

Transitional Justice and Reconciliation Process in Cambodia: The Perspective of Survivors¹

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Abstrak

Untuk menuntut pertanggungjawaban para pemimpin senior Khmer Merah dan mereka yang dianggap paling bertanggung jawab atas kejahatan kemanusiaan yang terjadi selama berkuasanya rezim Khmer Merah atau Demokratik Kampuchea (1975-1979), pemerintah Kerajaan Kamboja bekerjasama dengan Perserikatan Bangsa-Bangsa (PBB), telah mendirikan *Extraordinary Chamber in the Courts of Cambodia* (ECCC) atau yang lebih dikenal sebagai Peradilan Khmer Merah (*Khmer Rouge Tribunal*). Sebagai bagian dari proses keadilan transisional (*transitional justice*), proses peradilan terhadap pemimpin senior dan mereka yang dianggap paling bertanggung jawab tersebut diharapkan juga memberi kontribusi besar terhadap proses rekonsiliasi antara para korban dan para pelaku (baca: pelaku level rendah/*low level perpetrators*) yang saat ini belum tercapai. Artikel ini membahas pandangan mereka yang selamat dari kekejaman Khmer Merah (*survivor*) terhadap proses peradilan yang saat ini sedang berlangsung dan pengaruh atau kaitannya dengan proses rekonsiliasi di kalangan akar rumput. Temuan penelitian menunjukkan bahwa, berdasarkan pandangan para *survivors*, proses peradilan kurang dapat memberikan kontribusi yang signifikan dalam proses rekonsiliasi antara korban dan pelaku level rendah di kalangan akar rumput di Kamboja.

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Temuan penelitian menunjukkan pula bahwa Kamboja perlu menggabungkan pendekatan retributif melalui mekanisme peradilan, dengan pendekatan restoratif melalui Komisi Kebenaran dan Rekonsiliasi (KKR).

Kata kunci: Khmer Merah, kejahatan kemanusiaan, peradilan, rekonsiliasi

Introduction

The Khmer Rouge's (KR) rule from 1975 to 1979, had brought a tragedy of humanity in Cambodia. It is estimated 1.7 million people died in a horrible attempt by the regime to revolutionize Cambodian society into one without class or ethnic diversity. Recently the Cambodian government in cooperation with the United Nations, has established Extraordinary Chambers in the Courts of Cambodia (ECCC), a Cambodian-UN hybrid tribunal, to bring them to trial those who are most responsible for the gross human rights violation during the KR's rule.

The current judicial process aimed at the senior leaders of KR in Cambodia is a part of what social scientists call 'transitional justice'.³ Ideally, the transitional justice process in Cambodia should have an enormous contribution to the process of reconciliation in Cambodia. The KR's rule and nearly 20 years of conflict after the collapse of the regime, has resulted in creating a divided society in Cambodia. The community has been divided amongst the victims on one side and the perpetrators on the other side, and amongst the anti-KR on one side and the pro-KR on the other side. In order to create sustainable peace, this divided society needs to be reconciled.

This article focuses on exploring the perception of the survivors of the KR regime on the current transitional justice process and the state of reconciliation process in Cambodia. Specifically, it is aimed to address the following questions: what is the perception of the survivors of Khmer Rouge on the judicial process held in Cambodia? To what extent will the transitional justice process be implemented by the establishment of the ECCC, affect the reconciliation process in Cambodia? Is the ECCC the best way to deal with the past and promote reconciliation in Cambodia?

To collect data, the researcher use (1) literature studies, (2) observation, and (3) in-depth interview. The informants interviewed in this research are the survivors of KR, including both victims and perpetrators. In this research,

3 Five former KR leaders currently being charged are Kang Guek Eav alias Duch, former chief of S-21 prison; Nuon Chea, former head of the Democratic Kampuchea National Assembly; Ieng Sary, former minister of foreign affairs of Democratic Kampuchea; Ieng Thirith, former minister of social affairs of Democratic Kampuchea; and Khieu Samphan, former head of state of Democratic Kampuchea.

a victim is defined as someone who used to live under KR's regime, suffered from torture or harmed by them and was not affiliated with the KR. A former perpetrator is defined as someone who used as a cadre or agent of the KR, for example as guards, soldiers, chief of group, etc.

Due to geographical constraints and very finite resources, the field research was conducted in certain areas of Cambodia, namely in Kandal Province, Takeo Province, Kampong Speu Province and Phnom Penh municipality.⁴ The three provinces were selected because they represent the regions where the atrocities mostly happened. All of these provinces were part of KR's Southwestern Zone, which was considered by the KR as a model for the revolution.⁵ Phnom Penh was selected because it represented the area where the most radical change took place during the KR period. KR forcibly emptied the city by evacuating all the city dwellers to the villages to perform hard manual labour whom most had previously never performed.

In the three provinces, in-depth interviews and observations were conducted in sample areas where many victims and perpetrators live together without being reconciled. The areas are including the villages of Trapeang Sva, Trapeang Kak, Domrey Slab, Boeung Khyang, Boeng Khaek, Chambak Trab, Kandal Steung District in Kandal Province; Taleur and Sandao, in Tramkak District of Takeo Province; and of Chambak Sor, Chambak P'aim, Roleang Tlang, Thmei, and Wilpun, in Thpong District of Kampong Speu Province. In Phnom Penh, interviews were conducted with victims who attended the trial and also with victims at the Prek Pra area of Meanchey District, located in Km 8 and Km 9 area of Russey Keo District. These are the areas in Phnom Penh where Cambodia's Cham Muslims were concentrated. Thus, in addition to getting the perspective of the city dwellers, the researcher also could obtain the perspective of the Cambodia's Cham Muslims on the issues researched.⁶

Observation was performed in the villages where the interviews were conducted. It focused mainly on the interaction between the victims and

4 Cambodia has an area of 181,035 square kilometres (69,898 sq mi). It consists of 23 provinces and 1 municipality.

5 See Meng Try Ea, *The Chain of Terror: The Khmer Rouge South West Zone Security System*, (Phnom Penh: Documentation Cambodia, 2005). In 1976 the KR divided Cambodia into 6 geographical regions, namely East Zone, Southwest Zone, North Zone, Northwest Zone and West Zone. South West Zone consists of two district of Kampong Speu (Kong Pisey and Samrong Tong) and five district of Kandal (Kandal Stung, Sa-ang, Koh Tom, Kean Svay, and Leuk Dek).

6 Cham is one Cambodia's ethnic minority who are predominantly Muslim. About 90% of Cambodia's population is Khmer. The remainder includes Vietnamese, Chinese, Cham, and Khmer Loeu. The composition of religions in Cambodia is Theravada Buddhism (95%), Islam (3%) and Christianity(2%). For the stories of the sufferings and struggle of Cham Muslim during the KR, please see, Ysa Osman, *Oukoubah: Justice for the Cham Muslims under the Democratic Kampuchea Regime*, (Phnom Penh: Documentation Center of Cambodia, 2002), and Ysa Osman, *The Cham Rebellion: Survivors' Stories from the Villages*, (Phnom Penh: Documentation Center of Cambodia, 2006).

the perpetrators. Meanwhile, literature studies analysed publication materials, including books, articles, journals, magazines, newspapers, and documentary films related to the issues of the research.

