

## Justice, Human Rights, and Reconciliation in Postconflict Cambodia

Susan Dicklitch · Aditi Malik

Published online: 9 January 2010  
© Springer Science+Business Media B.V. 2010

**Abstract** Retribution? Restitution? Reconciliation? “Justice” comes in many forms as witnessed by the spike in war crimes tribunals, Truth & Reconciliation Commissions, hybrid tribunals and genocide trials. Which, if any form is appropriate should be influenced by the culture of the people affected. It took Cambodia over three decades to finally address the ghosts of its Khmer Rouge past with the creation of a hybrid Khmer Rouge Tribunal. But how meaningful is justice to the majority of survivors of the Khmer Rouge auto-genocide when only a handful of top officials are tried? Further, given the persistent abuse of political and economic rights in post-conflict Cambodia, we are skeptical that justice or reconciliation is presently possible.

**Keywords** Justice · Cambodia · Genocide · Human rights · Truth and reconciliation

No one can bring the dead back. Nor can anyone change what happened in the past, but can the wrongs of the past be righted? This is essentially what international justice strives for—whether it is truth and reconciliation, war crimes tribunals, hybrid tribunals, or retribution—international justice is about ensuring that “justice is done.”

Unfortunately, ensuring that “justice is done” is more difficult than it may appear—especially when there are different conceptions of what “justice” really is. The case of Cambodia is particularly illustrative of this problem.

---

S. Dicklitch (✉)  
The Ware Institute for Civic Engagement, Franklin & Marshall College, P.O. Box 3003,  
Lancaster, PA 17604, USA  
e-mail: susan.dicklitch@fandm.edu

A. Malik  
Department of Political Science, NorthWestern University,  
Scott Hall, 601 University Place,  
Evanston, IL 60208, USA  
e-mail: aditimalik2014@u.northwestern.edu

Between April 1975 and January 1979, Cambodians suffered enormous human rights abuses under the rule of the Khmer Rouge, a regime whose members have been described as “fanatical ideologues” (Kissinger 1994). During this period, it is estimated that more than 20% of the nation's population of eight million people perished.<sup>1</sup> However, a tribunal to try former high-ranking Khmer Rouge officials and those “most responsible” for the atrocities committed against the Cambodian people was not formally established until 2006.<sup>2</sup> This tribunal, the Extraordinary Chambers in the Courts of Cambodia (E.C.C.C.),<sup>3</sup> made its first indictment in July 2007. Many survivors of the Khmer Rouge regime's brutal rule are hopeful that the Khmer Rouge Tribunal will finally usher in some justice to the victims of the Khmer Rouge.<sup>4</sup>

Recognizing that there are many impediments to achieving “justice” for the victims of the Khmer Rouge regime, we argue that past abuses cannot be decoupled from present political and economic rights abuses; that the limited focus of the hybrid tribunal limits the potential for real justice; and the lack of adequate mental health services to a potentially retraumatized population is inhumane at best. Further, we recommend that Cambodia needs to simultaneously promote restorative justice while the hybrid court focuses on retributive justice. Cambodia needs a Truth and Reconciliation Commission, whereby individuals would be given the opportunity to come forward and confess their crimes and avoid prosecution. However, if they chose not to confess their crimes, they would face prosecution. By focusing on just a few of the “most responsible,” those thousands who were willing participants in the Khmer Regime do not have to atone for their sins or face their earthly Dharma.

## The Khmer Rouge Regime

On April 17, 1975, the Khmer Rouge regime led by Pol Pot (whose real name was Solath Sar) seized Phnom Penh, and declared a new beginning of history: Year Zero, and a new nation: Democratic Kampuchea. Unfortunately, Democratic Kampuchea was far from democratic. Although Pol Pot was driven by the desire to create a utopian agrarian communist society, what he created was a regime of terror, death, starvation, and genocide.

Frustrated by the US bombings of their neutral nation during the Vietnam War and viscerally influenced by communist doctrine, the Khmer Rouge leaders envisioned a revolution that would take the Khmer people back to their days of glory. This reunion with their monumental past of the period of the Khmer empire would be brought about through contact with the land. Consequently, the call of the Khmer Rouge was to completely abandon everything hailed to be “Western”

---

<sup>1</sup> See Kiernan (1996)

<sup>2</sup> Negotiations to set up the tribunal began on June 21, 1997 when the Cambodian government approached and requested the United Nations for assistance in this matter.

<sup>3</sup> We will hereafter refer to the E.C.C.C. as the Khmer Rouge Tribunal.

<sup>4</sup> For example, in the preface to *An Introduction to the Khmer Rouge Trials* (3rd edition), the Prime Minister of the Royal Government of Cambodia states, “When the judges have delivered their verdicts, we hope that Cambodians and all who support us will feel a load lifted from our backs as we finally bring justice in the name of the victims.”

including education, medicine, and law, and return to agriculture.<sup>5</sup> In their quest for glory, the Khmer Rouge carried out draconian measures such as “the extermination of the elite and educated, a complete evacuation of urban centers, the incineration of books, libraries, banks, places of worship, and university facilities, the execution of ethnic minorities; and the prohibition of religious practice and education.”<sup>6</sup>

The number of human beings that perished during the 4 years of Khmer Rouge rule is estimated at one and a half million to two million people (Heubeline and Poch 2007). Nobody was safe in Democratic Kampuchea. Anyone who the Khmer Rouge cadres perceived to be against the communist revolution that they were trying to implement was deemed an enemy of the revolution, or a “Vietnamese spy.”<sup>7</sup>

On January 6, 1979, the Vietnamese invaded Cambodia and drove the Khmer Rouge from power. This did not bring peace and stability to Cambodia—it took almost 20 years of civil war before all Khmer Rouge leaders surrendered or were captured.<sup>8</sup>

Removing the Khmer Rouge from power was one thing—keeping them out of power was another. The Vietnam-backed puppet regime that overthrew the Khmer Rouge ruled from 1979 to 1991, but the Khmer Rouge continued to launch attacks in the countryside and worked to destabilize an already exhausted nation. The United Nations organized national elections in 1993, resulting in a hybrid government run by co-prime ministers: Prince Norodom Ranariddh and Hun Sen. This was neither a politically or economically stable era in Cambodia, as political infighting continued between the two prime ministers resulting ultimately in a 1997 bloody coup. Hun Sen overthrew Ranariddh, winning new elections in 1998.<sup>9</sup> Since then, Prime Minister Hun Sen and the Cambodian People's Party (CPP) have been in power in Cambodia.

