate its own corruption, to be discussed shortly, it is more likely that the news media will be responsible for exposing any such corruption. If this is the case, and should investigative journalism expose truth in such allegations, NGOs should approach the news media and ask them to present the facts objectively, but to focus on the corrupt individuals involved, which could help spare the integrity of the trials for the sake of reconciliation and social reconstruction. This is not to suggest that the news media should "spin" the truth or feel pressured by the government or NGOs to do so, but that the NGOs should appeal to the news media's understanding of the shattered Cambodian community and the importance of the trials for multi-level reconciliation, so that the news media maintains its own integrity and continues to report the truth while placing the blame squarely on those responsible for the corruption rather than allowing the allegations to have a balloon effect, encapsulating the ECCC as a whole.

²⁶⁴ Pham, 4.

Truth Commissions

While there are many potential benefits of a truth commission—including: determining the truth about crimes committed by the Khmer Rouge; opening national dialogue; promoting reconciliation; furthering the accountability of perpetrators; providing victims with aspects of restorative justice such as validation and support; and providing perpetrators with restorative justice and reconciliation’s aspect of vindication²⁶⁵—a truth commission is not appropriate for the crimes committed by the Khmer Rouge for two central reasons. First, it is clear from several surveys that “Cambodians are not interested in having a truth commission,”²⁶⁶ and second, because a truth commission could likely create more divisions instead of furthering reconciliation efforts.²⁶⁷

Taylor describes in “Better Later Than Never: Cambodia’s Joint Tribunal,” how “Truth commissions tend to work best where there is a practical need to establish the facts about crimes in the immediate past,”²⁶⁸ while in Cambodia much of the ‘truth’ has already been established, and the crimes are at least 30 years removed. Taylor also identifies that “Violence and intimidation against witnesses is common in Cambodia,”²⁶⁹ and as such could prevent people from choosing to come forward in such a commission unless they were forced to do so. Mental health experts have also identified the risk of a truth commission to unearth long-suppressed emotions by talking about the Khmer Rouge regime’s atrocities, leading to a wave of mental illness in Cambodia.²⁷⁰

²⁶⁵ Taylor, 266.

²⁶⁶ Linton, 239.

²⁶⁷ Taylor, 266.

²⁶⁸ Taylor, 267.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

At the communal level of reconciliation, a truth commission does not seem necessary, because victims and perpetrators appear to live in harmony in villages. This was especially apparent in interviews with two neighbors of Him Huey, an S-21 prison guard. One interviewee who was a victim of the Khmer Rouge regime demonstrated empathy for Him Huey, saying that he did not feel that Him Huey deserved to be punished for the crimes he committed since he was following orders,²⁷¹ while 20-year-old Sreng Sroern did not know what position Him Huey had held or what crimes he had committed, and believed that the Khmer Rouge leadership—namely the deceased Pol Pot—should be punished.²⁷² Because of the gaping gray-area in the victim-perpetrator dichotomy, a truth commission would likely create problems in communities like this one, in which “victims” and “perpetrators” live harmoniously together. Further, rather than aid reconciliation, a truth commission could reopen survivors of the Khmer Rouge period’s wounds by suggesting that amnesty should be granted to those who committed grievous human rights abuses, whether under pain of death or not, on condition of their telling of the truth.²⁷³ As Linton says so succinctly, “reconciliation should not be promoted as a moral obligation and people should not be asked to love their torturers.”²⁷⁴

Commission of Inquiry

Given the possible consequences of a truth commission, this paper advocates instead for the establishment of a Commission of Inquiry that would act as a fact-finding commission to investigate and document atrocities committed by the Khmer Rouge regime. For the government of Cambodia to set up such a commission, it would require support, advice and assistance from

²⁷¹ Tam Taim, "Interview with Tam Taim," personal interview, 7 June 2009.

²⁷² Sroern.

²⁷³ Linton, 239.

²⁷⁴ Ibid.

the international community,²⁷⁵ as well as NGOs such as DC-Cam. Such a commission could further the progress of restorative justice and reconciliation in Cambodia because it addresses several problems that a truth commission also seeks to solve, but a Commission of Inquiry would do so without creating further social divisions because such a commission would be voluntary, and the victims and perpetrators do not have to come face-to-face with one another.