The total number of 63 survivors were interviewed (25 female and 38 male). Among them, 47 people can be categorized as victims and 16 people can be categorized as perpetrators. The victims interviewed are former prisoners, child survivors, those who lost their family members (children, husband, sister, brother, or in laws) and those who did not loss their family members but experienced forced labor. The perpetrators interviewed were former prison security guards, soldiers, cooks, medical staff, chief of group and chief of cooperative. Based on their ethnicity and religion, the interviewees included not only majority Khmer and Buddhists (77 people), but also minority Cham Muslim (6 people). While most of the interviewees are just common people working as farmers; 4 interviewees are village chiefs, 3 are religious leaders (Monks or Ustadz) and 1 is a head of primary school. Overall, the ages of the interviewees range from 37 years old to 82 years old.

Transitional Justice and Reconciliation

Transitional justice refers to the short term and often temporary processes addressing “the legacy of human rights abuses and violence during a society’s transition away from conflict or authoritarian rule” (Anderlini, Conaway, Kays, 2004: 1). Basically there are two approaches of justice that could be used to address the legacy of human rights abuses and violence during the era of transition: (1) retributive justice, and (2) restorative justice. Retributive justice is based on the philosophy that the criminal’s acts have created an imbalance of social order which should be addressed by action against the criminal. Therefore, for example, in cases of human rights violations, retributive justice puts emphasis on the importance of punishing the perpetrators. Meanwhile, restorative justice is based on the philosophy that imbalance of social order created by the criminal acts that should be addressed by undertaking comprehensive action on the victims, perpetrators and community. In the context of human rights violations, restorative justice emphasizes the importance of systematic responses to address the impacts of human rights violations on victims, perpetrators and community. By not focusing on punishment for crimes, restorative justice focuses on repairing the damage done, and offering restitution (O’Connor, 2006: webpage).

The process of transitional justice has a huge influence on the process of reconciliation between victims and perpetrators involved in past conflict or violence. Originating from the Latin word “*Conciliare*”, meaning “bring together”, the concept of reconciliation has been defined by many scholars in the field of peace and conflict studies. Suzannah Linton defines reconciliation as “the reestablishment of normal friendly relations after an estrangement, or a coming to terms with something in the past and moving on without

negativity" (Linton, 2004: 67). According to Hizkias Assefa, as an approach, reconciliation "not only tries to find solutions to the issues underlying the conflict but also works to alter the adversaries' relationship from that of resentment and hostility, to friendship and harmony". (Assefa, no year of publication: webpage).

John Paul Lederach emphasizes that reconciliation "must find ways to address the past without getting locked in a vicious circle of the past" (Lederach, 1997: 26). Lederach suggests that reconciliation is an effort to reframe the present by providing the space for encountering the acknowledgement of the past and envisioning the future. For this to happen, according to Lederach, "people must find ways to encounter themselves and their enemies, their hopes and their fears" (Lederach, 1997: 27). Similar to Lederach, Andrew Rigby states that "...reconciliation refers to the future and requires the active participation of those who were divided by enmity. At the core of any reconciliation process is the preparedness of people to anticipate a shared future" (Assefa, no year of publication: webpage).

These definitions appear to agree among the scholars on the basic elements of the concept of reconciliation, i.e.: (1) addressing the past, (2) moving forward to build the future, (3) reestablishing friendly relations (harmony) between parties involved in a dispute or conflict, and (4) actively involving those who were divided by enmity. In spite of the agreement on the basic elements of the concept of reconciliation, *how* the reconciliation can be achieved, is the subject of debates amongst academic scholars that further crystalize into two schools of thought: (1) idealist and (2) realist.

John Paul Lederach and Andrew Rigby embrace idealist school of thought in reconciliation studies. Lederach argues that there are four constitutive elements of reconciliation processes, i.e. truth, mercy, justice and peace. Reconciliation is the place where the four elements meet. He explains that,

"Truth is the longing for acknowledgement of wrong and the validation of painful loss and experience, but it is coupled with Mercy, which articulates the need for acceptance, letting go, and a new beginning. Justice represents the search for individual and group rights, for social restructuring, and for restitution, but is linked with Peace, which underscores the need for interdependence, well-being and security." (Lederach, 1997: 29).

Agreeing with Lederach, Rigby suggests that,

"...for reconciliation to take place and wholeness and harmony to be approached, people must enjoy a degree of security and freedom from fear of a return of violence and abuse, they must believe that the old sources of division and exclusion

are being transformed, and that the pain and hurt of their individual and collective past has been acknowledged. To the extent that such conditions are approached, over time, people will find themselves developing the capacity to forgive - forgiving the past in the sense of letting go of the old hatreds". (Rigby, 2000: 3).

Contrary to Lederach and Rigby, from a realist perspective Linton argues that reconciliation can be viewed "as simple as learning to live in peaceful co-existence with people one does not like or by whom one disliked" (Linton, 2004: 73). Linton suggests that reconciliation does not require forgiveness. She quotes Dwyer's argument that: "any conception of reconciliation - at either the micro or macro level - that makes reconciliation dependent on forgiveness, or that emphasizes interpersonal harmony and positive-fellow feeling will fail to be a realistic model of reconciliation for most creatures like us. If we care about reconciliation, let us advocate it in terms that make it credible to the relevant parties" (Dwyer, 1999: 81-98).

This research paper argues that the idealist approach is more effective and long lasting than the realist. On the other hand, the realist argument on "learning to live in peaceful co-existence" or "unimportance of forgiveness", simply will plunge the reconciliation process into the category of "negative peace" that sees the peace only as "the absence of violence" (Galtung, 1996: 31). More than the absence of war, reconciliation is a part of what is called as "positive peace" where the restoration of relationships, the creation of social systems that serve the needs of the whole population and the constructive resolution of conflict take place. (Galtung, 1996: 31). Consequently, it is argued that Lederach's approach to reconciliation involving the four constitutive elements: truth, justice, mercy/forgiveness and peace, is preferable and more effective.

The establishment of the tribunal and the current trial on the leaders of the KR can be categorized as a transitional justice process. Cambodia's society is currently in a transitional period, away from KR genocidal regime and the following conflict. During this transitional period, the government of Cambodia, in cooperation with the UN, attempts to address the legacy of the horror of genocide in Cambodia, happened during the KR era, by establishing the tribunal and bringing the leaders to trial and ask their responsibility for the atrocities. The writer, by adopting Lederach's idealist approach, explored the feeling and perceptions of the victims looking at the four constitutive elements of justice (truth, justice, mercy/forgiveness and peace) in relation to the current judicial proceedings against some key leaders of KR.

The ECCC: a Brief Background and Progress

In 1994, a year after United Nations Transitional Authority in Cambodia (UNTAC) successfully held the first election and the coalition government of the Kingdom of Cambodia was formed, significant efforts demanding the accountability of the KR for the crimes they committed during Democratic Kampuchea era were made. The efforts were marked by the passing of Cambodian Genocide Justice Act in April 1994 by the US Congress and the passing of an act to outlaw the KR by Cambodian government in July 1994.⁷ In April 1997, the UN Commission on Human Rights requested that the UN provide assistance to the Cambodian government in bringing individuals to be responsible for the past human rights abuses. Two months later, co-prime ministers Prince Norodom Ranariddh and Hun Sen formally requested UN assistance in setting up a tribunal (Whitley, 2006: 38). Since then, the Cambodian government and the UN have been involved in a long negotiation to establish a mixed national-international tribunal.

