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LESSONS FROM THE CAMBODIAN EXPERIENCE WITH TRUTH AND RECONCILIATION

John D. Ciorciari and Jaya Ramji-Nogales***

INTRODUCTION

As South Koreans seek to implement the recommendations of their country's Truth and Reconciliation Commission (TRC) effectively, Cambodia may not be an immediately intuitive place to look for guidance. Cambodia has never convened a formal truth and reconciliation process or produced an extensive official report of human rights violations with specific policy recommendations. Nevertheless, and starting from the understanding that social processes leading to reconciliation are necessarily different in different societies, the Cambodian experience does offer some important lessons for South Korea and other states working to satisfy the rights and needs of victims of past abuses. In particular, the Cambodian case may offer a useful example in navigating the complex politics that generally characterize transitional justice processes.

We focus on two central claims about the Cambodian experience. First, the Cambodian example highlights the importance of engaging local civil society to play a central role in truth and reconciliation initiatives. Where, as in Cambodia, political elites prioritize the maintenance and growth of their own power, they tend to subordinate certain truths and pursue a shallow form of reconciliation that privileges their narrow interests. The needs of ordinary survivors are often sidelined. Though civil society has fewer resources and less formal power and authority than the government and international institutions in organizing truth and reconciliation initiatives, it often has the advantage of being more responsive to societal interests. It also tends to be less encumbered by the political gridlock generated by competition among domestic political parties and international actors. Local non-governmental organizations (NGOs) are particularly well positioned to assess and address survivors' needs.

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In Cambodia, international NGO involvement in truth and reconciliation initiatives has been limited, both because of local political interference and resource constraints. Thus, many of the most active civil society groups in the truth and reconciliation arena have been local. These groups generally have less funding and transitional justice “expertise” than international organizations, but they draw on more relevant cultural resources, so may be preferable in the long run. Moreover, the growth of local groups addressing reconciliation issues may help to establish a more robust civil society that can contribute to deliberative political processes and a more stable democratic future.

Second, Cambodia offers a case study of questions of institutional sequencing in transitional justice efforts. In any society, responses to mass human rights abuses entail political and societal dialogue about what goals to pursue, through what institutional mechanisms, and in what order. We discuss how the space for pursuing truth and reconciliation initiatives has broadened over time in Cambodia, where official efforts initially focused on solidifying peace and only later turned to questions of transitional justice.

We also examine the ways in which mechanisms that are not aimed primarily at promoting truth and reconciliation may create openings in the political sphere for truth and reconciliation processes in other forms. In Cambodia, a hybrid court established in 2006 by the Cambodian government and United Nations has been the central avenue for accountability for the crimes of the Khmer Rouge regime. Though the tribunal includes innovative measures for victim participation and collective moral reparations, it is not an ideal vehicle for truth and reconciliation. The impact of the proceedings on public knowledge and victims’ healing has been modest to date, and “donor fatigue” resulting from the costly tribunal makes it unlikely that funds will be forthcoming for an official TRC in Cambodia.

Despite these issues, we argue that the existence of this court has helped to establish the political space for individual Cambodians and civil society organizations to institute important and innovative truth and reconciliation measures. Those non-governmental groups have been the unofficial implementing agencies of some of the steps that the South Korean TRC recommended—such as creating accessible archives, providing human rights education, and rewriting official history books. Many of these efforts have taken place at grassroots levels, but some have translated into key national policy programs. Thus Cambodia offers at least two lessons for implementing TRC recommendations: the importance of engaging local civil society and seizing the perhaps unexpected benefits that can be derived from particular institutional sequences.

I. DEFINING TRUTH AND RECONCILIATION IN CAMBODIA

Implementing measures to advance truth and reconciliation raises difficult questions within a society, let alone across different societies. What aspects of truth should be the focus? What kind of reconciliation is sought, and for whom? Both of these concepts are inherently culturally bound, and definitions necessarily privilege some normative goals at the expense of others. Indeed, to define these terms too precisely belies some of their essence; truth and reconciliation are ideas shaped partly through a complex and often contested process of political and social dialogue.

We begin with the premise that truth and reconciliation mean different things to different members of a society at different times.¹ From that starting point, we present some of the varied ways in which truth and reconciliation have been defined and pursued in Cambodia in an effort to assess the particular needs of ordinary Cambodian survivors. From this case study, and again acknowledging the societally and temporally contingent nature of the concepts of truth and reconciliation, we can carefully uncover cultural and historical parallels that might enable us to draw out lessons for South Korea and other countries.

Truth is, of course, a complex concept. Truth-seeking projects and commissions have emphasized multiple forms of truth when they have defined the term at all.² Truth is also subject to multiple interpretations within Cambodia.³ To many Cambodians, knowing “the truth” about the Khmer Rouge era means, above all, learning the facts surrounding their own painful experiences and the fate of lost loved ones. To others, truth is primarily something for victims to express—a device for empowerment and opportunity to have one’s voice heard after more than thirty years of being effectively silenced. Still others yearn to understand why the abuses happened—to hear explanations directly from the mouths of perpetrators and to understand how the broader system of repression functioned. These differing pri-

1. Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 MICH. J. INT’L L. 1, 22 (2010).

2. Most legal instruments establishing truth commissions have failed to define “truth” precisely. Audrey R. Chapman & Patrick Ball, *The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala*, 23 HUM RTS. Q. 1, 4-12 (2001). The South African TRC was the most explicit, emphasizing four forms of truth: factual or forensic truth, personal or narrative truth, social or “dialogue” truth that emerges from public interaction and debate, and restorative truth—a concept closely linked to acknowledgement. 1 TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT 110 (1999).

3. SUZANNAH LINTON, RECONCILIATION IN CAMBODIA 126 (2004).

orities around truth suggest the need for different transitional justice approaches within one or multiple mechanisms.

Reconciliation also lends itself to numerous definitions that vary and even compete along several axes, including goals, subject, and scope. It is widely understood as a long-term process, the objectives of which may themselves be rich concepts such as truth, justice, and peace.⁴ Reconciliation can signify an end of armed conflict or tense political divisions, but it can also refer to individuals' need for a degree of personal healing or closure. The Khmer concept of reconciliation, *kar phsas phsa*, implies both. It literally means "reconnecting the broken pieces" and suggests a process of healing, both internally and by bringing former enemies back together.⁵ Rebuilding a shattered society requires reconciliation at the individual, community, and national levels as people mutually acknowledge past suffering and re-establish productive relationships.

