The Khmer Rouge Genocide Trial and the Marcos Human Rights Victims:
the Quest for Justice and Reparations

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[*Abstract*]

Just how does one make sense of the genocide perpetrated by the Khmer Rouge during its rule in the 70's and the numerous human rights violations in the Philippines during the Marcos period? Like the conflicts that have marked human history at the close of the 20th century, Southeast Asia is no exception, similar to the many attempts to come to terms with the past and put to account wrongdoers worldwide. The paper is an attempt to historicize these two seemingly unrelated events and analyze them from the synoptic frameworks of transitional justice and reparations. Similar to the experiences faced by many societies transitioning towards democratic rule, notably in Latin America, the dilemma of whether to pursue justice or preserve the peace and the newfound status quo has characterized the length at which justice had eluded the victims in Cambodia and the Philippines. Yet, no matter what the limits are in pursuing accountability, or these so called historical injustices, closure is still achievable. The paper would like to argue that closure

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is possible when one, all or a combination of the following, depending on the gravity of the crime, is present—truth-telling, prosecution for the crimes committed, and a grant of compensation.

Keywords: Khmer Rouge, Marcos human rights victims, reparations, human rights in Southeast Asia, history and closure, amending historical injustices

I. Introduction

From 1975 to 1979 the ruling Communist Party of Kampuchea (CPK or Khmer Rouge) undertook its own brand of revolution. Trying to establish "Kampuchea democracy", the CPK wanted to bring back Cambodian society to its obfuscated roots, that is, to bring the country back to its pristine state before the advent of Hindu, Buddhist, and colonial heredity, thus the name Democratic Kampuchea (Thion 1993). Shortly after taking power, the CPK went about implementing its social program. This included relocating urban dwellers into the countryside, in the process erasing all traces of modernity and eliminating its enemies. Aside from orders emanating from the senior leaders, there were also "assertive killings" done by lower level cadres which occurred mostly in communes outside the capital Phnom Penh. Purposeful killings along with starvation, diseases, and exhaustion from work decimated an estimated twenty percent of the population or about 1.7 million persons, making it the highest per capita genocide in the world (Kiernan 1992: 159-160).

Four decades after this horrific episode in Cambodia's history, and after several years of bruising negotiations and grudging compromises, the Cambodian government and the United Nations finally established a hybrid tribunal to try senior leaders of the Khmer Rouge in 2005. Called the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, or simply the Extraordinary Chambers, this hybrid court, composed of Khmer and foreign judges and prosecutors, and largely funded by the international

community, aims to put to account the seven most senior leaders of the Khmer Rouge.

In the Philippines, it took 27 years after the downfall of the Marcos dictatorship before the government recognized the sufferings of human rights victims and allotted financial renumeration to compensate for their sacrifices in the restoration of democratic rule. Known collectively as the Marcos human rights victims, they filed a class suit against the former dictator in Hawaii for illegal detention, torture, summary executions, and forced disappearances. The class suit was a landmark case and achieved many firsts. It was the first human rights litigation on a mass scale against a former head of state. And it was also the first time that a dictator was found guilty of human rights violations and ordered to pay his victims. The case also set a precedent wherein dictators could no longer hide from the veneer of immunity for actions supposedly done in behalf of the state and by national borders. All in all, the victims were awarded almost US$2B in moral and exemplary damages. However, this victory would only be the start of the victims' travails and heartaches as the decision would encounter huge challenges and roadblocks. Because compensation for the victims would come from laying claim to the Marcos ill-gotten wealth stashed in a number of Swiss banks, it collided with the Philippine government's efforts to recover the same assets through the efforts of the Presidential Commission on Good Government (PCGG). In this sense, justice for the human rights victims collided with the Philippine government's pursuit of justice—to claim the Marcos ill-gotten wealth and use it to fund an urgent social reform measure, agrarian reform.

