

Transitional Justice in Cambodia: Challenges and Opportunities

Symposium Report
September 9, 2003

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**TRANSITIONAL
JUSTICE**

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The Asia Society, in cooperation with the International Center for Transitional Justice (ICTJ), has undertaken a series of public programs on transitional justice in Asia. Issues of memory, truth, and reconciliation in the transition of a society toward a multi-ethnic, participatory democracy are explored through the examination of six case studies: Afghanistan, Burma, Cambodia, East Timor, Indonesia, and Sri Lanka. The series is structured to produce a critical dialogue about efforts to address past human rights abuses and the lessons that can be learned from these experiences.

On September 9, 2003, the Asia Society hosted a symposium to discuss the challenges to uncovering the truth about atrocities committed under the Khmer Rouge regime and achieving justice for victims. The symposium explored which transitional justice mechanisms are applicable to the Cambodian experience and what opportunities to achieve truth and accountability exist. Experts from Cambodia and the United States discussed the current political context in Cambodia, the details of the highly contentious proposed tribunal, and other options to bring about accountability for crimes committed under the Khmer Rouge. Their short presentations were structured to inform the audience on these topics and stimulate a dialogue with participants on the current opinions, both of Cambodians and the international community, on how to best facilitate truth and justice in Cambodia. After the symposium, briefings were held in Washington, DC and San Francisco to discuss the role of the international community in promoting these aims.

Introduction

From 1975 to 1979, an estimated 1.7 million people died under Khmer Rouge rule. In an attempt to revolutionize Cambodian society into one without class or ethnic differences, the urban population was forced into the rural parts of the country to begin a life of forced labor. Those accused of being anti-Communist or simply not fitting into the new Cambodia were executed. Approximately two-thirds of the deaths during this era are attributed to starvation and disease.

Decades later, those responsible for the vast human rights abuses under the Khmer Rouge have yet to be held accountable. Since March 1999, the United Nations and the Cambodian government have been in on again, off again negotiations to establish a tribunal to try those most responsible for crimes committed under the Khmer Rouge regime. In March of this year, the UN General Assembly passed an agreement for the establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecutions of Crimes Committed during the Period of the Democratic Kampuchea.

This has produced controversy among those involved, from interested governments to the human rights community, over whether or not it will be possible to achieve credible and legitimate justice the way the tribunal is structured. Some argue that because the Extraordinary Chambers will be grounded in a corrupt and inefficient domestic judicial system, which is controlled by a government that has limited political will to address the past, the process will be a sham. Others believe, as one participant noted, that “half a loaf” is better than none at all. With victims still demanding justice and the Khmer Rouge

leaders getting older, the need to establish even a minimal level of justice is crucial and therefore the tribunal should be supported. However, as one participant concluded, as decimated as Cambodia is by its legacy of abuse, a much more holistic approach is necessary to recover and restore society.

Panel I: Political Context for Transitional Justice

The first panel was meant to set the stage for the rest of the symposium by taking a critical look at the background to the establishment of the agreement on the Extraordinary Chambers and the political context within which this and other transitional justice mechanisms might take place. Experts outlined the state of human rights in Cambodia today, focusing on the role of both the government and nongovernmental organizations (NGOs). Discussion in this panel centered largely on the condition of Cambodia's judiciary and the subsequent challenges in seeking to achieve accountability for human rights abuses.

State of Democracy in Cambodia

With the agreement between the United Nations and the government of Cambodia on the establishment of a tribunal to try those most responsible for crimes during the Khmer Rouge regime, one of the most critical issues is the political context in which these trials and other mechanisms to address the past might take place. The success of such efforts is dependent upon the credibility and efficiency of the institutions carrying them out. One of the common themes discussed during this panel was the extent to which democracy in Cambodia is a façade. A participant noted that Cambodia's embrace of "democracy" is to please Western donors. From the outside, Cambodia may seem to have the makings of a democratic nation. Participants noted that the constitution is sound and democratic institutions are allowed to operate. However, in practice Cambodia's democracy is corrupt and easily manipulated.