Survey evidence captures the complexity and dynamism of the concept of reconciliation as Cambodians come to terms with the past. Analysts from the University of California-Berkeley's Human Rights Center surveyed 1,000 Cambodians in late 2008 and conducted a second survey in December 2010. In 2008, respondents characterized reconciliation as the absence of violence and conflict (56%), unity and living together (33%), and communication and mutual understanding (9%).⁶ In 2010, 54% of respondents focused on unity and living together, 38% on communicating and

4. Most definitions of reconciliation suggest a process of acknowledging and grappling with the past, coming to understand it, and changing attitudes to make more positive relationships possible. See, e.g., LINTON, *supra* note 3, at 106; and Brandon Hamber & Gráinne Kelly, *Beyond Coexistence: Towards a Working Definition of Reconciliation*, in RECONCILIATION(S): TRANSITIONAL JUSTICE IN POSTCONFLICT SOCIETIES 287-95 (Joanna R. Quinn ed., 2009). South Africa's Archbishop Desmond Tutu has described reconciliation as involving "a very long and painful journey, addressing the pain and suffering of the victims, understanding the motivations of offenders, bringing together estranged communities, trying to find a path to justice, truth and, ultimately, peace." Desmond Tutu, *Foreword* to RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK 4 (David Bloomfield, Teresa Barnes & Luc Huyse eds., 2003).

5. Ana García Rodicio, *Restoration of Life: A New Theoretical Approach to Repatriation based on a Cambodian Experience of Return*, 13 INT'L J. REFUGEE L. 126 (2001); Action Asia, *Exploring Asian Approaches to Peace Building – Practical Insights and Reflections* 32 (2007), <http://www.actionasia.org/fileadmin/user_upload/Exploring_Asian_Approaches_to_Peacebuilding_book_1.pdf>.

6. Phuong Pham et al., Human Rights Ctr., Univ. of Cal. Berkeley, *So We Will Never Forget: A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia* 28 (Jan. 2009), <http://www.law.berkeley.edu/HRCweb/pdfs/So-We-Will-Never-Forget.pdf> [hereinafter 2009 Berkeley Report].

mutual understanding, and only 15% on an absence of violence and conflict. 27% also suggested that reconciliation meant having gentleness and compassion for one another.⁷ Reconciliation in Cambodia is a multi-level, multi-faceted process.

Governments, non-state organizations, and ordinary people may promote the varied goals of reconciliation in a number of ways. While amnesty programs might advance the goal of short-term peace, criminal trials and civil remedies (such as awards of reparations) might offer a greater measure of justice, and truth and reconciliation commissions may present a broader picture of the truth. A variety of other measures such as public ceremonies, memorials, and individual or community-level counseling can supplement efforts to advance these and other goals. Not all of these approaches work synergistically all of the time, however. As John Paul Lederach argues, the process of reconciliation often involves dealing with profound paradoxes: trying to build a shared future while seeking truths about a divided past and promoting mercy and mutual acceptance while insisting on justice and accountability for past offenses.⁸ The difficulty of marrying all aspects of reconciliation simultaneously points to the importance of timing. Institutions must sometimes be sequenced in a way that prioritizes different goals over time, thus meeting the needs of broader segments of society.

In Cambodia, reconciliation initiatives to date have focused primarily on healing scars from the Khmer Rouge period. That period was the most terrifying in the country's history, but it was not the only period of human rights abuses. Like the process of deciding what truth bears telling, choosing the reference point for reconciliation entails powerful normative and political considerations.

II. THE WINNOWING OF TRUTH AND RECONCILIATION IN CAMBODIA, 1979-2006

Official efforts at truth and reconciliation in Cambodia have been deeply intertwined with power politics. In particular, they have been associated with the rise of the Vietnam-backed People's Republic of

7. Phuong Pham et al., Human Rights Ctr., Univ. of Cal. Berkeley, *After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the Extraordinary Chambers in the Courts of Cambodia* 33 (July 2011) <http://www.law.berkeley.edu/HRCweb/pdfs/After-the-First-Trial.pdf> [hereinafter 2011 Berkeley Report]. Figures do not add up to 100%, because the survey allowed respondents to emphasize more than one aspect of reconciliation.

8. JOHN PAUL LEDERACH, *BUILDING PEACE: SUSTAINABLE RECONCILIATION IN DIVIDED SOCIETIES* 31 (1997).

Kampuchea (PRK), which supplanted Pol Pot in January 1979, and the subsequent reemergence of PRK leaders as the Cambodian People's Party (CPP) in the 1990s. The CPP's approach to reconciliation has prioritized political consolidation and an end to armed conflict, offering a form of forgiveness to Khmer Rouge members willing to acquiesce in CPP leadership. In terms of institutional sequencing, then, the PRK and CPP prized amnesty over accountability. The CPP has also introduced efforts at truth and justice, but generally in a way calculated to advance its political position. This focus on "macro-reconciliation"—maintaining peace and stability at the national level—was necessary to some degree during the years of armed conflict and insurgency that stretched from 1979 into the mid-1990s. However, the justification for focusing on macro-reconciliation has weakened over time.

Compromises among rival political groups are rarely enough to foster broad revelations of the truth or deep grassroots reconciliation. The focus on political stability in Cambodia, in part through formal or informal amnesty schemes, has imposed limits on "micro-reconciliation" at the level of individuals and communities.⁹ Many survivors cite Khmer Rouge impunity as a source of continuing anguish and an obstacle to personal healing.¹⁰ Even more describe their inability to understand the atrocities as a barrier to reconciliation.¹¹ Until very recently, official Cambodian history textbooks included just a single line about the Pol Pot regime. Complaints of physical and emotional injury are ubiquitous, pointing to another macro-level failure with micro-level consequences: the virtual absence of even rudimentary counseling and health services.¹² The Cambodian government and key international actors could not have been expected to solve all of these chal-

9. See generally John D. Ciorciari, *Cambodia's Trek Toward Reconciliation*, 23 PEACE REV. 438 (2011).

10. In the 2008 Berkeley survey, nearly 40% of respondents said that top Khmer Rouge leaders needed to be punished before they could forgive them. 2009 Berkeley Report, *supra* note 6, at 29-30. See also John D. Ciorciari and Sok-Kheang Ly, *The ECCC's Role in Reconciliation*, in ON TRIAL: THE KHMER ROUGE ACCOUNTABILITY PROCESS, at 335-39 (John D. Ciorciari & Anne Heindel eds., 2009).

11. In the 2008 Berkeley survey, 64% of respondents agreed with the statement that they could not reconcile without knowing the truth about what happened. Large majorities indicated that they wanted to know more about the Khmer Rouge regime, and most reported their knowledge of the period as poor or very poor—especially those who did not live through it. 2009 Berkeley Report, *supra* note 6, at 25-27. See also Sok-Kheang Ly, *Follow-up Survey on National Reconciliation* (2007) (on file with the Documentation Center of Cambodia).

12. For a discussion of Cambodia's challenges in meeting even rudimentary mental health care needs, see generally CAMBODIA'S HIDDEN SCARS (Beth Van Schaack, Daryn Reicherter & Youk Chhang eds., 2011).

lenges. However, Cambodia's experience illustrates how reconciliation processes can be unresponsive to individual and community needs when the legitimate aim of securing the peace and the significantly less legitimate goal of gaining or preserving political power drive institutional design and sequencing decisions. Moreover, reconciliation processes designed without the regular and active participation of civil society are significantly less likely to address these needs.