The paper would like to explore the tensions attendant in many democratizing societies that wanted to prosecute perpetrators of human rights violations committed during the former regime. It attempts to explore the difficulty of balancing the desire for justice on the one hand but also to keep the peace on the other. For many newly-restored democracies, there is a tendency to pursue peace and to forget wrongdoings done in the past. The paper then examines two cases—the trial of the senior leaders of the Khmer Rouge in Cambodia and the class suit filed against

Marcos by the Philippine human rights victims. The two cases highlight attempts at putting to account for past crimes and will be assessed in as far as providing repair to historical injustices and closure to the victims are concerned.

Ⅱ. Transitional Justice and Reparations

Transitional justice may be defined as the conception of justice associated with periods of political change. The concept of transitional justice developed from earlier works of scholars on democratic transitions or sometimes referred to as "transitology" (O'Donnel et.al. 1986; Linz and Stepan 1996). These works focused on the problem of how to consolidate democratic rule in order to avoid a slide back to authoritarianism, as many Latin American countries were prone. Transitional justice takes a step further by focusing on accountability on dictators whose rule was often marked by human rights abuses or gross human rights violations but at the same looking at the context for its success or failure. Transitional justice may also refer to the mechanisms by which societies undergoing transitions to democracy deal with the dark and atrocious past of former regimes, in particular, gross human rights violations.

The first debate in transitional justice literature revolves around the dilemma of whether to pursue prosecution over past human rights abuses during the transition period or defer them until such time that the political situation has become propitious for such reckoning (Mc Adams 1997; Teitel 2000; Mamdani 2001: 47-48). This so called justice-versus-peace dilemma was described succinctly, thus:

> "Putting to account perpetrators of human rights violations in democratizing countries are difficult as authoritarian regimes are brought about by deep divisions within society and they generally drive them even deeper. So that there is an immediate and widespread need in post-conflict societies to heal social wounds they have produced and there are strong pressures in many societies to cover up the past because it is thought to be damaging to the precariously

> achieved cohesiveness of a new democracy, where stability depends to a large extent on keeping social and political divisions within reasonable limits." (Hamber et. al. 2003: 148).

On the one hand, the issue of pursuing justice against perpetrators of human rights violations ran alongside the issue of whether to grant amnesty. In some instances wherein new democratic regimes and human rights advocates were predisposed to punish past offenders, the threat of retribution and coups forced them to reconsider the granting of amnesty (Sriram 2004). As some of its adherents would contemptuously point out, "But is it not democracy or the attainment of democratic rule that is the real reparation? Is it not official silence, or the policy of letting bygones be bygones, the price to pay for a transition to a democratic government? Is it not that non-acknowledgment of past crimes keeps the 'peace and harmony' in society?" (Mendez 1999: 6).

On the other hand, proponents of the pursuit of justice in spite of the political instability it brings believe that there is a need to address the wrongdoings of the past regime as a way of avoiding such practices and establishing the rule of law, a necessary process if a society is to move forward and achieve national reconciliation (Mendez 1997; Hesse and Post 1999). Quoted often by its adherents is the dictum "We cannot forgive those whom we cannot punish!" (Arendt 1962: 56).

Reparations on the other hand extend the concept of justice beyond those societies transitioning to democratic rule to include, but not confined to, victims of the Second World War and those of colonialism, both internal and external. Furthermore, reparations provide the modalities by which to address these so-called historical injustices. The concept of reparations, in its narrowest definition, means nothing more than compensation. Previously, reparations were given and received by nations alone. However, the Holocaust, being the cornerstone of contemporary reparations, altered this concept. Because other select groups aside from the Jews - such as gypsies, homosexuals and the handicapped - were the targets of the Holocaust, it came to mean compensation for

the oppressed and disadvantaged groups and individuals. As a result, it shifted the focus of reparations away from states and into individuals or select groups. Thus the Holocaust changed forever the concept of international law by making the individual, a group or non-state actors the subject of reparations (Torpey 2003: 2-9; Barkan 2000).

