

SPOTLIGHT Cambodia



Public Seminar Reflections on the Khmer Rouge Tribunal: Its Past, Present, and Possible Futures

On 13 October 2022, from 8:30am-10:30am (Cambodia Time), the Cambodian Institute for Cooperation and Peace (CICP) organized a public lecture on “Reflections on the Khmer Rouge Tribunal: Its Past, Present, and Possible Futures”. The event was supported by the Asia Pacific Centre for the Responsibility to Protect (APR2P). The dialogue was conducted in a hybrid format. There were 20 active members of Friends to R2P-Cambodia Network joining the dialogue at CICP Office. There were 100 online attendees joining us online via ZOOM from Cambodia and various countries.

The lecture aimed to discuss the paradoxical transitional justice mechanisms, ranging from the international hybrid tribunal in Rwanda to the South African Truth and Reconciliation Commission, contrasting such mechanisms which supposed to give voice to the victims by providing a host of social goods, including not just peace, reconciliation, and justice but also “the truth” to the criticism that transitional justice mechanisms has failed to attain its transformative goals as well as the partial and often political truth they may afford. The lecture also focused on these issues

in relationship to the Khmer Rouge Tribunal, attempting to locate the Khmer Rouge Tribunal as part of a larger process of transitional justice in Cambodia that has a long history that is transitioning into a new phase with a number of possible futures.

Amb. Pou Sothirak began the lecture by welcoming and expressing appreciation to Prof. Alex Hinton, Distinguished Professor of Anthropology, Director of the Center for the Study of Genocide and Human Rights, and UNESCO Chair in Genocide Prevention, Rutgers University and Dr. Noel Morada Director, Regional Diplomacy and Capacity Building, APR2P and all participants joining in-person and online for attending the event. He provided context about what can be expected from the lecture.



One of the most shocking stories of the 20th Century has to be the atrocity committed by the Khmer Rouge regime between April 1975 to January 1979 over the whole of population of Cambodia at that time. The country experienced mass starvation, forced labor, and the killing spree with an estimate of about 1.8 million to 2 million people had died through executions, starvation or disease.

During its reign of terror, the Khmer Rouge cadres were carrying out indiscriminate executions on a massive scale, conducting torture, imprisoning perceived enemies without trials, persecuting religious and ethnic groups, separating families, and operating thousands of agricultural cooperatives with forced labor. As part of their ideological quest to create a utopian state of fully independent and self-sufficient, Khmer Rouge leaders sought to eradicate traditional and foreign cultural influences and return to “Year Zero.”

What entailed during this reign of terror, families were separated, tearing up the traditional way of a peaceful society, purging officials of the ancient regime, eliminating the intellectual and

bourgeois class and ethnic minorities, “re-educating” all Cambodian strata, and crushing domestic political dissent and foreign subversion, especially from Vietnam.

Allegation of crimes committed by the Khmer Rouge regime of Pol Pot finally received the attention of the UN and the Cambodian government, when in August 2001 the late King Father Norodom Sihanouk signed the law on the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) for the persecution of crimes committed during the period of Democratic Kampuchea.

The ECCC, commonly known as the Khmer Rouge Tribunal had surmounted many hurdles such as political constraints, legal and financial shortcomings, and endless other controversy. Finally in 2006, the tribunal which was based on a partnership between the Cambodia government and the UN set out to bring justice to Cambodian victims through accountability by trying senior Khmer Rouge leaders, and helps Cambodian people find the trust, come to terms with what had happened, see that justice is served for so many unaccounted souls, and to move on with their lives for generation to come.

The hybrid trial began its first mandate between 2006-2008 to trial limited senior Khmer Rouge leaders who were most responsible for the crimes the Pol Pot’s regime committed from 17 April 1975 to 6 January 1979. The ECCC is now ending its historical mission when on 22 September, the KR Tribunal rendered the summary of its last substantive judgment in the most complex Case 002/02 against Kheiu Samphan, the former Head of State of Democratic Kampuchea.

The ECCC court has trialed 5 senior Khmer Rouge leaders. They were Kaing Guek Eav alias Duch, former Chairman of Phnom Penh’s Security Prison S-21; Nuon Chea, former Deputy Secretary of the Communist Party of Cambodia; Khieu Samphan, former Head of State of DK; Ieng Sary, former Deputy Prime Minister and Foreign Minister of DK, and Ieng Thirith, former Social Affairs Minister of DK. Only Khieu Samphan is still presently alive.

On 3 February 2012, ECCC sentenced life imprisonment for Duch of crime against humanity. He passed away in 2020. On 16 November 2018, ECCC re-

leased other verdicts to sentence for life imprisonment for Khieu Samphan and Noun Chea of genocide, crime against humanity, grave breaches of the Geneva Conventions of 1949. Noun Chea passed away in 2019. The court tried to complete legal due process for Ieng Sary and his wife Ieng Thirith but with no success due to the accused’s health circumstances. Ieng Sary and Ieng Thirith passed away in 2013 and 2015, respectively.

