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Transitional Justice and Political  
Reconciliation in Cambodia

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## **Abstract**

Transitional justice provides inconclusive accounts of the relationship between its many mechanisms, including trials, truth commissions, amnesty and traditional practices, and reconciliation. If the goal of justice is to bring peace and democracy, then political reconciliation should be the main focus along with the tribunal process. Using Cambodia as a case study, this paper examines the attempt to deal with the country's past atrocities and argues that whether it is in the form of tribunals or compromises, little has been contributing to building political reconciliation among the Cambodian political factions. Guided by Murphy's theoretical framework and the autoethnographic approach, this study reveals that the political identity with which each political group has labeled each other has undermined social and moral conditions, threatening the rule of law, political trust, and relational capabilities that are necessary for peace

and democracy. This paper also uses current surveys of Cambodia's younger generation to reveal the prioritized process along with the tribunal that the Extraordinary Chambers in the Courts of Cambodia is processing.

**Keywords:** Cambodia, Khmer factions, political reconciliation, prioritized policies, transitional justice

## Introduction

The Khmer Rouge (KR) regime has been vanquished for nearly four decades, but its legacy remains contentious in Cambodian politics. Previously, scholars debated about the recognition accorded by the United Nations (UN) to the KR regime, the Paris Peace Agreement where the regime was included among other Khmer factions, and the failure of United Nations Transitional Authority in Cambodia (UNTAC) to disarm the KR, allowing it to further disrupt Cambodian politics (see for example in Lizée, 1997; Peang-Meth, 1997; Roberts, 2001). Recent discussion is focused on the challenges of the KR Tribunal known as the Extraordinary Chambers in the Courts of Cambodia (ECCC). While some see the important role of the ECCC in bringing peace, strengthening the rule of law, and reconciling the nation, others question the necessity of the tribunal. From the beginning, the ECCC has been seen as a failure for the victims as it lacks the willingness to uphold justice due to the compromised agreement that allows Hun Sen's Cambodian People's Party (CPP) and his weak and corrupt institutions to dominate and run the court over its international counterpart (Stensrud, 2006; Ainley, 2014). It is also suggested that the lengthy process of the tribunal that is "much longer and more costly than necessary" not be a "model

to be cloned” (Ciorciari & Heindel, 2014, pp. 379, 437). And that the UN should withdraw its support as the ECCC is merely political and flawed and should not be focused much on the legalistic ways (Luftglass, 2004; McCargo, 2011; McCargo, 2015). However, besides the challenges it faces, the tribunal contributes at least a little justice, which is better than none (Lambourne, 2014), and provides platforms for discussions, interventions, and future hopes (UN, 2013).

Although there is abundant scholarship about the KR and its tribunals, little focuses on political reconciliation. What have we learned from political reconciliation after the atrocities in Cambodia? Have the Khmer Rouge tribunals cultivated political reconciliation in Cambodian politics? This paper attempts to address these questions by examining the political reconciliation process pursued in Cambodia after the atrocities. The core argument is that, despite many attempts to deal with the KR in either trials or compromises, little has been attempted to build political relationships among the Khmer political groups. In addition, it indicates that younger Cambodians prefer another measure along with the current tribunal process. The analysis of this political reconciliation provides extra accounts of what happened and is currently happening in Cambodian politics and helps to build a case contributing to studies of transitional justice in general and, more particularly, on building political relationships in a post-conflict society like Cambodia. With regards to transitional justice studies and political relationships, insights gained from this study respond to the need to understand the nature of conflicts, processes pursued to reconcile political relationships, and the prioritization of types of relationships that need to be repaired and transformed.

This article first introduces the concept of transitional justice in relation to political reconciliation. Following Murphy (2010), political reconciliation refers to the building of a political relationship that was usually destroyed during the period of atrocity. Murphy's (2010) theoretical framework is used to explore and analyze the political relationship in Cambodia to understand the nature of Cambodian conflicts and processes pursued to repair the relationships. This paper also seeks the perceptions of Cambodia's younger generation in order to prioritize the building of relationships. Finally, it substantiates the claim that the tribunals have made little contribution to political reconciliation with reflection to contemporary Cambodian politics.

## **Transitional justice and political reconciliation**

Transitional justice is defined as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel, 2014, p. 49). The idea, however, is not new as is illustrated in cases from Athens to France centuries ago (see Elster, 2004). It has also been conceptualized and practiced differently from the Nuremberg and Tokyo trials, the International Criminal Tribunals for Rwanda (ICTR) and former Yugoslavia (ICTY), to the special court for Sierra Leone (SCSL). However, literature on transitional justice provides “inconclusive” accounts of the relationship between the many mechanisms that include trials, truth commissions, amnesty and traditional practices, and reconciliation (Skaar, 2013, pp. 54-103).

Assessing reconciliation as “forgiveness,” “the creation and stabilization of normative expectations and trust,” “a political value,”

and the “constituting of a political community,” Colleen Murphy (2010, pp. 8-9) claims such conceptions are incomplete and the abstractness of the methodology used to analyze them faces and is constrained by limitations. According to her, during the period of atrocities, the relationships between political groups is damaged, and it is necessary to repair such relationships so that there will be a healthy society that could be conducive to peace and democracy. To her, “political reconciliation” is the process of rebuilding this “political relationship” which is usually destroyed during conflicts and under repressive regimes; thus, the aim of processes of political reconciliation is to “cultivate political relationships premised on reciprocity and respect for moral agency” (Murphy, 2010, pp. 1, 180). These two aspects form strong “social and moral conditions”, a basis to deal with any constraint and support the three dimensions of political reconciliation: the rule of law, political trust, and relational and basic capabilities (Murphy, 2010, pp. 130-134). There are also direct and indirect conditions to the three dimensions. For indirect conditions, it is necessary to create hope and realize the need to repair the relationships among political groups. For the rule of law, there is a need for an “ongoing cooperative activity between citizens and officials,” an agreement “between law and informal social practices,” the “legal decency and good judgment of officials,” and the “faith in the law” that citizens have (Murphy, 2010, pp. 134-135). For political trust, groups within the society have to develop an attitude that each is willing to talk and be open so that each can see the others as “competent, lacking ill will, and decent.” This view generates “trust responsiveness,” but the responsiveness has to be transparent so that there is no “risk of losing good opinion of another.” Eliminating and reforming all forms of “unjust action or

