

# **Transitional Justice and Reconciliation Process in Cambodia: The Perspective of Survivors**

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## **Abstract**

The Khmer Rouge rule (1975 to 79) brought the tragedy of humanity to Cambodia. An estimated 1.7 million people died in the regime's horrible attempt to revolutionize Cambodia as a society without class or ethnic differences. To deal with the past, the Cambodian government has decided recently to bring those responsible for the gross violation of human rights to the Extraordinary Chambers, producing debates among human rights and peace activists. While some believe that the judicial process will deliver justice for the victims, others argue that the process will only be a sham since it is grounded in a corrupt judicial system and the government's weak political will. Furthermore, some peace activists question the impact of the judicial process on the process of reconciliation in Cambodia.

Ideally, Cambodia's transitional justice should have an enormous contribution to the country's process of reconciliation. The processes of transitional justice and reconciliation should account for the survivors' views and perceptions. Both processes are closely related to healing the wounds of the victims or, more precisely, the survivors. Therefore, in both processes, it is important to listen to the survivors' voices. As Lederach (1997) suggests, the processes should give victims/survivors the chance to express their trauma, sadness, and anger about the wounds and injustice they experienced.

This research focuses on exploring the perspective of survivors of the Khmer Rouge regime regarding the recent transitional justice process and the state of reconciliation process in Cambodia. Specifically, the research addresses the following questions: What is the perception of Khmer Rouge survivors on the judicial process held in Cambodia? Do survivors perceive that the transitional justice process implemented through the establishment of the Extraordinary Chambers fulfill the requirements of

reconciliation in Cambodia? From the perspective of survivors, is it the best way to deal with the past and promote reconciliation in Cambodia?

## **1. Introduction**

The Khmer Rouge (KR) rule from 1975 to 1979 had brought a tragedy of humanity in Cambodia. An estimated 1.7 million people died in a horrible attempt by the regime to revolutionize Cambodian society into one without class or ethnic differences. 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 try those most responsible for the gross human rights violation during the KR rule.

The current judicial process aimed at the senior leaders of KR in Cambodia is a part of what social scientists call as ‘transitional justice’. Ideally, the transitional justice process in Cambodia should have an enormous contribution to the process of reconciliation in Cambodia. The KR 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, and amongst the anti-KR in one side and the pro-KR on the other. In order to create sustainable peace, this divided society needs to be reconciled.

This research 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, my research 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 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?

Currently five former KR leaders are being charged, i.e. 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. In the period when this research was undertaken (from 20 December 2008 to 20 September 2009), the trial on Kang Guek Eav alias Duch has been underway. The trial has been commenced since 30 March 2009, and is still on-going at the time when this research was completed (20 September 2009). The trials on the other suspects have not been started yet.

## 2. Conceptual Framework

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”.<sup>1</sup> 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.<sup>2</sup> Meanwhile, restorative justice is based on the philosophy that imbalance of social order created by the criminal acts should be addressed by undertaking comprehensive action on the victims, perpetrators and community.<sup>3</sup>

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. 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”.<sup>4</sup> John Paul Lederach suggests that reconciliation is an effort to reframe the present by providing the space for encountering the acknowledgement of the past and

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<sup>1</sup> Sanam Naraghi Anderlini, Camiller Pampell Conaway, Lisa Kays, “Transitional Justice and Reconciliation”, p. 1. [http://www.huntalternatives.org/download/49\\_transitional\\_justice.pdf](http://www.huntalternatives.org/download/49_transitional_justice.pdf), accessed on 9 January 2008.

<sup>2</sup> “Retributive and Restorative Justice”, <http://www.apsu.edu/oconnort/3300/3300lect03b.htm>, accessed on 28 July 2008.

<sup>3</sup> Sanam, *op.cit*, p.2.

<sup>4</sup> Hizkias Assefa, “The Meaning of Reconciliation”, [http://www.gppac.net/documents/pbp/part1/2\\_reconc.htm](http://www.gppac.net/documents/pbp/part1/2_reconc.htm), accessed on 5 July 2009

envisioning the future. For this to happen, according Lederach, “people must find ways to encounter themselves and their enemies, their hopes and their fears”.<sup>5</sup>

Lederach argues that there are four constitutive elements of reconciliation process, 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.”<sup>6</sup>

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 which happened during the KR era by establishing the tribunal and trying the leaders responsible for the atrocities. The researcher, 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.

### **3. Research Methodology**

To collect data this research used (1) in-depth interview, (2) observation, and (3) literature studies. The informants interviewed in this research are the survivors of KR, which include both victims and perpetrators. Due to geographical constraints<sup>7</sup> and very finite resources, the field research was conducted in Kandal Province, Takeo Province, Kampong Speu Province, that represent the regions where the atrocities

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<sup>5</sup> John Paul Lederach. *Building Peace: Sustainable Reconciliation in Divided Society*, Washington: United States Institute of Peace Press, 1997, p. 27

<sup>6</sup> Lederach, *ibid.*, p. 29.

