

## A Collective Response to Mass Violence: Reparations and Healing in Cambodia

---

**Jaya Ramji**

*Jaya Ramji (B.A., University of California at Berkeley; J.D., Yale Law School) is a clinical teaching fellow at the Center for Applied Legal Studies at Georgetown University Law Center. Previously, she was a Staff Attorney with the American Civil Liberties Union in New York. She has been a Legal Advisor to the Documentation Center of Cambodia since 1997.<sup>1</sup>*

---

After years of negotiations and impasses, stops and starts, the Khmer Rouge tribunal is finally in sight—the Cambodian government has signed an agreement with the United Nations, and the Cambodian National Assembly has approved this agreement along with a final version of the law establishing a tribunal to prosecute crimes committed during the Khmer Rouge era.<sup>2</sup> Twenty-five years after they were removed from power, the remaining Khmer Rouge leaders will finally face legal accountability for their crimes. While this is a great step forward in addressing these crimes of mass violence, a significant question remains: what role can the tribunal play in repairing Cambodian society? A criminal trial alone cannot adequately rehabilitate those who survived the Khmer Rouge, nor can it reconstruct Cambodian society. The issue of reparations, which has largely been overlooked in constructing the tribunal, is crucial in addressing the damage wrought by the Khmer Rouge regime.

This chapter explores a significant hole in the Khmer Rouge tribunal law—its complete failure to provide for any form of reparations. This gap is out of step with current developments in international human rights law, which increasingly recognizes a right to reparations for victims of massive human rights violations.<sup>3</sup> Historically, reparations have been largely financial and individually-focused, distributed by courts or administrative mechanisms. However, a careful examination of the broader goals of reparations suggests that an alternative

approach may be more appropriate for the Cambodian context. Based on a small survey of Cambodians conducted in 1997, several collective reparations proposals may meet the unique needs of Cambodian society while at the same time forging a new model for reparations more generally. A more comprehensive study is required to more accurately ascertain the aspirations of Cambodians with respect to reparations, but this chapter provides a starting framework to guide such an inquiry.

### GOALS, TYPOLOGY, AND MECHANISMS

Particularly given the unique nature of the Cambodian situation, it is important to understand precisely what is meant when we refer to “reparations.” The term “reparations” describes a broad set of responses to certain harms, which in this chapter will be limited to mass violations of human rights. Reparations are an effort to make someone whole, or to return him to the position he was in before suffering serious human rights abuses. Perhaps the best starting point is to examine the underlying goals that can be served through reparations in response to massive human rights violations. Once the ends are ascertained, it will become clear which types of reparations and which distribution mechanisms are most responsive in the Cambodian context.

While there are numerous goals underlying a reparations program, this chapter will examine three most relevant to the context of widespread human rights abuses: compensation, rehabilitation, and reconciliation. The first goal, compensation, requires reimbursing the victim for what was taken from her. In situations of material loss, compensation can be fairly straightforward—the harm can be easily assessed and the state, or even the perpetrator, can pay the victim for the loss. However, in cases of mass human rights violations, it is extremely difficult to measure the exact amount of money needed to make the victim whole.<sup>4</sup> Indeed, any reparations process that undertakes complete compensation as its goal is bound to disappoint, for the loss of dignity and emotional well-being experienced by victims of human rights abuses simply cannot be repaired materially. That said, a goal of moderated compensation may be possible for a reparations process implemented after mass human rights violations. On a spectrum with peace on the one end and justice on the other, compensation falls

closer to justice—it compensates the victims, but does nothing further to reconstruct society as a whole.

Another potential goal of reparations is the rehabilitation of victims. Rehabilitation is distinct from compensation in that it sets aside the effort to measure material harms and instead focuses on spiritual and emotional healing. Rehabilitation attempts to provide the victims with what the tools and support they will need to confront, digest, and move forward from the harms they suffered. Rehabilitation can take many forms, ranging from individual mental health counseling to the naming of perpetrators, enabling survivors to take control of their lives and move beyond their status as victims of mass human rights violations.