As it is in most cases, the genocide and the civil war that followed in Cambodia was not without international inference. Cold war politics helped perpetuate the cycle of destruction.

The Chinese had very warm relations with the Khmer Rouge, while the Soviet Union supported Vietnam and the post-Khmer Rouge regime, the People's Republic of

<sup>5</sup> Ironically, although the party rejected everything “Western,” which they considered to be a contamination of the Khmer people and culture, many of the top leaders of the Khmer Rouge had been educated in the “West,” most notably in France. Pol Pot, whose real name was Solath Sar was a 49-year-old schoolteacher and the political leader of the Khmer Rouge. He had studied radioelectricity in Paris from 1949 to 1953. Khieu Samphan, the President of the State presidium of Democratic Kampuchea had also studied in Paris, where he had focused on Economics and Politics. His successful doctoral thesis, which he defended in 1959 titled “Cambodia’s Economy and Industrial Development,” advocated national self-reliance and generally sided with dependency theorists in blaming the wealthy, industrialized states for the poverty of the Third World. Samphan’s educational interests and leanings give us a sense of the utter frustration and resentment that most top Khmer Rouge officials had toward the West, blaming the West’s exploitation of their nation as the cause of its “underdevelopment.” Therefore, the Khmer Rouge argued that the only route by which Cambodia could truly develop was by abandoning all western influences, and severing all ties with the west.

<sup>6</sup> The Khmer Rouge’s rejection of everything “Western” was so extreme that a person who wore spectacles was considered to have been “corrupted by the West.” This was reason enough, according to the Khmer Rouge to exterminate him or her. (van Schaack 1997)

<sup>7</sup> See Raszelenberg (1999)

<sup>8</sup> The Khmer Rouge continued to launch attacks from the western border of Cambodia with bases in Thailand and destabilize the countryside. The new government backed by Vietnam was called the People's Republic of Kampuchea (PRK). After a peace agreement in 1996 brokered by the United Nations, Pol Pot formally dissolved the Khmer Rouge.

<sup>9</sup> For more background on the history of Cambodia, see Kurlantzick (2000).

Kampuchea. China provided significant military aid to the disbanded Khmer Rouge forces, giving nearly \$100 million annually in aid to the Khmer Rouge.<sup>10</sup> The US bombing of Cambodia during the Nixon administration further strengthened the Khmer Rouge. Even the United Nations failed the people of Cambodia when it voted in 1982 to grant the Cambodian seat in the UN General Assembly to the “Coalition Government of Democratic Kampuchea”—shocking because the international community basically allowed the Khmer Rouge to continue and even gain recognition internationally.<sup>11</sup>

Ironically, current international efforts to help Cambodia have sometimes resulted in more harm than help to the Cambodian people. This is especially the case with foreign aid to Cambodia. Cambodia, postconflict, has become very aid-dependent. The influx of the aid industry in Phnom Penh has resulted in a “denuding of the public and private sectors of talented people (McCargo 2005, p. 104). As long as aid agencies can pay local Cambodians more than local industries or businesses, Cambodia will remain a two-tiered nation. The international donor community pledged \$690 million in assistance to Cambodia in 2007, 15% more than the previous year (Freedom House 2008), even though it is clear that democracy and the rule of law are not a central pursuit of the CPP regime.

What is perhaps most disturbing is that the international community is turning a blind eye to violations of civil, political, and socioeconomic rights in Cambodia. The recent awarding of an offshore mining contract to the US-based Chevron by the Cambodian government further muddies the waters. Shortly after the award, the US government lifted the ban on aid to the Cambodian government.<sup>12</sup> The International community has to come clean with its past involvement in the Cambodian genocide and put the interests of the Cambodian people above their own narrow national interests when determining aid and diplomatic arrangements.

### “Western Justice” vs. “Khmer Justice”

There is a great debate in western and nonwestern circles as to what is the most effective vehicle for reconciling a nation with its traumatic past. What is the best model?—retributive justice, restorative justice, local justice, truth and reconciliation, or simply sweeping the past under the proverbial rug? Many countries trying to reconcile their past with their present have attempted some combination of the above—some more successfully than others.

Rwanda, for example, recovering from a brutal genocide in 1994, decided on a combination of local and international justice with an International Criminal Tribunal for Rwanda (in Arusha) and local “Gacaca Courts”—indigenous village tribunals that mean, “justice on the grass” in Kinyarwanda.<sup>13</sup> South Africa postapartheid, decided on restorative justice with a Truth and Reconciliation Commission, while the international community formed the International Criminal Tribunal for the Former Yugoslavia. Several other courts in Sierra Leone, the Democratic Republic of Congo, and Uganda

<sup>10</sup> See The Khmer Rouge Tribunal, 33.

<sup>11</sup> Id.

<sup>12</sup> Human Rights Watch (January 2008) *Cambodia: Country Summary*. 4.

<sup>13</sup> See an interesting article on the Gacaca courts, IRIN, “Rwanda: Jury still out on effectiveness of ‘Gacaca’ Courts”, 23 June 2009.

offer alternative or similar models. What is striking in the Sierra Leonean case is the popular resentment toward the Special Court. Many Sierra Leoneans think that the estimated cost of \$212 million could have been better utilized in rebuilding the war-devastated and traumatized society (Timberg 2008). The Sierra Leonean national judicial system is painfully inadequate, many amputees are unable to provide for themselves or their families, and education is painfully inadequate. The same could be said of the E.C.C.C. Trying a handful of “those most responsible” is not enough to heal a traumatized nation—especially when the government still contains former members of the Khmer Rouge, and low-level perpetrators live freely in villages and urban areas. But, it may be enough to retraumatize a nation