One of the symptoms of this flawed system is the lack of independence among government institutions. The executive branch of government has considerable control over both the legislative and judicial branches. In addition, one participant commented that members of Cambodia's National Assembly act as if they are not accountable to the people, but to their political party leaders. Within this highly politicized environment, opposition parties face ongoing harassment, often at the hands of the police and armed forces. This setting creates numerous challenges to the legitimacy of any transitional justice initiative in which the government is involved.

State of Legal System in Cambodia

Because the agreement necessitates that the tribunal be rooted in Cambodia's legal system, many of the Symposium participants addressed the capacity of the judiciary. In

addition to having credibility issues, the judicial system is incompetent. A participant noted that the Supreme Council of Magistracy, a constitutional body that can take disciplinary actions against judges and prosecutors, is in dire need of reform. The Khmer Rouge's systematic destruction of Cambodia's professional class had a severe impact on the capacity of the legal system. A participant stated that only ten law students and legal professionals survived their regime. Participants noted that vast corruption and a lack of independent legal professionals hindered the capacity of a tribunal to be conducted in a fair and credible manner.

Participants also discussed the weakness of Cambodian law. The new penal and criminal procedure codes have yet to be adopted, resulting in domestic laws that do not conform to international standards. Participants mentioned that the absence of laws on criminal defense and evidence creates problems for the operation of a tribunal. Despite the ratification of most international human rights treaties, they are not enforced. The government has established human rights commissions; however, like other institutions, they are not independent and have failed to promote or protect human rights standards.

State of Civil Society in Cambodia

While institutions, such as the media and non-governmental organizations (NGOs), are allowed to operate, the government restricts their activities. Participants discussed that the print media is free from government control; however, this outlet does not reach many of the 80% of Cambodians living in the countryside. In addition, many Cambodians are illiterate so they are forced to rely on radio for information. However, most radio stations are state-controlled, and the broadcasts of only a few independent stations reach the countryside.

The government utilized similar tactics to control the influence of NGOs. While a significant number of NGOs are allowed to exist, an increasing number of them are associated with the government. Participants acknowledged that these "government NGOs" have been created to discredit the work of legitimate organizations. The public is not sure which NGOs can be trusted and which are merely appendages of Prime Minister Hun Sen's government. In addition, the government has attempted to influence the work of independent NGOs by introducing draft legislation to regulate their activities.

Culture of Impunity in Cambodia

A consequence of this façade has been a systemic lack of trust among the public in their democratic institutions. Several participants mentioned that impunity is rampant, as crimes such as the expropriation of people's land, torture, and killings frequently go unpunished. One participant argued that the subsequent disrespect for the rule of law has resulted in individuals settling local level disputes through violence. While this distrust is symptomatic of the current state of Cambodia's democracy, participants were clear in connecting it to the culture created under Khmer Rouge rule. During this time, society's

faith in public institutions eroded. Even since the fall of this regime, Cambodians have not seen people held accountable for ordinary crimes, much less for serious violations of human rights. This history of impunity merely reinforces the lack of trust in the government to fulfill its obligations to its citizens.

Continuing State of Transition in Cambodia

One theme mentioned during this panel, and also echoed throughout the symposium, was Cambodia's continuing state of transition. Several participants acknowledged that the decades of political change since the Khmer Rouge era have imprinted a sense of impermanence on Cambodian society. One participant discussed the half dozen political contexts, since the overthrow of the Khmer Rouge, in which efforts to pursue accountability have been placed. During the six months after the regime fell, there was confusion as to whether or not the Khmer Rouge was in exile. Decree Law Number 1 was introduced, laying the basis for a tribunal to try Pol Pot and Ieng Sary for the crime of genocide. The trial took place without them and they were convicted in absentia. While this tribunal had no legal foundation or international support, it was considered important within Cambodia in acknowledging the horrific crimes that had taken place.