<sup>7</sup> Cambodia has an area of 181,035 square kilometres (69,898 sq mi). It consists of 23 provinces and 1 municipality.

mostly happened <sup>8</sup>; and Phnom Penh municipality that represents the area where the most radical change took place during the KR period.<sup>9</sup>

In the three provinces, in-depth interview and observation were conducted in sample areas where many victims and perpetrators live together without being reconciled. In Phnom Penh, interviews were conducted with some victims who attended the trial and also with some victims in the area where Cambodia's Cham Muslims in Phnom Penh 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.<sup>10</sup>

The total number of survivors interviewed is 63 people, consisted of 25 females and 38 males. Among them, 47 people can be categorized as victims and 16 people can be categorized as perpetrators. Overall, the ages of the interviewees range from 37 years old to 82 years old.

#### **4. 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)<sup>11</sup> 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. In Taleur village and Sandao village of Tramkak district, the

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<sup>8</sup> All of these provinces used to be a part of KR Southwestern Zone, which was considered by the KR as a model for the revolution. See Meng Try Ea, *The Chain of Terror: The Khmer Rouge South West Zone Security System*, (Phnom Penh: Documentation Cambodia, 2005).

<sup>9</sup> KR forcibly emptied the city by evacuating all of the city dwellers to the villages to perform hard works which most of them previously never performed.

<sup>10</sup> 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).

<sup>11</sup> 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.

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. Similarly, in Chambak Sor village of Thpong district, the victims of KR still recognised the people who made them suffer during the KR and now live in neighboring villages.

Many victims conducted revenge actions on the perpetrators right after the KR collapse in 1979. There are, however, no recent reported clashes or revenge actions between the victims and the perpetrators.<sup>12</sup> 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.<sup>13</sup>

From a superficial observation 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.<sup>14</sup> Almost 72 % wish to see the KR members suffer in some way.<sup>15</sup> 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 victims, unexpectedly coming across perpetrators raises their anger. Informant C, a 72 year-old woman in Chambak Trab, who knows that the people involved in killing her husband are still alive, said, "When I saw them on the road, I

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<sup>12</sup> 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.

<sup>13</sup> Kim Ninh, Roger Henke, *Commune Councils in Cambodia: A National Survey on Their Functions and Performance*, (Phnom Penh: The Asia Foundation and Center for Advanced Studies, May 2005), p. 43.

<sup>14</sup> Phuong Pham, Patrick Vinck, Mychelle Balthazard, Sokhom Hean, Eric Stover, *So we will never forget: A Population-Based Survey on Attitudes About Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia*, (Berkeley: Human Rights Center, University of California Berkeley, 2009), p. 29.

<sup>15</sup> Ibid.

felt like [there is] a big fire on my chest.”<sup>16</sup> Such unexpected meetings with perpetrators remind them about the past and make them sad. Informant D, a 58 year-old woman, former prisoner who also lost his husband in the Sang Prison and currently lives in Prey Tatoich, said, “Seeing him raised my memory about sufferings in the past”. She is very unhappy because those who killed her husband, and also many such perpetrators from the past still live happily now.<sup>17</sup>

Such bad 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 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.”<sup>18</sup>

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 escapes people’s anger. Currently, he is still hated by many people in Chambak Sor and so he has not returned back to his original village.<sup>19</sup>

## **5. The Trial and Reconciliation Process**

### **5.1. The Trial and Justice**

Many victims interviewed said that they felt happy when they heard about the tribunal to put 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. Several surveys which have been conducted in Cambodia have suggested that the majority of Cambodian support the tribunal.<sup>20</sup> The latest survey conducted from 9 September to 1 October 2008 by Human Rights Center of University of California, Berkeley, in

<sup>16</sup> Interview with Informant C in Chambak Trab village, Kandal Steung district, 18 March 2009.

<sup>17</sup> Interview with Informant D in Prey Tatoich village, Kandal Steung district, 19 March 2009.

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

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

<sup>20</sup> See for instance, International Republican Institute, “Survey of Cambodian Public Opinion” <http://www.iri.org/asia/cambodia/2008%20May%2027%20Survey%20of%20Cambodian%20Public%20Opinion,%20January%2027-February%2026,%202008.pdf>, p. 42, 44., accessed on 30 June 2009.

collaboration with Center for Advanced Studies shows that 90.5 percent of the people who lived during KR said that it is important to hold accountable those responsible for what happened during the KR regime.<sup>21</sup>

However, many victims think that although the trial can make them feel happy, the trial will bring only partial justice for them. Informant G in Chambak Trab, a 58 year-old woman ex-prisoner in Kuk Sang, who also lost her husband and daughter during the KR, for example, 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 Sang Prison] have to be put on trial because they killed people directly”<sup>22</sup>.