The rise of reparations in the late 20th century was due to many factors. One is the ascendancy of the concept of human rights after World War II with the passage of the Universal Declaration of Human Rights in 1948 which was followed by other conventions which formed part of what is known as the first generation of rights or commonly known as political rights (Ratner and Abrams 1997: 5-7). Another is the curtailment of the strong "Westphalian" notion of sovereignty of the state at the end of the Second World War where nation-state formation in many Third World countries was seen more as a process than as an end result. Lastly, there was a strong sentiment among many nations at the end of the last century to make amends for crimes committed by the state. (Torpey 2003: 63-69; Ignatief 2001: 17).

There are three basic streams or sources of demand for reparations. First are those cases arising from acts of injustice perpetrated during World War II. These include claims arising from state-sponsored mass killings (the Holocaust being the prime example), forced labor and sexual exploitation on the part of the Axis powers. In Asia, the most publicized crime would be on the so-called comfort women. But this also included wartime incarceration of Japanese immigrants in the United States and Canada to economic and other types of collaboration with the Nazis by countries previously assumed to be neutral like Switzerland and even the Vatican.

The second set of reparations claims stems from colonialism - both in the classical European sense and internal (e.g. slavery, apartheid, forced assimilation, and occupation or appropriation of indigenous ancestral lands). In the former case, there are African nations that plan to seek reparations for economic devastation

brought about by European colonialism in the last century. In the latter, reparations are normally undertaken by First World countries vis-a-vis their indigenous populations. For example, Australia apologized for taking young aborigines away from their parents and forcing them to live in white families to hasten the process of assimilation. Canada likewise apologized to Native Americans or First Nations for taking over their lands for commercial purposes as atonement for this internal colonization.

The third set of reparations claims arose from state-sponsored violence and other authoritarian practices during the transition process to democratic rule in many countries in Latin America, Eastern Europe, and South Africa. The victims were generally understood not in racial but in political terms and constitute groups with a shared experience of political repression. Reparations, such as monetary compensation in South Africa, Chile, and Argentina came as a result of the findings of the truth commissions (Torpey 2001: 337). This is where transitional justice and reparations intersect with each other.

2.1. Modalities of Repair

The following are mechanisms most commonly used in order to obtain justice and reparations:

2.1.1. Prosecution or trials

Punishment for perpetrators of human rights violations through trials may be the most visible and dramatic form of pursuing justice. Of late, trials are not only international in nature but sometimes under United Nations supervision. This is to minimize threats to, or preserve, internal social cohesion in post-conflict societies, aid countries that have limited judicial capabilities and/or come up with tribunals that meet international standards, -. Tthe Khmer Rouge Genocide Trial in Cambodia, the trial of Serbian leaders in the former Yugoslavia, and the Rwandan Genocide Trial are examples. But they are time consuming. Death may overcome justice as in the case of Augusto Pinochet and some of the senior leaders of the Khmer Rouge.

2.1.2. Financial compensation

Financial compensation may arise as a result from the reports of truth commissions, a decision or order from a court undertaking trials for human rights violators, or a policy of restitution. In the first case, the victims of the apartheid regime in South Africa received substantial amounts of money at the behest of the Truth and Reconciliation Commission. Argentine and Chilean dissidents also received modest financial help from the government after the findings of truth commissions were announced to the public. In some other countries, financial compensation came about as a result of trials against human rights violators. In this regard, financial compensation is used more as reparations for victims or disadvantaged groups.

2.1.3. Truth commissions

One of the most common demands from victims and their kin in many transitional societies is an official truth-telling activity. Truth commissions has four important elements: it focuses on the past; does not concentrate on a specific event but paints an overall picture of certain human rights violations over a period of time; it exists for a pre-determined period of time; and, it is vested with a certain authority (Hayner 2001).