From 1979 to 1989, the political context shifted as the UN recognized the Khmer Rouge's participation in Cambodia's coalition government. At this point, both international and domestic political attention shifted away from Cambodia's legacy of abuse. However, individuals and NGOs began to focus on exploring the crimes committed by the Khmer Rouge. Efforts were made to push for accountability before the International Court of Justice, but UN member states were for the most part unresponsive. The participant noted that the 1991 Paris Peace Accords, which officially recognized the Khmer Rouge as part of the government, shut down any formal avenues to pursue transitional justice mechanisms. It was not until the Khmer Rouge withdrew from the 1993 elections that a space opened up to discuss what types of mechanisms might be relevant. The United States Congress passed the 1994 Cambodian Genocide Justice Act, Yale University established its Cambodian Genocide Program, and NGOs began conversing with the United Nations. This attention intensified with the collapse of the Khmer Rouge in 1996, which was prompted by the amnesty given to Ieng Sary. The defection of one leader after another allowed the former Khmer Rouge members to be incorporated into Cambodia's new government and society.

The participant argued that this is the political context in which Cambodia finds itself today. The former leaders are spread throughout Cambodian society, and since most defected, there is a perception that the struggle against the Khmer Rouge is over. Another participant noted that after Prime Ministers Hun Sen and Prince Ranariddh sent their 1997 letter to the UN asking for assistance in holding accountable those responsible for genocide and crimes against humanity during the time of the Khmer Rouge, the government quickly began making excuses as to why an exploration of the past would be harmful to society. These continually changing contexts, influenced by both domestic and international politics, have undermined the faith of Cambodians in efforts to deal with the

country's legacy of abuse. There is little belief in the possibility of sustainable change to a society that has been considered broken for decades.

Panel 2: Details of the Cambodian Extraordinary Chambers

While some of the time during this panel was used to discuss the details of the agreement for the Extraordinary Chambers, most of the discussion focused around various conflicting perspectives on the tribunal's effectiveness and impact. Several of the Symposium participants did briefly outline the long road traveled by the Cambodian government and UN in their efforts to reach an agreement on the Extraordinary Chambers.

Background to the Extraordinary Chambers

In January 2001, after years of negotiations, the Cambodian National Assembly passed the law on the Establishment of the Extrarodinary Chambers in the Courts of Cambodia. The UN abruptly withdrew from the process in February 2002, stating that further negotiations with the Cambodian government were not likely to breach the impasse that had been reached. As a mandate was politically impossible to obtain in the Security Council, the General Assembly took charge of the process and requested discussion be resumed with the Cambodian government. In May 2003, the General Assembly approved an agreement with Cambodia to establish the extraordinary chambers.

A few participants highlighted the key aspects of the agreement. The tribunal is to bring to trial senior leaders of the Democratic of Kampuchea and those persons responsible for most serious crimes during April 17, 1975 to January 6, 1979. Different from the current law that calls for three trial chambers, the agreement outlines only a Court of 1st Instance and Supreme Court. The majority standing of Cambodian judges, which was considered one of the most controversial compromises made by the UN, remains. These judges will be appointed by Cambodia's Supreme Council of Magistracy, which will also appoint the foreign judges from a UN list of nominated candidates. To counter the compromise on the balance of judges, it is still necessary to have a supramajority vote in order to reach a decision. One participant noted that a positive compromise included in this agreement was the decision that the Extraordinary Chambers will decide on the issue of Ieng Sary's pardon.

Cambodian Perspectives on the Extraordinary Chambers

During the symposium, an observation was made by several of the participants regarding the lack of Cambodian voices in the process of setting up the tribunal. The negotiations that took place between the Cambodian government and UN since March 1999 were dominated by the agendas of Cambodian officials and foreigners. Public opinion and the view of Cambodian NGOs did not figure prominently into the debate on how the tribunal

should be structured. Several participants from Cambodia's civil society expressed frustration over their lack of influence during the process. One participant used the example of the UN negotiation team's initial trips to Cambodia to discuss the tribunal. Until civil society requested otherwise, the negotiation team met with the government first and then NGOs. Despite the team spending a large portion of its time with these organizations, activists held the impression that these meetings were simply to inform them of compromises reached with the government, rather than an opportunity to take advantage of civil society's insight into the possible obstacles posed by Cambodia's legal system.

Expectations of the Extraordinary Chambers

The Symposium offered an opportunity to begin rectifying this imbalance of voices heard in the debate surrounding the tribunal. Members of Cambodian civil society put forward a range of objectives they hope the tribunal would achieve.

