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Misjudgment

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Sometimes, grand prosecutions of war crimes don't make sense

This past winter, in a makeshift courthouse on the dusty outskirts of Phnom Penh, the nation of Cambodia began a long-awaited step toward reckoning with its horrifying past. With the help of the United Nations, the country is putting on trial senior leaders from the Khmer Rouge regime, whose reign of terror killed as much as one-quarter of the country's population between 1975 and 1979.

The process evokes the Nuremberg trials after World War II and other high-profile tribunals held since then: a way to bring past leaders to account for their crimes, to force the country to examine its terrible past, and - in theory - to bring some degree of justice and allow for healing.

The stakes for Cambodia are high. The Khmer Rouge era left a legacy of trauma and violence, and the country's culture and society remain in tatters. The tribunal will cost up to as much as \$200 million from international donors - a steep price when weighed against the needs of a desperately poor nation.

But there is good reason to believe the tribunal will fail in its aims. Held 30 years after the fall of the regime, the trial focuses on only five leaders - Khmer Rouge head Pol Pot died a decade ago - leaving thousands of former Khmer Rouge officials living undisturbed in Cambodian society. And though it may reveal important information about the country's past, virtually no one in Cambodia will have access to its findings. Although it is too soon to know how it will turn out, the troubles faced by the Khmer Rouge tribunal offer a chastening example of why Nuremberg-style tribunals - despite their successes elsewhere - may be wrong for many of the developing countries that most need to find a way to grapple with their pasts.

Finding a model for handling war crimes in the developing world will be critically important as more countries emerge from violence and grope toward stability. In Africa, Southeast Asia, and parts of the Middle East, many nations remain trapped in brutal conflicts, or struggling with the legacy of war - a legacy that continues, in many places, to cause unrest well outside the country's borders. One promising approach may be small-scale, village-level reconciliation programs, which work within the country's social structures rather than creating an expensive Western-style process. They may lack the gravitas of a high-profile trial, but might do far more to move troubled countries out of the past - and to do it on their own terms.

In theory, a tribunal for war crimes or genocide can have a significant impact in a postwar society. After Nuremberg, the best-known model is South Africa's Truth and Reconciliation Commission. From 1996-98, the commission held open hearings that, to some extent, resembled courtroom trials. Both victims and perpetrators of apartheid-era violence came forward and told their stories; the hearings were shown on national television. The commission opened the apartheid-era archives of political crime to the public, and made it easier for the country to move on: Afrikaaner hardliners could no longer argue that the apartheid era was a time of peace and prosperity; and justifiably angered black South Africans could be mollified by the public admission of violence. One comprehensive study of the commission, published in 2004 in the *Journal of Black Studies*, found that, overall, both whites and blacks saw the commissions as effective at revealing the truth.

In that sense, the commission was similar to Nuremberg, which not only meted out punishment but also exposed the Nazis' crimes, making it harder for anyone to deny them in the future, and thereby enabling a stable new Germany. The Hague tribunal of war crimes suspects from the Balkan wars has also been touted as a success - it promoted reconciliation after the bloodshed, allowing nations destroyed by ethnic divides to begin healing.

But in developing nations, these theories break down. It can be critical for tribunals to work quickly, before evidence is lost, memories fade, and the suspects grow too old to stand trial. In Cambodia, as in many other poor countries, such immediacy may simply be impossible. After the fall of the Khmer Rouge in 1979, its armies decamped to the Thai border and remained there for more than a decade, and not until the mid-2000s did Cambodian authorities finally arrest top Khmer Rouge leaders. By now, the senior Khmer Rouge leaders are so old they could die before the tribunal finishes, as did Slobodan Milosevic, who died in custody facing trial for crimes during the Balkan wars.

In developing nations, tribunals are also far more likely to fail in their mission of publicly disseminating difficult truths about the country. In Cambodia, only a small percentage of people actually can follow the proceedings, which get little coverage on national television. A similar problem is unfolding in the trial of Charles Taylor, the despotic former president of Liberia: the court trying him maintains a comprehensive website of documents which is nearly useless to Liberians, whose country has one of the lowest levels of Internet penetration in the world. In both cases, the entire trial could unfold nearly out of view of the nation that most needs to see it.