Reconciliation is a third goal that can be described as rehabilitation for the entire society. In the wake of massive violations of human rights, societies are torn asunder, often becoming entirely dysfunctional. Efforts at reconciliation take a step back from the victim-centered approach, favoring peace in the balance against justice, and focus on determining which actions would best reconstruct society as a whole. While this goal may in some ways be in the best interest of the victims taken collectively, they may resent the process if the perpetrators benefit equally from a societal reconciliation program without acknowledging the special needs and claims of the victims. It is important to recognize that reconciliation need not mean ignoring the crimes of the perpetrators, but can include recognition of and even reckoning for these crimes. The most important component of reconciliation is establishing dialogue between conflicting groups, in order to enable forgiveness and bring conflicting groups back together.<sup>5</sup> Truth commissions and traditional processes such as the Rwandan *gacaca* are examples of reparations that aim to serve the goal of reconciliation.<sup>6</sup>

Depending on the type of human rights violations, the time that has passed since their commission, and, most importantly, the nature of the society affected by them, different goals, or a combination of goals, can be chosen for a reparations program. These goals can be met through different forms of reparations—financial, rights restoring, spiritual and moral, or societal—which can then be implemented through different mechanisms, be they individualistic or community-oriented.<sup>7</sup>

Historically, reparations for massive human rights violations have most often taken the form of material compensation.<sup>8</sup> This is fundamentally a damages approach to grave international human rights violations that involves measuring the economic, physical and emotional harm inflicted upon the victims and awarding monetary reparations based on this assessment. This approach has been widely criticized for its failure to meet the goals of rehabilitation, reconciliation, and even compensation.

For the victims of human rights violations and their families, material reparations have often been unresponsive to their goals. Many victims of mass human rights violations are most interested in knowing the “truth” about who was responsible for the harms and in receiving public acknowledgment of wrongs they suffered than in being financially compensated.<sup>9</sup> In part, victims and their families feel that a material response trivializes the spiritual and emotional harm inflicted by serious human rights abuses.<sup>10</sup> A comprehensive study of family members of victims of human rights abuses in Argentina, Chile, El Salvador, Guatemala, and South Africa found concerns that monetary reparations were an attempt to “buy off” their suffering, and felt that they were forced to accept this inadequate reparation because of their dire financial circumstances.<sup>11</sup> On the other hand, material reparations may be the most powerful method of evidencing official acknowledgement of harm inflicted on the victims and the responsibility of the perpetrators and/or the state for the victims’ suffering.<sup>12</sup> While material reparations may play some role in attaining rehabilitation, these serious flaws hinder the achievement of this goal.

Material reparations can also threaten the goal of reconciliation. History teaches us that, for the perpetrators of human rights violations, the cost of financial reparations from a weakened state has often been too severe, leading to instability and further societal damage. The Treaty of Versailles provides a classic example of the dangers that financial reparations can pose to peace and stability. In the wake of World War I, the Allied Powers forced Germany to compensate their citizenry for all damage inflicted during the war. John Maynard Keynes aptly predicted that this reparations program would reduce Germany “to servitude for a generation . . . , degrad[e] the lives of millions of human beings, and . . . depriv[e] a whole nation of happiness.”<sup>13</sup> Arguably, Hitler was able to capitalize on the widespread resentment of these burdensome reparations in

building his power base. While this is perhaps the worst case scenario, it is a vivid reminder of the threat that reparations can present to post-war economic and social stability.

Moreover, on many occasions, the financial end of the bargain has proved impossible to uphold, disappointing victims who were promised material recompense and failing to meet even the goal of compensation. States recovering from massive human rights violations have been unable to pay out reparations as promised or to provide more than a paltry sum to victims of these abuses. In South Africa, for example, the Final Report of the Truth and Reconciliation Commission, released in October 1998, recommended that victims' families and survivors receive a yearly payment of approximately \$3,250—the median annual household income in South Africa in 1997—for a period of six years.<sup>14</sup> It was not until 2003 that the government agreed to provide a one-time payment of \$3,900 to each victim or their family. Needless to say, this process caused a great deal of resentment and unhappiness on the part of the recipients of the reparations as well as the South African public. The dual problems of creating unattainable expectations and providing insultingly trivial amounts of money can plague reparations processes focused on financial remuneration. Thus even if compensation is a central goal, material reparations may not be an appropriate choice.

A second type of reparations often relied upon in the wake of mass violence is the restoration of rights stripped away by human rights abusers.<sup>15</sup> This approach includes reinstating all legal rights, including liberty and citizenship, enabling return to one's original home, ensuring return to employment, and return of stolen property. Rights restoration includes both symbolic and concrete measures aimed at returning dignity to those who suffered serious human rights violations. This type of reparation takes a step towards the spiritual while including elements of material reparations. Where possible, it can meet both the goals of compensation and rehabilitation at once, and can also play a role in reconciliation.