A. *Early Efforts at Truth and Reconciliation*

Immediately after the toppling of the Pol Pot regime, the new PRK government and its Vietnamese allies placed a legitimate priority on quelling the large Khmer Rouge insurgency and pacifying a country where impulses for revenge were strong. The goals of peace and political stability drove institutional design decisions, and transitional justice mechanisms were created and implemented by the government alone. In the years following the Pol Pot regime, much of the population harbored vindictive feelings against former Khmer Rouge cadres. Revenge killings took place in various parts of the country, as survivors took reprisal for the deaths of their loved ones and other members of their communities. The PRK faced a dilemma. Many of its officials and troops also sought revenge against the Khmers Rouges, and demonizing the Pol Potists helped legitimize PRK rule. However, violent reprisals against some former Khmer Rouge cadres threatened to exacerbate Cambodia's civil war by pushing greater numbers of former Khmer Rouge rank and file into the jungles, where they would fight alongside Pol Pot's forces instead of defecting to the new government or dropping their arms. The PRK thus had an incentive to stop the revenge killings, even if it had little sympathy for Khmer Rouge cadres.

The PRK instituted a kind of reconciliation plan, offering carrots to defecting Khmer Rouge soldiers while also wielding a formidable stick.¹³ The plan entailed using military counter-insurgency measures to coerce rebels to "reconcile" while issuing leaflets and radio broadcasts promising

13. Later in the conflict, hundreds of thousands of Cambodians were recruited or compelled to participate in the "K-5" scheme by helping to lay landmines and build a wall to separate Khmer Rouge guerillas from the rest of the population. EVAN GOTTESMAN, *AFTER THE KHMER ROUGE: INSIDE THE POLITICS OF NATION-BUILDING* 231-37 (2002). It resulted in thousands of deaths and injuries on both sides of the conflict and contributed to lasting resentment in some communities against the PRK (and later the CPP).

leniency to Khmer Rouge rebels who laid down their arms, apologized, underwent reeducation, and rejoined the fold.¹⁴

In August 1979, the PRK arranged a transitional justice process: a five-day trial of Pol Pot and one of his deputies, Ieng Sary. The “People’s Revolutionary Tribunal” returned history’s first genocide conviction. The trial it held was connected closely to the government’s defection policy. By pinning the blame on Chinese “hegemonists” and a handful of domestic villains, the trial presented the rest of society as victims, which the PRK hoped would dampen revenge killings and keep frightened former Khmer Rouge rank and file from joining the insurgency.

The strategy succeeded in abating revenge killings and attracting many Khmers Rouges to lay down their arms or join the PRK. The tribunal also provided some useful information and public recognition of the suffering of millions of people under Khmer Rouge rule. However, many survivors found the trials inadequate to make them forgive and reconcile with low-level Khmer Rouge cadres. The trials were also riddled with procedural flaws and were rejected outside the country as a way to justify the Vietnamese invasion of Cambodia. Rather than helping the new government solidify control, many outside powers—including China, Thailand, and the West—supported a coalition of royalists, right-wing republican rebels, and Khmers Rouges to fight Vietnam and bleed its Soviet sponsors. That “Coalition Government of Democratic Kampuchea” (CGDK) continued to occupy Cambodia’s seat at the UN General Assembly.

From 1980 to 1983, the PRK carried out additional measures to supplement criminal trials. The most important of these efforts was the nationwide review and condemnation of Khmer Rouge atrocities by the government organization *Renakse* (Salvation Front). The *Renakse* organized a series of community meetings in 1983 that had much of the appearance of a truth commission, although they were not labeled as such. The committee in charge of the process interviewed survivors around Cambodia, amassed evidence of damage done by the Khmer Rouge to people and property, dug up mass graves, examined documents, and wrote a report to the government. The *Renakse* commission also invited victims to sign petitions enumerating Khmer Rouge atrocities in particular parts of the country. According to PRK authorities, nearly 9,000 petitions were drafted.¹⁵

14. Sok-Kheang Ly, *State and Individual Efforts to Bring about Reconciliation* (Documentation Center of Cambodia, Aug. 2009).

15. For further discussion of the PRK petitions, see William J. Schulte, *THE HISTORY OF THE RENAKSE PETITIONS AND THEIR SIGNIFICANCE TO THE ECCC PROCEEDINGS IN SEARCHING FOR THE TRUTH* (Dec. 2007). Well over 1,000 petitions survive today in

Unfortunately, the *Renakse* truth commission-type process was not nearly as effective as it could have been. Like the 1979 trials, it suffered from both procedural flaws and over politicization. Most of the *Renakse* petitions were drafted by PRK officials and revealed a nakedly political purpose by laying out the PRK's case for prying Cambodia's seat at the UN General Assembly away from the CGDK. The government also did little to disseminate its findings to the public. Further, the process included no Khmer Rouge voices, preventing the occurrence of genuine dialogue between former foes.¹⁶ The *Renakse* process also did little to encourage public apologies that could have facilitated healing. Without the involvement of civil society, the PRK government furthered its own goals but failed to address many of the needs of Cambodian society.

The PRK government did engage in other, slightly more successful efforts to promote reconciliation. The PRK regime erected *stupas*—Buddhist religious monuments used for worship and remembrance—and other memorials at nearly 100 of the most infamous sites of Khmer Rouge terror around the country. It also helped ordinary villagers excavate the remains of the departed from more than 19,400 mass burial pits across the countryside. As many Cambodians believed that victims who died violent deaths and received improper burials would not be able to be reborn, this official assistance was an important recognition of their religious and cultural beliefs. In Cambodia, memorials were the first real step towards addressing individual and community needs. These relatively small-scale and uncontroversial processes may have represented the limits of political viability in a highly unstable society.

The government also developed ceremonies around the memorials, though these were often co-opted for partisan political ends. Beginning on May 20, 1983, Cambodians began to celebrate a "Day of Anger" to recall the abuses of the Khmer Rouge regime and share their pain. Much like the 1979 trials and *Renakse* inquiries, the PRK government used the Day of Anger to legitimize its rule and mobilize public support for the ongoing counterinsurgency campaign. A speech by President of the PRK National Assembly Chea Sim on the 1986 Day of Anger reflected this dynamic:

Beloved comrades and friends. . . those who died are reminding us to be vigilant, to strengthen our solidarity and practice revolution-

the Documentation Center of Cambodia (DC-Cam) archives, containing the signatures or thumbprints of 1,166,307 victims.

16. CRAIG ETCHESON, RECONCILIATION IN CAMBODIA: THEORY AND PRACTICE 43 (2004).

ary activities. We must be on the alert against the cruelties and poisonous tricks of the enemy. . .¹⁷

In the context of a continuing guerilla war, the Day of Anger functioned more as a rallying cry against the surviving Khmer Rouge movement than as a call to lay down arms and reconcile. Even after the dissolution of the Khmer Rouge insurgency, Cambodian leaders have too often used the Day of Anger to stir vitriol for the sake of partisan advantage, undermining or perhaps even eliminating the ceremony's contribution to reconciliation.