In January 2001, the Cambodian National Assembly passed the law to set up Extraordinary Chambers in the Court of Cambodia (ECCC Law). In June 2003, the UN and Cambodian government signed a draft agreement establishing a tribunal that would operate along the lines of the 2001 ECCC Law, but with modifications such as excluding amnesties and pardons (Whitley, 2006: 45). After the continuing negotiations about funding arrangements and the final form of the hybrid tribunal, in November 2005 the Extraordinary Chambers in Courts of Cambodia, was finally established and by May 2006 the judges and prosecutors has been appointed (Lambourne, 2008: 6)

The ECCC has jurisdiction to try only “senior leaders” of the KR’s regime and others who were “most responsible for serious violation of Cambodian and international law” between 17 April 1975 and 6 January 1979.⁸ As a hybrid tribunal, the judges, prosecutors and staffs consisted of a mix of Cambodian and international nationalities. Two co-prosecutors (1 Cambodian and 1 International) worked together to collect evidence and decide whom to charge and for what crimes. Cases were passed to two investigating judges (1 Cambodian and 1 International). If there was enough evidence, the case proceeded to trial (Extraordinary Chambers in the Courts of Cambodia, 2008: 13).

7 Quoting Hammers and Urs, Lambourne noted those events as turning point in the path towards accountability. Wendy Lambourne, “The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?”, paper presented at the Law and Society Association Australia and New Zealand (LSAANZ) Conference 2008 ‘W(h)ither Human Rights’, 10-12 December 2008, University of Sydney, p. 5.

8 Chapter II, article 2, Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

The ECCC consists of two levels of the court: the Trial Chamber and the Supreme Court Chamber. At the Trial Chamber there are 3 Cambodian and 2 International Judges, and at the Supreme Court there are 4 Cambodian and 3 International Judges.⁹

On 18 July 2007, the co-prosecutors submitted the name of the five suspects to be brought to the trial. On 31 July 2007, the investigating judges made the first arrest and within four months all the five suspects were under provisional detention at the ECCC (Extraordinary Chambers in the Courts of Cambodia, 2008: 13). The five suspects are: Kaing Guek Eav, alias Duch (former chief of S-21 prison¹⁰), Nuon Chea (former Head of the Democratic Kampuchea National Assembly), Ieng Sary (former minister of foreign affairs of Democratic Kampuchea) and Khieu Samphan (former head of state of Democratic Kampuchea).

During the period when this research was undertaken (January to September 2009), the only trial that had commenced was that of Kang Guek Eav, alias Duch. The trial began on 30 March 2009 and was still ongoing at the time when this research was completed (September 2009). The trials on the other suspects have not yet started. The ECCC originally estimated that all of the trials would run for three years, but were unable to give better estimates (Extraordinary Chambers in the Courts of Cambodia, 2008:9).

Victims and Perpetrators: Their Daily Interaction

Many victims and perpetrators live in the same or neighbouring village. In Kandal Steung district's Trappeang Sva village, where Khmer Rouge's Sang Prison (Kuk Sang)¹¹ was located, some people who lost their family members in the prison during KR period currently live in the same area with some KR cadres who used to work as prison security guards. There are also some former prisoners in the Sang Prison who live in the neighboring villages, such as Boeung Khaek, Boeung Khyang, Chambak Trab, Prey Tatoich, which are located only within the radius of 3-5 kilometer from Trappeang Sva village.

9 Chapter III, Article 9, Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.

10 S-21 was a detention centre located in Phnom Penh during the KR. According to the prosecutors, at least 12,380 men, women and children were executed at S-21, but as records may have been lost and some prisoners are not registered, the numbers are likely higher. According to David Chandler, strictly speaking, the S-21 was an interrogation and torture facility rather than a prison. The facility served primarily as an ante-room to death. For a detailed account about S-21, please see David Chandler, *Voice from S-21: Terror and History in Pol Pot's Secret Prison*, (California: the Regents of the University of California, 1999).

11 Sang Prison (Kuk Sang) was a building of teacher training college built by USAID in 1963. In 1977, under the direction of KR Southwest Zone Secretary Ta Mok, the KR transformed the building into a prison, called Sang Prison. According to one of the killers, around 5,000 people died in the prison. For a further story about this prison please see Craig Etcheson, "Mok's Work", *Searching for the Truth*, No. 8, August 2000, pp.39-40; No. 9, September 2000, pp. 41-42; No. 10, October 2000, pp. 39-40.

In Taleur village and Sandao village of Tramkak district, the victims of KR live side by side with some KR cadres who made them suffer or even contributed the killings of their family members during the KR's regime. Similarly, in Chambak Sor village of Thpong district, the victims of KR still recognized the people who made them suffer during the KR and now live in neighboring villages. Many informants reported that victims conducted revenge actions on the perpetrators right after the KR collapse in 1979. Informant A, a victim in Sandao village, for example, said that when two Khmer Rouge's group chiefs in Srae Romnong village came back to Sandao village after KR collapse in 1979, the people from Srae Romnong village came to Sandao and killed the perpetrators by burning them alive.¹²

There are, however, no recent reported clashes or revenge actions between the victims and the perpetrators.¹³ The survey conducted by Centre for Social Development (CSD) in 2005, for instance, shows that the councilors mostly considered the conflicts on the issue of land and domestic violence as the most important conflicts at the commune level (Ninh and Henke, 2005: 43). Theoretically, the reconciliation process in Cambodia is currently in the phase of peaceful coexistence. Although they live in the same or neighboring area, there is no violent conflict between the victims and perpetrators.

It seems like there are no problems between the victims and the perpetrators. However, if we observe more deeply, we will find problems when considering the interactions between the two groups. A survey conducted in 2008 by the University of California's Human Rights Center, in collaboration with Center for Advanced Study, showed that 84.6% of the people who lived under KR still harbored feeling of hatred toward those KR members responsible for violent acts (Pham, Vinck, Balthazard, Hean, and Stover, 2009: 29). Almost 72 % wish to see the KR members suffer in some way (Pham, Vinck, Balthazard, Hean, and Stover, *ibid.*). Living in close proximity, victims and perpetrators sometimes meet unexpectedly on a street or at some events, such as a village gathering, a wedding ceremony or a religious ceremony in a monastery. Interestingly, and what points to the relations between the two groups is that when they meet both victims and perpetrators never speak to each other and often prefer to move away from each other.

For many of the victims, unexpectedly, coming across perpetrators raises their anger. Informant B, a 40 year-old woman in Trappeang Sva, who lost her brother and sisters in the Sang Prison during the KR, recognized at least five people in her village who used to work as security guards in the prison.

12 For the reason of confidentiality, all of the name of informants will not be revealed in this article. Interview with Informant A in Sandao Village, Tramkak district, 1 May 2009.

13 In the interviews, some informants said that the revenge action took place after 1979, but now there is no revenge action anymore. For example, interview with informant ZB in Trappeang Sva.