The first problem that a Commission of Inquiry would address is the lack of historical record, which is considered vital for reconciliation and restorative justice because, like a truth commission, it provides validation, information, testimony and support for victims. Linton describes an ideal scenario, in which such a commission would take advantage of available resources, such as DC-Cam's massive database and the ECCC trials, to produce "a far ranging, balanced and reliable official record of Cambodia's recent and very bloody history."²⁷⁶ In creating a historical record, even if it is not as ideal as Linton muses, a Commission of Inquiry could address a second problem: the need for each individual to heal, which Youk Chhang addresses repeatedly as something that individuals "have to do on their own."²⁷⁷ A Commission of Inquiry could facilitate such healing for victims and perpetrators alike by allowing them to individually come to terms with the past and gain closure, supporting Linton's argument that "all Cambodians... need to be part of an effort to create their own record of their own past, in order to reconcile with what happened."²⁷⁸ In the process of creating a historical record, a Commission of Inquiry may also address a third problem: that many Cambodians want answers regarding why the Khmer Rouge period was the way it was. A Commission of Inquiry could help satiate this

²⁷⁵ Linton, 240.

²⁷⁶ Linton, 243-244.

²⁷⁷ Chhang.

²⁷⁸ Linton, 242.

“desire to know the facts, why people did what they did, why things worked out the way they did, and to understand the whole tragedy.”²⁷⁹

While a Commission of Inquiry may not necessarily provide these answers to everyone, if anyone, such a fact-finding commission promotes reconciliation by working to provide the foundations of restorative justice to victims, as well as beginning the process of individual healing. This individual healing is a result of victim participation, which is supported and increased by such a commission, and which is essential for the individual level of reconciliation; the extent to which individual healing would occur within the population would depend on the effectiveness of outreach and publicity efforts to increase victim participation in such a commission. This individual level of reconciliation further facilitates the communal and national levels of reconciliation, especially when coupled with a Commission of Inquiry’s benefits for the process of forgiveness and its five components. Such a commission could establish a consensus on truth, because perpetrators acknowledge their crimes, as well as remorse and repentance on the part of perpetrators, because the voluntary nature of the commission would imply contrition on the part of perpetrators who choose to participate. Depending on the degree to which such a commission promotes individual healing and closure, a Commission of Inquiry also has the potential to encourage a renunciation of vengeance by victims against their aggressors, empathy between victims and perpetrators for one another, and the resulting mitigation of punishment for perpetrators. Regardless of the extent to which a Commission of Inquiry could achieve all five of these components of forgiveness, such a commission would achieve at least some of these components, which could immensely promote reconciliation and social reconstruction, effectively promoting restorative justice.

²⁷⁹ Ibid.

While the above benefits of a Commission of Inquiry result from such a commission's potential actualization of the individual level of reconciliation, a Commission of Inquiry would also be likely to promote a public discourse,²⁸⁰ which could foster national reconciliation. This suggests that such a commission could simultaneously administer top-down and bottom-up approaches to multi-level reconciliation, another significant benefit for restorative justice and social reconstruction. The effectiveness of a Commission of Inquiry in providing multi-level reconciliation and social reconstruction is also supported by Linton's claim that such a mechanism, if supported by correlating mental health and rehabilitation programs at the grassroots level, could lead to personal recovery and wider social repair.²⁸¹

A Commission of Inquiry also offers an additional benefit to the international community, should it examine not only the domestic situation but also assess the involvement of third party states such as the US, Vietnam and China.²⁸² Such an assessment could be used as a lesson for the international community on what must be taken into consideration when a state involves itself in another state's domestic instability, and what the best course of action would be for an intervening state to help restore (or create) stability in the unstable state. This could be a particularly significant benefit as de-colonization and the end of the Cold War have brought a plethora of new states into creation, many of which are unstable for a variety of reasons, from containing communities with conflicting cultures and identities to a powerful majority suppressing a powerless minority.

²⁸⁰ Linton, 244.

²⁸¹ Ibid.

²⁸² Linton, 242.

The Royal Government of Cambodia

Possibly the biggest problem in Cambodia in the present is the culture of impunity and corruption which are embedded in the government. Suggestions have been made regarding how to solve this problem, and many of them may be effective – in the future. To even consider conducting “a major review and overhaul of the national criminal justice system that integrates the judicial legacy of the ECCC, ends corruption, and institutes transparency, accountability, and efficacy,”²⁸³ in a country that has been likened in metaphor to a shattered glass is almost like suggesting that to fix the broken glass, one should begin gluing back the pieces that are big enough to pick up – and then putting a brick on top of it. Like testing the strength of the drying glass with the brick, to eradicate corruption from the government at this transitional juncture in Cambodia’s history is unrealistic and more likely to crumble the “drying” foundations of transparent and trustworthy infrastructure.