Alongside modest advances in national-level reconciliation, Cambodia saw private efforts at micro-reconciliation during the 1980s. Largely religious in nature, the relative success of these efforts in addressing the needs of Cambodians speaks to the importance of involving local non-governmental actors in reconciliation processes. The most prominent occasion for such efforts has been the annual *pchum ben* festival, a traditional Khmer day of remembrance of the dead. According to traditional Khmer Buddhist religious beliefs, the gates of hell open once each year, and departed souls wander the earth. Cambodians gather at pagodas and place food such as rice balls on the earth to ease the spirits' suffering. The ceremony has added significance with respect to Khmer Rouge victims, as traditional beliefs suggest that spirits are condemned to wander the earth and barred from reincarnation until they are acknowledged in a religious ceremony. *Pchum ben* has provided a way for many Cambodians to do so for departed loved ones who never received a proper burial.¹⁸

Religious spaces—including Buddhist *wats*, mosques, and churches—that had faced relentless attacks under the Pol Pot regime thus became key public spaces for personal and community reconciliation. The country's beleaguered educational system, which devoted a mere sentence to the Khmer Rouge era in history texts, and a virtually non-existent mental health system made communities of faith all the more crucial in survivors' quests for a sense of healing and inner peace.

B. UNTAC: Prioritizing Peace

As the Cold War wound down, Vietnam looked for a way out of Cambodia as its Soviet sponsors turned inward. The major external powers be-

17. Translated by Sour Bunsou and quoted in Rachel Hughes, *Memory and Sovereignty in Post-1979 Cambodia: Choeung Ek and Local Genocide Memorials* in GENOCIDE IN CAMBODIA AND RWANDA: NEW PERSPECTIVES 267 (Susan E. Cook ed., 2006).

18. Ly Daravuth, *Notes on Pchum Ben*, Brandeis University International Center for Ethics, Justice and Public Life, 6-8 <http://www.brandeis.edu/ethics/peacebuildingarts/pdfs/peacebuildingarts/ly%20notes_on_pchum_ben-2.pdf>; Lor Chandara, *Festival of the Dead Remembers Torture Victims of KR*, CAMBODIA DAILY, Sept. 25, 2000.

gan to negotiate a settlement—again, prioritizing peace over justice. To most of the key parties, peace meant an end to armed hostilities and putting Cambodia on a democratic trajectory. The permanent five members of the Security Council and other key states pressed on Cambodia's various factions, including the Khmer Rouge, to hammer out a peace deal.

The result, finalized on October 23, 1991, was the Paris Peace Accords, which established an eighteen-month UN Transitional Authority in Cambodia (UNTAC). The most ambitious peacebuilding initiative in UN history, it provided for military peacekeepers, civil administration, and UN-sponsored elections in 1993. However, it did not focus on truth, reconciliation and justice, largely because its architects feared such provisions would lead Khmer Rouge insurgents to spoil the peace. That fear was reasonable, as the Khmers Rouges violated the UN ceasefire on numerous occasions and boycotted the elections. There was little political space for accountability efforts at that juncture. However, the country did not relapse into war, and the 1993 elections helped marginalize Pol Pot's forces politically. UNTAC provided neither trials nor amnesty, deferring but not precluding truth-telling exercises and other forms of transitional justice.

C. *Hun Sen's "National Reconciliation" Policy*

During the 1990s, Prime Minister Hun Sen used amnesty as part of an effort to pursue peace, an approach that served to increase his political power but compromised the goal of justice and did nothing to advance truth. The 1993 elections resulted in an unstable truce between Hun Sen and Norodom Ranariddh, the head of the royalist party Funcinpec, who agreed to serve as co-prime ministers in a constitutional monarchy headed by Ranariddh's father, King Norodom Sihanouk, who had allied loosely with the Khmers Rouges as the political face of the CGDK during the 1980s.

As Hun Sen and Ranariddh competed for influence, Hun Sen pursued a policy of "national reconciliation" focused on courting Khmer Rouge defectors on terms that would benefit his political party, the CPP. He brokered a key 1996 deal with Khmer Rouge leader Ieng Sary, who defected with roughly 3,000 of his fighters—a substantial fraction of the total insurgent ranks—in exchange for a royal amnesty and pardon granted by King Sihanouk in September of the same year. Those defections almost brought the Khmer Rouge armed resistance to a halt.

In 1997, Hun Sen achieved a decisive upper hand, when he accused Ranariddh of a plot to use Khmer Rouge guerillas to seize power, and CPP forces defeated royalist partisans in a series of bloody street battles. Hun Sen occasionally advocated justice—most notably in a June 1997 letter he

co-authored with Ranariddh to the United Nations requesting support to establish a tribunal¹⁹—but tended to pit peace against truth and accountability. In December 1998, he famously declared that defecting Khmer Rouge leaders Nuon Chea and Khieu Samphan should be greeted “with bouquets of flowers, not with prisons and handcuffs” and that Cambodians should “dig a hole and bury the past.”²⁰ The plan failed to produce meaningful apologies from Khmer Rouge leaders; Pol Pot’s second-in-command, Nuon Chea, issued vague regrets for “lives lost” and for “animals that died;” his colleague, Khieu Samphan, urged the public to “let bygones be bygones.”²¹ These dismissals of societal suffering did nothing to ease survivors’ pain.²²

In early 1999, Cambodian authorities apprehended two more notorious Khmer Rouge figures—Duch, who headed the central torture facility at Tuol Sleng, and zone commander Ta Mok, also known as “the Butcher.” The insurgency had essentially crumbled, increasing the practical possibility of trials or a truth commission. The imperatives of war and peace no longer limited the political and societal dialogue to the same extent, and more civil society leaders began to press for transitional justice. However, along the way, Pol Pot had died, the CPP had signed an amnesty deal with Khmer Rouge leader Ieng Sary, and other former Khmers Rouges occupied positions at all levels of government. Hun Sen considered the possibility of trials, but emphasized that they should be done “in the context of war and peace [and] in the context of national reconciliation, which is all one package.”²³

19. Identical letters from Kofi Annan, U.N. Secretary-General, to the President of the General Assembly and to the President of the Security Council (Jun. 23 1997), (annexed to U.N. Doc. A/51/930, S/1997/488 (Jun. 24, 1997)); Letter from Prince Norodom Ranariddh and Hun Sen, respectively the First and Second Prime Ministers of Cambodia, to Kofi Annan, U.N. Secretary-General (Jun. 21, 1997), (annexed to U.N. Doc. A/51/930, S/1997/488 (Jun. 24, 1997)).

20. John Gittings, *Pol Pot Men Say Sorry for Killing Fields*, THE GUARDIAN, Dec. 30, 1998.

21. Seth Mydans, *Under Prodding, 2 Apologize for Cambodian Anguish*, N.Y. TIMES, Dec. 30, 1998.

22. On Cambodian responses to the defections and subsequent statements of Khieu Samphan and Nuon Chea, see Wendy Lambourne, *Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation*, 4 PEACE, CONFLICT & DEV. 1, 11-12 (2004).