- Create justice for victims by holding perpetrators accountable
- Provide an explanation as to why the Khmer Rouge leaders killed their own people
- Function as a deterrent for future leaders throughout the world
- Catalyze the healing of Cambodian society from the psychological trauma inflicted during the Khmer Rouge era
- Serve as a model in reforming Cambodia's legal system

Members of civil society also explained requirements the tribunal must fulfill in order to be effective. Cambodians must see the tribunal as being independent and powerful. Without garnering the respect of the public and other institutions, its operations will be crippled. One participant used the example of court orders to be carried out by a police force already rampant with corruption. If the authority of the tribunal is not respected, it is unlikely that the police will carry out tribunal orders to seize documents or arrest suspects.

Proposed Changes to the Extraordinary Chambers

Cambodian participants mentioned several changes to the Memorandum of Understanding (MOU) that are necessary for the tribunal to be legitimate. Securing competent prosecutors and judges is vital to the tribunal's effectiveness, but so is its investigative capacity. A participant argued that the tribunal must not depend upon the police for investigations. The MOU needs to address the inadequacies of the Cambodian system by ensuring that the tribunal be equipped with a credible investigative capacity. The protection of witnesses and suspects also needs to be made explicit in the MOU. Another concern of the participants was the rights of the accused. In Cambodian law, within which the extraordinary chambers are to operate, foreign lawyers are not allowed

to represent suspects. The participant argued that the MOU allows for foreign defense counsel and that this discrepancy needs to be resolved.

Civil society members also outlined their recommendations for the court proceeding. After all judges are appointed, a special court procedure should be created for the tribunal. An evidence code must be drafted and all provisions must meet international standards. In addition, a participant suggested that the tribunal's rules and regulations be open to public opinion.

Possible Impact of the Tribunal

Much of the time during this panel was used to discuss the impact of the tribunal on Cambodians. Participants offered differing opinions on the importance of historical memory in Cambodia. One participant argued that unlike the experience of other countries, Cambodia's legacy of abuse lacks immediacy. Due to the decades that have passed since the Khmer Rouge regime, many Cambodians have moved on. The participant argued that ordinary Cambodians are more concerned with the impunity they face daily, than with the lack of accountability for crimes suffered decades ago. The struggle to survive poverty and constant political intimidation has left Cambodians indifferent to political developments. While other participants acknowledged this situation, they argued that historical memory is important to Cambodian society. While the tribunal may not directly address these immediate needs, the justice it could bring is important to the healing process and to efforts to begin addressing the current culture of impunity.

Effectiveness of a Mixed Tribunal

Another issue of debate was the effectiveness of a mixed tribunal in the Cambodian context. While this issue has dominated the international discussions on the Extraordinary Chambers, Cambodian participants largely raised this issue. One participant argued that the government's primary objective was to avoid establishing a tribunal. The government's second option was to push for a mixed tribunal, because it could be manipulated. A participant mentioned a 1999 study done by Cambodian civil society in which approximately 84,000 Cambodians voiced their preference for an international tribunal. While many of these individuals did not fully understand what an international tribunal was, they were certain that they did not trust their own judicial system to hold fair and effective trials. Participants noted that an international tribunal would ensure adherence to international law and would also avoid certain logistical concerns, such as witness safety. However, despite their objections to a mixed tribunal and belief that the current structure of the Extraordinary Chambers could not achieve justice, participants emphasized that effort should be made to bolster its capacity.

One participant agreed that the current structure of the tribunal is deeply flawed, but argued that a purely international tribunal would have had little impact on Cambodian

society. The physical distance created by holding trials outside of Cambodia would obstruct the dispensed justice from registering on the psyche of Cambodians. With the tribunal occurring elsewhere, local perspective on the issues being addressed would be lost, as the trials would be framed through an international point of view. However, while Cambodian involvement is necessary to impact society, the current structure allows for too much government control. While the participant argued the appropriateness of a mixed tribunal, he asserted that the Extraordinary Chambers would still not make a difference.