South Africa provides the best example yet of how a truth commission could be a way for repairing past historical injustices. Yet while it is famous outside of South Africa and is seen as a model for other countries to replicate, many victims of the apartheid regime resent the immunity given to those who opted to confess for their crimes (De Kok 1998: 67). The TRC fused the twin objectives of truth recovery and reparative process with the grant of amnesty (Simpson 1999: 16). However, the first country that came up with this mechanism though was Argentina. A truth commission was established immediately after the end of the military regime of Gen. Jorge Videla and its “dirty war” on dissidents in 1982. Then President Raul Alfonsin established National Commission for Disappeared Persons (CONADEP) the following year, which came up with a final report entitled *Nunca Mas* (Never Again) four years later. The report was used to

prosecute the military but such attempts were met with successive military revolts and eventually succumbed to it (Alfonsin 1993; Hayner 2001).

2.1.4. Lustration

The term lustration has long been used in Eastern Europe to refer to the compilation of an inventory or register. Thus, to lustrate someone meant to check whether his name appeared in a database. Lustration and *decommunization* were used interchangeably. While the former is understood as ascertaining whether an occupant of, or a participant for, a particular post worked for or collaborated with the communist security services, the latter refers to the wider removal and exclusion of people from office for having been functionaries of the Communist Party or related institutions. Thus, lustration was presented as a means of safeguarding the state and democracy either by compelling thousands of candidates and officials to disclose their personal histories or by using a discreet bureaucratic procedure to filter out such persons from the state sector (Kieran et.al. 2005: 24-26).

2.2. Moral Reparations

2.2.1. Restitution

In its simplest definition, restitution means to return something which was forcibly or improperly taken. It may be personal property (like pieces of art, real estate, or money) or communal property (ancestral domains or "homelands" and cultural or historical artifacts). Restitution aims to reestablish to the fullest extent possible the situation that existed before the violation took place. It may also mean rehabilitation, which may include, but is not limited to, legal, medical, psychological, and other cares (Hayner 2001: 171). Among the often mentioned cases of restitution includes the return of ancestral domain to First Nations in the US and Canada and the return of looted artifacts back to their countries of origins (Hamber and Wilson 2003: 156).

2.2.2. Apologies

Coming from the Greek word *apologos*, which originally meant

an oral or written defense or vindication of charges by others, it came to mean as justification, explanation, or excuse on account of an offense that was unintended. Apology may come in many forms. It may be official or personal. It may also be an individual apologizing to a fellow individual, a group to an individual, or a state to an individual or group. Apologies can be offered to someone or for something. Apology also entails non-repetition of the transgression. Though a violation may be irreversible, with an apology it may not be irreparable. Apology may also have the power to contain socially disruptive conflicts (Tavuchis 1991: 22-28). Shortly after assuming office, Prime Minister Rudd apologized to Aborigines for forcibly taking their young and bringing them to white homes for rearing in order to hasten the process of assimilation, a practice common in Australia from the 1920's to the 1970's. In Asia, many countries would very much welcome an apology from Japan for the so-called comfort women and other atrocities committed on civilian populations.

2.2.3. Symbolic or Commemorations

Reparations or redress of past human rights violations may not only be limited to financial compensation, educational or housing benefits, and exemption from military service. Especially if the intention is to instill the collective memory of the victims to future generations and remind them of the horrors of authoritarian rule, the symbolic remembrances may very well be the best form of reparations. Aside from erecting markers, memorials, or establishing museums, symbolic reparations include commemorations or setting aside a particular day to remember a particular event or date to keep alive the memory of the victims and save it from going into oblivion or what has is referred to as "forgetting" or "deremembering" (Smith 1996). But to write history without acknowledgement of past wrongs would only result in so-called "contested memories." Without facing justice and owning up to past misdeeds, there is a tendency among perpetrators to challenge the memories of the victims as a way of exonerating themselves (Bourguet et. al. 1990).

And the end goal of reparation measures is to effect closure.