The Khmer term for justice is “Yuttethor,” which is a derivative of the Khmer word for “Dharma (Thor).” “Yuttethor” implies fairness, honesty, and impartiality—with justice carried out by a monk or elder in the local Wat (Buddhist temple; Sreang 2006). The Khmer concept of justice is rooted more firmly in traditional, moral practices of mutual understanding and agreement than in state laws or legal practices.<sup>14</sup> Hence, a more restorative approach to justice seems to emanate from Khmer history. However, there is an additional element to Khmer justice rooted in Buddhism. “Dharma”—“duty” or “correct action”—is linked to concepts of justice and punishment. Straying from one’s “Dharma” will have a significant impact upon one’s ability to advance in “Samsara” (the cycle of birth and rebirth; Jacobsen 2006). Thus, those that transgress society’s boundaries will be punished twice: Once to rebalance “dharma” in this life, and again when people find that their past actions have resulted in a regression in “Samsara”—when for example, they get reincarnated into a cockroach.<sup>15</sup> Earthly punishments included fines, beatings, and in more serious crimes, financial restitution to victim’s families and even execution. Repeat offenders would have marks or tattoos incised upon their faces—while members of the elite would be forced to wear large iron collars for a set period of time. Shame was an integral aspect of punishment.<sup>16</sup>

“Rebalancing ‘dharma’” in this life typically did not involve incarceration. According to Jacobsen, “...incarceration was used only in cases where the perpetrators of crimes were members of the royal family (who cannot be killed) or in trial by ordeal.”<sup>17</sup> This is important when considering the impact of the E.C.C.C. The most extreme form of punishment within the E.C.C.C. involves incarceration. Given the impoverished living conditions for most Cambodians, this punishment would hardly rebalance the “dharma” for perpetrators of mass injustice.<sup>18</sup>

Given the nature of Khmer justice, perhaps the E.C.C.C.’s earthly form of “rebalancing ‘dharma’” is bound to fail. Either Cambodians have to wait for “Samsara” for justice—or an alternative form of restorative justice is in order—one that would also focus on low-level perpetrators of atrocities as well as “the most responsible.” This could entail a combination of shame, financial restitution, and an open dialog of asking for forgiveness, thus paving the way for harmony and reconciliation. Cambodian society has suffered long enough from an unbalancing of “dharma.”

<sup>14</sup> Ibid., p. 21.

<sup>15</sup> Ibid., p. 7.

<sup>16</sup> Ibid., p. 6.

<sup>17</sup> Ibid., p.6.

<sup>18</sup> Ibid., p. 7.

## International Justice?

The E.C.C.C. was formerly established in 2003, when the details on international participation within the tribunal were finalized. Cambodia first approached the United Nations for assistance to conduct a trial in 1997, and since 1998, the Royal Government of Cambodia and the United Nations have worked toward establishing this “hybrid” tribunal consisting of Cambodian and international judges.

The budget of the E.C.C.C. is \$56.3 million, which will sustain its operations for a period of 3 years.<sup>19</sup> This period began in early 2006, which means that the E.C.C.C. can function on its current budget only until early 2009.<sup>20</sup> The major donors to the E.C.C.C. are Japan, which contributed 50% toward the international share of the budget, France, Germany, the United Kingdom, and Australia.<sup>21</sup> India and the European Union are the major donors to the Cambodian side of the budget, but the E.C.C.C. is still “appealing for funds from donor countries, or from concerned organization, companies, foundations or individuals.”<sup>22</sup>

According to a 2004 survey conducted by the Khmer Institute for Democracy, 96.8% of the (Cambodian) respondents were in support of a public trial in Cambodia to prosecute those who were responsible for carrying out the gross human rights atrocities in the nation between 1975 and 1979.<sup>23</sup> However, during the course of our research in Cambodia, it was difficult to ignore the disillusionment and fatalism that some Cambodian youth suffered from.<sup>24</sup> The young people of Cambodia find themselves shouldering the enormous responsibility of taking Cambodia forward, on its path to “development.” Consequently, their opinions regarding what is undoubtedly the darkest chapter of Cambodian history are particularly important.<sup>25</sup>

More importantly, it is often stated that the courts and judges in Cambodia are so corrupt that, to make the tribunal legitimate in any way, there needs to be an international

<sup>19</sup> Id. It should be noted that the E.C.C.C. report states that its budget “is around \$60 million over three years.” *An Introduction to the Khmer Rouge Trials*, 2nd ed (2006). 18.

<sup>20</sup> See *Extraordinary Chambers in the Courts of Cambodia*, available at <http://www.eccc.gov.kh/>.

<sup>21</sup> See, *An Introduction to the Khmer Rouge Trials*, 2nd ed (2006). 18.

<sup>22</sup> Id.

<sup>23</sup> See McCargo (2005, p. 104) and; See Khmer Institute for Democracy (2004) *Survey on the Khmer Rouge Regime and the Khmer Rouge Tribunal 2004*. Khmer Institute for Democracy, 12. According to the Khmer Institute for Democracy, these respondents came from ten different provinces across the nation, 32% of who had educational qualifications of high school and beyond—55% of who were male and the rest female. As far as occupations are concerned, 33.3% of the respondents were farmers, 1.9% were laborers, 12.2% were housewives, 12.2% were teachers, 13.4% were civil servants, 1.1% were members of the police force, 0.4% were members of the military police, 1.3% were enlisted in the army, 9.6% had their own businesses, 6.0% had other occupations such as monks, 7.5% of them were nongovernmental organization (NGO) workers, and 0.9% of them were students.

<sup>24</sup> Confidential interview with youth respondent, June 26, 2007, Phnom Penh, Cambodia.