“Imperfect Justice” vs. Tainted Justice

The varying opinions within the human rights community over how to respond to the flawed structure of the tribunal were discussed during this panel. Some participants argued that imperfect justice is better than no justice at all. The Khmer Rouge leaders are getting older and any further delay in establishing a tribunal may result in the chief perpetrators not living long enough to be held legally responsible. Since the victims of this regime are still demanding justice and the Cambodian government has agreed upon the tribunal, participants argued that the Extraordinary Chambers should be supported to maximize their potential at distributing justice. These individuals contend that even imperfect justice will help heal Cambodian society. Other participants argued that the compromises made by the UN have resulted in a tribunal that will be a sham no matter what assistance is given; and therefore, human rights organizations should not risk their credibility or resources on the process.

The difference between these two camps seems to stem from a disagreement over where one draws the line of what is acceptable justice. For some, the whole process is beyond repair because it is rooted in the Cambodian judicial system. In the minds of some participants, the corruption of this system and the government’s historical lack of political will to prosecute former Khmer Rouge leaders taints the trials before they have begun. However, one participant countered that the lack of willingness on the part of international actors to engage with the tribunal is entrenched in views of how the tribunal should have been set up, rather than its current structure. In this argument, there is a line that can be crossed to make the process too corrupt, but that has yet to have happened.

Engaging with the Tribunal

Those participants supporting the tribunal argued that the international community must constructively engage with the tribunal to try and achieve the best possible scenario. One participant noted that negotiations for the tribunal were driven by the desire to achieve justice with the knowledge that the Cambodian legal system was inefficient. The goal of creating a means by which the Khmer Rouge leaders could be tried was achieved, but it required accepting a “lesser justice”. The participant argued that the tribunal should not be dismissed based upon assumptions, such as the belief that credible Cambodian judges

will not be found. The best way to proceed is for continual pressure to be applied on the Cambodian government to hold up their end of the agreement.

International Pressure

It was argued that the onus for this task falls on the international community. The law allows international players to guide the process to an extraordinary degree. An investigation can only be shut down by a supramajority vote, limiting the power of Cambodian judges and prosecutors to manipulate the court. However, this requires the astute participation of the international judges and prosecutors. Participants discussed that the selection of jurists was a critical variable in the tribunal's success. The Secretary-General must nominate credible international candidates who are willing to be the voice of dissent. To ensure quality Cambodian candidates, international pressure must be placed on the Cambodians to select individuals whose integrity is sound.

The discussion stressed that pressure must be used constructively and not simply delay the process. With this in mind, a participant stressed that international players must impress upon the Cambodian government that the Secretary-General's list of judges is not open for discussion. Likewise, it must be made clear that the list put forth by the Cambodian government will be heavily scrutinized and that financial support will be used to influence the list of the tribunal's personnel. A participant argued that this type of engagement requires a "daily doggedness" on the part of the UN and key governments. A key to exerting influence over the Cambodian government is the UN's willingness to use the withdrawal clause included in the agreement. Participants argued that the UN must be prepared to walk away from its involvement in the Extraordinary Chambers should the process become tainted.

Some of the Cambodian participants echoed calls for the UN to apply pressure on the Cambodian government. It was discussed that certain provisions need to be added to the MOU to ensure adequate investigative capacity and the rights of the accused. Participants argued that if the existing law goes unchanged, it is likely that the UN will eventually be forced to withdraw from the process. Without international pressure, the government would continue to ignore civil society's concerns about the tribunal meeting international fair trial standards. Participants agreed that they would apply pressure on the government to modify the MOU and lobby the international community to do the same.

Role of Member States and Donors

A few participants asserted that the UN did not have as much power to influence the proceedings as others assumed. The political will of the UN to be a strict taskmaster with the Cambodian government is only as strong as that of its members. A participant argued that the UN has no leverage with the Cambodian government now that the negotiations are done and the agreement finalized. Because funding for the tribunal is based on voluntary contributions, the Secretariat has little power to exert financial pressure. If

interested states want to proceed with the tribunal and are willing to fund it, the UN's involvement will continue. One participant countered that countries that have played a role in the negotiations will not continue to engage with the process if the Cambodian government does not act in good faith. In particular, the U.S. Congress will pressure the Administration to ensure that financial support is not being provided to a publicly endorsed process that is corrupt.