Although she is not sure whether they were involved in the killing of her siblings, she has feelings of hatred for them. She often encounters them on the road. She said, "When I saw them, I felt angry and suffered but I didn't know what to do..."¹⁴ Informant C, a 72 year-old woman in Chambak Trab also has similar feelings. She knows that the people involved in killing her husband are still alive. Her husband was only a three wheel cyclist; however, the KR cadres accused him of being a Lon Nol soldier and killed him. "When I saw them on the road, I felt like [there is] a big fire on my chest." She continues, "One day, [when I encountered one perpetrator on the road] the person asked me 'where are you going?'. I felt very angry. If I had a gun I wanted to shoot him at that time."¹⁵

Such unexpected meetings with perpetrators remind victims about the past and make them sad and angry. Informant D, a 58 year-old woman, former prisoner who also lost his husband in the Kuk Sang and currently lives in Prey Tatoich, still remembers one prison guard in Trappeang Sva who took her and her husband to the prison about thirty years ago. She saw him several times when he walked in front of her house. When they came accross each other, the perpetrator was unable to look at her face to face. However, she explained, "Seeing him raised my memory about sufferings in the past". It reminded her of the time when her husband was sent away to dig a channel, but he never came back. She is very unhappy because those who killed her husband, and also many such perpetrators from the past, still live happily now.¹⁶

Informant E, a 60 year-old man in Chambak Sor village, a former prisoner at Phnum Prasadh prison, recognises one of the security guards of the prison who currently lives in Wilpun Commune. Several months ago, he came across him in a campaign activity for the national election. When he saw him, he cried as memories came back of what happened in the Phnum Prasadh prison. He witnessed the perpetrator and other guards killed many prisoners. "When they killed the victims", informant E recollected, "They were very happy, like having party or ceremony".¹⁷

Such experiences of the past also bring about trauma-related fears to the victims. Informant F, a 63 year-old woman ex-prisoner in Sang Prison, who currently lives in Boeng Khaek said that she still recognized a former security guard who currently lives in Trappeang Sva. He has a motor-cart, and often passes the road near her house. When she saw him, she was really worried

14 Interview with Informant B in Trappeang Sva village, Kandal Steung district, 3 March 2009.

15 Interview with Informant C in Chambak Trab village, Kandal Steung district, 18 March 2009.

16 Interview with Informant D in Prey Tatoich village, Kandal Steung district, 19 March 2009.

17 Interview with Informant E in Chambak Sor village, Thpong district, 2 June 2009.

about her safety. She said, "When I walked alone and saw him, I always moved away from him. I was so frightened that he would torture me again as he did in the past."¹⁸

The experience in the past does not only affect the victims but also the perpetrators. Some perpetrators interviewed are also still worried that the victims will take revenge on them. One KR's former cooperative chief in Thpong district's Chambak Sor village, for example, decided to move to Chambak P'aim village to escape people's anger. Following the collapse of the KR's regime, some people in Chambak Sor wanted to take revenge on him and shot him in his legs. He was saved by the Cambodia-Vietnamese authority which controlled Cambodia after the collapse of the KR. Currently, he is still hated by many people in Chambak Sor and so he has not returned back to his own village.¹⁹

The Trial and Reconciliation Process

Based on the conceptual framework of the reconciliation process, how significant the contribution of the trial to the reconciliation process in Cambodia, can be assessed by observing the perception of the survivors (both victims and perpetrators) on the trial and the four constitutive elements of the reconciliation process: justice, truth, mercy/forgiveness, and peace.

The Trial and Justice

The KR's rule for three years, eight months and twenty days, has caused a lot of sufferings to the victims. Their horrific experience is something that they will never forget and even now steers emotions. Many victims interviewed said that they felt happy when they heard about the tribunal was bringing the KR leaders on trial. For them, the trial means the leaders would be punished and that will help them to relieve some of their misery and their anger.

This finding is in line with several general surveys which have been conducted in Cambodia. In 2005 a survey by the Open Society Justice Initiative found that 62% of respondents favored the establishment of a court (Open Society Justice Initiative, 2006: 24). A survey by International Republican Institute in February 2008, found that 71% of Cambodian citizens were aware of the KR Tribunal and 69% "very much agreed" with the trial of top KR leaders, while 17% "somewhat agreed" (International Republican Institute, 2008: 42, 44). The latest survey from 9 September to 1 October 2008 by Human Rights Center of University of California, Berkeley, in collaboration with

18 Interview with Informant F in Boeung Khaek village, Kandal Steung district, 18 March 2009.

19 Interview with Informant E, Y and U, 2 June 2009; Informant Z, ZA, 1 June 2009, in Chambak Sor village, Thpong district.

Center for Advanced Studies, shows that 90.5% of the people who lived during KR said that it is important to hold accountable those responsible for what happened during the KR regime. (Pham, Vinck, Balthazard, Hean, Stover; 2009: 31).

Informant G, a 58 year-old woman in Chambak Trab, a prisoner in Kuk Sang and also lost her husband and daughter during the KR, said that she felt happy when she knew there is a trial on the KR leaders. She said that she was angry with them who had made her suffer. Nearly crying, she said, "My husband and daughter had no mistakes. They were innocent. But, they killed them".²⁰ Informant H, 55 year-old woman in Chambak Trab, whose husband and daughter were also killed, said, "I want the tribunal to process and punish them. I am angry so much to the regime but I don't know what to do"²¹

Few victims felt that the tribunal would bring enough justice for them. Based on their belief that the tribunal will punish the leaders, even though the tribunal will try only the five leaders, they think that the trial will have an important symbolic meaning: that there is recognition that the KR regime was wrong and has to be punished.

Informant J, a 45 year-old man in Taleur village of Tramkak District, who was forced to work in a child unit, feels the trial is the way for him to find justice. For him, "Although the trial only punishes the five leaders, this means also punishment for all of the perpetrators."²² This view is shared with Informant K, a 60 year-old Cham Muslim victim, and currently Muslim religious leader in Phnom Penh. Informant K compared the criminality conducted by Polpot with the criminality conducted by Firaun (Pharaoh Ramses II) as written in the Islamic Holy Book, Al Qur-an. Whilst Firaun killed baby boys born during his reign because of the belief that they would be his enemy in the future, Pol Pot²³ killed a lot of Cambodian also as to eradicate future enemies. Like Firaun who was punished to death by the God, Pol Pot also should be punished. As Pol Pot is already dead, the leaders who are still alive are held to be responsible for their murderous policy of the past.²⁴

However, many other victims think that although the trial can make them feel happy, the trial will bring only partial justice for them. Some victims think that the trial should be not only on the KR leaders, but also the other perpetrators, including the low level perpetrators who live in the same or neighboring area with them. Informant B in Trappeang Sva insists that the

20 Interview with Informant G in Chambak Trab village, Kandal Steung district, 18 March 2009.

21 Interview with Informant H in Chambak Trab village, Kandal Steung district, 18 March 2009.

22 Interview with Informant J in Taleur village, Tramkak district, 27 April 2009.

23 Saloth Sar or Minh Hai, (May 19, 1928- April 15, 1998), widely known as Pol Pot, was the leader of the he KR and was Prime Minister of Democratic Kampuchea from 1976-1979.