structures” that deteriorate the capability to be respected, recognized as a political member, an effective participant in social and political life, and able to function in such a way that is necessary to survive and to escape poverty, are also indirect conditions contributing to relational and basic capabilities. For direct contributions, reforming and enforcing the declared rule of law is considered as a step toward building political relationships in the rule of law dimension. Transforming the “way in which citizens and officials view and respond to each other’s demands” is a direct process to build political trust. To contribute directly to basic and relational capabilities, it is crucial to create mechanisms to address psychological and other healthcare, education and training, and social security services and support.

Murphy provides a significant theoretical framework to understand the challenges and opportunities for the rule of law, political trust, and relational capabilities to be examined and built within the whole society. This study will use Murphy’s theoretical framework to understand and analyze the political reconciliation process pursued in Cambodia after the fall of the Khmer Rouge regime.<sup>1</sup>

## The Methodology

Guided by Murphy’s framework, this analysis also uses the autoethnographic approach in that the writer is embracing the events and unpacking them (see Brigg & Bleiker, 2010). Although most research approaches require the researchers to distance themselves

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1 I do not attempt to test the theory in particular, but I employ Murphy’s theoretical framework to understand and explore political reconciliation pursued in Cambodia under the assumption that the Khmer Rouge tribunal is not sufficient to build a political relationship within political groups in Cambodia; thus, it is less contributive to political reconciliation.

from the research topic so that the outcome is perceived to be more scientific, this paper situates itself with the important role of current autoethnographic studies and ethical considerations in international relations and political science (see e.g., in Dauphinee 2010, 2013; Doty, 2010; Neumann & Neumann, 2015), in which the researcher engages himself and voices the concerns that he thinks are important sources of insight. As a child born from a survivor family in the KR regime, the author spent his childhood in one of the refugee camps from 1981 to 1992 and was then repatriated in 1993 to Cambodia where he has spent the remainder of his life until the present. Besides spending more than ten years teaching graduate and undergraduate classes, he has worked with a number of non-governmental organizations and a political party dealing with community development and capacity building. Thus, experiences, values, and beliefs will most certainly influence the interpretation.

This article is also informed by a survey conducted with Cambodian students (5 universities in Phnom Penh, 1 university in Siem Reap, 1 university and 1 high school in Kompong Cham) from October to December 2016 to seek the prioritization of the political reconciliation process.<sup>2</sup> Table 1 describes the basic characteristics of the respondents. The data from 994 participants have been collected anonymously and with their consent. The findings from this survey, however, are not aimed to represent Cambodian young people in general. Instead, it is taken as indicative to suggest what should be considered important along with the Cambodian tribunal.

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2 The survey was a part of another project studying the respondents' knowledge of Khmer Rouge regime and their attitudes toward the regime. The research used a survey of 38 questions and MAXQDA12 was used to analyse both of the qualitative and quantitative data.

Murphy (2010) argues such information is necessary for policy makers to consider when attempting to build political relationships. One limitation of this article is that it lacks input from Cambodian politicians, who are the main actors in the reconciliation process. Future research should focus on this group.

**Table 1. Respondents’ demographic characteristics**

| Gender           | Age Group                          | Education Level              | Where from   | Currently Stay   | Occupation  |
|------------------|------------------------------------|------------------------------|--|--|---|
| F=489<br>(49.2)* | 18-25=634<br>(63.8)                | Master=126<br>(12.7)         | PP=272 (27.5)<br>K.Cham=263 (26.6)   | PP=702 (70.6)<br>K.Cham=160 (16.1)   | Student=773<br>(77.9)   |
| M=479<br>(48.2)  | 26-37=217<br>(21.8)                | Bachelor=694<br>(69.8)       | Kandal=102 (10.3)<br>Takeo=53 (5.3)  | Kandal=31 (3.1)<br>SiemReap=18 (1.8)   | Government<br>Staff=47 (4.7)  |
| N/A=26<br>(2.6)  | U n d e r<br>1 8 = 1 4 1<br>(14.2) | High<br>school=174<br>(17.5) | PreyVeng=55 (5.6)<br>K.Thom=43 (4.3)<br>Kompot=33 (3.3)<br>SiemReap=23 (2.3)<br>B.Bang=29 (2.9)<br>K.Speu=24 (2.4)<br>Pursat=13 (1.3)<br>P.Sihanouk=10 (1)<br>K.Chhnang=10 (1)<br>B.Meanchey=16 (1.6)<br>Kratie=11 (1.1)<br>Tb.Khmom=8 (0.8)<br>SvayRieng=13 (1.3)<br>P.Vihear=5 (0.5)<br>Kohkong=4 (0.4)<br>StungTreng=2 (0.2)<br>M.Kiri=1 (0.1)<br>n=990 | K.Thom=9 (0.9)<br>Takeo=7 (0.7)<br>P.Sihanouk=5 (0.5)<br>K.Speu=4 (0.4)<br>SvayRieng=4 (0.4)<br>PreyVeng=5 (0.5)<br>K.Chhnang=3 (0.3)<br>B.Bang=3 (0.3)<br>Pursat=2 (0.2)<br>B.Meanchey=3 (0.3)<br>O.Meanchey=2 (0.2)<br>Kompot=1 (0.1)<br>N/A=35 (3.5)<br>n=994 | N G O = 2 6<br>(2.6)<br>Private com-<br>pany=96 (9.6)<br>Teacher=52<br>(5.2)<br>n=994 |
| n=994<br>(100)   | O v e r 3 7 = 2<br>(0.2)<br>n=994  | n=994                        |  |  |   |

\*Numbers in brackets are the valid percentages.