Several participants did stress the importance of international donor pressure. They argued that the Cambodian government is very sensitive to how they are perceived in the international arena and depend heavily on foreign aid. Participants asserted that these donor countries should use this dependence to exert influence over the government's participation over the tribunal.

Why Not to Engage with the Tribunal

In contrast to these arguments, some of the participants felt that resources should not be wasted on assisting the Extraordinary Chambers to achieve imperfect justice. The tribunal's foundation in a domestic judicial system that lacks capacity, both in terms of resources and laws, makes many participants skeptical about its chances to deliver credible justice. In addition to these technical concerns, there is little political will on the part of the government to try former members of the Khmer Rouge. Many of these cadres hold positions in government and still wield a great deal of power. The majority status of the Cambodian judges and significant powers invested in the Cambodian prosecutor increase the influence the government will be able to exert over the Extraordinary Chambers. Participants argued that it is pointless to constructively engage in a process that will undoubtedly reach outcomes based not on laws and evidence, but on a "politically pre-arranged script".

Since it is envisioned that the government will continue to try and manipulate this process, the chances for success are marginal. Some participants argued that if the trials are perceived as being influenced by the government, their impact will do more harm than good. Cambodians will continue to lose faith in official efforts to end impunity. One participant noted that the crimes of the Khmer Rouge are so horrific that the international community should have adhered to higher standards and not compromised in order to achieve a small amount of justice. The message sent to Cambodians and the rest of the world is that the government has the ability to bend the international community to its will. As the government has used its democratic image to procure aid, so will it use the façade of its pursuit of justice.

Panel 3: Other Transitional Justice Options for Cambodia

Among those who disagreed over whether or not to engage with the tribunal process, there was a consensus that the Extraordinary Chambers were only one aspect in the quest for justice in Cambodia. This panel focused on other efforts to bring about truth and

accountability in a country decimated by the Khmer Rouge rule and continuous political transitions. Symposium participants agreed that a holistic approach was needed to restore Cambodian society and bring about a fuller measure of justice.

Participants discussed that even if the tribunal is successful, there will still be dissatisfaction within society. Because of its temporal and personal jurisdictions, the Extraordinary Chambers are meant to try only a handful of perpetrators, leaving a larger category of Khmer Rouge suspects untouched. One participant noted that victims still live among former Khmer Rouge, many of who hold positions of power at the village level, and that these cleavages must be addressed. For this participant, the issue is not only about justice, but also about promoting healing among the numerous divisions in Cambodian society. Therefore, a more complex formula of measures is necessary to address Cambodia's legacy of abuse.

One participant listed the factors that have made other societies conducive to dealing with their past in a robust way:

- Political will to honestly confront a country's legacy of abuse;
- A strong legal system;
- Technical skill and experience in dealing with large scale human rights abuses; and
- A strong civil society.

Unfortunately, Cambodia seems to be lacking of all these. Compared with Argentina and Chile, where there is a resurgence to deal with the past, the Cambodian government has proven to lack political will in confronting past human rights abuses. Because of the vast destruction caused by the Khmer Rouge, the technical ability of Cambodians is limited. And unlike Peru, in which the establishment of a truth commission was driven by local NGOs, government repression has kept civil society weak.

Symposium participants focused on how to create sustainable initiatives aimed at achieving civil society's checklist of objectives – truth, justice, deterrence, reform, and healing – in such an inhospitable environment. Several key ideas were debated during this panel.

- ***Strengthening Civil Society: Building Networks & Increasing Capacity***

One participant noted that the international community has sent too many mixed signals over the years about its commitment to justice in Cambodia and, therefore, cannot be relied on to provide financial and political capital for initiatives. In order for efforts to be successful, they must be driven by Cambodian civil society. Therefore, an emphasis needs to be placed on building networks in civil society and increasing its capacity.