There are several reasons that the necessary reforms to eradicate the culture of impunity and corruption are unrealistic at this point. First, many former Khmer Rouge cadres are employed by the government and occupy positions of power. It can be assumed that many of these individuals would act in their own interests, and would not support measures that would condemn them for their participation in the Khmer Rouge regime; this is also further complicated by the paradox of perpetration, because many people only survived the Khmer Rouge regime by complying with their Khmer Rouge superiors. To remove “those against whom there is credible evidence of participation in gross violations of human rights”²⁸⁴ would already be a very complicated process, and would be further complicated by domestic politics. Therefore, while

²⁸³ Pham, 49.

²⁸⁴ Linton, 246.

these individuals *should* be removed from their positions in public offices,²⁸⁵ it is unrealistic at this juncture, and would likely destabilize the fragile reconciliation process by questioning the paradox of perpetration and who should be held accountable for the Khmer Rouge regime's crimes.

Second, the judicial system itself is deeply corrupted by the culture of impunity. Taylor suggests that the international community could try to further the Rule of Law by offering legal training to the country,²⁸⁶ but the Cambodian government could perceive this as an impingement on their sovereignty, and such an offer may cause the resurfacing of resentment toward the international community for third party states' involvement in Cambodia's domestic politics that at least partially contributed to the destabilization prior to Democratic Kampuchea, if only through third party states' backing of various regimes. Another reason this suggestion is unlikely to help at this time is because of the rampant poverty throughout Cambodia, making it unlikely that bribery in either the judicial sector or the police force can be stopped.

For corruption to be dealt with, eradication efforts must be accompanied hand-in-hand with economic development and growth, which will require foreign investment. At this time, there is little motivation for states to invest in Cambodian infrastructure amidst allegations of government corruption. In the future, symbolic steps to eradicate corruption can be taken by the government of Cambodia to encourage such foreign investment, but the government's current priority needs to be "gluing the glass back together," the metaphor describing multi-level reconciliation and social reconstruction. By focusing on these goals, civic trust becomes a priority as well, and increases in civic trust can, in turn, increase international trust in the government of Cambodia (*more on this to follow*). Hence, for corruption and the culture of

²⁸⁵ Taylor, 268.

²⁸⁶ Taylor, 268.

impunity to be dealt with, eradication efforts must be simultaneous with economic development, and both must be supported by a foundation of civic trust resulting from social reconstruction and restorative justice efforts.

Social Reconstruction

For social reconstruction to occur, restorative justice must be provided, enhancing multi-level reconciliation. Before restorative justice can be effective, however, the climate of fear must be addressed, creating “an open political environment where honest discussion and debate on what happened and genuine mechanisms for the past can function effectively,”²⁸⁷ which could combat the culture of impunity. Without addressing this climate of fear, social programs and initiatives created to bolster restorative justice and reconciliation will be considerably less effective. Such an environment does not need to be fully established for the social programs to make progress because the social programs can reinforce the solidification of an open political environment. The existence of this environment, then, must be introduced by the government, which could require as little as statements by government officials supporting such an environment and having these statements widely circulated in the media in order for them to be absorbed into the national psyche. This has partially been done by Hun Sen’s condemnation of the Khmer Rouge regime and the crimes the Khmer Rouge committed, but this acknowledgment lacks sincerity and seriousness given his aforementioned statements regarding stalling the trials. Therefore, further efforts should be made to demonstrate the government’s provision of such an open political environment, in order to establish genuine and sincere interest in providing justice to the victims of Democratic Kampuchea.

²⁸⁷ Linton, 232.

The formation of a Commission of Inquiry is one such program to forward restorative justice, with the aforementioned benefits of validating victims' suffering and promoting multi-level reconciliation. Such a commission needs correlating programs with support from Cambodia's leaders who could "organize seminars to explore whether Cambodian traditions and Buddhism could be worked into a common strategy to promote reconciliation."²⁸⁸ Linton furthermore identifies the "need to develop a fact-finding mechanism that does not in itself dabble in socio-political experiments, yet is backed up by comprehensive professional mental health and social repair programs that draw on the tremendous potential of Buddhism."²⁸⁹

Therefore, Buddhist-based social programs should be established with support from the government and NGOs to capitalize on the Buddhist principles ingrained in Khmer culture, many of which have provided solace to the survivors of the Khmer Rouge period. As Linton describes, Cambodia's culture and Buddhist tradition possess "immense possibilities for individual and communal reconciliation... As one respondent stressed: 'nothing is better than using Buddhist teachings as a base for reconciling the nation'."²⁹⁰ By using Buddhist teachings as a base for reconciliation and restorative justice initiatives, such social repair programs would take Cambodia's culture as a non-Western society into account and would be sensitive to Cambodian ways of life, especially "local rituals of managing, reducing and resolving conflicts."²⁹¹ These programs should include Buddhist leaders, because their support would add legitimacy to such initiatives' Buddhist undertones. Linton presents a similar suggestion to this end, proposing that "interested communities could be assisted in designing a process of trust-building and conflict

²⁸⁸ Linton, 234.