Spiritual and moral reparations are another possible response to widespread human rights violations.<sup>16</sup> Rather than attempting to provide a financial award to every individual abused by a repressive regime, this type of reparation focuses on redressing intangible losses suffered by victims. Ideally,

spiritual and moral reparations will empower survivors and allow them to regain a sense of dignity and self-worth. For example, if implemented correctly, apology can provide significant moral reparation. The perpetrator must fully accept responsibility for his actions, and the victim must have the power to accept, refuse, or ignore the apology.<sup>17</sup> Widespread distribution of the results of trials and other efforts to uncover the “truth” can also offer powerful spiritual reparations, as they meet a common desire of victims and their families to know who was responsible for the abuses inflicted upon them. Unlike material reparations, the attitude and engagement of the perpetrator can play an important role in spiritual and moral reparations. As a result, the latter may be preferable if reconciliation is a central goal. Moreover, the focus on the victim’s spiritual and emotional well-being means that this type of reparation is likely also superior in achieving rehabilitation.

Finally, societal reparations focus on restoring elements of society that were destroyed through mass human rights violations.<sup>18</sup> The rule of law, a free press, an independent judiciary, educational and cultural institutions, and other fundamental components of a democratic society or a particular community are often severely weakened or obliterated during periods of serious human rights abuses. Societal reparations seek to strengthen these aspects of democracy and civil society through training, education, rebuilding, and monitoring. The entire community, victims and perpetrators alike, can be involved in repairing the wounds of widespread violence. Given its focus on reintegrating society, this type of reparations is linked most closely with the goal of reconciliation, but can also play a crucial role in individual rehabilitation.

In determining which mechanism is preferable for a particular situation, there are two threshold questions: who will be the recipient of the reparations and who will pay for the reparations. Will the recipients be limited to the victims of the human rights violations, or will bystanders and perpetrators also benefit? If the former, how will we define and identify “victims”? Will individual perpetrators be required to pay for the reparations, or will they be paid by the state or by a third state? This decision requires consideration of the goals of reparations for the situation at hand.

Reparations have historically been implemented through mechanisms, court-based or administrative, that focus on the individual as the recipient. Naomi Roht-Arriaza points out that this approach may not be the most appropriate

response to mass human rights violations.<sup>19</sup> Mechanisms that award reparations on an individual basis fail to reflect the collective nature of the harm perpetrated in mass conflict situations. Moreover, such mechanisms are most effective in responding to individual violations or small groups of victims, given the inherent literacy bar in filing claims and the judicial resources needed to process claims.<sup>20</sup> In addition, these institutions require victims to come forward and identify themselves, a process likely to intimidate and exclude many of those who suffered human rights abuses. Roht-Arriaza therefore suggests a collective reparations model that may overcome these obstacles and respond more effectively to mass human rights violations.

Individualized mechanisms to award reparations are useful where compensation is a central goal and reparations are material or rights-restoring. In court-based mechanisms, the individual perpetrator generally pays reparations to the victims of the human rights violations they committed. The net is tightly drawn, perhaps allowing for greater material reparations for individuals determined to be victims, but limiting the societal or broader effect of the reparations. Administrative mechanisms provide reparations to individual victims according to a pre-determined scheme. Often, administrative programs entail state-awarded reparations to individual victims. The United Nations Compensation Commission for the Gulf War provides an example of another type of administrative program, one run by an international body with funds from oil revenues.<sup>21</sup> In administrative mechanisms, the decision of who will be categorized as a victim is extremely tricky, with over-broad categorization leading to diminished reparations for those most in need, while overly narrow categories will seriously harm the psyches of those who suffered under the human rights violating regime but were not deemed to meet the standard of "victim."<sup>22</sup> Moreover, the evidentiary burden of proving oneself a victim may be too high, eliminating many meritorious reparations claims for lack of proof. In responding to mass conflict, then, individualized mechanisms can have serious shortcomings.

The collective mechanism suggested by Roht-Arriaza may be the most appropriate for mass violations of human rights, given that a collective harm may require a collective response.<sup>23</sup> One way of viewing the collective mechanism is to see reparations as a component of national development. This perspective is responsive to the reality of post-mass violence societies, which are often in dire

need of basic infrastructure and institutions. In addition, it loosens the requirements for recipients and providers; victims and perpetrators alike can benefit from collective reparations, and they can be paid for by perpetrators, the state, a third state, international funds, or any combination of the above. Collective reparations, then, can be shaped depending on the primacy of the goals of rehabilitation and reconciliation. However, they have been criticized for, among other reasons, their potential to conflate government obligations, allowing the state to slap a new “reparations” label on development work that it should have been providing regardless.<sup>24</sup>

### THE LAW OF REPARATIONS

The law establishing the Khmer Rouge tribunal contains a troubling blind spot with respect to reparations. In the section enumerating penalties, the statute specifies that the court may confiscate property acquired unlawfully, but does not authorize the payment of damages or other forms of reparations.<sup>25</sup> Indeed, the KRT Law explicitly limits all penalties to imprisonment.<sup>26</sup> This lacuna is particularly worrisome because contemporary international human rights treaties provide a legal basis for reparations.