- ***Engaging Ordinary Cambodians: A National Consultation Process***

Symposium participants agreed that the public must be involved in the process to address the country's past. One participant suggested a national consultation process to elicit the opinions of Cambodians on truth and justice and to identify their priorities for which measures they would like to see implemented. By having initiatives driven by civil society and the public, participants hoped that the politicization that has caused past efforts to fail could be avoided.

- ***Mobilizing Cambodian Society: Keeping the Public Informed & Using Media***

In addition, participants agreed that a vital aspect of a transitional justice strategy is the mobilization of society around these issues that goes beyond consultation. One participant emphasized the need for Cambodians to be kept abreast of the tribunal's progress and informed about civil society initiatives. Another mentioned the successful use of the media in other countries, such as Peru and Serbia, to educate and organize the public. It was noted that Cambodian NGOs did broadcast a roundtable discussion about the tribunal in hopes of stimulating discussion among the wider public. Another participant remarked that it was hard to imagine grassroots movements capturing people from the villages without the use of media. As part of a larger education and mobilization strategy, ordinary Cambodians need to be given a space where they can express their opinions and share their experiences.

- ***Role of International NGOs: Providing Technical Assistance & Sharing Comparative Experiences***

A participant called for the international community to critically engage with Cambodian civil society on a transitional justice strategy. It was discussed that the role of the international community should be to help build civil society's capacity. A participant suggested that organizations with experience in analyzing flawed justice systems and confronting a government's unwillingness to produce sustainable change should provide advice to local NGOs. In addition, information on the transitional justice measures employed by other countries should be shared widely with Cambodian civil society, so that they might draw on the lessons learned from these experiences.

- ***Collaborating on Advocacy Efforts***

Several participants emphasized the need for better collaboration between domestic and international efforts. In addition to organizing internally, Cambodian civil society needs to work in partnership with international NGOs. Participants acknowledged that transitional justice efforts would be more effective if advocacy strategies were coordinated and information was quickly disseminated among the international and domestic human rights communities.

- ***Overcoming Challenges to Achieving Accountability: Investigating and Documenting Past Human Rights Abuses***

Given the limitations on accountability created by the current political environment, the panel discussion focused on other efforts that may help overcome these challenges. It was suggested that international and domestic human rights groups work together to investigate and build cases against the Khmer Rouge leaders who are not targeted for prosecution by the Extraordinary Chambers. This will allow the focus to be placed on those who are most responsible for serious violations at all levels of the Khmer Rouge hierarchy, rather than just the upper level officials who have captured domestic and international attention. It was suggested that these investigations could possibly be published as studies. This documentation could also prepare the way for future prosecutions, should the political climate change. This investigative effort is also beneficial in that it communicates to victims that some action is being taken to address the past.

- ***Monitoring the Extraordinary Chambers***

A participant suggested that Cambodian NGOs monitor the proceedings of the Extraordinary Chambers. Analysis could be done on the adherence of the trials to international standards and the procedures of other hybrid and international courts. The idea of linking this monitoring to judicial reform was also raised.

- ***Establishing a Truth Commission***

Finally, several participants mentioned the idea of a truth commission. Members of civil society expressed that they envisioned such an institution dealing with lower level Khmer Rouge. NGOs had been contemplating the idea of a truth commission for a while, but felt it was best to propose it after the Extraordinary Chambers had been established. A participant cautioned that current political dynamics should be taken into account before establishing a truth-telling body. It is difficult to imagine victims or perpetrators wanting to testify publicly while former Khmer Rouge hold positions of power throughout the government. Another participant warned that a truth commission should not be seen as a “catch all” in dealing with the vast number of perpetrators not covered under the tribunal’s mandate. It should not be assumed that a truth commission is an appropriate response to a country’s legacy of abuse. If one emerged, it would have to be premised on a national consultation process with Cambodians and not pursued simply to please external actors.

- *Engaging in Reconciliation Efforts*

Another option discussed was that of reconciliation. Several participants commented on how the term has been manipulated by those in power, and subsequently, has negative connotations for many Cambodians. It has often been under the guise of “reconciliation” that former low- and middle-ranking Khmer Rouge leaders have been re-integrated into positions of power. In other cases, one participant observed, victims of current violations are intimidated into “reconciling” with their abuser by unlawfully trading away their rights to prosecution in exchange for a promise to not be victimized again. A participant shared that in East Timor reconciliation efforts have been successful in blending dispute resolution and accountability at the local level. This community process requires a perpetrator to confess his or her actions to the victim and engage in community service. It was expressed that perhaps “reconciliation” can be reclaimed to help heal the divisions within Cambodian society.