<sup>25</sup> The results of this survey give one the impression that there is overwhelming support for the Khmer Rouge Tribunal among the people of Cambodia today. However, it should be noted that this survey primarily interviewed persons who had survived the Khmer Rouge regime. Furthermore, the age range of the respondents varied from 30 years to 83 years, with the average age being 49 years, which tells us that this survey was not particularly targeted at the youth. In contrast, our 17 respondents are members of the “post Khmer Rouge generation,” 47% of whom were female, and 53% were male. Their ages ranged between 17 and 30 years of age, with the average age being 28.27 years. All of them had educational qualifications beyond middle school (23% were in high school at the time of this study, 54% were in university, and another 23% had completed their education and were working in NGOs. Therefore, 23% of them were employed by NGOs and 77% of the respondents were students).

component to the same.<sup>26</sup> It is not surprising, therefore, that a reason often cited by the United States, and also by a high ranking US Embassy official in Cambodia, for not contributing financially to the Khmer Rouge Tribunal, is that the USA is not convinced that the structure of the Tribunal is legally sound, and that a hybrid tribunal which includes Cambodian lawyers with little training will be fair and impartial.<sup>27</sup>

What is even more troubling given these financial difficulties of the court is the fact that the first indictment made by the E.C.C.C. came more than a year after the court began operations in the nation, and approximately 4 years after the agreement was signed between the UN and the Royal government of Cambodia to establish the E.C.C.C.

Pol Pot died in 1998, but the first indictment for Kaing Guek Eav (alias Comrade Duch) came only in July 2007.<sup>28</sup> Duch was a leader of the Khmer Rouge and is best known for heading the Khmer Rouge special branch and running the infamous Tuol Sleng (S-21) prison camp in Phnom Penh. While Duch was the first senior leader to be indicted, other senior leaders of the Khmer Rouge lived freely in Cambodia for decades, albeit in declining health: Nuon Chea, the movement's chief ideologue; Ieng Sary, the former foreign minister; and Khieu Samphan, the former head of state.<sup>29</sup> Since Duch's arrest, Nuon Chea, Khieu Samphan, Ieng Sary, and Sary's wife Ieng Thirith have all been charged with various crimes by the Khmer Rouge Tribunal bringing the total count to five senior leaders who have been indicted by the tribunal so far.

Furthermore, the report of the E.C.C.C. states that the first trials were expected to begin in 2007, which means that the E.C.C.C. is running far behind schedule.<sup>30</sup> Is the E.C.C.C. then impeding its progress to cover its own tracks—after all, if all the senior leaders of the Khmer Rouge do die before the trials take off then, according to its mandate, those working at the E.C.C.C. will be able to make the claim that they carried out their part of the responsibilities, but that no one can fight nature (or in this case, death).

This brings us to the question of the mandate of the E.C.C.C. In essence, who is the E.C.C.C. empowered to put on trial? As its own report states and as stated above, “in the spirit of achieving *justice, truth and national reconciliation*, the Cambodian government and the U.N. decided that the court should limit prosecutions to the senior leaders of Democratic Kampuchea who planned or gave orders, as well as those *most responsible* for committing serious crimes.”<sup>31</sup> Therefore, low level and middle-ranking Khmer Rouge members who are not “most responsible” for serious crimes, and children, family members, and associates of Khmer Rouge will not be prosecuted. What “most responsible” really means, and how the E.C.C.C. will determine who is “most responsible” remains, unfortunately, a rather murky detail,

<sup>26</sup> See, Human Rights Watch (2006), see also, Human Rights Center (2009).

<sup>27</sup> Confidential interview with a high ranking US Embassy official in Cambodia, June 19, 2007, US Embassy in Phnom Penh, Cambodia.

<sup>28</sup> Since then, the E.C.C.C., has charged four other high-ranking Khmer Rouge members: Nuon Chea (former head of the Democratic Kampuchea National Assembly); Ieng Sary (former minister of foreign affairs of Democratic Kampuchea and Pol Pot's brother-in-law); Ieng Thirith (former minister of social affairs of Democratic Kampuchea); and Khieu Samphan (former head of state of Democratic Kampuchea; An Introduction to the Khmer Rouge Trials, 3d ed. 8 (2008).

<sup>29</sup> Pol Pot died in 1998, and Ta Mok, the regime's military commander and one of Pol Pot's most ruthless henchmen, died in July 2006 (“*Key Khmer Rouge figures charged*”, BBC News, December 11, 2007). This should provide members of the E.C.C.C. with a chilling comparison of the ICTY in Yugoslavia, and the E.C.C.C. should try to ensure that the persons that they want to prosecute do not die while under trial.

<sup>30</sup> See An Introduction to the Khmer Rouge Trials, 2nd ed (2006). 8.

<sup>31</sup> Id



especially for those not familiar with international law, such as the average Cambodian citizen.

Furthermore, although the tribunal holds the power to prosecute those on trial for crimes under Cambodian law (such as murder, torture, and religious persecution) as well as international crimes such as genocide, crimes against humanity, war crimes, destruction of cultural property, and crimes against internationally protected persons, it is often stated that getting a genocide conviction for Cambodia is less than likely (since what happened under Democratic Kampuchea does not align completely with 1948 Convention's definition of genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group"), and that it is more likely that the E.C.C.C. will be able to convict the people it prosecutes of crimes against humanity (such as mass murder, extermination, enslavement, deportation, torture, imprisonment, persecution on political, racial and religious grounds, rape, and other crimes of sexual violence). Of course, it is not our purpose to debate whether it really matters if the outcome of the trials produces a genocide conviction vs. a conviction of crimes against humanity. The atrocities committed under the Khmer Rouge and the death tolls from the period speak for themselves as to how grave the human rights abuses were at the time.

Another particularly important issue for the Cambodian people with regard to the E.C.C.C. is the issue of witness protection. Already residing in a culture of fear and impunity, it is instrumental that witnesses be protected, something that the E.C.C.C. makes no mention of. In fact, 36.3% of our respondents stated that this was one of their concerns as well, because without the assurance that witnesses will be protected, the already traumatized Cambodian population will find it virtually impossible and potentially traumatic to speak up in court.

Based on our interviews, we found that 63.6% of the respondents felt that the tribunal was being established too late (compared to 98.6% of the respondents of the Khmer Institute for Democracy Survey of 2004 who supported this public tribunal).<sup>32</sup> Most of our respondents were not well acquainted with the intricacies of the tribunal, and only 36.6% stated that they were interested in attending the trials. Seventy-five percent of those who expressed this interest stated that, due to transportation problems and lack of transport provided by the E.C.C.C. to interested Cambodians from outside Phnom Penh, they would probably be unable to attend the trial.

All the above facts show that the information about the tribunal is not filtering through to the young and educated people in the nation, and that, even for those who are aware of the tribunal, they do not think it will achieve much. Many are apathetic about the entire endeavor. This is especially surprising given that we focused particularly on the young and educated persons in the nation.