²⁸⁹ Ibid.

²⁹⁰ Linton, 248.

²⁹¹ Linton, 245.

resolution that draws on Buddhist principles and is perhaps centered around the temples and guided by village elders.”²⁹²

Because Buddhism is a constant presence in Khmer culture, the support of Buddhist leaders could be enormously helpful in bringing about multi-level reconciliation and social reconstruction in Cambodia. As such, NGOs should appeal to Buddhist leaders in Cambodian society to promote healing and social repair at the individual and communal levels, and as a result at the national level.

The government should also enlist the help of NGOs to analyze and evaluate what form(s) of reparations would be most beneficial and realistic to promote transitional justice and social reconstruction.²⁹³ Monetary reparations are not realistic or suggested for two reasons. First, they are not culturally accepted and Cambodians do not want monetary reparations. Second, even if monetary reparations were desired, it is not fiscally possible for the government to provide them, and what the government could provide would be unlikely to provide any benefit to victims once such reparations had been divided among all of the survivors – not to mention providing monetary compensations for those killed. Even if financial reparations were a possibility, this problem of monetary reparations to those who died during Democratic Kampuchea would most likely cause civil unrest and foster resentment towards the government because giving compensation to families on behalf of those who were killed would almost certainly be viewed as an insult to survivors would likely feel—rightfully so—that the government had put a price on the lives of their loved ones. Hence, reparations in Cambodia should be of a moral, symbolic, or otherwise reconciliatory nature that aims to further social reconstruction and bring transitional justice to the victims of the Khmer Rouge regime.

²⁹² Ibid.

²⁹³ Pham, 5.

According to *The Handbook of Reparations*, the term ‘reparations’ in a judicial context encompasses many forms of redress for victims of offenses, including restitution, compensation, rehabilitation, and satisfaction and guarantees of nonrecurrence.²⁹⁴ Pablo De Greiff argues that this juridical approach to justice is problematic because it aims to resolve relatively isolated cases, and instead advocates that justice should be thought about in terms of the achievement of three goals: recognition, civic trust and social solidarity.²⁹⁵ Reparations and reparation programs in Cambodia should act with the purpose of fulfilling these three goals because their achievement significantly bolsters the provision of restorative justice to victims as well as promotes multi-level reconciliation and overall social reconstruction and transitional justice. By making these the goals of reparations programs, reparations are considerably more likely to bring transitional justice and social reconstruction to Cambodia’s ‘broken’ society.

De Greiff argues that reparations must recognize the status of individuals as citizens because transitional justice aims to return or establish the status of citizens to individuals, and the purpose of reparation programs is to further transitional justice.²⁹⁶ Before individuals can be recognized as citizens, however, they must be recognized as “irreplaceable and unsubstitutable human beings.”²⁹⁷ Therefore, the state should not only recognize those affected by the Khmer Rouge regime as citizens and grant them their rights as such, but the state must also recognize and respect every Cambodian as an individual who is unique and indispensable. This is also aided in part by Hun Sen’s acknowledgment and condemnation of the Khmer Rouge regime and the crimes the Khmer Rouge committed by validating the victims’ suffering, despite the aforementioned problems with this statement. This recognition can be further ingrained by

²⁹⁴ Pablo De Greiff, *The Handbook of Reparations* (New York: Oxford UP, USA, 2006) 452.

²⁹⁵ Ibid.

²⁹⁶ De Greiff, 460.

²⁹⁷ Ibid.

promoting the efforts that the government and the ECCC are undertaking to bring justice to post-genocide Cambodia.

Because reparations are in themselves a form of such recognition, it follows that effective and successful reparations programs would recognize individuals as both citizens and unsubstitutable human beings. Therefore, the government of Cambodia should create social programs that allow every person who wants to participate to have the opportunity to. This could be through initiatives already established by NGOs, through a partnership with NGOs like DC-Cam to engineer a new initiative, or conducted by the government alone with support from NGOs on how to proceed. These initiatives should provide what Youk Chhang described as the need for victims to have “someone to really listen to their story... [because] when you listen to it, it is very helpful.”²⁹⁸ This would give victims validation and support, two of victims’ needs for restorative justice, and in providing recognition, would further transitional justice. A Commission of Inquiry would also provide this validation and support, and would strengthen individuals’ feelings of self-worth by recognizing the suffering they experienced resulting from actions against them as unsubstitutable human beings. This recognition is reinforced as well by the aforementioned assurance of an open political environment, which also strengthens individuals’ feelings of self-worth by recognizing and validating their suffering. This notion of self-worth resulting from an individual being recognized by the state as an unsubstitutable human being and citizen of the state can also be strengthened by reparations such as memorials, by giving national recognition to such suffering (more on this to follow).