International human rights law has long provided grounds for victims of mass human rights violations to seek reparations, and increasingly requires them. The Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, the Convention Against Torture, and the Convention on the Rights of the Child all provide for the right to an effective remedy for individuals whose rights under these treaties are violated.<sup>27</sup> Relying on these and other multilateral treaties, the United Nations High Commissioner for Human Rights has promulgated draft principles on the right to reparations for victims of gross violations of international human rights law. The principles do not create new substantive rights, but enumerate clearly and thoroughly the various aspects of the right to reparations.<sup>28</sup> In addition, the Rules of Procedure and Evidence of the International Criminal Court includes provisions on reparations, authorizing victims and the court to request reparations, including restitution, compensation, and rehabilitation, from a convicted person.<sup>29</sup>



Based on this strong support for a right to reparations in treaty law and soft international law, the Khmer Rouge tribunal law's failure to provide for any reparations appears out of step with international obligations and expectations. While the KRT Statute provides for situations such as this, the process by which such conflicts will be resolved is somewhat opaque.

Where Cambodian law does not deal with a particular matter, or . . . where there is a question regarding the consistency of . . . a rule [of Cambodian law] with international standards, guidance may also be sought in procedural rules established at the international level.<sup>30</sup>

This vague reference to international law does not specify which procedural rules the court should rely upon. In his chapter in this volume, Scott Worden discusses this problem and recommends that the tribunal be bound by a set of written procedures, which could be adopted by the National Assembly and the court.<sup>31</sup> Ideally, these procedures would include a provision authorizing the court to award reparations to victims of the Khmer Rouge. If they do not, Worden further notes that it is unclear whether the judges can adopt substantive procedures without legislative authority, as the Constitution currently requires that substantive procedural codes be promulgated by the National Assembly. Authorizing reparations might, then, require an argument addressed to the tribunal directly or a proposed amendment of the KRT Law presented to the National Assembly, based on international human rights law principles and the language of the KRT Statute. The confusion as to where authority for reparations might lie will require a frustrating expenditure of unnecessary effort, but does not appear to be insurmountable.

#### THE CASE OF CAMBODIA

The mass human rights violations perpetrated by the Khmer Rouge in Cambodia present a unique case for reparations. The two threshold questions—who would receive reparations and who would pay for them—require a resolution. Potential responses are complicated by the time that has elapsed since the atrocities were committed—victims and perpetrators alike have died, memories

have faded, and various types of symbolic reparations have already been made. Based on a small survey conducted by the author in 1997, the chapter concludes with recommendations for reparations tailored to the Cambodian situation.

For numerous reasons, it is extremely difficult to separate out a class of victims, or reparations recipients, in Cambodia. First of all, approximately one-third of the Cambodian population was killed during the Khmer Rouge era. There are very few Cambodians, even twenty-five years later, whose families were left untouched by the atrocities of the Khmer Rouge. It is difficult to imagine a class of victims and their families that would not include the vast majority of the country. Moreover, it may be difficult to separate low-ranking Khmer Rouge cadre from their victims. Given that the tribunal will only be prosecuting the leaders of the regime, an entirely separate judicial or administrative process would be required to decide who should be considered a victim and, where reparations would come from the perpetrator, who should be considered a perpetrator. It is hard to imagine that Cambodians have retained the evidence necessary to establish their status as a victim, and would be nearly impossible to prove a negative—i.e. that someone was not a perpetrator. Finally, it is not at all clear that the individualistic focus of western criminal justice systems is appropriate for the Cambodian cultural context. While further study must be conducted on this topic, one can argue that collectivism rather than individualism is the norm in this Buddhist society, and thus that reparations should aim to heal society as a whole rather than compensate individual victims piecemeal.<sup>32</sup>