Some victims also want the government to give them individual reparation that will enable them to make their lives 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.<sup>23</sup> For informant G, any gift from the government can represent symbolic compensation for her sufferings. She said, “Any kind of gift from the government I will accept it”<sup>24</sup> 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 in Taleur village, a 45 year-old man who was forced to work hard in a child unit during KR, said, “If the tribunal can get money from the leaders on trial, it should be used to build Stupa<sup>25</sup> for the victim and (the government should) announced that the Stupa is built by taking money from the KR leaders.”<sup>26</sup>

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.<sup>27</sup> However, it appears that it is almost impossible for the victims to

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<sup>21</sup> Pham, *op.cit.*, p. 31

<sup>22</sup> Interview with Informant G in Chambak Trab village, Kandal Steung district, 18 March 2009.

<sup>23</sup> Interview with Informant F in Boeung Khaek village, Kandal Steung district, 18 March 2009.

<sup>24</sup> Interview with Informant G in Chambak Trab village, Kandal Steung district, 18 March 2009.

<sup>25</sup> 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.

<sup>26</sup> Interview with Informant J in Taleur village, Tramkak District, 27 April 2009.

<sup>27</sup> Rule 23, par. 11, Extraordinary Chambers in the Courts of Cambodia: Internal Rules.



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.<sup>28</sup>

Besides victims who want low level perpetrators to be tried or who wants reparations or compensation, there are some other who think that the trial will not bring enough justice for them due to the faulty process of the trial itself. 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<sup>29</sup> he is worried that the leaders will die before the trial comes to them.<sup>30</sup> 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 find justice for him.<sup>31</sup> 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 trial<sup>32</sup> and that someday there will be a shortage of money that forces the tribunal to be shut down.<sup>33</sup>

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 find justice for the victims.<sup>34</sup> 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.”<sup>35</sup>

## 5.2. The Trial and the Truth

<sup>28</sup> “Lawyers Renew Call for KR Victim Trust Fund”, *Cambodia Daily*, 4 June 2009.

<sup>29</sup> 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.

<sup>30</sup> Interview with Informant M in Trappeang Kak village, Kandal Steung district, 5 March 2009.

<sup>31</sup> Interview with informant N in Boeung Khaek village, Kandal Steung district, 23 March 2009.

<sup>32</sup> 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 Chamber in the Courts of Cambodia, *An Introduction to the Khmer Rouge Trials*, 3<sup>rd</sup> edition, (Phnom Penh: Extraordinary Chamber in the Courts of Cambodia, 2008) p. 19

<sup>33</sup> 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.

<sup>34</sup> For example interview with Informant P, a 67 year-old man, a former group chief in Taleur village, Tramkak district, 28 April 2009.

<sup>35</sup> Interview with Informant Q in Trappeang Sva village, Kandal Steung district, 3 March 2009.

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 think that the trial will help them find the truth on who is 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.<sup>36</sup> 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 by the Cambodian regime against their own people.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup>

<sup>36</sup> Laura McGrew, "Transitional Justice Approaches in Cambodia", *Justice Initiative*, Spring 2006, p. 140.

<sup>37</sup> Wendy Lambourne. "The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?", paper presented at the LSAANZ Conference 2008 'W(h)ither Human Rights', 10-12 December, University of Sydney, p. 7.

<sup>38</sup> *Ibid.*, p. 7.

<sup>39</sup> Interview with Informant R in Chambak Trab village, Kandal Steung district, 23 March 2009.

<sup>40</sup> Interview with Informant C in Chambak Trab village, Kandal Steung district, 18 March 2009.

Even though the trial is being conducted, the lower level perpetrators still find it difficult to acknowledge the past or their role in it. Although many of the victims witnessed and pointed out those who made them suffer, many perpetrators still refuse to admit their roles and mistakes. Informant T, 48 year-old man, another former security guard in Sang Prison denies the claim of the victims or that the thousands of bones found in the prison are the bones of the victims of KR. 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.<sup>41</sup>

### **5.3. The Trial and Forgiveness**

The current trial in Phnom Penh appears not to be able to help many victims forgive the low level perpetrators. Many of the 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 some 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.

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.<sup>42</sup>

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, meaning the lack of victims' understanding on the perpetrators' reason of "following orders" and the lack of perpetrators' understanding on the sufferings felt by the victims. Empathy can be gained with the victims' willingness to listen to the reasons for the actions of those

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<sup>41</sup> Interview with Informant T in Trappeang Sva village, Kandal Steung district, 25 March 2009.

