



On the Record: Civil Society and the Tribunal in Cambodia

Issue 9: August 10, 2000

The Survey: Results and Recommendations

Issue 9 draws some conclusions about the material and summarizes Laura's research findings. The vast majority of Cambodians who participated felt that justice was crucial. Most said they wanted a fair and credible trial of the former Khmer Rouge leaders with at least some international participation, while some wanted total UN control over an international tribunal outside the country. Participants also wanted to know the truth about what had happened under the Khmer Rouge and why the suffering and deaths had been necessary.

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From the AP Editorial Desk

Laura McGrew undertook her research in Cambodia between December 1999 and February 2000, with partial support from the Canadian Embassy in Phnom Penh. Her research comprised three different elements, which were undertaken concurrently.

One element involved soliciting articles from leaders of civil society. These form the basis for the previous six issues of this series.

A second element of the research involved holding focus group discussions and interviews with leaders of civil society and expatriates with long experience in Cambodia (several of whom spoke Cambodian). Over 180 Cambodians participated. The majority worked with nongovernmental organizations (NGOs) and international organizations.

At the same time, she held discussions with small groups that were chosen to be representative of the general population including: monks, taxi drivers, widows, persons with disabilities, and farmers. Due to the extremely sensitive nature of the topic, no participants were required to give their names.

The focus group discussions were organized with assistance from NGOs and international organizations working in human rights and development. (The organizations are identified, together with contact information, in the next issue.)

In some of these discussions, Laura used two US-made documentaries to stimulate debate about accountability and provide some background for participants. One was about the South African Truth and Reconciliation Commission ('Facing the Truth'). The second looked at the Nazi holocaust ('The Trial of Adolf Eichmann'). These documentaries are available on the PBS website.

In the third element of her research, Laura prepared a questionnaire that was offered to study participants in all groups, except to former Khmer Rouge. Forty-eight Cambodians filled out the English version. The results of the questionnaire and discussion groups, including recommendations, are summarized in this issue.

In Laura's view, the most important findings to come out of this research were as follows. First, the vast majority of Cambodians who participated felt that justice was crucial. Most said they wanted a fair and credible trial of the former Khmer Rouge leaders with at least some international participation, while some wanted total U.N. control over an international tribunal outside the country. (Only about 10 people out of the 180 stated they didn't think there should be a trial at all, and eight of those were former Khmer Rouge.)

Second, participants wanted to know the truth about what had happened under the Khmer Rouge and why the suffering and deaths had been necessary. In many respects, their demands -- wanting the whole truth, the historical background, to know what countries were involved, to know why the Khmer Rouge did what they did -- was more applicable to a truth commission than a trial. Yet few knew about truth commissions. Many groups and individuals requested more information about truth commissions as well as the negotiations surrounding the tribunal. Most felt the full truth about the Khmer Rouge regime would be obtained in a trial.

There was wide agreement that a well-conducted tribunal should, and would, reduce impunity and make the government more accountable. Participants also felt that a tribunal could prevent such a tragedy from reoccurring and ensure an accurate historical record; bring justice for the victims who died and those who are still living. A few felt that these would constitute the first steps toward healing Cambodian society. All of this was brought up again and again, in discussions, statements, and questionnaires.

In this issue, Laura McGrew summarizes the results of her research and her recommendations. Laura has written a comprehensive report on her research, which is currently being updated. The report will also be available at website of The Advocacy Project, which is currently being reorganized and redesigned.

A discussion group is being developed to assist Cambodians to learn more about experiences in other countries. To subscribe, send your email address to: lamcgrew@igc.org.

The Questionnaire

The questionnaire was offered both in English and Khmer, but the Khmer-language questionnaires have not been analyzed yet and are not included in these results. The questionnaire ran to six pages and comprised 59 different questions. Its purpose was to delve deeply into a select group of Cambodian's (well-educated, English-speaking) viewpoints, so as to better understand how the transitional justice process could best serve society's needs.

Of the participants, 43 were Buddhist, two were Christians, one was Muslim Cham, one was Buddhist/Christian, and one was undecided; 36 were men, 12 women. The group included 29 employees of NGOs or international organizations, one factory worker, one farmer, four government officials, six students, two teachers, and three unknown/other. Ten participants are living in Phnom Penh, six in Kampot, and 32 in Battambang.

The majority was educated (18 university, 18 upper secondary school, and 11 lower secondary school). Their ages ranged from 16 to 61 years. Of the 43 participants over the age of 21, all but one lived in Cambodia during the Khmer Rouge regime.

Following are the results of the questionnaire. Note that multiple answers were allowed in many questions so the numbers don't always add up. Due to the small number of participants who were not randomly selected, and the non-scientific nature of the questionnaire, the results are not representative of the general population. However, it is interesting to note that the results from two informal surveys on these topics (one in 1997 by the Cambodian Genocide Program, and one just prior to this survey conducted by the newspaper *The Cambodia Daily*) were remarkably similar.