23. *Cambodian Prime Minister seeks reconciliation through reconstruction*, EIR News Service, Feb. 12, 1999 (interviewing Hun Sen).

D. *Choosing a Tribunal over a Truth Commission*

It was in that context that the United Nations, led by the United States and allied Western powers, began to press more assertively for transitional justice. Thomas Hammarberg, the UN Secretary-General's human rights representative in Cambodia, called for a truth commission.²⁴

In early 1999, a Group of Experts appointed by UN Secretary-General Kofi Annan recommended an international trial of some twenty to thirty suspects. Though noting that a truth commission "could not replace prosecutions for Cambodia in terms of the goals of justice, closure and accountability," the UN Group of Experts recommended "a process of reflection among Cambodians" to determine the appropriateness and potential design of a truth commission for Cambodia.²⁵ Hun Sen responded by saying he preferred a "truth commission" that would swap amnesty deals for Khmer Rouge confessions.

There was little political space available for a truth commission, however. Some international observers saw it as a way for the Cambodian government to avoid delivering justice. Cambodian political elites and some international donors may also have been concerned about a truth commission's ability to investigate the multitude of unclean hands in Cambodia's modern history. There were also concerns that any such process would risk reopening old wounds and destabilizing fragile relations between former Khmers Rouges and their neighbors.

In terms of institutional sequencing, then, there was not much choice; both the Cambodian government and the United Nations favored a tribunal rather than a truth commission. Both invoked the concept of "reconciliation," but to different political ends. The UN Group of Experts argued that justice would facilitate reconciliation, and that an international tribunal, perhaps in The Hague, would be the most legitimate and effective locus for criminal trials. Hun Sen contended that sending Khmer Rouge suspects to a foreign court would reignite the insurgency and that the government knew best how to keep the peace. The CPP's favored form of stability implied further consolidation of domestic political dominance. After several years of tense negotiations, the two sides compromised, agreeing to form a "hybrid" tribunal within Cambodia's judicial system.

24. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Thomas Hammarberg, submitted in accordance with Commission resolution 1996/54, Comm. on Human Rights, U.N. Doc. E/CN.4/1997/85, §D (Jan. 31, 1997).

25. Report of the Group of Experts for Cambodia established pursuant to G.A. Res. 52/135, ¶¶ 200, 219, U.N. Doc. A/RES/52/135 (Feb. 18, 1999).

III. THE KHMER ROUGE TRIBUNAL, 2006-PRESENT

The result was the Extraordinary Chambers in the Courts of Cambodia (ECCC), a mixed tribunal combining international and domestic laws, procedures, and personnel.²⁶ Both sides favored a relatively narrow judicial inquiry focused on surviving “senior leaders” and others deemed “most responsible” for gross human rights abuses during Pol Pot’s reign. The tribunal was thus designed in a manner that would contribute toward a set of truths acceptable both to its national and international sponsors. Each side believed it would foster a form of reconciliation, but they differed on the particulars. International actors and human rights advocates generally sought a process that would strengthen the rule of law and by extension drive domestic political reforms in Cambodia; the CPP sought a brand of reconciliation that would reinforce its domestic political position.

Most Cambodians surveyed about the tribunal process sought justice, but also put a high priority on learning the truth about their personal suffering and the reasons for the terror of Democratic Kampuchea. Many sought explanations from Khmer Rouge leaders, apologies, and an opportunity to participate. Unfortunately, the architects of the ECCC did not design the tribunal in a way well suited to satisfy those preferences. To a large degree, these were left to civil society to fulfill.

A. *Design of the Tribunal*

Courts have inherent limitations as mechanisms for promoting truth and reconciliation. They necessarily focus on facts most relevant to determining the guilt or innocence of the accused. Thus, they can have the unintended—or in some cases intended—consequence of masking structural and systemic patterns of injustice that may be at the root of the mass violence.²⁷ Trials are also complex, and can be difficult for ordinary survivors to follow. Advocates contend that they facilitate reconciliation by assigning culpability, acknowledging victims’ suffering, expunging impunity, and

26. Cambodia enjoys an edge, appointing a majority of judges and occupying key administrative functions, such as the heads of the Public Affairs office and the Victims Unit. For a detailed review of the court’s judicial and administrative structure, see Anne Heindel, *Overview of the Extraordinary Chambers*, in *ON TRIAL*, *supra* note 10, at 85-112; John A. Hall, *Court Administration at the ECCC*, in *ON TRIAL*, *supra* note 10, at 172-81.

27. Rama Mani, *Reparation as a Component of Transitional Justice: Pursuing “Reparative Justice” in the Aftermath of Violent Conflict*, in *OUT OF THE ASHES: REPARATION FOR VICTIMS OF GROSS AND SYSTEMIC HUMAN RIGHTS VIOLATIONS* 53, 53, 68 (K. De Feyter et al. eds. 2005).

helping build a stronger rule of law. Those outcomes are all eminently desirable, but they do not automatically lead to a broad rendering of the truth or to reconciliation. In fact, by reinforcing a victim-perpetrator dichotomy, trials may further entrench post-conflict social divisions.²⁸

There are nevertheless important strengths in the ECCC's institutional design, proceedings, and setting that give the tribunal the potential to facilitate truth-telling and contribute to reconciliation. The ECCC's in-country setting facilitates connections with the public that would be impossible for trials in The Hague. The ECCC also has mechanisms enabling survivors to submit complaints and an innovative scheme whereby victims can join the proceedings as civil parties in addition to other forms of participation. Yet the tribunal has made slow progress to date, completing just one trial and suffering from chronic political and administrative crises. Its provisions for victim participation have also had mixed results.²⁹

B. *Victim Participation*

Participation in the ECCC's proceedings might have enabled Cambodians to speak the truth and have their voices heard. In theory, increasing victims' active involvement in a trial process is more likely to result in victim healing.³⁰ In practice, the forms of survivor participation allowed at the ECCC – witness testimony, civil party participation, the submission of written complaints, and attendance in the viewing hall – have so far failed to contribute much to this form of truth.

The first form of participation is through testimony, which offers the opportunity for victims to interact most intensively with the judicial process. At times, testifying can have a cathartic effect.³¹ Yet testifying, at least in Case 001, has been insufficiently empowering for participants for a few reasons. First, the Trial Chamber has used its rules of conduct to discipline witnesses whose testimony strayed beyond the limited scope of the Chamber's evidentiary needs.³² The court's inquiries, which are restricted

28. *Id.* at 67.

29. See generally Toni Holness & Jaya Ramji-Nogales, *Participation as Reparations: The ECCC and Healing in Cambodia*, in *CAMBODIA'S HIDDEN SCARS*, *supra* note 12, at 172.