One could question where this sense of apathy among the youth of Cambodia stems from. A vast majority of our respondents stated, for example, that for them, economic issues such as gaining employment after completing their education and having a stable roof over their heads are far more important than seeking redress for crimes committed against the people of their nation nearly 30 years ago. Furthermore, the statement of one young respondent is particularly illuminating when one tries to pinpoint from whence the sense of ennui among young

<sup>32</sup> Khmer Institute for Democracy (2004, p. 12). Our respondents consisted of a focused survey group of 17 persons—members of the educated youth in Cambodia.



Cambodians today stems. This respondent stated that when people think of Cambodia, they either think of it as the nation of the Angkor Wat temples, or the nation of the Khmer Rouge, and nothing else. The same respondent works for a local NGO and has traveled to India and Thailand on assignments. In both nations, the respondent stated that all that people knew about Cambodia was the Khmer Rouge legacy.<sup>33</sup> There is, therefore, some sense of embarrassment among the youth that the ghosts of the Khmer Rouge continue to haunt their present. Consequently, with the establishment of the tribunal, and with Cambodia finding itself in the limelight, some young people in the nation are unhappy with this undue attention to only one issue in the nation. Many would prefer the same focus be laid on providing employment opportunities and eradicating poverty in the nation. Of our respondents, 63.6% also stated that the tribunal is just being put up for “show,” and that it is not going to achieve anything concrete (as opposed to a shocking 65.6% of the highly educated respondents of the 2004 Khmer Institute for Democracy survey who favored a standard trial over no trial; Khmer Institute for Democracy 2004, p. 17).

The fact that the E.C.C.C. is taking such a painfully long time to establish itself undoubtedly contributes to this sense of apathy and hopelessness. In a 2003 editorial published by the Documentation Center of Cambodia, it was stated that it is not only young Cambodians who have little interest in news relating to the Khmer Rouge, but that “even some Cambodians that lived through the KR atrocities” are nonchalant about these issues.<sup>34</sup> The article implied that the reason for the same could be that despite having heard about a possible tribunal for more than two decades, “nothing has happened in terms of legal accountability to recognize the suffering that they went through (Eng 2003).” Consequently, the Cambodian people lack faith in the current processes of the E.C.C.C. and regard it as another set of false promises. Could the money be better spent elsewhere with socioeconomic development or capacity building?<sup>35</sup>

## A Human Rights Protective Culture

It seems almost self-evident that there can be little hope for justice in a postconflict society without a rights-protective culture. But what exactly does that mean? A rights-protective culture secures both civil and political rights, as well as economic, social, and cultural rights (as outlined in the Universal Declaration of Human Rights). This does not mean that a rights-protective culture never commits any civil, political, socioeconomic, or cultural rights transgressions. Rather, a rights-protective culture strives primarily to protect the rights of its citizens. There are many ways this can occur. Primarily, the state cannot be the violator of its own citizens' human rights, nor can it allow other citizens or foreign agents or individuals to violate the rights of its citizens. In functional states

<sup>33</sup> Confidential interview with youth respondent, June 25, 2007, Phnom Penh, Cambodia.

<sup>34</sup> The Documentation Center of Cambodia is a nonprofit, nongovernmental organization in Phnom Penh (in association with Yale University's Cambodian Genocide Program) that records and preserves the history of the Khmer Rouge and compiled and organizes information that can serve as potential evidence in legally accounting for the crimes of the Khmer Rouge regime. (Eng 2003)

<sup>35</sup> In fact, in a recent (2009) population-based survey in Cambodia conducted by the Human Rights Center at the University of California, Berkeley, 20% of respondents indicated that social services such as health service, education, and psychological counseling should be provided to victims, while another 15% mentioned infrastructure, while 12% preferred economic measures, (Human Rights Center 2009, p. 44.)

and societies, this is a given. In dysfunctional postconflict states and societies like Cambodia, this is wishful thinking.

### A. Political and Civil Rights

The rule of law, accountability, and the securement of civil and political rights are all crucial to the creation of a human rights-protective culture. Without these basic legal instruments, the political structure invites violations of human rights. Cambodia's brutal legacies of the past continue to haunt the present political structures.

Cambodia is a constitutional monarchy with a population of approximately 14 million people. Even though Prime Minister Hun Sen and his CPP party won re-election in the latest July 2008 elections (Montero 2008), some suggest that these elections were simply “an exercise in political theater that the CPP uses to legitimize its power” (McCargo 2005, p. 100). At the very least, the elections were not deemed free and fair by international standards (Human Rights Watch 2008a). Prime Minister Hun Sen and his CPP party have used vote rigging, voter intimidation, and have even killed opposition members in order to remain in power.<sup>36</sup> Hun Sen has been able to consolidate his power through the strategic weakening of his coalition partner, Funcinpec (National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia), and the opposition party, Sam Rainsy Party (Human Rights Watch 2007).

The United States Department of State rates the Cambodian government's human rights record as “poor.”<sup>37</sup> A weak judiciary, endemic corruption, and a lack of rule of law, plague postconflict Cambodia. Political activists continue to be killed; press freedom suppressed; and criticism of the government frowned upon.<sup>38</sup> Freedom House has consistently ranked Cambodia as “not free” with a 6 and 5 ranking in civil and political rights.<sup>39</sup>

The prospect for accountability, let alone national healing is limited when the perpetrators of heinous crimes still walk Cambodia freely. Prime Minister Hun Sen and numerous other CPP members were previously Khmer Rouge cadres. Although Sen defected from the Khmer Rouge early on, the fact that he was ever even associated with the regime is a complication for achieving justice in Cambodia today. Similarly, Prince Sihanouk was “head of state” for the Khmer Rouge and had a “highly ambiguous relationship” with the regime (McCargo 2005, p. 104). Neither Prime Minister Hun Sen or Prince Sihanouk can be put on trial since the mandate of the E.C.C.C. is so narrowly defined as to try only senior leaders and those “most responsible” for the crimes committed in Democratic Kampuchea. However, the fact that the current government had such close ties with the Khmer Rouge contributes to the culture of fear in the nation.