Another extremely vexing question is who will pay for these reparations. As argued above, a case can be made that the Khmer Rouge tribunal has jurisdiction to order reparations from individuals found guilty before it. While some of the Khmer Rouge leaders who may be found guilty, Ieng Sary in particular, have extensive wealth, their assets may not be accessible or adequate to compensate Cambodians for the crimes of the Khmer Rouge. As a result, it may be necessary to turn to sources over which the tribunal has no jurisdiction, such as the Cambodian government and the international community. While it is questionable whether the tribunal can issue an order that would bind the Cambodian government, international human rights law enumerates the government's obligation to provide reparations.<sup>33</sup> Thus the Cambodian Constitutional Council or an international body might have stronger jurisdictional

grounds for such an order. However, given the ongoing struggles for funding for the tribunal itself, it is also hard to imagine that the Cambodian government would be willing or even able to produce funds necessary for serious reparations.<sup>34</sup> Another appropriate source of funding could be the international community, which made many severe mistakes in responding to the Khmer Rouge's horrific abuses, including allowing the Khmer Rouge to retain their seat at the United Nations for many years. Moreover, individual countries that directly or indirectly supported the Khmer Rouge, such as China and the United States, could make amends by funding a reparations program. While the tribunal has no power over these states, a campaign to provide reparations in conjunction with the tribunal's findings might be persuasive in soliciting donations. On the other hand, states are not likely to admit wrongdoing unless forced to, and the immense funding required for the tribunal itself is likely to lead to serious donor fatigue.

Cambodia is also unusual in that twenty-five years have passed since the Khmer Rouge era ended, so efforts at reparations have already been made by the state and by private individuals. Numerous memorials to the killing fields have been created, including stupas and more controversial piles of skulls and bones.<sup>35</sup> The government, with donor assistance, has created a museum at Tuol Sleng, the infamous S-21 prison that was the site of torture and execution by the Khmer Rouge. Every year, January 7 is a national holiday to celebrate the downfall of the Khmer Rouge, and Anger Day is celebrated on May 20 to remember the deaths perpetrated by the regime. A significant number of spiritual reparations have been instituted in Cambodia, including re-ordination of monks, reconstruction of temples, allotment of government positions for religious figures, and performance of ceremonies of the dead,<sup>36</sup> and do not need to be repeated but could perhaps be revived in connection with a trial of the Khmer Rouge.

#### CAMBODIAN ATTITUDES TOWARDS REPARATIONS

In 1997, the author conducted a survey of twenty-five Cambodians from various socio-economic strata to ascertain their opinions about accountability for the Khmer Rouge.<sup>37</sup> While by no means scientific or even comprehensive, the question of reparations posed in the survey gave rise to three recurring themes: the need to repair the educational system, rebuild religious institutions, and ensure

the protection of legal rights. Thus, many interviewees believed that reparations should be used to improve the educational system.<sup>38</sup> Some thought funds should go to building schools, while others proposed scholarships or other funding for education. A couple of the interviewees specified that money should go towards education about the genocide, particularly historical textbooks.<sup>39</sup> Several of the interviewees suggested that they would like to see the reconstruction of Buddhist temples, or pagodas, that were destroyed by the Khmer Rouge.<sup>40</sup> One interviewee proposed that funds be used to build Pāli schools—monastic educational institutions that teach the language of the Theravāda Buddhist texts.<sup>41</sup> Finally, interviewees saw a need to improve the legal system and specifically to teach Cambodians their basic legal rights.<sup>42</sup> All of these community-based reparations projects could contribute significantly both to rehabilitation and reconciliation, and could be implemented through collective reparations mechanisms.

Before transforming these ideas into reparations projects, a comprehensive study of Cambodians' opinions must be undertaken. The South African Truth and Reconciliation provides an excellent example of how to design such a study.<sup>43</sup> To create culturally appropriate reparations processes, the TRC consulted with many groups of people, including victims, non-governmental organizations, community-based organizations, faith communities and academics. They instituted consultative workshops to determine the needs and interests of these groups, and developed principles from their consultations and workshops that would guide the structure of the reparations process in South Africa. While this is an ambitious standard for designing a reparations process, and may not be possible to recreate given financial and infrastructural shortcomings in Cambodia, it provides an excellent starting point. In particular, it is important to consult with religious leaders in designing a reparations process for Cambodia, enabling the incorporation of a Buddhist as well as a Cham perspective.

In the meantime, the 1997 survey as well as the analysis above point to a few different options for reparations in Cambodia. Given the size of the population affected, the time that has lapsed since the violations, and the cultural context, compensation seems an inappropriate and inapposite goal for a Cambodian reparations process. Accordingly, the following proposals focus on programs geared towards rehabilitation and reconciliation, which suggest community-based reparations distributed through a collective mechanism.<sup>44</sup>

Cambodian society as a whole will be the beneficiary, avoiding the nearly impossible task of separating victims and their families from the rest of society. Funding should be sought from all possible sources: convicted perpetrators, the Cambodian government, donor states, and international organizations. Keeping in mind the preferences expressed for reparations focused on rebuilding education, religion, and the law, I propose three possible routes that this process could take in Cambodia, depending upon the available funding.