30. Brandon Hamber, *The Dilemmas of Reparations: In Search of a Process-Driven Approach*, in *OUT OF THE ASHES: REPARATION FOR VICTIMS OF GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS* 135, 149 (K. De Feyter et al., eds. 2005).

31. John D. Ciorciari & Anne Heindel, *Trauma in the Courtroom*, in *CAMBODIA'S HIDDEN SCARS: TRAUMA PSYCHOLOGY IN THE WAKE OF THE KHMER ROUGE*, *supra* note 12, at 123-29 (providing some examples from the Duch case, as well as counterexamples suggesting re-traumatization).

32. Holness & Ramji-Nogales, *supra* note 29, at 172, 174-75.

to admissible evidence, do not always match the interests or needs of victims. Judges have asked witnesses to restrain themselves emotionally and restrict their testimony to only those facts that judges consider useful. Second, the ECCC has been inaccessible to many of the witnesses both because of the rigidity of its technical rules regarding testimony and its intimidating and unfamiliar appearance.³³ Witnesses have become preoccupied with rule compliance, hindering the expression of the substance of their testimony. Third, some testifying survivors have found the physical structure and technologies of the ECCC intimidating and emotionally challenging.³⁴ The imposing physical presence of the court building and the sophisticated technology upon which the court process relied were often entirely alien to witnesses, many of whom scarcely have access to electricity in their home villages.

The ECCC is the first international criminal tribunal to implement a second form of victim participation: the civil party process. Through this mechanism, victims who allege that they suffered direct abuses as a result of a defendant's conduct can participate in the proceedings by filing documents and presenting arguments before the tribunal.³⁵ The civil party process has been limited or problematic in a variety of ways, and as a result has failed adequately to enable Cambodian voices. First, the ECCC Internal Rules necessarily preclude most Cambodians from participating as civil parties if they cannot establish a link to a particular defendant's crimes. Indeed, in the first trial against Duch, the former head of the Khmer Rouge torture and interrogation facility at Tuol Sleng, the tribunal dismissed applications of some for failure to prove a close bond of affection with or dependency on one of Duch's victims.³⁶ The extent of participation by those selected was also limited given legitimate resource and time constraints in the court.³⁷ The relatively low number of civil party petitioners suggests a

33. *Id.* at 177.

34. *Id.*

35. Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 8), *rev'd* Aug. 3, 2011, at 22 [hereinafter ECCC Internal Rules], available at [http://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20\(Rév.8\)%20English.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20(Rév.8)%20English.pdf).

36. Prosecutor v. Guek Eav Kaing *alias* Duch, Case File No. 001/18-07-2007-ECCC/TC ECCC, Transcript of Trial Proceedings—Kaing Guek Eav “Duch”, at 27 (July 26, 2010) [hereinafter 26 July 2010 transcript], http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E1_83.1_TR001_20100726_Final_EN_Pub.pdf.

37. See Sarah Thomas, *Civil Party Participation at the ECCC*, INTLAWGRRLS (July 15, 2008), available at <http://intlwgrrls.blogspot.com/2008/07/civil-party-participation-at-eccc.html> (discussing the reasons for the ECCC's change in attitude, from welcoming to exclusionary, toward civil parties).

fear of proceedings; it may also reflect a lack of detailed knowledge about or interest in the ECCC.³⁸

A third way to participate is through victim complaints, which might have presented an opportunity to enable victims to speak the truth and be heard. Here the court's main challenge has been capacity. Given the huge number of aggrieved victims, the court's understaffed, underfunded Victims' Unit has had a difficult time even acknowledging complaints in a timely manner, which risks undermining petitioners' confidence in the exercise. In 2009, a non-Cambodian with strong ties to the government and links to a Marxist organization became head of the Victims' Unit.³⁹ She later stepped down, but to some survivors that appointment diminished the unit's legitimacy. Public confidence in the tribunal, and particularly the Victims' Unit, is imperative if participation is to be reparative.

A fourth way to participate is to observe the trial proceedings from the gallery or on television. The ECCC Internal Rules authorize judges to limit observers' emotional expression during trials,⁴⁰ which has hindered the potential reparative effect that might have resulted from a more interactive process. Although one of the espoused benefits of an in-country tribunal is its proximity to survivors, the facility in Phnom Penh remains inaccessible

38. The 2008 Berkeley survey found that 85% of respondents reported having no or limited knowledge of the ECCC. 2009 Berkeley Report, *supra* note 6, at 3. The 2010 survey showed progress: only 38% of respondents described their knowledge of the ECCC as limited, while 67% could accurately describe the basic hybrid nature of the court. 2011 Berkeley Report, *supra* note 7, at 3. A 2009 survey by the International Republican Institute again showed that general public awareness about the trials had risen and that roughly one third of respondents had seen part of the trials on television. *Survey of Cambodian Public Opinion*, INT'L REPUBLICAN INST. 32-39 (July 31 – Aug. 26, 2009), <http://www.iri.org/sites/default/files/2010%20February%202%20Survey%20of%20Cambodian%20Public%20Opinion,%20July%2031-August%2026,%202009%20-%20Khmer%20and%20English%20version.pdf>.

39. One Khmer Rouge survivor wrote, “[I]t is both absurd and insulting to have a Marxist advocate representing the victims of a Marxist regime, which was being tried by the court of law.” Chanda Chhay, *Open Letter to Dr. Helen Jarvis, Appointed Head of the Victims Unit at the Extraordinary Chamber in the Court of Cambodia*, KI-MEDIA (June 20, 2009), <http://ki-media.blogspot.com/2009/06/open-letter-to-dr-helen-jarvis.html>. See also Patrick Falby, *Cambodia KRouge court leaves victims disappointed*, AGENCE FR. PRESSE, Sept. 13, 2010, available at <http://lg-media.blogspot.com/2009/09/cambodia-krouge-court-leaves-victims.html>.

40. “Where, in the view of the Chambers, any person is disrupting the proceedings, they shall first issue a warning. In cases of continued disruption, the Chambers may order the person disrupting the proceedings to leave or be removed from the courtroom or the premises of the ECCC and, in case of repeated misconduct, may order the exclusion of that person from attending the proceedings.” ECCC Internal Rules, *supra* note 35, at 35.

to most indigent survivors in the countryside, and televised viewing is unavailable in most of the country.

C. *The ECCC's Effects on Reconciliation to Date*

There is some evidence that the ECCC is contributing to reconciliation if we define the term as unity, communication, and compassion.⁴¹ The 2010 Berkeley survey found that 80% of respondents believed the ECCC would help rebuild trust and promote national reconciliation in Cambodia, and roughly 25% expected that the trials would help ease mental anguish among individual survivors.⁴² Finally, contrary to the expressed fears of the Cambodian government that efforts to end impunity would lead to fresh violence, the first five years of the ECCC's operations have not prompted outbreaks of violence, and upheaval appears unlikely in the near future. The passage of time is one reason, but another appears to be broad-based public acceptance of the basic legitimacy of the process.