What Cambodians Want from a Process

Cambodians who filled in the questionnaire want:

- A tribunal that is internationally controlled, or at least internationally sanctioned [45 out of the 48 questioned]. Many said that without international participation, a trial would be worthless. They did not trust the Cambodian government to prosecute the former Khmer Rouge leaders.
- A trial should be public and broadcast widely [48/48].
- 20/48 wanted only the top Khmer Rouge political and military leaders to be prosecuted. Another 20/48 wanted at least the senior leaders down to the regional level to be prosecuted.
- A trial should happen immediately [11/48]; as soon as possible [27/48]; when the evidence is sufficient [2/48]; should be delayed until the right format could be found, even if this took years [5/48].
- 39/48 wanted to know the truth about what the Khmer Rouge did and especially, 'why' they did it [42/48]. Although few knew what a truth commission was, 28/48 wanted one.
- 30/48 thought 'others' were also responsible for the Khmer Rouge regime (In this, they included China, Vietnam, King Sihanouk, and some members of the current government.)
- The courts are not fair [41/48].
- The police are not fair [38/48].

- Security in Cambodia. [23/48] feel safe at home and at work, while only [6/48] feel safe when traveling in the provinces or home areas at night.
- Testimony. Half would testify at a trial of the Khmer Rouge [24/48].
- Protection will be needed for witnesses for the defense and prosecution, and for court staff [42/48].

What Cambodians Think About Justice for the Khmer Rouge

- 31/48 thought that the Khmer Rouge could not become a fighting force again, although this would depend on the political will of the government and neighboring countries.
- Cambodians have suffered greatly under the Khmer Rouge, including many Khmer Rouge themselves -- 30/48 have nightmares or dreams.
- 37/48 know many people who are still suffering severely (mentally or physically) or have many bad memories from their experiences under the Khmer Rouge.
- They feel worse when they think [33/43] or talk [31/43] about their times under the Khmer Rouge. (But participants were eager to participate in the study and share their stories -- many said they wanted the world to know what happened to them.)
- On the most appropriate type of punishment they suggested the following possibilities: prison [31/48], house arrest [8/48], reparations [25/48], a ban on joining the government or holding public office [15/48], exile [3/48]. Several wrote on the questionnaire that former Khmer Rouge leaders should not be given titles or allowed to live in fancy houses.
- 39/48 felt it was very important to hear an explanation (confession); 29/48 wanted an apology from those responsible for the Khmer Rouge regime. Fewer, 17/48, felt the Khmer Rouge should ask for forgiveness. Only 10/48 said they wanted vengeance.
- On apologies by the Khmer Rouge. Almost half had heard, or heard about, the apologies made by Khieu Samphan and Nuon Chea early in 1999. Of these, 23 were not convinced the leaders were sincere, 8 were convinced, while 17 had no opinion. Fifteen welcomed the apologies but were unable to forgive; 16 felt angry; 11 unhappy; one had no feeling; and one had felt speechless. Only one person felt glad and was able to forgive them.

General Recommendations

The following recommendations emerged from the entire project:

- Funding. The international community should consider immediate funding of the activities mentioned in these recommendations.
- Coordination. An institution should be identified, and supported, to coordinate efforts at developing justice and reconciliation processes to heal Cambodian society after the Khmer Rouge.
- Public Education. Immediate and widespread education should begin about the upcoming trial process in all areas of the country (especially the former Khmer Rouge areas) and to all levels of society. Such education should include the processes of trials and truth commissions, how to give testimony and submit evidence, etc. Many participants in the study mentioned the need for intensive human rights training (as had been done during the U.N. Transitional Authority in Cambodia, UNTAC) in the former Khmer Rouge areas.
- Transparency. Increased transparency is urgently needed in the government preparations for a tribunal or other justice process for former Khmer Rouge. The great majority of

participants expressed frustration that their views would not be heard. Given this, government officials need to solicit the opinion of Cambodians.