It is a slap in the face and a blatant insult to the memories of the millions who perished under the regime that the tribunal will not punish the perpetrators of these atrocities in any meaningful way given the links between the present day

<sup>36</sup> See for example, Human Rights Watch (2008b), and Amnesty International (2008a).

<sup>37</sup> United States Department of State, (Released by the Bureau of Democracy, Human Rights and Labor, March 11, 2008) *Cambodia: Country Reports on Human Rights Practices – 2007*. 1, (<http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>).

<sup>38</sup> *Id*

<sup>39</sup> <http://www.freedomhouse.org/template.cfm?page=22&country=7365&year=2008>, Freedom House describes a “not free” country as “one where basic political rights are absent, and basic civil liberties are widely and systematically denied”. See, Freedom House (2007).

administration and the Khmer Rouge. Lastly, can Cambodians really be expected to speak up if they perceive their current leaders as such a threat? What kind of precedent and message does this system send? Justice under this system, evidently, is not being done.

## B. Socioeconomic and Cultural Rights

It is difficult to think about a rights protective culture when the majority of Cambodians remain in extreme poverty. Ranked 131 out of 177 countries in the United Nations Development Plan's Human Development Index, Cambodia is a country far from socioeconomic justice.<sup>40</sup> Civil servants make an estimated \$28 per month, while the gross domestic product in Cambodia is \$2,727 per capita.<sup>41</sup> Yet, a third of Cambodians live below the poverty line.<sup>42</sup>

Land grabs, landlessness, and land disputes dot the Cambodian countryside. As Amnesty International documents, Cambodian government representatives are often involved in arbitrarily expropriating land from the marginalized people living in poverty (Amnesty International 2008b). As Freedom House reports, Adhoc, a Cambodian human rights watchdog, estimated 50,000 people were evicted for development in 2006 and 2007 (UNHCR 2008). The rights of the Cambodian poor seem secondary to profit and kickbacks to the Cambodian government.

## C. A Culture of Impunity and Corruption

It is difficult to secure civil, political, or socioeconomic rights when corruption is endemic within a society. Transparency International, a respected international nongovernmental organization, reports on corruption reports that corruption and abuse of power are very serious problems in Cambodia. Cambodia, for example, was ranked 162 out of 180 countries surveyed in Transparency International's 2007 Corruption Perceptions Index. A World Bank report released in 2006 found that “unofficial payments” are “frequent, mostly, or always required” for business transactions. Furthermore, the International Monetary Fund also concluded that corruption and bureaucratic obstacles significantly hinder economic growth. Land grabs and other abuses by the political elite, top bureaucrats, and the military generally go unchecked. Trees are illegally logged, mines are exploited, and commercial crops are grown to enrich the elite and their supporters, according to Global Witness, a British-based environmentalist group (Freedom House 2008). Yet, the corruption is not limited to high levels—there is also the prevalence of “survival corruption” which is a consequence of meager salaries and poverty in Cambodia.<sup>43</sup>

When public school students in urban areas are paying an average of \$44 per year in bribes to their teachers, and when doctors and nurses routinely expect bribes for providing medical care, there is a severe problem of endemic corruption (McCargo

<sup>40</sup> The UNDP human development index looks at three equally weighted variables: gross domestic product with purchasing power parity, literacy rates and life expectancy at birth. United Nations Development Program (2008).

<sup>41</sup> Id

<sup>42</sup> Transparency International, *National Integrity Systems: Transparency International country Study Report—Cambodia 2006*.

<sup>43</sup> United States Department of State (Released by the Bureau of Democracy, Human Rights and Labor, March 11, 2008) *Cambodia: Country Reports on Human Rights Practices—2007*. 10, (<http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>).

2005, p. 102). This endemic corruption undermines not only development, but also perpetuates a culture of impunity and injustice.

#### D. Human Rights Respective Society

It is difficult to think of a rights-respective society when so much trauma and violence color not only the past but also the present in Cambodia. As Fletcher and Weinstein argue, “a necessary foundation for healing a society that has experienced mass violence is learning the truth about what happened” (Fletcher and Weinstein 2002). This is very difficult and painful when many ordinary people were engaged in mass violence during the Khmer Rouge regime—not just the leaders. Untreated trauma, just like an untreated infected cut, festers and tends to cause more systemic damage. Cambodians society is a scarred society. If a simple bandage is placed on the festering wound or if the scab is picked and left exposed without further treatment, the consequences could be life threatening. The signs are there: a high degree of domestic violence and child abuse, vigilante mob justice, numerous extrajudicial killings, and a general lack of value for human life is pervasive. As one editorial printed in the *International Herald Tribune* opines, “Cambodians, Too, Deserve Justice” (Jendrzeczyk 2002).

### Can Justice Be Done?

It is not possible to forget the past—no matter how hard a nation tries. But is it possible to heal some of the trauma and bring to justice the perpetrators of injustice? The E.C.C.C. report states that, “it is hoped that fair trials will ease the burden that weighs on the survivors. The trials are also for the new generation—to educate Cambodia's youth about the darkest chapter in our country's history.”<sup>44</sup> Additionally, as mentioned above, the E.C.C.C. has the lofty aims of achieving the multiple goals of justice, truth, and national reconciliation.

The E.C.C.C. realizes that there is a need to educate the youth about the Khmer Rouge regime. In fact, it should be noted that the period of the Khmer Rouge rule in Cambodia is not taught to school students as a part of their curriculum. Despite realizing that there is a lack of awareness regarding the tribunal in Cambodia, on the ground, it seems that little has been done to counter this fact.<sup>45</sup> As Alexander Hinton stated, there is a severe need for outreach regarding the tribunal in Cambodia, because there are many in the nation, “who didn't even know that a trial was going to take place, what an international tribunal was or who might be tried. If the Extraordinary Chambers are to be successful, they need to mean something to these people (Hinton 2006).”

The above discussion is relevant if we are looking at the tribunal as a means to provide justice, and to a lesser degree, education. However, what about the tribunal as a means of reconciliation? Would the Khmer Rouge Tribunal be able to achieve reconciliation at all, especially given the way that it is currently set up—as a hybrid court in Phnom Penh with little outreach to persons outside the capital?