Closure may be effected, depending on the gravity of the crimes committed, with a combination or all of the following elements - truth, accountability, and redress. The truth behind gross human rights violations must be established for the benefit of survivors or the next of kin of victims. Furthermore, truth is necessary in order to establish the basis for compensation. However precarious, it is necessary to pursue accountability measures, like trials and punishments, to establish the rule of law and do away with impunity. Finally, redress provides a modicum of consolation to the victims. Redress may be compensation but it need not be monetary alone. More essential to victims are moral or symbolic in nature - apologies, memorialization, and shared history-writing among former protagonists.

Ⅲ. Untangling the Gordian Knot in Cambodia

Surprisingly, the first attempt to put to account the leaders of the Khmer Rouge came from the Vietnamese after invading the country in 1979. As expected, this plan could not be taken seriously. Aside from the civil war that would engulf Cambodia for the next one and half decade, the Khmer Rouge, being the strongest of all Cambodian opposition forces, effectively became the battering ram of Vietnam's enemies - ASEAN, China, the United States and Western Europe. Regardless of its past, the Khmer Rouge now enjoyed support - financial, military, diplomatic - as they implemented the policies of Vietnam's enemies. It was only after the death of Pol Pot and the dramatic implosion of the Khmer Rouge in 1999 that the trial became feasible. More than that, the usefulness of the Khmer Rouge has ebbed as the end of the Cold War signaled the start of a comprehensive agreement to pursue peace and rehabilitation in the former Indochina. Furthermore, the presence of a multitude of Western non-government organizations and aid agencies in the country put pressure on the Hun Sen government for accountability as a precondition for aid and assistance. Grudgingly however, Hun Sen mused that "We should dig a hole and bury the past. I do not see what a trial would achieve" (Evers 2000: 27-28).

While the US and France were intense lobbyists for a trial, China was however reluctant for it might reveal the details of its involvement with the Khmer Rouge. Initially, it was feared that China would use its veto power in the Security Council to block any attempts for a trial. But China relented in 2004, paving the way for the General Assembly to approve the UN's participation in the trial. From 1999 to 2002, protracted negotiations between the UN and Cambodia ensued. To break the impasse, the US, the European Union and Japan, the UN and Cambodian government came up with a compromise agreement - the formation of an "extraordinary chambers" still within the Cambodian court system but would include foreign judges. It accommodated the concerns of both parties - the UN's desire for an internationally controlled trial and the Cambodian government's resolve that international assistance would not infringe on its sovereignty. After half a year, its official report recommended that the UN establish an ad hoc international tribunal to try senior Khmer Rouge officials and that the prosecutor appointed by the UN limit his/her investigation to those persons most responsible for the most serious violations of international human rights laws in order to achieve the twin goals of individual accountability and national reconciliation.

The draft law was passed by the National Assembly in August 2001 and within the same month signed into law by then King Norodom Sihanouk as The Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea. In May 13, 2003, the UN General Assembly approved the agreement between the United Nations and the Royal Government of Cambodia (RGC). And on June 6, 2003, the UN and the RGC signed an agreement to regulate the cooperation between the two parties in bringing to trial senior leaders of the Khmer Rouge, i.e. the time frame is to be between April 7, 1975 and January 7, 1979. Thirteen foreign judges and prosecutors have been chosen to serve alongside 17 Khmer judges in the Extraordinary Chambers.

Despite the seeming success in forging consensus between

Cambodia and the international community, there were persistent criticisms of the process. One is the definition of the term genocide, its applicability to the Cambodian case, the period covered and the defendants for prosecution. Critics of the genocide trial believe that the supposed genocide committed by the Khmer Rouge was not based on racial or religious motives but in pursuit of their own brand of revolution. It was, in their opinion, a case of bad history for it did not resemble Hitler's Holocaust. Over the years however, there was a growing consensus that genocide covers a whole range of horrendous crimes, including the deliberate targeting of political or class enemies (Heder 2012).