Reparations must also seek to restore or create civic trust, which De Greiff describes as a trust among citizens who are members of the same political community and therefore assume that fellow members share the same principles and the domain of application of these

²⁹⁸ Chhang.

principles.²⁹⁹ Civic trust is both a catalyst for and a symptom of trust in legal institutions,³⁰⁰ reaffirming the necessity of the Cambodian government's foremost focus to be on multi-level reconciliation and social reconstruction as the first steps to provide transitional justice before eradicating corruption and the culture of impunity, because citizens must trust that when they report a crime, the legal system will deliver a consistent outcome to cope with the reported norm-violating behavior.³⁰¹ The provision of transitional justice, however, would build this civic trust, laying the foundations for the eradication of corruption and the culture of impunity by establishing and demonstrating the precedent that crimes will be punished. This is accomplished in part by the ECCC's responding to the crimes of the Khmer Rouge, and reparations should be used to further this nature of civic trust to promote social reconstruction and transitional justice.

Because reparations are a demonstration that the state and their fellow citizens are serious in their efforts to provide equality and respect to victims,³⁰² reparations would increase civic trust as well as promote reconciliation and transitional justice. The government should make sure that this sentiment of seriousness is understood and absorbed by the population, and should enlist (dare it be suggested) a Public Relations team to create a mixed-media campaign that effectively conveys this sentiment. Furthermore, if reparations increase civic trust, they would also promote inclusiveness within the state by means of the provision of equality for all citizens.³⁰³ Not only would this inclusiveness strengthen national reconciliation and social reconstruction, but it would also provide transitional justice by promoting possibilities for democracy.³⁰⁴

²⁹⁹ De Greiff, 462.

³⁰⁰ De Greiff, 463.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ De Greiff, 464.

³⁰⁴ "What is Transitional Justice? -," International Center for Transitional Justice, 07 July 2009 <<http://www.ictj.org/en/tj/>>.

Therefore, reparations programs in Cambodia should foster this sense of civic trust, which can be done through the aforementioned recommendation of Buddhist-based social programs due to their emphasis on Buddhist principles that support multi-level reconciliation and social reconstruction. Civic trust would also be strengthened by the aforementioned suggestion of a Commission of Inquiry because such an initiative would demonstrate that the state is serious about respecting the suffering of all citizens equally, and because it would begin to establish the aforementioned precedent that the state would respond to crimes committed against these citizens. These provisions would increase citizens' trust in the government's systems, and would bolster: restorative justice by providing validation, testimony and support to those affected by the Khmer Rouge; social reconstruction by recognizing of the equal worth of every individual, and providing forums for multi-level reconciliation; and overall transitional justice by strengthening prospects for democracy and a democratic process.

Social solidarity is described by De Greiff as “the type of empathy characteristic of those who have the disposition and the willingness to put themselves in the place of others,”³⁰⁵ and results in the ability to have an impartial perspective when judging another's actions.³⁰⁶ This is considered crucial to transitional justice because impartiality is a necessary condition for justice.³⁰⁷ In the same manner that civic trust follows recognition, social solidarity follows civic trust; because of this, social solidarity is not an appropriate goal for reparations to fulfill at this juncture due to the lack of civic trust present in Cambodia. Reparations programs can provide social solidarity, and should look to do so once civic trust is strengthened.

An anomaly is present, however, in the progression of these three goals, namely, that social solidarity seems to be somewhat present in Cambodia despite the daunting lack of civic

³⁰⁵ De Greiff, 464.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

trust. This is demonstrated by interviewees who were solely victims of the Khmer Rouge regime, rather than perpetrators who were also victims; none of the former victims believed that perpetrators living in their villages deserved to be punished. For example, Tam Taim (Him Huey neighbor) said that Him Huey should not be punished because he was following orders.³⁰⁸ In this way, Tam Taim's judgment of Him Huey's behavior exemplifies the presence of social solidarity, because Tam is able to put himself in Him Huey's position and empathize with the crimes Him Huey committed due to the position he was in (a throw-back, so to speak, to victims' comprehension of the paradox of perpetration). It should be noted, however, that not all of these victims felt that perpetrators should not be punished for this reason; rather, several of these interviewees explicitly left the punishment of such perpetrators up to Karma. For example, Mom Sareoun said that if anyone in her village deserved to be punished, she would have punished them herself long ago, and that those who did live in her village would face Karma.³⁰⁹