- Other Mechanisms. Alternatives and additions to a trial should be actively considered particularly a truth commission. Any truth commission or other truth-telling process should be consistent with the kind of guidelines suggested by Priscilla Hayner. (See 'International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal, Law and Contemporary Problems,' 1997.) Guidelines include public participation in designing the commission; time and money to allow for preparation; a flexible but strong mandate for investigation; political support; operational independence; appropriate funding and staffing; and involvement of the international community. Most importantly, recommendations of the commission would need to be implemented.
- Education for Leaders of Civil Society. Seminars for leaders of civil society on other efforts to bring truth, justice, reconciliation, and peace to post-conflict societies. Seminars could bring specialists from such countries as South Africa, Guatemala, South Korea, Philippines, and Sri Lanka to share information and stimulate discussion about possible solutions for Cambodia.
- Research into Religion. Seminars on the role of religion in dealing with the Khmer Rouge horror and healing society. It was suggested that discussion is needed on Buddhism before, during, and after the Khmer Rouge regime to increase the nation's understanding of history. Several participants also mentioned involving older people who have a greater understanding of the old system of Buddhism, and Buddhists from neighboring countries such as Thailand and Sri Lanka. Christian and Muslim leaders should also be consulted. A seminar could also study how to prevent religion from being exploited for political purposes.
- Public Opinion Survey. National surveys of opinions on truth, justice, and reconciliation, especially in rural areas. These could be managed by NGOs working at local levels that have prior relationships with villagers. (Several NGOs have expressed interest in such a project.)
- Large Public Meetings. A large public meeting in the Olympic Stadium, with representatives from all levels of society, to allow Cambodians to express their ideas to the government. Several participants mentioned that they would like to hear from their leaders and would like the leaders to hear their views. Participants suggested all levels of society be included: villagers, city dwellers, government officials, ministers, and the King. (Several mentioned this model as occurring during Sihanouk's rule.)
- Continued Public Fora. Regular public fora in all provinces, like the one organized by the Center for Social Development to discuss reconciliation and the Khmer Rouge. Such participation could help to start a dialogue and reduce the sense of frustration felt by so many Cambodians. Special efforts should be made to organize fora in 'newly integrating' areas.
- Witness Statements and Oral Histories. Expand the work of the Cambodian Documentation Center to allow all Cambodians who wish to do so to provide witness statements and oral histories. This process could employ historical photographs to help improve memories and tell stories, as well as stories that recognize 'heroes and heroines,' who acted nobly in extremely difficult circumstances.

- Historical analyses by Cambodians. Several participants felt that although there have been many books written by non-Cambodian academics, more analysis is needed from Cambodians. (The Cambodian Documentation Center has been working on many areas of important research. The publication of the new DC-CAM in February will help to spread knowledge of the Center's work.)
- Mental Health Services. Ensure that counseling and/or mental health services are provided in advance of a trial or other truth-telling process. Funding agencies should begin funding increased mental health services now, in advance of the trauma that will inevitably arise from any justice process in Cambodia. Delegations of Cambodian mental health workers/counselors should visit countries that have established mental health programs, like South Africa, Rwanda, and Bosnia, and experts should be funded to visit Cambodia.
- Art and Culture. Develop art, music, theatre, story-telling, and other mechanisms to explore the justice and reconciliation processes in Cambodian society. Find ways to bring existing art exhibits to a wider audience, to assess the effect of such exhibits, and to explore other ways in which art and culture can help in healing society. Make use of videos in discussing the kind of moral questions that have faced Cambodians. The videos used in this project have made an important impact on Cambodians and foreigners alike. Commercially made movies such as 'Schindler's List' can be helpful.
- Memorialize Victims. Explore ways of memorializing those who died during the Khmer Rouge period. Many current memorials, like Tuol Sleng, consist of piles of skulls and these were described as being culturally inappropriate and not particularly useful. Other types should be considered, obviously with input from the Cambodian people. For example, in Sri Lanka several large statues have been put up in major cities to recognize the 30,000 disappeared people, and small plaques are being mounted in many villages with the names of the disappeared. Trees are being planted near the plaques and people are watering the trees.
- Educate the Younger Generation. Educate youth about the Khmer Rouge regime. Cambodia's youth has no direct memories of the Khmer Rouge regime, and much care needs to be taken in designing curricula on this difficult subject and evaluating how it is taught in schools.

Specific Recommendations Relating to a Tribunal

- Meetings should be held at the international level to start preparing for the entire range of issues reviewed in this study -- transitional justice, long-term reconciliation, mental health, etc.
- Advice should be sought from U.N. personnel who have worked in UNTAC or the two tribunals on the Rwanda and the former Yugoslavia. Their past experience could save much time and money.
- Information dissemination about the tribunal, and its broadcasting to Cambodians should be planned well in advance. Dissemination to overseas Cambodians should also be considered. This should include radio, television, and video productions. Former officials in the UNTAC Information and Education Division services would be particularly well qualified to assist, as would the Cambodians who worked for the Division and have since gained further media experience.

- Planning should begin immediately for the provision of mental health services around the tribunal and the training of specialists. Mental health services are severely lacking in Cambodia, and it will take time to train counselors.
- Translation services also need planning well in advance. There is a serious shortage of high-level legal translators in Cambodia, thus recruitment is necessary from overseas, as well as extensive training for both locally recruited and overseas Cambodians. Care must be taken not to drain important staff from local NGOs and U.N. agencies.
- Organize educational visits by Cambodians and their counterparts, who will be involved in the tribunal (legal experts, politicians, administrators, etc.) to the two criminal tribunals in Arusha and The Hague.
- Ensure that women are involved in all aspects of the tribunal, so as to ensure that it does not suffer from the kind of gender inequity that has plagued and discredited the Cambodian judicial system.

For more details, see the recommendations from the Cambodian Human Rights Task Force, which was referred to in Issue 4 of this series in 'The Legal Experts: Legal Standards and International Principles' by Sok Sam Oeun. Updates on the Task Force recommendations are available by signing up for the NGO Forum news list at: admin@ngo.forum.org.kh.

In the next issue: Civil Society Organizations