After more than 16 years, it is important now to reflect upon the legacy of the Khmer Rouge Tribunal. It is fair to say that people from all walks of life have made substantial contributions to the legal proceedings by providing testimony and evidence about the KR atrocities and that the trials helped families of the victims to reconcile their grievances and served as a coping mechanism for the country to heal itself.

The KR tribunal, whose legacy remain vivid as of now, also put in place programs to help victims of the KR regime cope with the pain of the past. Looking down into the future, I hope that some positive roles of this hybrid court in helping bring justice through accountability to the Cambodian victims who lost loved ones and suffered traumas from the Khmer Rouge perpetrators when Democratic Kampuchea ruled Cambodia and what this means for the future efforts to prevent mass atrocities in Cambodia to ever occur again.

There are future works to remain on how to preserve and make use of the comprehensive ECCC’s archives and make them accessible for scholars and researchers to explore a powerful method to deter atrocity crimes by investing in accountability and judicial process and can be used as school program to educate younger generations of Cambodia to have a more holistic understanding of the darkest tragedy of Cambodia.

Amb. Pou then invited Dr. Morada to deliver his introductory remark.



Dr. Noel Morada joined with Amb. Pou in welcoming participants to this lecture. No one is better equipped to talk about the Khmer Rouge Tribunal than Prof. Alex Hinton due to his long time of experience and research on this subject matter. This lecture is part of promoting awareness of R2P and the KR Tribunal, particularly enhancing accountability and justice which are important aspects of R2P.

Cambodia has made a significant progress in promoting R2P. Cambodia is the only country in ASEAN to be party to the International Criminal Court, and appoint a R2P National Focal Point. APR2P’s partnership with CICP on R2P is part in helping further strengthen awareness and capacity to promote R2P not only in Cambodia and also the region.

Prof. Hinton’s talk will unpack the extent of how justice and accountability can be achieved in the case of the KR Tribunal and what we can learn from this process.

Amb. Pou handed the floor to Prof. Alex Hinton to present.



Prof. Alex Hinton thanked to CICP and APR2P for the opportunity to speak on this important topic. Since he is an anthropologist, his lecture will be more about philosophy rather than policy discussion behind the understanding of the KR Tribunal.

Before digging in the legacies of the KR Tribunal, Prof. Hinton introduced participants the concept of transitional justice. Generally, this term means a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotions of possibilities for peace, reconciliation and democracy. Transitional justice is adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly. In others, they may take place over many decades.

In specific term, transitional justice refers to a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war in order to build a more democratic, just or peaceful future.

Vaguely speaking, transitional justice also means how societies respond to legacies of massive and serious human rights violations. Above all, transitional justice is about victims.

Mechanisms, ranging from the international hybrid tribunal in Rwanda to the South African Truth and Reconciliation Commission to the KR Tribunal are all part of ways the international community and countries involved work towards attaining transitional justice.

Prof. Hinton discussed transitional justice in Cambodia. There are about 3 key transitions. First was during the period of People's Republic of Kampuchea that had a focus on political memory. It is understandable as Cambodia at that time just recovered itself from the Khmer Rouge that inflicted to people in Cambodia mass atrocities. The killings were so fresh. Therefore, the authority at that time saw transitional justice in a political memory way. Key initiatives took place such as memorialization such as the establishment of Choeung Ek museum, establishing a tribunal that focused on sentencing KR leaders although in a more political way, Renakse petitions, putting in place Tuol Sleng Museum, having Day of Anger, and having partial Lustration.

The second transition happened during the aftermath of the signing of the Paris Peace Agreements in 1991 and establishment of the United Nations Transitional Authority in Cambodia (UNTAC). With heavy international involvement, the transitional justice saw another moving step towards a focus on human rights and democratization. Significant discussions and efforts were made in institutionalizing and enhancing human rights, rule of law reforms, democratization, peace, civil society and reconciliation in Cambodia. While those works were not entirely successful, this phase was an important step that provide many bases for Cambodia to move ahead relevant matters related to transitional justice on its own such as the KR Tribunal with the support of the international community.

The third transition took place during the process leading to the establishment of the KR Tribunal in 2006. Key initiatives focus on criminal justice and rule of law. During this phase, many significant works were in place such as establishing the KR Tribunal – an international hybrid criminal tribunal, outreach and inreach, NGO transitional justice works, memorialization, education, mainstreaming gender as well as prevention of sexual-based violence (SBV).

Prof. Hinton discussed the possibility of the fourth transition of the Cambodia's transitional justice after the closure of the KR Tribunal. It is still early to see Cambodia's next focus in this stage. Some discussions suggest this phase will be more about archives and legacies of the KR Tribunal.

Thinking of the KR Tribunal's legacies, it is important that one needs to have moral imaginations in order reflect what has been done right and what needs to improve. Looking at the phases that Cambodia has been through in transitional justice, the country has had some successes but also areas that it needs to continue to work on, particularly human rights and rule of law in order to enhance guarantee of non-occurrence of the past mass atrocities. Therefore, consistent discussions in public sphere need to be in place to promote awareness of transitional justice and practical ways to do so.