## The Cambodian tribunals: building political relationships?

Following Murphy's framework, if they aim to politically reconcile, they will build political trust, respect the rule of law, and improve relational capabilities. Before analyzing these propositions, we need to examine how each group treats each other, as this will be significant grounds for the analysis showing if they are committed to fixing their relationships through the trials and compromise. Four significant political groups have been identified since the Khmer Rouge (KR) fell in 1979: the KR, the two non-communist factions, and the Vietnamese-installed group. The treatments and relationships are divided into four phases.

### *Phase 1: The People's Republic of Kampuchea and the Khmer Rouge*

First, with the help of Vietnam, the People's Republic of Kampuchea (PRK), whose members were also former Khmer Rouge cadres, ousted the KR from power and held a revolutionary tribunal against Pol Pot and Ieng Sary in August 1979. After five days of deliberation, the two were both found guilty of genocide. They were sentenced to death in absentia. A museum of genocide, "resembling the Holocaust memorials" was also created (Chandler, 2008, pp. 360-361). In addition to this, the PRK has commemorated every 20 May, since 1983, the "Day of Anger" where "selected survivors and PRK officials" come to "recall their sufferings" during the KR regime (Chandler, 2008, p. 362). They do not only express their sorrow but also condemn and "vent their anger" toward Pol Pot as well as the "American imperialist" and "Chinese expansionist" (UPI, 1984).

Meanwhile, with recognition from the United Nations, the KR and its remnant forces were still present along Cambodia's western border with Thailand and, additionally, were receiving support from their friends.

Seeing itself as a liberator and Cambodia's savior from genocide, it is likely that the PRK brought the KR to trial in order to show the world its commitment to the rule of law, however, the international community described it as a show trial. It is argued that the trial of the two men was politically used to distinguish the new PRK regime from the KR and more importantly to disqualify the KR from a UN seat. The commemoration is also seen as a tool for political and propaganda purposes (Guillou, 2013). Since this commemoration was not popular among citizens in general, it was replaced by a less regressive ceremony known as the "Day of Remembrance" under the sponsorship of the Cambodian People's Party (CPP). This annual event would be celebrated under the CPP's chairman or senior members. People would gather to listen to a statement and watch a show that vividly recalls what life was like during the KR's period. This would reinforce how gratitude to the CPP's leadership and the Vietnamese soldiers should never be forgotten. Buddhist ceremonies would also be held at museums like Toul Sleng and Choeng Ek, where skeletons and skulls piled there have been described as a political tool to promote intense dislike for the KR regime.

This first treatment from PRK to the KR is understandably influenced by the politics of the Cold War and resentment that is deeply rooted within their origin. In retrospect, the KR originated from the Cambodian communist party known as the People's Revolutionary Party of Kampuchea (PRPK) or the Kampuchean

People Revolutionary Party (KPRP), founded in 1951 under the endowment and inspiration from the Indochinese Communist Party (ICP) in Vietnam. Pol Pot changed this name to Communist Party of Kampuchea (CPK) in September 1966 in an attempt to “lessen Vietnamese influence and strengthen relations with China” (Dy, 2007, p. 9). Instruction is also given to mark 1960 as the birth of the party rather than 1951 so that there will be a “clean break” from the ICP (Chandler, 1993, p. 264). Racial resentment over the Vietnamese divides the communist brothers into two rivalry groups, one of which is supported by China and the other by Vietnam. The conflict between the two sides was intense between 1977-1978 when people from the Eastern Zone, accused of having “Cambodian bodies and Vietnamese minds,” were brutally executed (Chandler, 1993, p. 271). Former KR comrades Heng Samrin and Chea Sim, who were the PRK’s head, escaped from the slaughter to Vietnam and sought assistance from Hanoi. After the fall of the KR, the US worked together with China to support the KR and ensure that the Soviet Union and its close alliance with Vietnam could not control Cambodia. As Kissinger notes to Beijing: “The Chinese want to use Cambodia to balance off Vietnam...We don’t like Cambodia, for the government in many ways is worse than Vietnam, but we would like it to be independent. We don’t discourage Thailand or China from drawing closer to Cambodia” (Kiernan, 2002, p. 487). This is without a doubt why the KR still had their seat in the UN.

*Phase 2. The Non-communist and Khmer Rouge*

Besides the KR, there are two other non-communist forces that kept fighting against both the KR and PRK in the 1980s along the Cambodian-Thai border. These were the National United Front for

an Independent, Neutral, Peaceful, and Cooperative Cambodia with its French acronym FUNCINPEC led by Prince Norodom Sihanouk, and the Khmer People's National Liberation Front (KPNLF) led by the Republican Son Sann. These two groups formed a Coalition of Government of Democratic Kampuchea (CGDK) under an agreement signed in Kuala Lumpur on 22 June 1982.

This second deal with the KR marked significant compromise between the Cambodian political groups, yet behind the facade of cooperation, the relationship was fragile. Although with a different legacy, the royalist FUNCINPEC and the republican KPNLF cooperated well with each other, as they had similar goals. These goals were to get rid of the Vietnamese-installed government and to prevent the return of the KR genocide in Cambodia. Together they advocated for “liberal democracy,” held “the same national flag,” wore “the same uniform,” and received “the same military training” (Peang-Meth, 1992, p. 180). However, each realized that the relationship with the KR would downgrade their popularity among Cambodians. They still considered the KR as the enemy and always sought to eliminate it from the political arena. Kiernan (2002, p. 488) describes the relationship as “neither a coalition, nor a government, nor democratic, nor in Cambodia.” The cooperation with the KR, though, was very necessary for military and financial assistance since the KR was the only legitimate government recognized by the UN, and therefore eligible to receive any aid from foreign countries.