24 Interview with Informant K in KM8, Phnom Penh, 28 March 2009.

former security guards who live in the same village with her have to be put on trial as what has been done to the five leaders. Through the trial process, she wishes to see them suffer like those made suffer by them during the KR.²⁵

Similar with informant B, informant G also demands that the low level perpetrators have to be put on trial because of the killings they committed. She said, "The people [who used to work in the Kuk Sang] have to be put on trial because they killed people directly"²⁶. Informant D mentioned that even after the trial on the leaders completed, her feeling will not be better. She actually does not know the leaders but only the low level perpetrators who live in the neighboring areas. To make her feelings better she wants them also to be punished. She said, "The five leaders didn't commit the killings directly but the low level perpetrators committed the killings directly".²⁷

Some victims also feel that the trial will only punish the leaders and will not bring enough justice for them if it is not accompanied by individual reparation. For some victims, reparation from the government will enable them to make their life better. Informant F, a woman victim in Boeung Kaek, is suffering from breathing difficulties caused by the torture she experienced during the KR. She mentioned that besides the trial, she wanted the government to give her money to go to the hospital.²⁸ Informant L, a 37 year-old man in Taleur, who lost his parents during the KR, said that when he returned to his village after KR collapse, unlike other people who received land distributed by the government, he did not receive land from the government because he was still a child at that time. He said, "I am very poor now. If my parents are alive I would not be very poor like now because my parents can support me to live better." He wants the government give him money, materials or land.²⁹ Informant G, a victim in Chambak Trab village, argued that the government should give her compensation for her being made to work and suffer during the regime. For her, a gift from the government can represent symbolic compensation for her sufferings. She said, "Any kind of gift from the government I will accept it".³⁰

Some other victims also hoped that if the government could punish the accused by asking them to pay for reparation, the money should be used for collective reparation to the victims, e.g. for building a hospital or memorial sites dedicated to the victims. Informant J, a victim from Taleur village, said, "If the tribunal can get money from the leaders on trial, it should be used to

25 Interview with Informant B in Trappeang Sva village, Kandal Steung district, 3 March 2009.

26 Interview with Informant G in Chambak Trab village, Kandal Steung district, 18 March 2009.

27 Interview with Informant D in Prey Tatoich village, Kandal Steung district, 19 March 2009.

28 Interview with Informant F in Boeung Khaek village, Kandal Steung district, 18 March 2009.

29 Interview with Informant L in Taleur village, Tramkak district, 3 May 2009.

30 Interview with Informant G in Chambak Trab village, Kandal Steung district, 18 March 2009.

build Stupa³¹ for the victim and (the government should) announced that the Stupa is built by taking money from the KR leaders.”³²

According to Internal Rule of the ECCC, the tribunal may award only “collective and moral” reparations to the victims. These shall be awarded against and be borne by convicted persons.³³ However, it appears that it is almost impossible for the victims to obtain these “collective and moral” reparations. All of the court’s current detainees have been declared too poor to pay for their own defense, meaning they would be unable to pay reparations either.³⁴

Besides victims who want low level perpetrators to be brought on trial or who wants reparations or compensation, others think that the trial will not bring enough justice for them due to the faulty process of the trial itself. During the interviews, victims often complained about the length of time needed to try the accused and the amount of money used for the tribunal. Informant M in Trappeang Kak village, a 50 year-old man victim of forced labor during KR, for example, hopes that the trial will last quickly. Considering the age of the leaders,³⁵ he is worried that the leaders will die before the trial.³⁶ Informant N, a 62 year-old man in Boeung Khaek village, who lost 3 siblings during the KR is very pessimistic that the tribunal can bring justice for him. He feels that the tribunal may take too long time to punish the leaders. He also raises the concern about the amount of money used for the trial³⁷ and that someday there will be a shortage of money that forces the tribunal to be shut down³⁸. “How should we do if the money finish?... If the tribunal can’t finish the case, the justice can’t be found”, he said.³⁹

Most of the victims interviewed have very low grade of education. Furthermore, their knowledge about the required procedure for a fair trial is very limited. As UN-Cambodian Hybrid tribunal, the ECCC implements

31 Stupa is a dome-shaped monument, used to house Buddhist relics or ashes of people who have died or to commemorate significant events in Buddhism.

32 Interview with Informant J in Taleur village, Tramkak District, 27 April 2009.

33 Rule 23, par. 11, Extraordinary Chambers in the Courts of Cambodia: Internal Rules.

34 “Lawyers Renew Call for KR Victim Trust Fund”, *Cambodia Daily*, 4 June 2009.

35 Duch is 66 years old; Ieng Sary is 83 years-old; Ieng Thirith is 76 years old; Nuon Chea is 82-years old; Khieu Samphan is 77 years-old.

36 Interview with Informant M in Trappeang Kak village, Kandal Steung district, 5 March 2009.

37 It was originally estimated that the ECCC would cost around \$20 million per year. In early 2008 it was estimated that the cost of the full operations of the court would rise to \$30 million a year. See, Extraordinary Chambers in the Courts of Cambodia, *An Introduction to the Khmer Rouge Trials*, 3rd edition, Phnom Penh: Extraordinary Chamber in the Courts of Cambodia, 2008, p 19.

38 In March 2009 the ECCC ever experienced a shortage of money as international donors to the Cambodian side froze fundings amidst concerns of corruptions. As a result, it was announced that Cambodian staff would not receive their salaries in that month. “ECCC says no pay for national: judge says insufficient funding has left Cambodian side insolvent”, *The Phnom Penh Post*, 3 March 2009.

39 Interview with informant N in Boeung Khaek village, Kandal Steung district, 23 March 2009.

a strict procedural standard of justice, for example, the case has to be investigated thoroughly before being brought to the trial. During the trial process, the accused is given the right to defense, so lengthening the trial period. Most of the victims have an assumption that the leaders are already guilty as they are the cause of their suffering during the KR's regime. In the victims' minds, the trial should be over quite quickly. The concern about the old age of the accused also added their worries that the accused will die before the trial carried on.

Besides interviewing victims, perpetrators living in the same or neighboring area, were also interviewed to ascertain their feelings on the trial and justice it was designed to deliver. Some of the perpetrators think that the trial is important to bring justice for the victims. Informant P, a 67 year-old man, a former group chief in Taleur village, for example, said that he agreed that there should be a tribunal to put the leaders to jail because they killed million people.⁴⁰ However, some other perpetrators show no feeling towards the tribunal and the trial process. Informant Q, a 52 year old man, a former prison security guard in Trappeang Sva, for example, said that he did not care about the trial. He felt that the trial would not have any positive impacts. He explained, "Although the tribunal was established the people still cannot get back the lives of the dead."⁴¹

The Trial and the Truth

Many victims mentioned that they wanted to know about the truth in the past. The truth for them includes: who is responsible for the atrocities happened during the KR? Who did what in the KR? Who is right and who is wrong? What was behind the KR? Why Khmer killed Khmer? Many of them think that the trial will help them to find the truth on who was responsible for the atrocities in the past, who is right or wrong and who is behind the KR. However, it appears that many still harbor some doubts whether the trial will help them to find the truth on why Khmer killed Khmer.

In order to promote reconciliation between the survivors at the grass root level, the victims actually needs to have an understanding about the whole context of the atrocities, including the reasons and circumstances that lead the perpetrators to commit the cruel actions during the KR period. However, as suggested by Laura McGrew, the KR Tribunal process may help survivors know more about their past, but is unlikely to meet their need or desire to know the whole truth or a full historical account (McGrew, 2006: 140). Wendy Lambourne also argues that there are still questions as to the ECCC's ability to satisfy the need for an understanding of why such crimes were committed

40 Interview with Informant P in Taleur village, Tramkak district, 28 April 2009.

41 Interview with Informant Q in Trappeang Sva village, Kandal Steung district, 3 March 2009.

by the Cambodian regime against their own people (Lambourne, 2008: 7). The temporal jurisdiction of the Court, for example, prevents the investigation on the crimes perpetrated by the Lon Nol which preceded the Pol Pot regime, nor can the tribunal investigate the role of foreign governments in aiding and abetting the KR. This may contribute to a clear understanding of why Khmer killed Khmer during the KR (Lambourne, 2008: 7).