Because the nature and extent of the atrocities committed varied over time, there was difficulty in pinpointing blame or accountability. This brought up two other crucial elements of the trial. One is the period covered by the trial. While it is undisputable that a significant percentage of Cambodia's population perished under the Khmer Rouge regime, it is equally true that American carpet bombing of Cambodia killed an undetermined number of Khmers numbering in the thousands. In fact, according the Cambodianists, skeletal remains purportedly attributed to the KR were actually victims of the violent bombing campaign launched by the US from 1968 to 1975 (Vickery 1984: 64). It must also be mentioned that other countries were equally responsible for supporting the Khmer Rouge with weapons, finances, sanctuary, diplomatic support, etc. chief among them, China and Thailand.

Another contentious point was the very limited number of accused that were tried in court. In fact, even the late King Norodom Sihanouk said that the trial had become a farce, if not comedic, because there were more judges than defendants. There were 27 judges and prosecutors to try three defendants in four cases. Middle or low level cadres directly involved in the killings did not face trial. A great number of them were either pardoned earlier by then King Norodom Sihanouk including Prime Minister Hun Sen, himself a Khmer Rouge battalion commander, in order to diffuse political tension and weaken the Khmer Rouge. If the trial were indeed serious, critics claim, the list should include not

only the prime minister himself but also former and present Khmer Rouge officers who became high ranking members of the government. A veteran Cambodia specialist predicted that if the trial leads to a direction threatening to people in positions of power, they could pose obstacles to the tribunal's running smoothly. Thus it is not so much the issue of lack of knowledge and training and credibility on the part of the Cambodian courts as it is of political will on the part of the government (Heder 2012).

Another is Cambodia's external relations. Cambodia is highly dependent on foreign aid and it does not come free, for it infringes on the country's sovereignty. The passage of economic, political, and legal reforms was a prerequisite for the release of any grant, aid or loan. Several governments, including Australia, France, Great Britain and Japan have urged that Cambodia reach an agreement on the trial. But it is not only Western donor countries that hold sway over Cambodia. China has transformed itself from Hun Sen's bitter enemy to its closest ally in the Southeast Asian region, in the process becoming Cambodia's largest donor and investor.

Ⅳ. The Troubled Transition in the Philippines

The Corazon Aquino administration faced a common dilemma attendant to many countries seeking to address human rights violations in times of transition to democratic rule - how to balance the demands for justice against the destabilizing threat of military intervention. Pres. Aquino inherited from the previous regime a politicized, fractious, ill-disciplined, notorious, and corrupt military (Coronel 1990). Thus, in contrast to many countries where reparations for human rights victims were initiated by the state, the experience in the Philippines was in effect a "forgive and forget" policy. Thus, if legal remedies for the Marcos human rights victims were not available in the Philippines, it was the United States legal system that provided the basis and venue for such undertakings. American legal statutes provided the framework

and bases for prosecuting the former dictator for human rights abuses. Although the case was stalled for some years because of the legal obstacles thrown by the defendants, the Filartiga case, a landmark case that brought to prominence the Alien Tort Claim Act (or ATCA) in 1987 and the passage of an important human rights instrument, the Torture Victim Protection Act in 1992, paved the way for the case against the Marcos family to proceed.

One month after fleeing the Philippines, five lawsuits were immediately filed against Marcos, his daughter Imee and the head of the military, General Fabian Ver, in three judicial districts in the United States for human rights abuses committed between 1972 and 1986. These were: 1) The "Group of 21" - student activists who were detained and tortured by the military during the early part of the martial law period and eventually moved to the United States; 2) The Piopongco Case or the Group of Three - a case involving an activist who was detained, tortured, and held in solitary confinement in Malacañang itself and Jose Ma. Sison, former Chair of the Communist Party of the Philippines and a leading opponent of the Marcos regime; and, 3) The Maximo Hilao et.al. Case - filed by Maximo Hilao in 1986 in Pennsylvania in behalf of her daughter Liliosa who died while undergoing tactical interrogation, a euphemism for torture. This case was the last to be filed but was the biggest in number with approximately 10,000 other victims. This last case was used to consolidate other cases against Marcos.