*Phase 3. The Non-communist, State of Cambodia (former PRK), and Khmer Rouge*

Another major breakthrough in Cambodian politics happened when the four fighting factions sat at one table and signed a peace agreement in Paris in 1991, witnessed by another eighteen interested foreign countries.<sup>3</sup>

This was the third attempt made by all conflicting parties together, to end the decades of Cambodian civil war. According to the deal, a transitional government (Supreme National Council) was founded and would work with the United Nations Transitional Authority in Cambodia (UNTAC). The agreement held all factions to a cease-fire and required a disarmament. Refugees living along Khmer-Thai border had to be repatriated and a national election would be held in May 1993 under UNTAC supervision. Yet, the KR and the SOC continued to fight each other along the Cambodian border. As noted by Peang-Meth (1992, p. 35), a former senior officer from the KPNLF, the ceasefire agreement was signed but was not respected and “armed fighting in Cambodia has never stopped.” As required by the peace accord, Vietnam had to withdraw its troops from Cambodia and this would make SOC vulnerable, as its troop would not be able to compete with the other three united forces. The KR was suspicious of the Vietnamese troops’ transformation into SOC forces. This suspicion was reasonable as the CIA’s de-classified files, confirm (Wright, 2017). Sihanouk also expresses his discontent and wishes to bring the KR to trial. In one public speech in Phnom Penh, before any of his SNC members had arrived, Sihanouk talks to the crowd: “In Buddhism, we have to forgive, but we can never forget what the Khmer Rouge did to the Cambodian people”

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3 For a comprehensive analysis of the agreement and its background see Steven R. Ratner, “The Cambodia Settlement Agreements,” *The American Journal of International Law*, Vol. 87, no. 1 (1993), pp. 1-41.

(Peang-Meth, 1992, p. 35). The bloody assault on the KR's leader Khieu Samphan, when he was first invited by Hun Sen to Phnom Penh in 1991, alienated the KR, even more, from the political stage. With this incident, the suspicion of Vietnamese forces, and the realization that it could not compete in the election, the KR decided to leave the peace agreement, and refused to participate in the national election. They continued to cause troubles along the Khmer-Thai border by killing, kidnapping, and torturing innocent Cambodians and foreigners until the agreement was finally dissolved in 1998.

#### *Phase 4: The elected government and the Khmer Rouge*

Finally, a tribunal known as the Extraordinary Chamber in the Courts of Cambodia (ECCC) was set up after time-consuming negotiations between the Royal Government of Cambodia and the UN. From the beginning, the ECCC faced many challenges. It was believed that local and international politics contributed to these challenges. In the beginning, the Cambodian First Prime Minister Prince Norodom Ranariddh and Second Prime Minister Hun Sen, sent a letter requesting the UN's assistance in bringing the KR leaders to trial. According to the letter, Cambodia wanted the same assistance as in the ICTR and the ICTY. However, after the successful coup in July 1997, Hun Sen changed his mind. It was most likely that the idea of seeking UN assistance had been a political maneuver by both rival parties, the CPP led by Hun Sen and the FUNCINPEC led by Prince Ranariddh, to recruit the remaining KR forces (estimated to be 5,000-10,000) to their respective armed forces. Both prime ministers, in the name of peace and national reconciliation, requested that the King grant amnesty to Ieng Sary in 1996 to protect him from

any accusation relating to earlier times. However, the real purpose, as claimed by Hun Sen, was to encourage more defections from the Khmer Rouge. The recruitment and mobilization of armed forces from both parties created severe tension in the coalition government. After the coup in 1997, while Hun Sen's government was under severe criticism, the tribunal negotiation with the UN was resumed. It was believed that Hun Sen used this to divert attention from the coup. Furthermore, the influential role of China and the US at the UN Security Council could not be overlooked, as they were also influencing actors in the formation of the ECCC.

One does not need to describe how the rule of law, political trust, and relational capabilities were damaged during the Pol Pot's barbaric genocide era. It is generally agreed that these relational dimensions have to be rebuilt. However, since the KR has been overthrown, subsequent political groups determine and plan different ways of relating to it, which this paper argues is not for the pursuit of political reconciliation. Whether or not each group attempts to build a robust political relationship, we need to analyze the direct and indirect conditions as well as constraints, contributing to the process of the political reconciliation in the four phases described above.

*Indirect contributions: hope and acknowledgment to repair*

Is there hope and acknowledgment to repair the relationship between the rival parties in Cambodia? As claimed, "Hope" has a "critical role in facilitating conditions that enable the general transformation of relationships" (Murphy, 2010, p. 125). Without it, conflicting parties do not have a shared desire and vision to be part of the same society, and to stop committing violence against each

other. Hope was absent in the first relationship between the KR and the PRK. The KR trial at that time was not legitimate internationally. The trial and memorial sites were for hate and revenge purposes rather than for a shared hope to live together. The two lived in a different world, separated by the Cold War masters, and they viewed each other as an enemy that needed to be destroyed. Hope continued to be absent from the two noncommunist groups and the KR. Of course, the two noncommunist groups, which later formed the coalition party—FUNCINPEC and the Buddhist Liberal Democratic Party (BLDP) after 1993 election, shared the same vision and ideology. However, their relationship between the KR in the second coalition phase was merely for financial and military aid to mobilize their troops against the PRK. The KR was also forced to join the two from the foreign countries. It did not seem to have any better choice. Hope was also undermined in the third attempt as the KR decided to leave the peace accord and continue to fight along the border. With the amnesty granted to Ieng Sary in the fourth phase, one may see his defection with his army of about 3,000 to Hun Sen's CPP in 1996 as part of a shared hope for peace. Yet, this was a myth. Ieng Sary was still controlling his lucrative Pailin (a western province) where he continued earning money from logging and gem mining. Ieng Sary's defection even deteriorated political conflict among the coalition government the FUNCINPEC and the CPP (Woods, 1997). The deal with him and the CPP was mere corruption (Biddulpha, 2014). The Cambodian tribunal, the ECCC, is not the result of the hope that both antagonized groups had agreed to repair in the relationship. It was rather, influenced by the international factors. Also, it is the result of the global norm, where the violation of human rights is no

longer tolerated and local political legitimacy is being questioned, that the hybrid tribunal is set up (Bonacker, Form & Pfeiffer, 2011).