However, the ECCC is also plagued by severe and ongoing weaknesses that limit its potential to bring justice, truth, or reconciliation to victims of the Pol Pot regime. Public in-fighting between the United Nations and Cambodian government has intensified the politicization of the process and eroded the tribunal's independent judicial credibility.⁴³ In particular, a feud between the Cambodian government and selected UN staff about whether to add additional defendants has caused both delay and despair among some survivors, who seek additional prosecutions.⁴⁴ A significant number of Cambodians remains skeptical of the contribution of the trials to reconciliation. They retain deep-seated anger toward both Khmer Rouge leaders and the lower-level cadres who inflicted abuse on their families.

Another crucial limitation of the civil party scheme relates to reparations. Cambodia clearly lacks the financial resources to provide a level of financial restoration that would compensate millions of victims fully for the

41. See *infra* discussion of Cambodian definitions of reconciliation. Interviews with survivors after the Duch trial suggest a modest positive contribution for many observers of the process but also residual anger and a suspicion of the sincerity or value of apologies by those deemed most responsible for Khmer Rouge atrocities. See Ci-rciari & Ly, *supra* note 10, at 334-39.

42. 2011 Berkeley Report, *supra* note 7, at 7-10.

43. See, e.g., Sophal Ear, Editorial, *Khmer Rouge Tribunal vs. Karmic Justice*, INT'L HERALD TRIBUNE, Mar. 17, 2010; John Hall, *A U.N. Fiasco in Cambodia*, WALL ST. J. ONLINE, Oct. 5, 2011, <http://online.wsj.com/article/SB10001424052970204612504576608511111845334.html>.

44. See, e.g., *Statement by the International Co-Investigating Judge*, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, <http://www.eccc.gov.kh/en/articles/statement-international-co-investigating-judge>.

personal and economic losses they suffered. In the ECCC, Internal Rule 23 *quinquies* provides that the court may award only collective and moral reparations to Civil Parties.⁴⁵ It adds that such reparations “shall be awarded against, and be borne by convicted persons,” and may comprise orders to publish the judgment in news or other media at the convicted person’s expense; orders to fund a non-profit activity or service that is intended for the benefit of victims; or “other appropriate and comparable forms of reparation.”⁴⁶

The language of Rule 23 does not necessarily limit reparations to a convicted person’s resources, but it also makes no explicit provision for other sources of funding. Duch responded to an inquiry regarding reparations by stating that he does not “have any ability to assist anybody at this stage.”⁴⁷ Other defendants are also apt to have little if anything to contribute to financial reparations. Any reparative awards will at best be of symbolic significance when measured against the myriad survivors who endured the brutal policies of the Pol Pot regime.

The tribunal has the power to grant collective and moral reparations, and non-governmental groups suggested a variety of options, such as health clinics and memorials. However, the court lacks the power to require government action to establish such facilities and depends on donor resources to carry out its mandate. At the end of the Duch case, it offered victims only two meager forms of collective and moral reparation: inclusion of the names of civil parties and their relatives who died at S-21 in the judgment, and an online compilation of statements of apology made by Duch during the trial.⁴⁸

IV. REMAINING CHALLENGES AND LESSONS LEARNED

Cambodia has taken some steps toward truth and reconciliation, but the process remains far from complete. Cambodia’s experience with truth and reconciliation suggests several lessons that can be usefully applied in South Korea and other states working to implement recommendations related to truth-telling, memory preservation, reparative justice, apologies,

45. See ECCC Internal Rules, *supra* note 35, at 25.

46. Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 5), *rev’d* Feb. 5, 2010, at 25 [hereinafter ECCC Internal Rules (Rev. 5)], *available at* <http://www.eccc.gov.kh/sites/default/files/legal-documents/IRv5-EN.pdf>.

47. Prosecutor v. Guek Eav Kaing *alias* Duch, Case File No. 001/18-07-2007-ECCC/TC ECCC, Transcript of Trial Proceedings – Kaing Guek Eav “Duch”, at 114 (Aug. 17, 2009), *available at* http://www.eccc.gov.kh/sites/default/files/documents/court/001_18-07-2007-ECCC/TC_ECCC_Transcript_of_Trial_Proceedings_-_Kaing_Guek_Eav_Duch.pdf.

48. 26 July 2010 transcript, *supra* note 36, at 28.

and reconciliation. The role of civil society has been crucial in implementing each of these goals in Cambodia. While the official transitional justice mechanisms to date have been less than effective in achieving these goals, the ECCC has created political space that has made progress towards these goals possible.

A. *The Role of Justice*

The importance of justice to reconciliation, both in its retributive and restorative forms, has been clear in Cambodia. The failure to deal decisively with the problem of impunity has impeded reconciliation for many Cambodian survivors. Youk Chhang, the director of the Documentation Center of Cambodia (DC-Cam), has argued that: "Peace requires more than the absence of armies in open combat. A peaceful society is a just society, and the Cambodian people have not yet found justice. Peace will not truly come to Cambodia until there is real justice for the crimes of the Khmer Rouge regime."⁴⁹ The ECCC has put a handful of people on trial, but slow progress and their advancing ages means they may never be convicted. The narrow scope of the court's jurisdiction also leaves many observers perceiving the tribunal more as political theater than justice. Participants in the trials, who have been few in number relative to the millions of victims of Khmer Rouge brutality, generally have been unable to contribute to truth-telling in a form that would be empowering to them. Without genuine apologies or explanations from the architects of Khmer Rouge terror, many have been unable to trust or forgive former Khmer Rouge cadres living in their midst.

Cambodia also shows the difficulty of using judicial processes as a means to reparative justice. Khmer Rouge misrule and years of ensuing war decimated an already weak economy and left the state with little capacity to provide meaningful reparation to victims even if it had wished to do so. South Korea's greater wealth may enable it to offer non-trivial compensation to many victims, but if Cambodian survivors' attitudes are any indication, money will be far from sufficient to provide meaningful reparation. Relatively few Cambodians interviewed about the Khmer Rouge accountability process seek financial remedies. Many more demand the truth about lost relatives and the circumstances of their own suffering.

49. Youk Chhang, Speech for the Truman-Reagan Freedom Award, Washington, DC (Nov. 4, 2000), *available at* <http://web.archive.org/web/20081121044203/http://www.wccpd.org/news/news70.html>.

B. *Truth through Public Education*

A number of scholars and human rights groups have advocated a truth commission in Cambodia.⁵⁰ A body empowered to investigate and remedy past abuses could build upon the limited truth told by the ECCC. Nevertheless, a formal truth commission in Cambodia is quite unlikely. Donors have already begun to waver on the commitment of additional resources to the ECCC, and the government has long been wary of a broad-based TRC process. The ECCC can help through effective outreach, but its account of the past will be focused on the specific charges against the defendants in custody.