The most ambitious reparations proposal is to establish a quasi-traditional truth and healing process throughout Cambodia. Such a program could be similar to truth commissions that have been established in other countries, such as South Africa, but would require serious revision and amendment in order to conform to the Cambodian cultural context. Like truth commissions, this mechanism could provide a space for victims and perpetrators alike to tell their stories, thus establishing a dialogue and starting down the path to societal healing.<sup>45</sup> Because its focus could be broader than solely meeting the legal standard required to prove guilt and because it would not be limited by strict rules of evidence or procedure, this process could allow the “truth” to emerge, painting a more complete picture of Cambodian history.<sup>46</sup> A truth and healing program could then disseminate the testimony of victims and perpetrators, including information from documents held by organizations such as the Documentation Center of Cambodia. This history, once documented, could be adapted into textbooks, furthering educational goals. The power of this basic process must, of course, be enhanced through a comprehensive study of the opinions and needs of Cambodians, and would by necessity include religious communities in the design.

A less ambitious reparations process would focus on educational reform and/or “know your rights” programs. Educational reform could range from teacher training and salary increases to building schools and purchasing textbooks. One can envision a role for NGO and U.N. involvement in these processes. Another aspect of this program could be a civil and human rights training program, using educational facilities on the weekends or during the evenings to teach Cambodians about their legal rights. Again, reparations could include syllabus design, publication of reading materials, salaries and expenses for teachers, and ongoing training of local participants in the rights education program.

Finally, the reparations process must, at a minimum, include the distribution of trial findings through outreach and the media, including television and radio. Interviewees unanimously agreed on the importance of widespread dissemination of trial results, as well as publishing the names of the perpetrators. Ideally, these results would be distributed daily during the trials, allowing Cambodians to feel invested in the trial process. This approach, however, would require either dissemination through print media or a comprehensive effort to provide radio or television links in public spaces in villages throughout Cambodia before the trial commences. While the timing of such pre-judgment reparations is unusual, the importance of keeping Cambodians included and engaged in the trial suggests that this may be the best approach. This option also presents the donor community with an opportunity to make a discrete contribution to the healing process in Cambodia.

#### CONCLUSION

The Khmer Rouge tribunal presents an unparalleled historical moment, not only to account for massive human rights violations, but also to repair the harm that these abuses wreaked on Cambodian society. While the KRT Statute fails to explicitly authorize reparations awards, international human rights law provides a solid legal basis for victims of the Khmer Rouge to seek reparations. Whether the tribunal relies on the statute itself, uses its own authority to promulgate procedural rules, requires the National Assembly to amend the KRT Statute, or even uses its moral authority to encourage a parallel reparations process by the government in conjunction with the international community, it should create a viable path to enabling reparations awards. Moreover, reparations could be forthcoming from sources outside the jurisdiction of the tribunal, such as the Cambodian government, other states, and international organizations. Of course, any reparations process must take into account the Cambodian cultural context and the needs of the Cambodian people. Prior to designing the reparations mechanism, then, a comprehensive survey should be conducted to determine the opinions of Cambodians concerning the goals and form of reparations for their society. Based on a small survey, it seems likely that the goals of reconciliation and rehabilitation will be front and center, and that spiritual and moral as well as societal reparations

will be the most appropriate for Cambodian society. A collective societal response to the crimes of the Khmer Rouge may not only present the most culturally appropriate reparations program for Cambodia, but is also an important and necessary step in a new direction for reparations for massive human rights violations more generally.

## NOTES

<sup>1</sup> The author would like to thank Beth Van Schaack, David Koplow, Philip G. Schrag, and Luis Carlos Nogales for their insights and edits on this chapter.

<sup>2</sup> Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (June 6, 2003); Instrument of Ratification on the Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (Oct. 19, 2004); Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (enacted Aug. 10, 2001) (amended Oct. 5, 2004) [hereinafter KRT Law or KRT Statute].

<sup>3</sup> Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Rev. 05 Aug. 2004) [hereinafter U.N. Reparation Guidelines], available at <http://www.ohchr.org/english/events/meetings/docs/versionrev.doc>. The United Nations High Commission for Human Rights held a third consultative meeting on September 29 through October 1, 2004, with an eye to finalizing these draft guidelines.

<sup>4</sup> MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 93 (1998).

<sup>5</sup> MINOW, *supra* note 4, at 92.