From the field research, it appears that although the trial is being conducted, many victims still do not understand the reasons of why the KR cadres, who are actually their fellow villagers, sent them to jail or killed members of their family. Informant R, a 50 year-old man in Chambak Trab village, still does not understand why he and his family were sent to the Kuk Sang by the person who was actually his neighbor. He remembers at that time that he was not able to complete his job to thresh a large pile of rice in one night because he was very tired. The KR cadre, who was actually his neighbor, caught him and then sent him to the prison with all of his family members. His wife and two children died in the prison.⁴² Informant C in Chambak Trab also does not understand the reasons why the KR cadres in his village, who knew very well that her husband was only a common person, accused him as a Lon Nol soldier and killed him.⁴³

Eventhough the trial is being conducted, the lower level perpetrators still find difficulties to acknowledge the past or their role in it. Although many victims witnessed and pointed out those who made them suffer, many perpetrators still refuse to admit their roles and mistakes. Informant Q who is still recognized by the victims as a security guard and one of the executors in the prison, refused to admit that he was a security guard. He explained that he the victims had been mistaken about him. When asked about his role in the past, he showed a testimony he gave to the ECCC. As per the testimony, he explained that he was only a farm worker inside the prison. He never killed people, but admitted that he used to see the killing conducted by other guards.⁴⁴ Informant S, a 47 year-old man in Trappeang Sva village, is another person who is recognized by the victims as one of the security guards in the prison; he explained that he was only a cook in the prison. His duty was only to cook and give the food to the prisoners based on the order of his upper. He has no regrets on what happened in the past because he only followed the orders.⁴⁵ Informant T, 48 year-old man, another former security guard in Sang Prison, denies the claim of thousands victims' bones found in the prison.

42 Interview with Informant R in Chambak Trab village, Kandal Steung district, 23 March 2009.

43 Interview with Informant C in Chambak Trab village, Kandal Steung district, 18 March 2009.

44 Interview with Informant Q in Trappeang Sva village, Kandal Steung district, 3 March 2009

45 Interview with Informant S in Trappeang Sva village, Kandal Steung district, 25 March 2009.

He explained that the bones were not only the victims of KR, but also the victims of Vietnamese invasion. He also does not regret his role in the past because he was a child at that time and only followed orders.⁴⁶

The Trial and Forgiveness

The current trial in Phnom Penh does not make the victims give forgiveness to the low level perpetrators. Many victims said that although the trial may punish the leaders, they still would not forgive the low level perpetrators. The trial on the KR leaders indeed makes them feel that justice is being done; however, it would not have any effect on their feelings of hatred and anger on the low level perpetrators who currently live in the same or neighboring area.

For the people in Chambak Sor village, for example, it is still hard to forgive one former cooperative chief who has moved to Chambak P'aim. Although the leaders of KR are now on trial and will be punished, the villagers still will not accept the former cooperative chief moving back to their village. Informant U, a 39 year-old man, who was a member of child unit and lives in Chambak Sor, explains his reason why he hates the former cooperative chief and that is his cruel actions during the KR's regime. He witnessed that he killed children by smashing them against a tree. Although the former cooperative chief currently has been working as layman in a monastery, informant U said, "(The man) was so cruel. Even he works for more than a thousand monasteries, his sins is unforgiven."⁴⁷

What the interviews show is that for many victims, it is difficult to link the punishment of the leaders with forgiveness to the low level perpetrators. Consequently, victims believe that the low level perpetrators should be also punished due to their direct complicity in killing or torturing. Informant D in Prey Tatoich village even said that she does not know the leaders, but only knows the low level perpetrators who used to be very powerful in the area where she lived during the KR.⁴⁸

The view that the low perpetrators are also as brutal as the leaders is caused by the absence of empathy between victims and the perpetrators. It means that there is lack of victims' understanding on the perpetrators' reason of "following orders" and lack of perpetrators' understanding on the sufferings felt by the victims. Empathy should come from both parties, victims and perpetrators. It can be gained with the victims' willingness to listen to the reasons for the actions of those who caused their pain and with the offenders' understanding of the anger and bitterness of those who suffered. (Bloomfield, Barnes, Huyse, 2003: 21).

46 Interview with Informant T in Trappeang Sva village, Kandal Steung district, 25 March 2009.

47 Interview with Informant U in Chambak Sor village, Thpong district, 2 June 2009.

48 Interview with Informant D in Prey Tatoich village, Kandal Steung district, 19 March 2009.

All perpetrators interviewed said that they did the cruelties in the past simply because they were ordered to do so from the top. If they rejected the order, they will be killed by the upper. However, only few victims believed that the low level received orders from the top. Informant K, a religious leader in Phnom Penh, for example, said that many perpetrators were still young at that time, some were even children. He remembered that one child soldier carried a gun which was even bigger than his arms. Since some were children, informant K believed that it was easy for the upper to influence to do brutal and cruel actions.⁴⁹

Many victims do not believe that low level perpetrators committed the cruelties simply because they received orders from above. Some victims argue that what the low level perpetrators committed was an expansion of the orders from above. Informant N in Boeung Khaek said, "The uppers only ordered a small thing, but what they (the lowers) did was bigger than the order".⁵⁰ Some victims do not understand why perpetrators accepted, without any reservation, orders to commit cruelties; whilst others believe that the cruelties were committed because of their own intentions.⁵¹

It is interesting to note that some perpetrators feel themselves also to be victims of the KR's regime. Many of them were still very young at that time and were forced to work for the KR with the risk of being killed or jailed if they refused or made mistakes. Meng Try-Ea, in his research on S-21 security guards explained how the KR cadre could also be perceived as victims. He concluded that:

"The young comrades of S-21 suffered many forms of abuse. The abuse began when they were recruited to become district militia and comrades. It worsened when they were taken, in many cases by force, far from their parents to live under the control of chiefs who could order their execution without a second thought. The process resembled kidnapping. Pressed into working for the party in the Center, these children lost their childhood, and in many cases, never saw their families again. They had no chance to attend school or play in the rice fields with their friends and buffalos" (Ea, 2001: 46).

However, many victims are not be able to empathise with the notion that the perpetrators could also be victims of the KR. On the other side, it was found that many of the low level perpetrators also lacked empathy with

49 Interview with Informant K in KM8, Phnom Penh, 28 March 2009

50 Interview with Informant N in Boeung Khaek village, Kandal Steung district, 23 March 2009.

51 For example interview with Informant C, G, H in Chambak Trab village, Kandal Steung District, 18 March 2009,

the victims. They did not acknowledge that their past actions were seen to be wrong or cruel. Since they believe that they only followed the orders, they do not regret about what happened in the past.

The Trial and Peace

The war in Cambodia formally ended when the four factions in Cambodia agreed to sign Paris Peace Accord on 23 October 1991.⁵² However the security condition in Cambodia remained unstable since the KR guerillas were still active in some regions. The important policy that started significant developments in peace in Cambodia was issued in July 1994, when the government offered amnesty or immunity from prosecution for KR/CPK members who defected to the government (Curtis, 1993: 23). By the end of 1994, the government had secured some 6,000 defections under the amnesty programme (Curtis, 1998: 35).

The KR movement was terminally weakened by the defection of its Deputy Prime Minister Ieng Sary, along with significant numbers of troops from the northwest of the country in 1996, and other high ranking KR cadres following the death of Pol Pot in 1998. Through the amnesty programmes, the government assured the physical safety and survival of the defectors, the right to work and carry out their professions and the security of their property. The government also gave them land and financial assistance to ease their integration (Linton, 2004: 46). Since 1998 the security condition in Cambodia has been relatively stable.