In the absence of a broader TRC process, educational initiatives are particularly crucial—as they likely will be in South Korea and other states seeking to implement truth-telling recommendations. Cambodians want to know more about their country's history. The 2010 Berkeley survey found that 67% of Cambodians who lived under the Khmer Rouge and 85% who did not, wanted to know more about the Pol Pot era.⁵¹

In recent years, the Cambodian government has made more extensive progress by partnering with DC-Cam and other civil society groups.⁵² For years, Cambodian textbooks had only a single line devoted to Khmer Rouge history. The Cambodian government generally shied away from grassroots programs that encourage more robust discussion of Khmer Rouge atrocities and contribute to a fuller historical account. This avoidance was in part due to the intense emotional sensitivity of the issues and possibility of social conflict, and in part due to the fear that a full vetting of the truth would expose some unwanted facts about the history of groups or individuals currently in power.

Since 2008, DC-Cam and the Ministry of Education have undertaken a major nationwide project to reform school curricula, added a course at secondary school and university levels on Khmer Rouge history, and trained teachers and lecturers on pedagogy. With authority from the government,

50. See, e.g., Jaya Ramji, *Reclaiming Cambodian History: The Case for a Truth Commission*, 24 FLETCHER F. OF WORLD AFF. 137 (2000).

51. 2011 Berkeley Report, *supra* note 7, at 32.

52. DC-Cam is a non-governmental organization dedicated to promoting memory and justice with respect to Khmer Rouge atrocities. It was established in 1995 as the field office of Yale University's Cambodian Genocide Program. In 1997, DC-Cam became an independent Cambodian NGO with funding from diverse states and international agencies, and it runs projects related to Khmer Rouge history, public education, accountability promotion, community reconciliation, and support for the ECCC. See THE DOCUMENTATION CENTER OF CAMBODIA, www.dccam.org (last visited Apr. 16, 2012).

DC-Cam has also established an extensive archive of documents on Khmer Rouge history available to researchers. Any country pursuing the emerging norm of a “right to the truth” should enact a law pertaining to the declassification and disclosure of government records related to human rights abuses.⁵³ This and other measures can assist civil society to play a central role in disseminating truth through public education.

C. *Reconciliation through Community Dialogues*

Though the ECCC has had a mixed record in establishing reconciliation, it has spurred innovative and effective civil society efforts to engage Cambodians at the community level. These structured dialogues have enabled more widespread consumption of the results of the trials as well as conversations about the losses suffered at the hands of the Khmer Rouge. Perhaps most importantly, they create a space for victims and perpetrators to interact, and foster understanding and forgiveness.

DC-Cam has brought more than fifteen thousand representatives of communities throughout Cambodia to learn about the ECCC. At the beginning of these visits, the DC-Cam hosts legal training sessions that explain the Court’s jurisdiction and procedures and describe the biographies of the defendants. After attending hearings at the ECCC, the community representatives return to the DC-Cam for a facilitated discussion of their experience at the Court. They take this experience back to their villages, where they discuss and lead group dialogues about the trials (with the support of DC-Cam staff and other experts). These community forums include Cambodians from neighboring villages that do not have a representative at the trials. The public discussion of suffering under the Khmer Rouge brings the shared experiences of the villagers into the open and begins the process of community-wide healing.

The community dialogues also play an important role for the surviving Khmer Rouge cadres, who continue to be haunted by the fear of revenge.

53. The right to the truth for victims of human rights violations has been recognized by a number of United Nations bodies, as well as by regional human rights courts and numerous national governments through the establishment of specific archives or through general freedom of information laws. *See, e.g.*, *Claude-Reyes et al. v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.T. (ser. C) No. 151* (Sept. 19, 2006); *International Convention for the Protection of All Persons from Enforced Disappearance, G.A. Res. 61/177, U.N. Doc. A/RES/61/177* (2006) (entered into force Dec. 23, 2010); *Right to the Truth, Human Rights Council Res. 9/11, UN Doc. A/HRC/Res/9/11* (2008); *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN Comm. for Human Rights, UN Doc. E/CN.4/2005/102/ADD.1* (Feb. 8, 2005).

Many former lower-level cadre live in perpetual worry that the victims who live in their villages will engage in violent retribution against them. Former Khmer Rouge cadres are grateful for the opportunity that the dialogues provide to foster understanding among community members and opportunities for forgiveness. These community forums also help to dispel any fears or misunderstandings that former cadre may have about the possibility of being prosecuted by the ECCC.

Perhaps most importantly, the community dialogues empower Cambodians themselves to structure a healing process that is most appropriate to address their unique needs. This community input is valuable not only in ensuring the legitimacy of the forum and the engagement of villagers, but also in creating a lasting impact on communities. Officials and civil society leaders seeking to build a reconciliation process should consider how they can ensure that it is not only participant-designed and driven, but also inclusive of all societal groups, including perpetrators. Moreover, even if primary accountability efforts do not meet community needs, the political space they create can be leveraged in the service of processes that are more responsive to local concerns.

D. *Public Memorials and Ceremonies*

Cambodian experience also points to the value of neutral, non-political public memorials and ceremonies, such as a monument to the departed and a national day of remembrance. In Cambodia, ceremonies and memorials have been more conducive to healing when they have focused on sharing communal suffering and honoring loved ones rather than focusing enmity on perpetrators and their kin. They have also been most effective when they have tapped into local cultural and religious norms associated with healing. In Cambodia, that has often meant appealing to Buddhist principles of tolerance and forgiveness, but other faiths have proven equally central to reconciliation efforts elsewhere. A strong role for local community and religious organizations is crucial. Such ceremonies and events must be above the fray of partisan politics if they are to encourage reconciliation rather than sowing renewed divisions. In practice, that means advocates of such initiatives need to exercise considerable discretion and restraint.

IV. CONCLUSION

A few broad lessons emerge from the Cambodian case. We start from the premise that measures in pursuit of truth and reconciliation need to be designed and sequenced in the context of local culture and political condi-

tions to be effective.⁵⁴ The implementation of truth and reconciliation initiatives must be driven by the preferences of those who need to be reconciled. Studies like those undertaken by the UC-Berkeley Human Rights Center deserve replication elsewhere—inviting views of survivors on what would best help them heal.⁵⁵ This is especially true in societies in which political gridlock slows progress at the official level and draws initiatives into partisan debates. However, even where power politics drives institutional sequencing, these politicized processes may help to create political space for bottom-up, grassroots truth and reconciliation efforts.

Civil society groups can and should play a central role in such reconciliation initiatives. Such groups will be best able to build neutral, non-political forums for truth telling involving genuine dialogue between survivors and perpetrators.⁵⁶ Dialogue can humanize complex historical conflicts and enable former adversaries to engage positively with one another. Moreover, in order to create a more comprehensive and accurate historical picture and help answer the question of “why?,” the process needs to allow safe space for both victims and perpetrators to share their experiences. The engagement of civic and religious leaders can help to ensure that these dialogues are tailored to local sensibilities and therefore more effective as reconciliation processes.⁵⁷

54. Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 MICH. J. INT’L L. 1, 3 (2010).

55. *Id.* at 63-66.

56. *Id.* at 61-62.

57. *Id.* at 66.