<sup>6</sup> For a comprehensive discussion of truth commissions, see PRISCILLA B. HAYNER, *UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY* (2001); for a thoughtful examination of the promises and pitfalls of the gacaça process, see Samantha Power, *Rwanda: The Two Faces of Justice*, N.Y. REV. BOOKS. 47 (Jan. 16, 2003).

<sup>7</sup> The United Nations High Commissioner for Human Rights' draft guidelines are particularly helpful in assessing different types of reparations. See U.N. Reparation Guidelines, *supra* note 3, at § VIII.

<sup>8</sup> See *id.* at § VIII, pt. 21.

<sup>9</sup> MINOW, *supra* note 4, at 103.

<sup>10</sup> *Id.* at 93.

<sup>11</sup> Czitrom, Claudia Gerez, *Executive Summary of Victor Espinoza Cuevas, et al., Truth Commissions: An Uncertain Path?* 20-32 (2002), available at <http://www.apf.ch/americas/mexico/Executive%20Summary.pdf>.

<sup>12</sup> MINOW, *supra* note 4, at 100.

<sup>13</sup> JOHN MAYNARD KEYNES, *THE ECONOMIC CONSEQUENCES OF THE PEACE* 225 (1920).

<sup>14</sup> This benchmark amount of 21,700 Rand would be adjusted for each victim, based on individual suffering, rural versus urban location, and the number of dependants. [http://www.news24.com/Content\\_Display/TRC\\_Report/5chap5.htm](http://www.news24.com/Content_Display/TRC_Report/5chap5.htm)

<sup>15</sup> See U.N. Reparation Guidelines, *supra* note 3, at § VIII, pt. 20.

<sup>16</sup> See *id.* at § VIII, pts. 22-23.

<sup>17</sup> MINOW, *supra* note 4, at 115.

<sup>18</sup> See U.N. Reparation Guidelines, *supra* note 3, at § VIII, pt. 24.

<sup>19</sup> Naomi Roht-Arriaza, *Reparations Decisions and Dilemmas*, 27 HASTINGS INT'L & COMP. L. REV. 157 (2004).

<sup>20</sup> *Id.* at 169.

<sup>21</sup> For an examination of the United Nations Compensation Commission, see David Bederman, *The United Nations Compensation Commission and the Tradition of Claims Settlement*, 27 N.Y.U. J. Int'l L. & Pol. 1 (1993). The Compensation Commission's website can be found at <http://www2.unog.ch/uncc/start.htm>.

<sup>22</sup> Roht-Arriaza, *supra* note 19, at 177-80.

<sup>23</sup> *Id.* at 181-85.

<sup>24</sup> *Id.* at 188-92.

<sup>25</sup> KRT Law, *supra* note 2, Art. 39. *But see* Scott Worden, Chapter 5, in this volume, at 182 (noting that while the KRT Law is silent on compensation, it allows victims to appeal, which may imply that they are allowed to seek compensation).

<sup>26</sup> KRT Law, *supra* note 2, Art. 28.

<sup>27</sup> Universal Declaration of Human Rights, U.N.G.A. Res. 217A(III), Art. 8 (Dec. 10, 1948) (right to effective remedy) (Cambodia accepted United Nations Charter on Dec. 14, 1955); International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, Art. 2(3) (Mar. 23, 1976) (right to effective remedy and enforcement thereof) (Cambodia signed on October 17, 1980 and acceded to on May 26, 1992); International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, Art. 6 (Mar. 7, 1966) (right to effective remedy for racial discrimination and just and adequate reparation or satisfaction) (Cambodia signed on April 12, 1966 and ratified on November 28, 1983); Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, Art. 14 (June 26, 1987) (right to fair and adequate compensation, including as full rehabilitation as possible; compensation awarded to dependents where torture kills victim) (Cambodia acceded to on October 15, 1992); Convention on the Rights of the Child, 1577 U.N.T.S. 3, Art. 39 (Nov. 20, 1989) (states to take appropriate measures to promote physical and psychological recovery of child victims of abuse or torture) (Cambodia acceded to on October 15, 1992).

<sup>28</sup> See U.N. Reparation Guidelines, *supra* note 3.

<sup>29</sup> Rules of Procedure and Evidence of the International Criminal Court, R. 94-99, available at [http://www.un.org/law/icc/asp/1stsession/report/english/part\\_ii\\_a\\_e.pdf](http://www.un.org/law/icc/asp/1stsession/report/english/part_ii_a_e.pdf). See also International Criminal Court, Regulations of the Court, Regulation 88, available at [http://www.icc-cpi.int/library/about/officialjournal/Regulations\\_of\\_the\\_Court\\_170604-EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Regulations_of_the_Court_170604-EN.pdf); Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, Art. 75 (July 7, 1998) (Cambodia signed on October 23, 2000 and ratified on April 11, 2002).