As Prof. Hinton concluded his talk, the discussion session was open. Key questions from the participants with Prof. Hinton's answers included as follows.

- How to promote reconciliation in Cambodia between the KR perpetrators and their victims?

There is no straightforward way to answer this. A clear definition of reconciliation is needed. Reconciliation means different things for different groups of people as well as during different periods of their lives. Some people reach out to their local leaders to achieve such reconciliation but some resort to Buddhism to make peace with themselves. But the problem in the Cambodia case is that there is a very high expectation of mechanisms such as the KR Tribunal in bringing justice to the victims by making perpetrators at all levels held accountable. This is not possible due to many political and le-

gal reasons. Therefore, one who hopes that the KR Tribunal will lead to reconciliation will find the tribunal's works unsatisfied. But if one is familiar with transitional justice, one tends to have modest expectation on the process of the KR Tribunal because a progress, regardless how big or small, is better than no progress in a post-conflict society. While the KR Tribunal cannot hold the all levels of KR perpetrators accountable, it creates bases that put in place important elements such as human rights and rule of law that help enhance the guarantee of non-occurrence of mass crimes.

- What will the KR scholarship look like in the next 10-15 years?

There are many areas of the KR scholarship that can look into. For example, works by historian David Chandler need to be dived into and analyzed. KR scholars should come up with research questions that are relevant to undercurrent aspects of the KR and the KR Tribunal.

- How important is the collective memory (the building of stupas and collection of remaining victims' bones) in enhancing the transitional justice in Cambodia?

Collective memory is important to shape political memory of circumstances. It is up to Cambodia to decide on this matter.

- Supposed R2P was in place during the Khmer Rouge period (1975-1979), how would the international community respond to the mass atrocities in Cambodia?

It is important to take into account of geopolitical contexts. It should be noted that even with R2P in place, the international community has not been able to address current gross human rights violations in Myanmar and North Korea. Therefore, the international community would not be able to do much back in the 1970s given the geopolitical contexts during the Cold War at that time. But international human rights regimes are more robust today than back in 1970s. In addition, the existence of the social media spread better awareness of human rights violations now, compared to the past 40 years.

After Prof. Hinton's talk, Amb. Pou asked Dr. Noel Morada to say a few words at the closing. Dr. Morada noted that this

talk was an interesting discussion in linking transitional justice and R2P. As the case of the KR Tribunal indicated, transitional justice is not effective if the issues of justice and accountability are not well addressed. As ways forward, next generation Cambodians should invest more in transitional justice to set systems in place of preventions and protections of mass atrocities.

Amb. Pou delivered a closing remark to conclude the event. The key takeaways included:

- This public lecture is an opportunity for deep discussions of path trends, opportunities and challenges in the present time and in the future in the field of transitional justice which has taken place during the 16 years of the Khmer Rouge tribunal. Participants learn from the distinguished speaker that transitional justice has a role to play in moving forward Cambodia in seeking reconciliation and ensuring the non-recurrence of the Khmer Rouge regime.
- Transitional justice can help countries such as Cambodia to cope with its dark history by reinstating the rule of law, seeking accountability and allow society to come to terms with serious and systemic crimes committed during the Khmer Rouge regime by redressing the truth, justice, reparations and guarantees of non-recurrence of the genocidal regime of Pol Pot.
- With the closing down of the KR tribunal, its legacy has helped victims of the KR regime cope with the pain of the past. Looking down into the future, the ECCC hybrid court has helped bringing justice through accountability to the Cambodian victims who lost loved ones and suffered traumas from the Khmer Rouge perpetrators when Democratic Kampuchea ruled Cambodia and what this means for the future efforts to prevent mass atrocities in Cambodia to ever occur again.
- Prof. Alex Hinton discusses the paradoxical transitional justice mechanisms, contrasting the opportunity for such mechanisms to give voice to the victims by providing a host of social goods, including not just peace, reconciliation, and justice but also the truth with the challenge related to the criticism that transitional justice mechanisms has failed to attain its transformative goals as well as the partial and often political truth they may afford.
- Prof. Hinton has explained very well the Khmer Rouge Tribunal's path, present and future as part of a larger process of transitional justice in Cambodia that has a long history transitioning into a new phase with moral imagination to think about the future of transitional justice as a real expectation rather than simply an aspiration.
- In the face of persisting challenges toward transitional justice in such cases of military coup in Myanmar and crisis in Ukraine, stronger efforts are need to enforce transitional justice to cope with violations by state actors, impose more robust international mechanisms to prevent atrocity crimes and repair harms that have been done, and at the same time enforce universal jurisdiction over international crimes such as genocide, crime against humanity, war crime, and ethnic cleansing which can open up new possibilities for accountability through judicial process with international standard.

Amb. Pou expressed his appreciation to APR2P for the support for this lecture. He thanked to Prof. Alex Hinton, Dr. Noel Morada and participants for their valuable contributions in making this lecture productive with many takeaways. He announced the close of this event.



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