To be able to accept that relationships need to be fixed is also another indirect contribution to the political reconciliation process; thus, counter “denial” is necessary (Murphy, 2010, p. 128). Following sociologist Stanely Cohen, Murphy (2010) outlines three forms of denial (literal, interpretive, and implicatory), and strategies to counter them. “Official fact-finding” is one strategy to counter literal and interpretive denials and “memorialization or apology” may counter the implicatory denial. From the first to the third phase of the relationship, the KR never accepted that they had committed serious crimes. They attributed the problem to the Vietnamese and the former PRK (now the CPP) who are currently leading the government and aligning themselves with the Vietnamese. A formal truth commission was absent in the fourth phase. The truth behind the genocide and memorial sites remains controversial. The ECCC has investigated four cases so far. Case 001 with Duch, case 002 with Khieu Samphan and Noun Chea, Case 003 with Meas Muth, and case 004 with Yim Tith. All were found guilty of crimes they had committed but none accepted any responsibility. Only Duch emotionally accepted the fact that he had killed people and asked for forgiveness, however he claimed not to be the main person responsible, as he was just following orders. Noun Chea had always requested the court to bring the current CPP’s senior leaders in and question them about their involvement, but none has yet to appear in front of the court. The opposition party criticized Hun Sen as a former KR commander who helped the Vietnamese to invade

Cambodia. They questioned (omit 'about') the victory of the PRK on 7 January 1979 and the skulls in the memorial sites during a political campaign in 2013. As a result, the National Assembly under Hun Sen's direction passed the Law on Denial of Crimes Committed during the Khmer Rouge Regime (1975-1979). Anyone who denies there is no such genocide will be imprisoned from 6 months to 2 years and fined from 250USD to 1000USD. Having such a law is a question to how much truth, acknowledgment, and hope that political groups in Cambodia have toward building a relationship to peacefully coexist.

*Indirect contributions to rule of law, political trust, and relational and basic capabilities*

The insights from legal philosopher Lon Fuller have influenced Murphy's framework of conditions to the rule of law. There are at least four conditions necessary to maintain the rule of law: "[O]ngoing cooperative activity," "congruence between law and informal social practices," "legal decency and good judgment," and "faith in law" (Murphy, 2010, p. 135). None of them embedded in the political relationship among the Cambodian groups. The political groups cooperated and abided by the legal agreements only when they saw a benefit for themselves, without any commitment to long term relationships. The interpretation of the agreement was subject to different interpretations by all sides. As seen in the first phase, the relationship between the KR and the PRK did not satisfy any of the four conditions. They continued to fight and the legal interpretation and implementation were at odds. There was minimal cooperation in the second phase, but good judgment and faith were

non-existent. The attempt to exist together and compete in the election in 1993 also failed in the third phase, as the KR decided to leave the agreement and the three other groups outlawed the KR. If funding to the KR from foreign countries had not stopped, Pol Pot had not died, and the KR's leaders had not defected, the fighting would have continued and the ECCC would not have been founded. The only two possible things that the ECCC may contribute to rule of law in Cambodia now, are the "vigorous investigation of cases" and the "autonomy of judges in dictating the content of court arrest orders and sentencing rulings" (McCarthy & UN, 2015, p. 14). As Murphy (2010) suggested, the ongoing cooperation between political groups is the most fundamental condition to the rule of law; unfortunately, the cooperated agreement was fragile and none of the groups saw it as a base line for cooperation.

Trust in general is almost absent in Cambodia today. A recent survey indicates that 94% of the respondents (n=1000) reported that people are not trusted (Asian Foundation, 2014). Murphy (2010, pp. 135-136) defines political trust as the willingness of political groups to be open and see each other as "competent, lacking of ill will, and decent." Competent authority will be able to exercise its power to maintain the rule of law and produce harmonious and fruitful societal welfare. The absence of the attempts to "undermine," "exploit," and "harm" each other characterizes the lack of ill will among the political groups (Murphy, 2010, pp. 77-79). With these attitudes, each will be seen as "decent" in their relationship. These characteristics (competent, lacking of ill will, and decent) will generate a "default political trust" and "trust-responsiveness". All of the characterizations mentioned were absent from first to

fourth phases of the political settlement in Cambodian politics. From the beginning, as the “Day of Anger” was imposed by the PRK and “Cambodian bodies and Vietnamese minds” by the KR, little was seen as conducive to political trust. From the second to fourth phase, resentment, hatred, and undermining attitudes were all seen within the political groups. Each sought ways to undermine each other, and the relationships built were secretive, corrupted, and exploitative. As a result, the KR was completely dissolved in 1998 and the non-communist groups were divided into many smaller political factions.

Finally, there are four capabilities influencing the political reconciliation process: The ability to be “recognized as a member of a political community,” “respected by others,” “a participant in the political, economic, and social processes of one’s community,” and to keep “bodily health,” to be “nourished,” and to have “sufficient income” (Murphy, 2010, pp. 101-102). The general condition that indirectly affects this is to stop and reform all forms of unjust actions and structures that violate these basic rights and alienate political groups from the political community. It is not an exaggeration to claim that the condition has not been fulfilled if we look at the goal of the relationship between the four political groups outlined above. From the first to fourth phase, each group did not have a shared sense of community where one was willing to respect and acknowledge the other’s rights or freedoms. They were only determined to destroy and take advantage of each other.