<sup>30</sup> KRT Law, *supra* note 2, Art. 33.

<sup>31</sup> See Worden, *supra* note 25, at 185 (outlining three possibilities for establishing procedural rules—through ad hoc judge-made rules, through a revision of Cambodian criminal procedure, or through a comprehensive set of binding rules). Worden notes that



the Khmer Rouge Trial Task force is currently drafting rules intended to address inconsistencies between the KRT Law and international law. *See id.* at 183-87.

<sup>32</sup> As Ian Harris notes in his chapter, “the goal of Buddhist [legal] proceedings is to harmonize the parties, not simply to reach a goal that is consistent with abstract legal principles.” Ian Harris, Chapter 2, in this volume, at 85.

<sup>33</sup> U.N. Reparation Guidelines, *supra* note 3, at § I, pt. 2, §2.

<sup>34</sup> At the time of publication, the Cambodian General Assembly had failed to authorize funding for the tribunal. *See, e.g.,* Yun Samean, *No Money Slated for KR Trial in 2005 Budget*, THE CAMBODIA DAILY (Dec. 24, 2004).

<sup>35</sup> For an excellent analysis of the existing memorial sites, see Rachel Hughes, *Memory and Sovereignty in Post-1979 Cambodia: Choeung Ek and Local Genocide Memorials*, in *NEW PERSPECTIVES ON GENOCIDE: CAMBODIA AND RWANDA* 269 (Susan Cook ed., 2004).

<sup>36</sup> *See id.* at 273.

<sup>37</sup> For a further discussion of these interviews, see Jaya Ramji, *Reclaiming Cambodian History: The Case for a Truth Commission*, 24 FLETCHER F. WORLD AFF. 137 (2000).

<sup>38</sup> Interviewee # 1, 5, 6, 7, 10, 11, 12, 15, 16, 20. This and the following “Interviewee” cites come from the author’s notes of interviews she conducted in 1997, under the auspices of the Documentation Center of Cambodia and the Orville K. Schell Center for International Human Rights at Yale Law School, with twenty-five Cambodians from different regions of Cambodia, socio-economic backgrounds, and political parties. Because of anonymity concerns expressed by numerous interviewees, particular interviewees are identified here by numbers that delineate the chronological order of the interviews.

<sup>39</sup> Interviewee # 16, 20. Since 1993, Cambodian textbooks have barely mentioned the Khmer Rouge era, and teachers seldom discuss the atrocities they committed. *See* Ramji, *supra* note 37, at 148-49. A recent NPR report noted that twelfth-grade textbooks contain only four pages on the Khmer Rouge and their crimes. Dr. Kol Pheng, the Cambodian Minister of Education, Youth, and Sports, is working with USAID funding to provide Cambodian schools with new textbooks that will thoroughly discuss the Khmer Rouge era, by 2006. Youk Chhang of the Documentation Center of Cambodia is doubtful that this project will be completed unless the trials move forward. NPR News, *Khmer Rouge Gets Little Notice in Cambodian Education*, Morning Edition (Nov. 16, 2004), available at <http://www.npr.org/templates/story/story.php?storyId=4172115>.

<sup>40</sup> Interviewee #3, 6, 10, 12.

<sup>41</sup> Interviewee #5.

<sup>42</sup> Interviewee # 3, 4, 7.

<sup>43</sup> Reparation and Rehabilitation Committee, South African Truth and Reconciliation Commission, *A Summary of Reparation and Rehabilitation Policy, including proposals to be considered by the President*, available at [www.doj.gov.za/trc/reparations/summary.htm](http://www.doj.gov.za/trc/reparations/summary.htm).

<sup>44</sup> This analysis accords with that of Ian Harris, who notes that influential Buddhist monks have repeatedly expressed the view that “the [accountability] process should eschew a ‘politics of anger,’ or retribution, in favour of reconciliation, understood as a reordering of the world in accord with *dhamma*.” Harris, *supra* note 32, at 82.

<sup>45</sup> See MINOW, *supra* note 4, at 92 for further discussion of the importance of opening this dialogue.

<sup>46</sup> For a more comprehensive discussion of truth commissions, see, e.g., PRISCILLA B. HAYNER, *UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY* (2001); see generally Ramji, *supra* note 37.

<http://www.mellenpress.com/mellenpress.cfm?bookid=6456&pc=9>