<sup>42</sup> Interview with Informant D in Prey Tatoich village, Kandal Steung district, 19 March 2009.

who caused their pain and with the offenders' understanding of the anger and bitterness of those who suffered.<sup>43</sup>

All of the 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 a few victims believed that the low level received orders from the top. Informant N in Boeung Khaek said, "The uppers only ordered a small thing, but what they (the lowers) did was bigger than the order".<sup>44</sup> 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.<sup>45</sup>

#### **5.4. The Trial and Peace**

The war in Cambodia formally ended when factions in Cambodia agreed to sign Paris Peace accord on 23 October 1991. However the security condition in Cambodia became stable only after the defections of the KR's 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. As explained previously, although there are still problems in the relations between the victims and the perpetrators, they currently live in peaceful condition. The establishment of the tribunal to try the KR leaders is also made possible by the peaceful condition in Cambodia.

The field research reveals 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.<sup>46</sup> The formerly 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 enjoyed the

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<sup>43</sup> David Bloomfield, Teresa Barnes, Luc Huyse (eds.), *Reconciliation after violent conflict: A Handbook*, (Stockholm: International Institute for Democracy and Electoral Assistance, 2003), p. 21.

<sup>44</sup> Interview with Informant N in Boeung Khaek village, Kandal Steung district, 23 March 2009.

<sup>45</sup> For example interview with Informant C, G, H in Chambak Trab village, Kandal Steung District, 18 March 2009,

<sup>46</sup> For example interview with Informant J, 27 April 2009, and interview with Informant V, 28 April 2009, in Taleur village, Tramkak District; interview with Informant A in Sandao village, Tramkak District, 1 May 2005.

amnesty program given by the government. Some of them have even already risen to political positions in the government or parties.<sup>47</sup>

However, at the time when this research was conducted, there was a debate between the co-prosecutors whether or not to try more KR leaders. 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. Beyond this, 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.<sup>48</sup>

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.<sup>49</sup>

## **6. Dealing with the Past and Promoting Reconciliation in Cambodia**

The establishment of the ECCC and the trial on the KR leaders is only one way to address the past and improving the reconciliation process in the transitional period. It is essentially an application of the retributive justice approach which punishes the

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<sup>47</sup> For example, Nhem En, the current deputy governor of Anlong Veng district is a former Khmer Rouge's photographer in S-21 prison.

<sup>48</sup> "Hun Sen Tells French President: 5 KR Prosecutions are Enough", Cambodia Daily, 20 July 2009.

<sup>49</sup> For example, interview with informant V and interview with informant W in Taleur Village, Tramkak District, 28 April 2009.

wrongdoers. 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 persons.<sup>50</sup> There are a lot of low level perpetrators who cannot be tried because of the security condition.

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 by establishing Truth and Reconciliation Commission (TRC) as a complementary of the ECCC. The Truth and Reconciliation Commission can help Cambodians find the whole truth in the following ways. *First*, it can establish a record of the past which is accurate, detailed, impartial and official<sup>51</sup>, 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 find 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 tried and why the process of the trial takes a long time. *Second*, the commissions can complement the prosecution process by gathering, organizing, and preserving evidence that can be used in prosecutions.<sup>52</sup> *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.<sup>53</sup> *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 make creative suggestions regarding symbolic forms of reparation for victims, such as memorials, reburials and

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<sup>50</sup> Bloomfield, Barnes and Huyse (eds.), *op.cit.*, p 105.

<sup>51</sup> Bloomfield, Barnes and Huyse (eds.), *ibid.*, p. 125.

<sup>52</sup> Bloomfield, Barnes, and Huyse (eds.), *ibid.*

<sup>53</sup> Bloomfield, Barnes, and Huyse (eds.), *ibid.*, p. 126

commemorative ceremonies.<sup>54</sup> *Five*, by establishing the trauma healing section inside, the Commission can also help the victims to heal their trauma.

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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> Further, in spite of their limited scope, some NGOs also have held activities similar 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 as ‘Promoting

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<sup>54</sup> Bloomfield, Barnes, and Huyse (eds.), *ibid.*

<sup>55</sup> Bloomfield, Barnes, and Huyse (eds.), *ibid.*

<sup>56</sup> Lambourne, *op.cit.*, p. .9.

<sup>57</sup> Lambourne, *ibid.*

<sup>58</sup> The Deacon's of the Death (2004). A documentary film directed by Jan van den Berg, Sok Chea, and Chan Theory.

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.

## 8. Conclusion

Ideally, the transitional justice process in Cambodia should have an enormous contribution to the process of reconciliation in Cambodia. However, the research conducted from 20 December 2008 to 20 September 2009 in Cambodia has found that 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 findings of the research give weight to the argument that 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, truth and reconciliation commission needs to be established. The TRC will enable the survivors to find sufficient justice and reveal the full account of the truth. The TRC will help promote the process of forgiveness between the victims and the perpetrators. The TRC will finally strengthen the peace in Cambodia.



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