*Direct contributions to rule of law, political trust, and relational and basic capabilities*

Reforming and enforcing the declared rule of law that each group agrees to, changing the negative views and responding to each other's demands, as well as providing social services that include healthcare, education, and training, directly contribute to the three dimensions necessary to building the political relationship. It is not fair to say none exists; it is just that little meaning is given to them from the first to the third phase. It is in the fourth phase that all of these attempts have been put into place. Thanks to the Cold War, which has ended, those countries involved are probably tired of Cambodian politics. The Paris Agreement in 1991 gave birth to the Cambodian Constitution which states liberal democracy as the main ideology and details the influx of millions of dollars on rehabilitating programs. Although some citizens have benefited from the peace agreement and development assistance from generous non-governmental organizations (NGO), political groups did not stop fighting until 1998. The KR tribunal had to be delayed until formal processing in 2007. School textbooks about the KR kept changing from a strong tone of hatred and violence in 1979 to a silence during the UNTAC period, and a mild voice on human rights in the tribunal process. However, the revision of the textbook is more about the political manipulation of students learning in their history classes (Ngo, 2014). Violence, corruption, and historical myths remain embedded in Cambodian politics.

#### *Social and moral constraints*

There are two social and moral values that need to be satisfied before the rule of law, political trust, and relational and basic capabilities can be effectively repaired and built. These are the “respect for moral agency and reciprocity” (Murphy, 2010,

p. 142). It is suggested that these two values are general constraints to effective political reconciliation. With respect to moral agency, the question of “*what undermines the capacity of individuals to care about, empathize with, and acknowledge the second-personal reasons of others?*” needs to be answered (Murphy, 2010, p. 150 [Emphasis original]). Murphy claims the understanding of group identity shared among political groups is where to begin to find the answer. Truth commissions can help find the group narration of such “psychocultural dramas” that infuse “emotional conflicts over social policy, language, or resources.” Shaping the “narrative understanding of political communities and of social groups within political communities” is one of the processes to cultivate respect for moral agency. From the first to the fourth phase, Cambodian political groups still had different narrations. Two noted different narrations were found, although there was no formal truth commission to seek and identify these in the KR tribunal. One group like the CPP sees the Vietnamese as saviours; thus, 7 January 1979 is Victory Day. On the opposite side, the KR and the other two non-communist groups see it as a day of Vietnamese invasion. There is a reason for that. Historian Ben Kiernan (2001) has noted in his *Myth, Nationalism, and Genocide*, Lon Nol’s regime (1970-1975), both of its predecessors (Sihanouk’s), and the KR always use anti-Vietnamese propaganda to mobilize Cambodians for political purposes. All three shared the same message that “Ho Chi Minh, in the will made before his death in 1969, had called upon his fellow Vietnamese to take over Cambodia” (Kiernan, 2001, p. 188). Pol Pot’s *Black Paper* released in 1978 reads:

It recalls the barbarous crime committed by the “Yuons” [Vietnamese] in 1813... The Yuons buried alive the Khmer people up to their necks and used the latter’s heads as a stand for a wood stove to boil water for their master’s tea. As they burned and suffered, the victims shook their heads. At that moment, the Yuon torturers said to them: “Be careful not to spill the master’s tea!” (Kiernan, 2001).

The KR has portrayed Hun Sen’s CPP as Vietnamese puppets who are fulfilling Vietnamese will; the noncommunist groups link the CPP to both the KR and the Vietnamese. This suggests the Vietnamese identity in Cambodian politics needs to be openly discussed and a common sense understanding sought, if the process of political reconciliation is to be targeted. Unfortunately, this sensitive topic is ignored in Cambodia today. As a result, there is no respect for moral agency among the political groups. The other underlying theme of the constraint is reciprocity. Conditions to the rule of law and political trust encourage a “recognition and commitment to reciprocity in transitional context” (Murphy, 2010, p. 134). As described earlier, these conditions were absent from the Cambodian political groups. Consequently, there was no attempt to build the relationship based on reciprocity.

The illustration up to this point has shown that from 1979 to 1998 there were, at least, four attempts made by Cambodian political groups to work together and unite their differences. However, little

attempt had been made to build the robust relationship that was based on the respect of moral agency and reciprocity under the rule of law, political trust, and relational capabilities. Whether it was in the form of compromise or trials, the process of building the political relationship was not there.

## Contemporary politics: unity without reconciliation?

“National unity and reconciliation” is rhetoric that Cambodian politicians have always used to appeal to society. This rhetoric was frequently used by Prince Norodom Sihanouk under French colonization. In the Cambodian dictionary,<sup>4</sup> “unity” (*Bong-roub Bong-roum/Ek Kpheap*) and “reconciliation” (*Bong-roub Bong-roum/Phsas Psar*) share the same meaning, and are often used interchangeably. For example, “unity” in Khmer is translated to “reconciliation” in English as enshrined in Article 52 of the Cambodian Constitution.

The Royal Government of Cambodia shall protect the independence, sovereignty, and territorial integrity of the Kingdom of Cambodia, adopt the policy of national reconciliation to ensure national unity, and preserve the good national traditions of the country. The Royal Government of Cambodia shall preserve and protect the law and ensure public order and security. The State shall give priority to endeavours, which improve welfare and the standard of living of citizens. (Constitution of Cambodia, Article 52)

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4 The only Khmer dictionary written by Khmer Buddhist Sangha Choun Nath published since 1938. There is no updated one available yet.