Memorialization is offered by the ITCJ as one of five recommended initiatives to aid in accomplishing transitional justice, and is one of the least complicated projects capable of aiding social reconstruction in Cambodia. Memorials should be created to reinforce the government's recognition of Cambodians as individuals as well as citizens, and to enhance civic trust by demonstrating the government of Cambodia's seriousness both about treating its citizens equally and respectfully, and about dealing with norm-breaking behavior and crimes against these citizens. By renaming streets, creating memorials, and performing other memorialization initiatives, Cambodian society gives validation to those who survived the Khmer Rouge period, honors those who died during Democratic Kampuchea, and helps establish a historical record for and awareness in the international community by means of tourists' exposure to such memorials.

³⁰⁸ Taim.

³⁰⁹ Sareoun.

The government of Cambodia should work with the media to generate interest in and tourism to such memorials, encouraging foreign investment and economic development. This demonstrates once again that the government's efforts to increase civic trust must come before eradicating corruption and its corresponding economic development because efforts to increase civic trust (such as creating memorials) will encourage such economic development, at which time eradicating corruption can occur concurrently. The educational benefit of such memorials should not go unnoticed, and such memorials should be utilized within secondary school curricula to enhance the experience of learning about the Khmer Rouge regime for Cambodia's youth.

Although scarce and largely ineffective due to a lack of widespread dissemination of their existence or significance, there are current memorialization efforts in Cambodia. One of these is the country's annual "Day of Anger" on May 20. In 2008, two thousand Cambodians attended during the memorial at Choeng Ek—the genocide museum situated at a former Khmer Rouge killing field—where students staged a re-enactment of the atrocious crimes committed by the Khmer Rouge regime to commemorate the lives lost during Democratic Kampuchea.³¹⁰ However, Etcheson notes that, "over the years, people have come to recognize the explicitly political character of the official observance, and participation has gradually dwindled to include mostly the ruling party faithful, as well as those who attend the ceremonies... in order to conduct private religious ancestor veneration rituals."³¹¹ Hence, the government must provide the aforementioned memorialization efforts in a sincere and genuine manner to honor the victims instead of furthering their political agendas. These memorialization efforts are essential in furthering national reconciliation because it will help victims as well as perpetrators accept and

³¹⁰ "Cambodians mark 'Day of Anger,'" Genocide Watch, 20 May 2008.

³¹¹ Etcheson, *After the Killing Fields*, 150.

come to terms with the past, and if memorializations are conducted properly, could foster the provision of restorative justice in post-genocide Cambodia.

Increasing victim participation should be emphasized as an overall priority, because without the involvement of the victims of the Khmer Rouge—be they solely victims or victimized perpetrators—restorative justice cannot be provided to them, mitigating multi-level reconciliation. This is particularly supported by Youk Chhang’s claim that victims must heal “on their own.”³¹² Victim participation should be increased through: reparations, especially social programs promoting multi-level healing and reconciliation; memorialization initiatives honoring the victims and validating the pain of survivors; and increased outreach by the ECCC and the government with help from NGOs like DC-Cam to at most incorporate victims in the legal process and at least show Cambodians that the state is serious about providing retributive justice in response to the crimes committed against them. In the sense that, according to Prime Minister Hun Sen, those born after 1979 “still bear a heavy burden...[sharing] in the difficulties of rebuilding our society from Year Zero without the benefit of the wisdom and experience of those who were lost,”³¹³ these victims of the Khmer Rouge should also be incorporated in these initiatives to increase victim participation, and those young enough should have such initiatives integrated into their academic curricula. Another, smaller initiative to increase victim participation, recommended by Taylor, is that Cambodian government should “allow individuals to access state files.”³¹⁴ Overall, victim participation must be increased to allow individuals to heal, promoting multi-level reconciliation and social reconstruction, and to disseminate to the victims that the offenses committed against them are being dealt with, promoting the actualization of both retributive and restorative justice.

³¹² Chhang.

³¹³ Secretariat of the Royal Government Task Force, 1.

³¹⁴ Taylor, 268.