Tribunals can also be warped by the sitting government in its own interests. The current Cambodian prime minister, himself a former Khmer Rouge official, once said the country should just "dig a hole and bury the past." Little wonder then, that when the foreign co-prosecutor of the Khmer Rouge tribunal suggested expanding its mandate to prosecute a wider number of suspects, his Cambodian peer nixed the idea. "[Prime Minister] Hun Sen has no role in this court, yet he keeps trying to use his hold over its Cambodian personnel to interfere," Brad Adams, Asia director for Human Rights Watch, told reporters.

A similar problem looms in Zimbabwe, a nation with a violent history that would seem a promising candidate for a tribunal. There, though the longtime opposition Movement for Democratic Change now controls many levers of power, the old guard around president Robert Mugabe still wields enough influence to stop any real investigation of the abuses of Mugabe's regime. In East Timor, now independent after a guerrilla war against Indonesia, the government launched a high-profile Commission on Truth and Friendship, but in the interest of preserving good relations with its powerful neighbor, generated a watered-down investigation of the Indonesian military's alleged mass killings and other crimes. The result left the Timorese population frustrated, and the Indonesian military still operating in a climate of impunity.

It's hard to see how a tribunal that does not reach most of the public, comes late, and is compromised by the sympathies of regimes in power could do the difficult job of justice and healing. Such trials also consume significant resources, often due to the expense of making cases and finding evidence after civil wars. The Khmer Rouge trial will cost upward of \$200 million. Helena Cobban, a longtime journalist who has studied postwar justice, estimates that the tribunal in Sierra Leone, launched in 2002 to prosecute crimes against humanity committed during the country's civil war in the late 1990s, has spent over \$40 million per case. Those sums are huge anywhere, but are almost unconscionable when dealing with countries with so many social needs, and where donors, having already given to tribunals, might be wary of handing over cash for other needs.

The purpose of these tribunals is admirable. But rather than follow the example that worked in Western countries, poor nations might be wiser to invest in local-level reconciliation programs.

A promising example has unfolded in Rwanda, which disintegrated into civil war and genocide in the early 1990s. There, the government has instituted a program called gacaca, essentially a series of village-level community courts in which former victims can confront alleged perpetrators of the 1994 genocide. In the gacaca courts, the accused tell their stories and, often, ask for forgiveness. After hearing the confessions, the community court often sentences them to punishment, which often involves making restitution on a local level.

Gacaca has demonstrated several advantages. By operating on a local level, it brings the healing process to the whole country, without having to rely upon citizens following a single high-profile tribunal on television or radio. Using community leaders as a kind of judge, it has proven far cheaper, and much faster, than a tribunal, particularly one held in the West. The gacaca courts have reportedly already heard more than 1 million cases. By operating at a local level, too, the gacaca courts can, to some extent, avoid the influence of the central government.

The Rwandan process is not without flaws. Local retribution against the guilty has occurred, violently in several cases. But on the whole it has been remarkably effective. And as Rwanda deals forthrightly with the legacy of its genocide, it has built one of the

most vibrant economies in Africa, consistently posting among the highest annual growth rates on the continent.

In Cambodia, it is easy to see how such a process could help: In many villages former Khmer Rouge local leaders live alongside their victims, creating an atmosphere of hatred and a pattern of brutal retributive violence. Indeed, it's on a local level, rather than nationally, where Cambodia needs to make peace. But the government has barely even tried this strategy - partly, perhaps, because its interests aren't served by bringing large numbers of former Khmer Rouge to justice, and partly because international donors tend to prefer funding centralized, high profile tribunals.

Without this local-level process, however, Cambodia probably will never come to terms with its past. As the past century shows, reckoning with war history matters. But it's how you reckon that may turn out to matter just as much.