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OPEN SOCIETY INSTITUTE

Transitional Justice in Cambodia: Challenges and Opportunities

Tuesday, September 9, 2003

New York

Co-sponsors: International Center for Transitional Justice and Human Rights Watch

The format of this symposium will be a series of moderated discussions that will include all of the symposium's participants, with initial remarks by a select set of experts to help generate discussion.

8:30 am **Breakfast**

9:00 am **Welcome and Introductory Remarks**

Robert W. Radtke, Asia Society

Alex Boraine, International Center for Transitional Justice

Brad Adams, Human Rights Watch

Presiding: Shyama Venkateswar, Asia Society

9:15 am **Panel 1: The Political Context for Transitional Justice**

This first session will set the stage for the rest of the symposium by looking at the political context in which Cambodia's tribunal – the Extraordinary Chambers – has come to be and will take place. This session will primarily focus on the following issues:

- 1) What were the earlier attempts to convene international tribunals and why did they fail?
- 2) What is the depth and nature of democracy in Cambodia today? How responsive is it to public opinion?
- 3) What is the state of human rights in Cambodia today?
- 4) What are the major challenges in seeking to achieve accountability for human rights abuse in Cambodia?
- 5) What is the nature of the Cambodian judicial system?
- 6) What are the strengths and weaknesses of civil society in Cambodia?

Discussants will open with brief remarks to be followed by a moderated discussion.

Discussants:

1. Kek Galabru, Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
2. David Elder, American Friends Service Committee
3. Balakrishnan Rajagopal, MIT

Moderator: Barbara Crossette, Columnist, National Journal
UN Wire

10:15 am **Coffee Break**

10:30 am **Panel 2: Details of the Cambodian Extraordinary Chambers**

The second panel will look more closely at the details of the newly established process and attempt to identify its strengths and weaknesses, ways for domestic and international actors to engage with the court and explore some ideal outcomes of the court and how to achieve them. In this session, the following issues will be addressed:

- 1) What are the basic details about the Cambodian tribunal's organization, process and strategies?
- 2) What are the challenges and limitations of the Cambodian tribunal model?
- 3) Is evidence of the Khmer Rouge's long legacy of grave human rights violations available and can it be gathered?
- 4) What roles do NGOs, the human rights community and the international community play in the process? What is the nature of their engagement?
- 5) What is the range of possible outcomes of the tribunal's work?

Discussants will open with brief remarks to be followed by a moderated discussion.

Discussants:

1. Sok Sam Oeun, Cambodian Defenders Project
2. David Scheffer, Georgetown University Law Center
3. Steve Heder, School of Oriental and African Studies

Moderator: Brad Adams, Human Rights Watch

12:30 pm **Lunch**

1:00 pm **Panel 3: Other Transitional Justice Options for Cambodia**

Given the current Tribunal's limited scope (1975-1979), what are some additional opportunities available to the Cambodian people to address the many human rights abuses committed in Cambodia during the past thirty years? In this session, the following issues will be addressed:

- 1) What other options are available to address human rights abuses?
- 2) What are the possibilities that a system of reparations (monetary or otherwise) could be devised for families of Khmer Rouge victims?
- 3) Would a truth commission or some other truth recovery process be effective or desirable in Cambodia?
- 4) What are some additional international models that might work well in the Cambodian context?

Discussants will open with brief remarks to be followed by a moderated discussion.

Discussants:

1. Paul van Zyl, International Center for Transitional Justice
2. Craig Etcheson, Advisor to the Documentation Center of Cambodia
3. Thun Saray, Cambodian Human Rights and Development Association (ADHOC)
4. Daphna Shraga, United Nations Office of Legal Affairs

Moderator:

Brad Adams, Human Rights Watch

2:30 pm

Concluding remarks

3:00 p.m.

Adjourn