Transnational civil society should be mobilized to improve human rights in Cambodia, which would bolster social reconstruction by encouraging individuals' sense of self-worth through recognition of their status as unsubstitutable humans and through the respect and equality afforded to them as such, and would bolster transitional justice through the promoting of democratic principles such as the basic human rights of life, liberty and justice. Applying Anne Florini's writing in *The Third Force: the Rise of Transnational Civil Society* on the role of transnational civil society in reinforcing international human rights norms in states with norm violating leadership, transnational civil society can and should mobilize to improve human rights in Cambodia.³¹⁵ Therefore, transnational civil society should increase the moral consciousness of the international community—rather than the international political community—regarding what has taken place in Cambodia, using the media to proliferate the crimes of the Khmer Rouge and the efforts underway to bring justice to the victims of the Khmer Rouge and post-genocide Cambodia, and to garner financial support for both the ECCC and NGO initiatives. An increase in this moral consciousness should increase domestic support and pressure for other governments to help fund the process of legal justice in Cambodia, potentially increasing international donations and funding for the ECCC and ECCC outreach programs. This moral consciousness and subsequent domestic support at an international scale should also increase private donations and fundraising efforts for NGOs, such as DC-Cam. In this sense, transnational civil society could use or could replace celebrities, who would normally garner attention for such a human rights crisis, and create popular support in other countries for relief efforts.

The media has arisen throughout this paper's policy prescriptions as an important actor in promulgating everything from the statements of the government to the initiatives of NGOs.

³¹⁵ Anne Florini, *The Third Force The Rise of Transnational Civil Society* (New York: Carnegie Endowment for International Peace, 2000).

Effective use of the media by reparations programs, outreach initiatives, and government Public Relations campaigns should be emphasized as a powerful tool in bringing the goals of such activities to fruition, namely, the accomplishment of transitional justice—encompassing both restorative and retributive justice—and overall social reconstruction through multi-level reconciliation. The government of Cambodia should work with NGOs to engage the media in their mutual cause of propagating the efforts being made and initiatives underway in order to increase victim participation and bring restorative and retributive justice to Cambodia. Such a proliferation of these efforts should lead to a greater dissemination of both the government’s recognition of all Cambodians as individuals and as citizens, and the government’s serious and genuine efforts to respond to the crimes of the Khmer Rouge regime, fostering civic trust.

The media as a whole should sponsor more programming that is either ECCC-based or that serves the purpose of furthering multi-level reconciliation. One possible demonstration of the latter option is to create a soap opera that acknowledges the continuing social complexities due to the Khmer Rouge regime in the same manner that DC-Cam’s Breaking the Silence initiative aims to, as the UC Berkeley study found that soap operas were the second most frequent source of knowledge about the ECCC after the news from specific television programs.³¹⁶ NGOs should work with the news media to create ECCC-based special programming, possibly on a government-created network reserved for such programming, as suggested earlier. By having NGOs work with the news media without government involvement, not only are corruption charges held at bay, but the quality of the programming will be raised because it will better reflect the attitudes and sentiments of the Cambodian population and therefore approach them more effectively in relation to the goal of supporting social reconstruction. Such news programming in the style of *60 Minutes*-like feature specials on the

³¹⁶ Pham, 3.

ECCC, including interviews with judges and clerics—or media professionals appointed to represent them—regarding the progress of the trials and the role of specific testimonies, etc., could also be greatly beneficial in circulating the progress the trials have made, further rectifying the discrepancy between Cambodian and international conceptions of justice and the temporal delays of the ECCC. Both the news and entertainment media are infinitely valuable to the accomplishment of transitional justice and social reconstruction, and should be treated as such by the government of Cambodia and NGOs, lest the potential value of such programming fall by the wayside with the lack of such programming becoming a detriment rather than a benefit to the actualization of these goals.

Internationally, the news media play a similarly significant role by mobilizing popular support for international funding for everything from refugee relief efforts to the ECCC. The media is the key to mobilizing transnational civil society to support domestic measures within various industrial states capable of funding NGO initiatives for social reconstruction and multi-level reconciliation, and both the government of Cambodia and NGOs should take advantage of the ECCC trials as a way to draw international attention to these goals. There is a significant lack of international news coverage on the trials—as demonstrated by the lack of New York Times articles on the trials, let alone of reconciliation efforts or domestic politics in Cambodia—which prevents the involvement of transnational civil society and its ability to aid in the actualization of transitional justice and social reconstruction in Cambodia. Increases in international attention and involvement in NGO activities separate from the politics-dominated UN could also have the secondary effect of making Cambodians feel as if they are supported by the international community, and that not only are the injustices they endured known, but also that the international community wants to help Cambodians regain their self-worth.