As explained previously, although there are still problems in the relations between the victims and the perpetrators, they currently live in peaceful condition. Cambodia, as argued above, has been in the phase of peaceful coexistence. The establishment of the tribunal to bring to a trial the KR leaders, is also made possible by the peaceful condition in Cambodia. It was revealed that many of the informants (both victims and perpetrators) feel the trial will not disturb the peaceful condition in Cambodia. Many of them believe that the accused leaders no longer have a significant number of supporters so the trial would not destabilize the country.⁵³

The former powerful leaders are old and do not have fanatic followers. More than 10 years after the defection that terminated the KR movement, many of the former KR members have profited the amnesty program given by the government. Some of them have even already risen to political positions in the government or parties.⁵⁴

52 After the UNTAC's administered general election in May 1993, the Royal Government of Cambodia established with Prince Norodom Ranariddh from FUNCINPEC party as first prime minister and Hun Sen from CPP as second prime minister.

53 For example interview with Informant J, 27 April 2009, and interview with Informant V, 28 April 2009, in Taleur village, Trankak District; interview with Informant A in Sandao village, Trankak District, 1 May 2005.

54 For example, Nhem En, the current deputy governor of Anlong Veng district is a former Khmer Rouge's photographer in S-21 prison.

However, at the time when this research was conducted, there was a debate between the co-prosecutors whether or not to bring KR leaders more to trial. In December 2008, the ECCC's international co-prosecutor asked for six additional individuals to be investigated. His Cambodian counterpart, however, has opposed any further investigation. One of her concerns was that prosecuting the perpetrators, other than the highest leaders, could harm Cambodia's stability and national reconciliation. On 2 September 2009 the ECCC published the decision of The Pre-Trial Chamber (PTC), declaring that it cannot resolve the disagreement by a super-majority decision and that therefore, in accordance with the Internal Rules of the ECCC, the investigation of additional suspects for future prosecutions shall proceed. A nonrandom survey conducted by Documentation Center of Cambodia (DC Cam) in February 2009 shows that from 1110 people from 185 districts more than half of the respondents (56.6%) did not believe that additional prosecutions would cause public disorder or violence in the country. Only 37.6% of them believed that further trials would cause public disorder, while 5.9% did not have and/or simply did not want to express their views (Chy, 2009: 16). Beyond this debate, there is a strong tendency to believe that the government of Cambodia is in favor of only trying the five accused. This is reflected by comments made by Prime Minister Hun Sen in his visit to France in July 2009 when he stated that the KR tribunal should not seek prosecution of any leaders of the KR beyond the five already in custody. The government believes that the trial on more than five, will threaten the peace in Cambodia.⁵⁵

Many informants have assumed that the tribunal or trial will punish the leaders. They have not considered that the tribunal could find them not guilty. When this was put to the informants, many of the victims said that they would be very disappointed. However, as citizens, they said they would follow the decision of the court and give up the matter to the government.⁵⁶

Dealing with the Past and Promoting Reconciliation in Cambodia

It appears that the establishment of the ECCC, as well as the process of the trial, as a part of transitional justice in Cambodia, according to the survivors, is unlikely to contribute much to improving the reconciliation process between victims and the low level perpetrators in Cambodia. Eventhough the trial is felt by the victims as very significant to release some of their misery or their anger at the KR regime and some of the leaders, it will satisfy only a half portion of the justice they ask. It is difficult for the trial to establish the whole truth or full account of history. The trial also

55 "Hun Sen Tells French President: 5 KR Prosecutions are Enough", Cambodia Daily, 20 July 2009.

56 For example, interview with informant V and interview with informant W in Taleur Village, Tramkak District, 28 April 2009.

will be unlikely to help them much to forgive or give empathy to the low level perpetrators. If the accused are found guilty and are sentenced to imprisonment, it is likely that the problems between victims and perpetrators in the daily interaction will remain. The current hatred and anger of the victims to the low level perpetrators will still prevent both victims and perpetrators from communicating to each other and interacting normally.

The establishment of the ECCC and the trial on the KR leaders is only one way to address the past and improve the reconciliation process in the transitional justice period. It is essentially an application of the retributive justice approach which punishes the wrongdoers. The judicial mechanism such as trials, besides bringing some justice to the victim, serve other purposes, namely:

“challenging a culture of impunity; individualizing guilt, to avoid assigning guilt collectively to an entire group; averting unbridled private revenge; fulfilling an obligation to the victims to publicly acknowledge guilt and innocence (by the accused); and deterring or punishing.” (McGrew, 2006: 140).

However, the judicial mechanism in the state of transition has one principal limitation. The mechanism is only able to put very few people on trial, those who are perceived as the most responsible. There are many low level perpetrators who cannot be brought to trial because of the security condition. A trial can also cover only few cases and involve only few victims as witnesses. In the case of Cambodia, this disadvantage and weakness result in the low contribution of the trial to the reconciliation process between a large numbers of victims and perpetrators at the grass root level.

To promote the reconciliation process in Cambodia and also deal with the past, there is a need for Cambodia to combine the retributive approach with the restorative approach in transitional justice. This focuses on reconciliation, rehabilitation and rebuilding of the society. The restorative approach will help the Cambodian survivors to restore their feelings of dignity and help both parties, victims and low perpetrators to restore their relationship. It needs a process involving a broad cross section of society toward reconciliation and societal healing. To achieve such ends, this article argues that Cambodia needs to establish a Truth and Reconciliation Commission as a complementary of the ECCC.

Truth and Reconciliation Commission (TRC) is developed from the format of truth commission. According to Priscilla Heyner, there are four primary elements of the truth commission: (1) focused on the past; (2) not focused on a specific event, but attempts to paint a picture overall of certain human rights abuses or violations of international law over a period of time; (3) exists temporarily and for a pre-defined period of time, ceases to exist with the submission of the report of the findings; (4) always vested by some sort of

authority, by way of its sponsor, that allows a greater access to information, greater security or protection to dig into sensitive issues, and a greater impact with its report (Hayner, 1994: 607). As suggested by its name, a TRC places an emphasis on the function of the commission for not only finding the truth but also undertaking restoration efforts for the victims, as well as promoting reconciliation between the victims and the perpetrators.

From the first time of its establishment in Uganda in 1974 until January 2005, 36 Truth Commission (including Truth and Reconciliation Commission) have been established in the world (Weissbrodt, 2005: webpage). However, the TRC of South Africa has been noted by many scholars as the most outstanding. It has served as a role model to many of the subsequent truth and reconciliation commissions set up worldwide. One mechanism in the TRC of South Africa, which contributed significantly for the reconciliation process, was public hearings. This mechanism provided victims with an opportunity to tell their stories before a public audience. By this mechanism the Commission could formally acknowledge past wrongs and encouraged public understanding and sympathy for the victims. During the public hearings, the Commission also invited the offenders to recount their crimes. At the same time, the victims and their families can listen, ask questions, and recount their own victimization. In exchange for their confession, the commission provided amnesty for the perpetrators. The Commission also recommended reparations for the victims financial compensation, rehabilitation and restitution. In summary, as reported, the TRC helped reconciliation in South Africa by restoring the human dignity of the victims and making peace with the trouble in the past (Truth and Reconciliation Commission of South Africa, 2003: 350). This could be achieved when “an astonishing willingness to forgive was displayed; those responsible for violations apologized and committed themselves to a process of restitution; and where the building or rebuilding of relationships was initiate” (Truth and Reconciliation Commission of South Africa, 2003: 350).