Nevertheless, since the demise of the Khmer Rouge regime, the concept of “unity” and “reconciliation” is ill-defined and pursued for different purposes, rather than to politically unite and reconcile as previously illustrated. They have united, but not politically reconciled. Even after the UN-led election in 1993 and the full implementation of the KR tribunal in 2007, political reconciliation is not pursued under any precise policy action. Others could argue that there are a number of policies that may contribute to one of the dimensions of the political reconciliation. These are relational capabilities as seen in education, healthcare, and other social service policies aiming to alleviate poverty and encourage political participation. On the contrary, this paper argues that it contributes little to political engagement and the building of political relationship, as the rights to politically engage and express are currently under serious threat. Under the impunity law today, a number of human rights activists and members of the opposition party are in prison under various charges and laws that have been adjusted to limit freedom. During the time of this writing, two notable events have occurred. One is the assassination of a well-known Cambodian political analyst, Kem Ley, and the other is the resignation of the main opposition party leader Sam Rainsy as the head of the Cambodia National Rescues Party (CNRP). If his image/picture/photo is found attached to the party logo, the party will be dissolved. The current situation is very concerning as there is an indication of no respect of moral agency and reciprocity, which are the social and moral constraints to political reconciliation. One possible explanation on why there is a lack of such respect is the political identity that each political group labels each other, based on their historical past. Party transformations and factions continue to haunt current Cambodian politics. In

retrospect, after 1993, the royalist party FUNCINPEC and the Republic BLDP (former KPNLF faction) participated in a coalition government but both parties have been fragmented under Hun Sen’s famous DIFID (Divide, Isolate, Finish, Integrate, and Develop) strategy. Sam Rainsy, former minister of Finance from FUNCINPEC, founded his last Sam Rainsy Party (SRP) in 1998. This party later merged with the Human Rights Party founded by Kem Sokha, a former member of the Senate from BLDP in 2008, to become a new party -- Cambodia National Rescue Party (CNRP). The new party won 55 out of 123 parliamentary seats in the last national election in 2013. Sam Rainsy is a son of Sam Sary, a former top officer under Prince Sihanouk’s regime, who was later described as a “traitor” to the Prince. Prime Minister Hun Sen always uses this past to attack Rainsy. In a recent remark, responding to Rainsy’s accusation that the country is heading away from democracy under Sen’s dictatorship, Hun Sen rebukes:

“I cannot keep calm because of this insult by the son of a traitor,” ... “Your Excellency called me a dictator, and today I called you son of a traitor, but it is not me who insulted your family ... I am following the word used by the former regime, ... “I know in our modern society it is difficult to be accepted [as a traitor], but I cannot change the historic traitor to [a nationalist],” ... “The leaves do not fall far from the base of the tree.”<sup>5</sup>

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5 Vong Sokheng, “PM launches personal attack on Rainsy,” *The Phnom Penh Post*, 13 November 2015.

Hun Sen has been known for his bigoted personality and his ability to neutralize and paralyze opposition. Rainsy has also been known for his racist rhetoric against the Vietnamese and he always links them to the current leadership under the CPP. He has been described as playing the “racist card” and this has caused concern to both Cambodian and foreign observers (Ebbinghausen, 2014). Vietnamese Prime Minister Nguyen Tan Dung has also urged Cambodia to calm the situation and deal with the issues of immigration and border demarcation as soon as possible (Thong, 2014). However, these two issues are very sensitive in Cambodian politics. Kem Sokha, currently the CNRP deputy, was imprisoned in the past for defamation, after a banner appeared at a rally alleging Hun Sen had sold Cambodian territory to Vietnam while Sokha was a chief of the Cambodian Center for Human Rights (CCHR) in 2005. Recently, senator Hong Son Hour from the opposition party, was sentenced to a seven-year prison term under the charge of forgery and incitement after he posted a border treaty between Cambodia and Vietnam from 1979, which Hun Sen claims is “fake.” Hun Sen describes this as an act of “treason” and Hour was arrested after Sen’s public remarks (Sokha, 2015). Another parliamentarian Um Sam An who has vocally criticized the border agreement has also been sentenced to two and a half years with a \$1000 fine under the charge of “incitement to cause chaos in society.” (Chheng, 2016) Both of them were arrested although they have parliamentary immunity. It requires two thirds of the votes from members of parliament to revoke somebody’s immunity. However, as the CPP does not have enough voice to do so, both cases were described as flagrante delict, thus warranting the immediate arrest of the members.

Hun Sen's deals with Vietnam deserve suspicion. In 2005 he threatened to abolish the monarchy if the new king Norodom Sihamoni did not sign off on the "supplemental border treaty." (Shaw & Chan, 2005) Most opposition party members believe Cambodia loses some of its territory to Vietnam under such a treaty. There is also no transparent debate and public discussion about the issue, and those who have voiced their concern have always faced death threats. In a speech in 2008, he was willing to offer coffins to those who dare to claim any land lost to Vietnam. Further more, he uses the immigration law to respond differently to the illegal Vietnamese residing in Cambodia, the Montagnard group fleeing from Vietnam and seeking asylum in Cambodia, and the treatment of the Uighurs that have escaped from China. The measures used with the two later groups of people are described as a violation of the United Nations convention relating to refugee protocol, while few measures have been taken against the former group. Recently, the Court has dismissed the complaints made by the CNRP about five thousand Vietnamese voters who have been issued Cambodian national identity cards, and who have registered to vote without nationalization granted by royal decree from the king, as the law prescribed (Narim, 2017). More explanation should also be made about the 40,000 hectares of land along the Cambodian-Vietnamese border. This land was secretly granted to the Vietnamese People's Army under companies registered as Cambodian owned allowing the workers, some suspected of being Vietnamese soldiers, to farm without going through transparent and accountable concession procedures (Blomberg & Roeun, 2015). Yet, the Cambodian government tries to ignore all of these problems.