The Khmer Institute for Democracy Survey previously cited states that among those supportive of this public tribunal, 72.6% of the respondents stated that they

<sup>44</sup> *An Introduction to the Khmer Rouge Trials* (2006). 2nd ed, 5.

<sup>45</sup> See for example, Human Rights Center (2009, pp. 36–37)

wanted Khmer Rouge leaders being held responsible for their acts (Khmer Institute for Democracy 2004, p. 12). Of the respondents, 89.1% stated that they still think about the past, and of these, 61.6% are still resentful of Khmer Rouge leaders.<sup>46</sup> Perhaps, in this light, the focus of the Extraordinary Chambers should be on providing reconciliation, and more importantly, a sense of healing to survivors of the regime. It is unlikely that the E.C.C.C. can achieve justice without reconciliation. Additionally, the human wrongs of the past would not have been set right if an effort is not made to heal the memories and consciousness of the Cambodian people.

Furthermore, with these trials and the testimonies and stories that are going to inevitably arise, does the E.C.C.C. have any infrastructure in place to deal with the wounds of Cambodians that have remained untouched for over 30 years? In an effort to provide, and what some would say, to impose, justice on the Cambodian people, is the tribunal going to do more harm than good by re-traumatizing an already fragile population?

In order to shed light on how fragile this population truly is, one should consider the following: among our respondents, only 23.5% stated that their parents had ever spoken to them about the Khmer Rouge regime, and told them about the atrocities and hardships that they had suffered during that time. One of our respondents was so traumatized by the story of his parents, that he became a monk.<sup>47</sup> The E.C.C.C. has been established, presumably and according to its own reports, in order to make people speak about their experiences under the Khmer Rouge in an effort to provide justice to the Cambodian people. However, given that over three fourths of those we interviewed stated that their parents never told them about what they had to endure under the Khmer Rouge regime, how does the E.C.C.C. intend to make Cambodians “talk?” If reconciliation and justice are supposed to be the two pronged aims of this tribunal, people need to speak up in order to be able to hear the other side. If they do not speak up, there is no way that reconciliation will truly be achieved.<sup>48</sup>

As Judith Herman has argued, when dealing with “a forgotten history,” one of the key stages of recovery is remembrance and mourning.<sup>49</sup> During this stage, it is crucial that the trauma story be reconstructed “with a review of the patient's life before the trauma” and the circumstances that led up to the event.”<sup>50</sup> In the case of Cambodia, we argue that not only has the history of trauma in the nation been forgotten and buried as a horrific chapter of the past, but also that it is being disinterred far too late. Furthermore, we are not looking at reconstructing the story of one patient, but we are concerned with resurrecting a collective memory, of millions of people whose voices have effectively been silenced for three decades. In such a situation where practically every Cambodian qualifies as a “patient,” the tribunal seems far from capable of dealing with this collective remembrance and mourning.

A final element of this matrix is the idea of revenge. Of our respondents, 33.3% stated that the Khmer Rouge leaders should be put to death and should be “made to suffer” in the same way that they made the Cambodian people suffer.<sup>51</sup> Of the

---

<sup>46</sup> Id

<sup>47</sup> Confidential interview with youth respondent, July 3, 2007, Battambang, Cambodia.

<sup>48</sup> See also, Human Rights Center (2009, p. 26)

<sup>49</sup> See Herman (1997).

<sup>50</sup> Id

<sup>51</sup> Confidential interviews with youth respondents, July 26 and 27, 2007, Phnom Penh, Cambodia; Confidential interviews with youth respondents, July 4 and 5, 2007, Battambang, Cambodia.

respondents, 76.9% who supported the tribunal in the Khmer Institute for Democracy (KID) survey stated that they still have anger for the Khmer Rouge leaders (Khmer Institute for Democracy 2004, p. 11). It seems to be the case, therefore, that the E.C.C.C. needs to be prepared not only to deal with taciturn persons, hesitant to reopen their wounds, but also with persons who are overcome with rage about what they and their nation had to forcibly endure.<sup>52</sup> While the report of the tribunal rattles out a long list of NGOs “around the world that are interested in the Khmer Rouge trials and will be supportive in different ways,” what these ways are exactly is indeterminate.<sup>53</sup> The list of organizations includes NGO mental health services as well as government health services. In what capacities these organizations are tied to the tribunal, however, is anybody's guess.

Despite all anticipated alliances with mental health organizations, the E.C.C.C. runs two extremely perilous risks. On the one hand, it runs the risk of being inundated with grief-stricken Cambodians who have finally received an outlet for their pain. In this situation, it is foreseeable that perhaps the E.C.C.C. will be unable to handle the sheer numbers of such cases. On the other hand, the E.C.C.C. could find itself dealing with enraged Cambodians, which would mean that there is a great threat of violence here with what the E.C.C.C. plans to undertake. We are not convinced—given the way things stand at present—that the E.C.C.C. is equipped to deal with either of these possibilities.

### Hope for the Future?

Cambodian society is far from dealing with its horrifying past. Unfortunately, Cambodian society is also far from realizing a human rights protective culture. The CPP government under Prime Minister Hun Sen routinely violates the rights of its citizens with impunity. There is little accountability on the socioeconomic or political front. It is almost as if Cambodian society has become incapacitated by its inability to deal with its tormented past. This is why it is so important that the Cambodian government pays more than just lip service to dealing with the past.

The old maxim: “Justice must not only be done: It must be seen to be done,” is particularly relevant to the Cambodian case. The recent indictments of senior Khmer Rouge officials bodes well for at least giving the illusion of the government and international community pursuing retribution for the crimes against humanity during the Khmer Rouge regime. However, a narrow prosecutorial focus on the senior leaders and those who have committed the “most serious crimes” absolves a vast majority of former Khmer Rouge cadres that still live freely in Cambodia. As long as these crimes are not atoned for, a culture of impunity will continue. Thirty years of bloodshed and turmoil cannot be wiped clean in three or four short years, with only a handful of offenders charged. Furthermore, unless the national government as well as the international community step up to deal with the fallout of national trauma associated with Cambodia's violent past, the tribunal could result in further trauma, a

<sup>52</sup> See also, the UC Berkeley report, *So We Will Never Forget*, p. 29, Id.