Combining judicial mechanism with a truth and reconciliation commission, in fact, is not a new approach. Timor Leste combines The Commission for Reception, Truth and Reconciliation with the Special Panel for Serious Crimes Unit. The idea is that those who have not committed serious crimes can participate in the community-based reconciliation process held by the Commission, while those who committed serious crimes have to be accountable before the Special Panel.⁵⁷

57 For the procedure to determine whether a perpetrator can participate in the community-based reconciliation process held by the Commission or has to be accountable before the Special Panel for Serious Crimes Unit, please see, Commission for Reception, Truth and Reconciliation in East Timor, *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor*, (Dili: Commission for Reception, Truth and Reconciliation in East Timor, 2005), p. 13. The report also can be accessed electronically from <http://www.etan.org/news/2006/cavr.htm>

In Cambodia, the combinational approach of the judicial mechanism and TRC should be different from Timor Leste. Unlike Timor Leste, where the Commission has an authority to recommend whether or not there is a need for further judicial process on the perpetrators, in Cambodia the TRC can be designed for having authority to consider no further judicial process on the low perpetrators. The TRC in Cambodia, therefore, can be designed to deal mostly with finding the truth, without any judicial implication, and promoting reconciliation process between the victims and the other perpetrators beyond the five accused.

Cambodia needs to continue the trial process and, concomitantly, establish the TRC. The Truth and Reconciliation Commission can help Cambodians to find the whole truth in the following ways. *First*, it can establish a record of the past which is accurate, detailed, impartial and official (Bloomfield, Barnes, and Huyse (eds.), 2003: 125), by deploying truth-seeking mechanisms such as statement taking, public hearings and investigation. *Second*, in its process, the truth and reconciliation commission can involve a large number of the population in the transitional justice process. Narratives from both victims and perpetrators can be gathered, compared and confirmed to make a comprehensive historical account. *Third*, acknowledgement can be gained through the public hearing process which enables the victims and perpetrators to hear and validate one another stories as well as their feelings and experiences.

The truth and reconciliation commission can help victims to ask justice by following ways. *First*, the Commission can be a forum to communicate to the survivors what happened in the trial. Here, it can be explained, for example, the reasons why only five leaders were brought to trial and why the process of the trial takes a long time. *Second*, the Commission can complement the prosecution process by “gathering, organizing, and preserving evidence that can be used in prosecutions” (Bloomfield, Barnes, and Huyse (eds.), 2003: 125). *Third*, it can promote the accountability of the other perpetrators by recommending other forms of accountability such as “removal from office, restitution or community service schemes” (Bloomfield, Barnes, and Huyse (eds.), 2003: 125-126). *Fourth*, the Commission can recommend “a necessary form of compensation for past abuses and for ongoing psychological, physical and economic injuries experienced by victims”. It can also innovatively suggest “symbolic forms of reparation for victims, such as memorials, reburials and commemorative ceremonies” (Bloomfield, Barnes, and Huyse (eds.), 2003: 126). *Five*, by establishing the trauma healing section inside, the Commission can also help the victims to heal their trauma.

Many victims interviewed said that they may forgive the perpetrators if they confess about what they did in the past. Although they know that it may be hard for the perpetrators to apologize, they hope that the perpetrators will

be able to do this.⁵⁸ On the other hand, it was found that some perpetrators felt that the accusation of the victims was not precise and that a mediation forum would be a good way for them to explain their roles in the past.⁵⁹ Although some victims still harbor anger and refuse to talk with the perpetrators, it appears that as long as the government and the religious leaders play a facilitating role, they will participate in the forum.

The truth and reconciliation commission will contribute to the forgiveness between the victims and perpetrators. It can be a mediation forum between the victims and perpetrators where the victims can speak about their sufferings and the perpetrators can confess about what they did in the past. Through a public hearing mechanism, the commission can open a forum of dialogue between victims and perpetrators. It can promote tolerance and understanding by allowing conflicting parties to hear each other's grievances and suffering (Bloomfield, Barnes, and Huyse (eds.), 2003: 126). This may help build empathy that may lead to confessions and forgiveness. The empathy, confession and forgiveness resulting from the process of the Commission can counter the rivalries and hatreds arising from past events. This, finally, will enable the strengthening of the peace condition in Cambodia.

The truth and reconciliation commission is suitable for the Cambodian society. As argued by Lambourne, the establishment of a Commission of Truth and Reconciliation in Cambodia is consistent with Buddhism, the religion of the majority of Cambodians. The Buddhist perspective on justice prefers restorative justice rather than retributive justice (Lambourne, 2008: 9). Buddhism teaches that justice involves the "undoing" of a crime so that order might be restored and the goal of harmonizing the parties rather than consistency with abstract legal principle (Lambourne, 2008: 9). The Buddhist monks can play an important role in the process of reconciliation between the victims and perpetrators. As shown in a documentary movie "Deacon of the Death", a Buddhist monk could play an effective role to assemble a meeting between victims with the perpetrators, gain confession from the perpetrators and release the anger of the victims.⁶⁰ Furthermore, in spite of their limited scope, some NGOs also have held similar activities with Truth and Reconciliation Commission. Documentation Center of Cambodia (DC Cam), for example, has collected thousands documents connected to the KR period and interviewed many victims and perpetrators in the projects such

58 For example, interview with informant D in Prey Tatoich village, Kandal Steung district, 19 March 2009, interview with informant E in Chambak Sor village, Thpong district, 2 June 2009, with informant R at Chambak Trab village, Kandal Steung district, 23 March 2009, interview X in Taleur village, Tramkak district, 2 May 2009, etc.

59 For example, interview with Informant S at Trappeang Sva village, Kandal Steung district, 25 March 2009.

60 *The Deacon's of the Death* (2004). A documentary film directed by Jan van den Berg, Sok Chea, and Chan Theory.

as 'Promoting Accountability', 'Victims of Torture', 'Victim Participation'. The Centre for Social Development (CSD) has run "public forum" activities where the survivors are given a chance to talk about reconciliation. The truth and reconciliation commission can involve these NGOs and their resources in achieving its aim to find the truth and promote reconciliation in Cambodia.

Conclusion

Ideally, the transitional justice process in Cambodia should have an enormous contribution to the process of reconciliation in Cambodia. However, the establishment of the ECCC and the trial process on the five accused appears to be unlikely to contribute much to the process of reconciliation between victims and low level perpetrators at the grass root level in Cambodia. Although the trial is very important for many victims to achieve some justice and relieve some of their suffering and anger with the regime, the victims feel that the justice delivered by the trial will not be sufficient enough. The trial will also not be of much help to the victims in discovering the whole truth or forgiving the low level perpetrators.

The retributive approach of the judicial mechanism combined with the restorative approach of truth and reconciliation commission (TRC) is needed to promote a reconciliation process in Cambodia. The trial needs to be continued, however, at the same time, a truth and reconciliation commission needs to be established. A TRC will enable the survivors to find sufficient justice and reveal the full account of the truth. It will also help promote the process of forgiveness between the victims and the perpetrators. The accounts given show that although there is peace at the surface level, to achieve a lasting, stronger, harmonious peace, a TRC is necessary to achieve a deeper, real and more sustainable peace in Cambodia. ●

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