The nationalistic sentiment is profound in Cambodia and needs to be dealt with peacefully. Some CNRP youths previously offered themselves to the US-led international coalition to fight against ISIS, however they hoped in return for help to fight against what they call, “Vietnamese encroachment.” (Sokchea, 2014) The CNRP consistently rejects the idea of racism in its policy, but Rainsy claims the concern is a “legitimate concern for Cambodians, who can see the future of their country when there is a demographic imbalance caused by illegal immigration.” (Willemyns & Naren, 2015) A recent interview focused on what he is going to do with Vietnam if he becomes a Prime Minister because he does not like Vietnam and Vietnam does not like him. Rainsy replied:

It is not a matter of liking or not liking. It’s a matter of respecting each other, but you must start by respecting yourself first. If you sell your country to a foreign country, [it means] you don’t even respect yourself, so other people will look down upon you. But when a new leadership in Cambodia shows that they want to defend their country, love and respect their country, then countries around us will also start to respect Cambodia. (The Nation, 2017)

Respect and trust are absent among the current political groups. The CPP and the CNRP created a “culture of dialogue” in July 2014 after a year-long political deadlock in 2013. This has fostered an agreement to reform a number of institutions including (1) constitutionalize an independent national election committee, (2) amend a number of internal rules in the national assembly to

ensure that the opposition parties work effectively and efficiently, (3) re-examine the Senate management and leadership, and (4) institutionalize state institutions so that they are independent. Unfortunately, the CPP dismissed the CNRP's proposal to amend the Law on the Organization and Functioning of the Supreme Council of Magistracy, the Law on the Statute of Judges and Prosecutors, and the Law on the Organization and Functioning of the Court, that were promulgated in 2014 in a very controversial environment, as they were not open for public discussion. They were adopted in the assembly and senate without participation from the opposition party as they disagreed over the greatly increased powers given to the executive body to override the judiciary. The culture of dialogue also fails abruptly when both of the parties accuse each other of playing dirty tricks. While Hun Sen is seen as trying to divide the CNRP by splitting the two leaders from each other, Rainsy and Sokha are accused of playing "bad cop, good cop." (Sokchea & Handley, 2015) Right now the internal rules in the national assembly have been changed. Deputy leader Kem Sokha has been removed from his post as the vice-president of the National Assembly. Sam Rainsy had to leave the country and resign from the CNRP presidency because the CPP amended the law governing political parties to prevent any criminal from becoming a party leader. The law states that the party will be dissolved if its leader is a criminal. Under the second amendment, dated 10 July 2017, his picture and voice are also banned from use in public. Any party involved with any criminal (most likely only referring to Sam Rainsy) threatens the security of the state and national unity and shall be dissolved by (omit 'the') law. It seems normal in Cambodian politics, as the law has always been used to oppress the opposition party. There was a similar case

with Prince Norodom Ranariddh, when a law on monogamy was passed in 2006 that made the Prince resign from the presidency of the national assembly and flee to France after being sentenced to 18 months in prison.

With the serious rights violation, corruption, misuse, and abuse of laws, it is reasonable for each political group to distrust each other. Also, it seriously questions the ability of the political groups to build a robust relationship with the blatant disrespect originating from their past identity.

### **The younger generation and prioritized policy**

Murphy (2010) suggests that although truth commissions and tribunals may help build political relationships, other contextual settings have to be considered as well in order to develop effective political reconciliation policies. Since the ECCC is widely known for its political influence and the truth commission is absent, this part attempts to seek prioritized processes from the current youths' perception. The objective is to seek what could be prioritized processes necessary to build political reconciliation aside from the current ECCC. Youth in Cambodia between 15 and 29 years old will make up to 40% of the population by 2020 (UNFPA, 2015). The theory of "Youth Bulge" suggests, "any society with a large cohort of people in the age group of 15-35 years, is at great risk" (Özdemir & Podder, 2015). Understanding their perception may help alleviate any possible risk.

Respondents are asked to answer to open-ended questions about what they think are the most important things that Cambodia should focus on right now, along with the KR tribunal. The responses

are then grouped and coded into frequent themes of Knowledge Enhancement (education, human resources development, and building a productive citizen), Rule of Law (justice, corruption, transparent government) and Political Trust (trust, respect, unity). These themes received scores of 40.17%, 20.94%, and 15.81% respectively. Road building, traffic jam, and other social services such as health care, food prices, and electricity shortages are grouped to the Development theme and received the fourth priority of 12.54%.

Building an informed citizen through knowledge enhancement by providing quality education, critical thinking, and employability skills is the highest priority concern for current Cambodia, while rule of law and political trust are the second and third priority. This response to Murphy’s framework indicates that building basic and relational capability processes should be prioritized along with strengthening the rule of law and political trust.

## Conclusion

It is argued that Cambodia has to move on and be optimistic about the future, as the whole country has been “victimized” (Duffy, 1994, p. 219). Yet, this paper posits that how to move on positively relies mostly on the ability of the antagonist groups to politically reconcile. This study has explored the political reconciliation pursued in Cambodia after the Khmer Rouge era. There are notable attempts to deal with the past either through compromise or tribunals, as seen from the first to fourth phases; unfortunately, Cambodian political groups, with influences from the international communities, are not aiming to build a long-term political relationship that is based on the rule of law, reasonable trust, and relational capabilities. One social

and moral constraint that makes political groups distrust and have a low opinion of each other is the past identity that helps define each group. The ability to put aside their past and deal with sensitive issues such as Vietnamese immigrants and border disputes, in a transparent and accountable manner, will likely build a reasonable trust that is conducive to the process of building political relationships. Yet, the question remains whether they all are willing to acknowledge and hope for a shared future with each other. It is doubtful because the ruling elites, who set the rules, are determined to always win the game. This makes cooperation and good faith in law difficult. Future study should also focus on the ruling political elites in Cambodia and seek to clarify their stance on political reconciliation.

The survey results from the younger generation provide another vantage point that policy makers need to consider. Of course, the role of the current ECCC and the international community may not be responsible for the messy Cambodian historical debates. However, other prioritized processes that are aimed at building political relationship through knowledge enhancement, strengthening the rule of law, and building political trust are very urgent and necessary in sustaining peace and democracy in Cambodia. The ability of younger Cambodian elites to build a future Cambodia is also under threat if they are still being bombarded with their predecessors' political past and identity. Politicians should look to the future rather than pointing to the distant past where everyone may have committed a political mistake.

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