<sup>53</sup> An Introduction to the Khmer Rouge Trials, 2d ed (2006). 19.



lack of closure and possibly even more violence. National reconciliation and restoration will require more than just retributive justice.

For justice and reconciliation to be a realistic goal in Cambodia, present human rights abuses must be addressed, impunity must be eliminated, and the Cambodian and international government must make a more concerted effort to deal with the mental health traumas of the past. A focus on restorative justice—and truth seeking through the construction of a Truth and Reconciliation Commission may help a society come together and acknowledge its traumatic past. Victims of the Khmer Rouge should not have to wait for “samsara” for justice.

## References

- Amnesty International (25 September 2008a) Cambodia: Human Rights Defenders Silenced Through the Legal System. <http://www.amnesty.org/en/for-media/press-releases/cambodia-human-rights-defenders-silenced-through-legal-system-20080925>.
- Amnesty International (11 February 2008b) *Cambodia Burns Homes of the Poor*. <http://www.amnesty.org/en/news-and-updates/report/cambodia-burns-homes-poor-20080211>
- Eng, Kok-Thay (2003) *Khmer Rouge History: Educating the Young Generations*. Documentation Center of Cambodia, Special English ed., 3d Quarter, 1.
- Fletcher, Laurel E. and Weinstein, Harvey M. (2002) Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation. *Human Rights Quarterly*, 24, 586.
- Freedom House (2007) *Freedom in the World 2007: Freedom Stagnation amid Pushback Against Democracy*. [http://www.freedomhouse.org/uploads/press\\_release/fiw07\\_overview\\_final.pdf](http://www.freedomhouse.org/uploads/press_release/fiw07_overview_final.pdf)
- Freedom House (2 July 2008) *Freedom in the World 2008 – Cambodia*. UNHCR Refworld, <http://www.unhcr.org/refworld/docid/487ca1fa2.html>
- Herman, Judith L. (1997) *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror* (New York, NY: Basic Books), p. 175.
- Heubeline, Patrick and Poch, Bunnk (2007) The Phoenix Population: Demographic Crisis and Rebound in Cambodia. *Demography*, 44, 405-406
- Hinton, Alexander (2006) We Can't Let the Khmer Rouge Escape. *The Washington Post*, 3.
- Human Rights Center (University of California, Berkeley) (2009) *So We Will Never Forget: A Population-Based Survey on Attitudes about social reconstruction and the extraordinary chambers in the courts of Cambodia*. <http://hrc.berkeley.edu/pdfs/So-We-Will-Never-Forget.pdf>
- Human Rights Watch (2006) Cambodia: Government Interferes in Khmer Rouge Tribunal. [http://hrw.org/english/docs/2006/12/05/cambod14752\\_txt.htm](http://hrw.org/english/docs/2006/12/05/cambod14752_txt.htm)
- Human Rights Watch (January 2007) *Cambodia: Country Summary*.
- Human Rights Watch (25 July 2008a) *Cambodia: Threats, Intimidation Mar Campaign*. <http://www.unhcr.org/refworld/docid/488f17f81e.html>
- Human Rights Watch (July 2008b) Cambodia: Murder of Journalist Jolts Run-Up to Election. [http://hrw.org/english/docs/2008/07/16/cambod19364\\_txt.htm](http://hrw.org/english/docs/2008/07/16/cambod19364_txt.htm)
- Jacobsen, Trudy (2006) “Punishing the perpetrators of the Cambodian Genocide”, *Asia Insights*, Theme: Justice in Cambodia”, NIAS (Nordic Institute for Asian Studies), No. 3, December, p. 6.
- Jendrzeczyk, Mike (2002) Cambodians, Too, Deserve Justice. *The International Herald Tribune*.
- Khmer Institute for Democracy (2004) *Survey on the Khmer Rouge Regime and the Khmer Rouge Tribunal 2004*, Khmer Institute for Democracy. pp. 11, 12, 17
- Kiernan, Ben (1996) *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979* (New Haven, CT: Yale University Press) p. 456-460
- Kissinger, Henry (1994) *Diplomacy* (New York, NY: Simon and Schuster). p. 694.
- Kurlantzick, Joshua (2000) Letter from the Killing Fields: Cambodia Now. *The Washington Quarterly*, 23, 21-26.
- McCargo, Duncan (2005) “Cambodia: Getting Away with Authoritarianism”, *Journal of Democracy*, 16
- Montero, David (2008) In Cambodia vote, stability wins. *Christian Science Monitor*, 29 July 2008.
- Raszelenberg, Patrick (1999) The Khmers Rouges and the Final Solution. *History & Memory*, 11, 67
- Sreang, Heng (2006) “Justice in Cambodia: A Short Reflection on some obstacles to implementing “justice” within the context of the law in present-day Cambodia”, *Asia Insights*, Theme: Justice in Cambodia”, NIAS (Nordic Institute for Asian Studies), No. 3, December, p. 21.



- Timberg, Craig (2008) Sierra Leone Special Court's Narrow Focus: Well-Funded but Selective War Crimes Probe Draws Resentment of Impoverished Victims. *The Washington Post* (online).
- UNHCR (30 October 2008) *Cambodia: Concern over UN Human Rights Role*. <http://www.unhcr.org/refworld/country,,,KHM,,490ad4d4c,0.html>.
- United Nations Development Program (2008) *Human Development Report 2007–2008*. <http://hdr.undp.org/en/statistics/>
- van Schaack, Beth (1997) The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot. *The Yale Law Journal*, 106, 2269–2270.

**Susan Dicklitch** is Associate Professor of Government and Associate Dean of the College at Franklin and Marshall College. She is the author of *The Elusive Promise of NGOs in Africa: Lessons from Uganda*, (Palgrave Press, 1998) and several scholarly articles on human rights. We would both like to thank Diana Dicklich for her comments and suggestions as well as the anonymous referees.

**Aditi Malik** is a graduate of Franklin and Marshall College, and a Ph.D., candidate at Northwestern University. She conducted field research in Cambodia in the summer of 2007 through the Global Youth Connect program.