CONCLUSION

Given our analysis of the various initiatives that can bring transitional justice to Cambodia as well as the various complications to and mitigating factors of this goal, this paper finds that of the five aforementioned ICTJ models to bring transitional justice, a combination of criminal prosecutions, reparations programs, and memorialization efforts would be effective and, at this time, are the only efficient and realistic methods by which to provide justice to the Cambodian victims of the Khmer Rouge regime and facilitate individual, communal and national reconciliation in post-genocide Cambodia. This analysis is based on the conclusions that: criminal prosecutions, in the form of the ECCC, can bring retributive justice if conducted fairly and with increased outreach to emphasize the government's recognition of each Cambodian as an individual and citizen, strengthening civic trust in the state's legal apparatus; the formation of a Commission of Inquiry in correlation with reparations programs can be highly effective in providing restorative justice to the Cambodian victims of the Khmer Rouge, and facilitate multi-level reconciliation and social reconstruction; and memorialization efforts can both validate the suffering of the Khmer Rouge period's survivors, and offer further opportunities for education initiatives. Both retributive and restorative justice models are necessary and are incorporated because they fulfill different purposes within the framework of transitional justice, providing both legal accountability and emotional recovery.

Based on this paper's research, the UN-sponsored ECCC tribunal is capable of bringing retributive justice and therefore aspects of transitional justice; this potential is significantly weakened, however, by the lack of outreach and domestic comprehension of the trials, and needs to considerably improve and increase outreach efforts, victim participation, and education initiatives in order to strengthen the Rule of Law in Cambodia for posterity, and to ensure the

dissemination of the trials' progress and purpose of bringing the victims of the Khmer Rouge regime justice. The ECCC tribunal is largely incapable of providing restorative justice, but may prove beneficial to overall social reconstruction if correlating social programs are created to aid multi-level reconciliation in response to the trials. There are several benefits of the ECCC trials for restorative justice. First, the proceedings are a recognition by the government of Cambodians' status as individuals and citizens, which in turn results in increased civic trust. Second, this recognition increases individuals' sense of self-worth, which in turn supports social solidarity and, hence, multi-level reconciliation and social reconstruction. For some, the trials may allow individuals to heal and reconcile, and is likely to aid—at least to some extent—in communal and national reconciliation in a top down approach. Individual reconciliation and healing is left mostly, however, to both bottom-up and top-down restorative justice efforts, such as: the establishment of a Commission of Inquiry; reparations programs including social programs that are potentially based in Buddhist principles or are either conducted or supported by Buddhist leaders; memorialization initiatives to validate victims' suffering and honoring those who did not survive the Khmer Rouge period; and education programs both for the generations who did not live through the Khmer Rouge regime, and for those who did live through Democratic Kampuchea and who need to understand why such atrocities occurred so that they can come to terms with their experiences. This need for answers and individual reconciliation must also be incorporated in ECCC outreach programs as a paramount concern in order to accomplish restorative justice and hence transitional justice, as well as multi-level reconciliation and social reconstruction in Cambodia. With regards to the three levels of reconciliation, based on this paper's analysis, it appears that the restorative model of justice focuses more on individuals' emotions, while the retributive focuses more on the national level. However, both

are necessary at all three levels in order for justice is to be provided to the victims of the Khmer Rouge regime.

This paper finds that outreach efforts, especially those centered on increasing and improving education and victim participation, are infinitely significant in the accomplishment of transitional justice and social reconstruction in Cambodia. Without increased knowledge and comprehension of what is occurring regarding bringing justice to post-genocide Cambodia, justice will continue to be perceived by Cambodians as elusive and delayed. This paper also finds that for the goals of providing transitional justice and social reconstruction to be accomplished, these efforts and initiatives need considerable support from: NGOs like DC-Cam, which this paper's authors find to be an exemplary demonstration of the potential benefits of NGO initiatives; the media, specifically the domestic entertainment media and the international news media; and transnational civil society.

While other studies acknowledged the potential of trials to further divide post-war communities that have not reconciled,³¹⁷ this paper's analysis of the state of multi-level healing, forgiveness and reconciliation did not find this to be a mitigating factor of social reconstruction in Cambodia. As Youk Chhang explained so concisely the importance of both retributive and restorative models of justice in bringing about multi-level reconciliation and social reconstruction in Cambodia, "Only legal prosecution, only education can bring about a process to reconcile."³¹⁸ Cambodia has a long way to go, and once these goals are accomplished there will still be much left to tackle (i.e. the culture of impunity and corruption), but this paper argues that the aforementioned policy initiatives can help bring transitional justice and social

³¹⁷ Pham, 6.

³¹⁸ Chhang.

reconstruction if implemented correctly and with adequate support—especially financial support—from the international community.

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