In the meantime, another case was tried involving another victim, Archimedes Trajano, a Manila-based student who criticized Imee Marcos-Manotoc at a forum. After the forum, he was kidnapped, interrogated, and tortured to death. Her mother Agapita sued Imee Marcos-Manotoc for false imprisonment, kidnapping, wrongful death, and deprivation of rights. Marcos-Manotoc's defense was that she could not be sued because she was acting in an official capacity as a government agent and had control over security personnel. She claimed immunity under the Foreign Service Immunities Act (FSIA) that exempted foreign states and their agents from prosecution. The court struck down her argument for two reasons. One, the crime was committed outside

of the scope of her official duties and beyond her authority. And two, she acted on her own authority and not upon the authority of the GRP.

She then questioned the court's jurisdiction over the case in spite of the fact that the act was committed outside of US territory and that the US Constitution did not provide provisions for trying purely foreign disputes. The judge ruled that Article III of the United States Constitution granted federal courts jurisdiction over civil actions brought by foreign plaintiffs against foreign nationals or sovereigns. It further pointed out that actions against foreign nationals in US courts raised sensitive issues over US foreign relations, thereby making it a federal concern and falling with the purview of federal courts.[1)]

With this ruling, the human rights victims filed for the reopening of the original case by way of a motion for reconsideration at the US Court of Appeals' Ninth Circuit in San Francisco, California. The Estate[2)] quickly filed a manifestation against the appeal by the human rights victims. But the court deemed the appeal as meritorious. Furthermore, the Estate was found liable; even if Marcos did not directly order, conspire, or aid the military in the torture, he knew of such conduct and yet failed to use his power to prevent such abuses. The court upheld the concept of command responsibility in international law. As a result, the Ninth Circuit Court reversed the earlier decisions dismissing the cases against the Marcos Estate and remanded the cases for trial to the District of Hawaii under Judge Manuel Real. The Judicial Panel on Multi-District Litigation consolidated all the cases and certified it as a class action suit on April 8, 1991 (Ramirez 2000: 115-116).

The class suit, now docketed as Multi-District Litigation 840, was a bifurcated trial or a two pronged trial. The first phase is divided into two stages: 1) the first is the 'liability stage' where

1) In the United States Court of Appeals, Ninth Circuit, 1983, 987 F2.d 493 and 25 F3.d 1467.

2) Refers to the surviving members of the Marcos family after the patriarch Ferdinand died on September 28, 1989.

the court, through the jury, will determine whether the Marcos Estate was indeed liable for violations of international law; and, 2) if the Marcos Estate was adjudged to be liable for the crimes committed, the process will then proceed to the 'damage stage' in order to determine the amount of compensation due to the class or the whole set of victims. The second phase is intended for the Court to determine the amount of compensation due to each of the victims or claimants (Orendain 1992).

After only two weeks of trial, the jury found the defendants guilty for the acts of torture, summary executions, and disappearances when it handed its verdict on September 22, 1992. On February 23, 1994, the Court awarded the victims US $1.2 B as compensatory damages for all the plaintiffs, whether class or direct. Then on January 20, 1995, the Court again awarded the victims US $776M for exemplary damages for the class suit members. The Hawaii district court was also able to determine that the individual plaintiffs be awarded money ranging from $150,000 to $700,000. (Ryan 1992; Kaser 1994a and 1994b).

The three-phased trial officially culminated on January 27, 1995 when the Hawaii District Court released its Final Order. First, it found the investigation report of the Special Masters it sent to the Philippines to validate the 135 randomly selected the previous year to be authentic and individually awarded them financial remuneration ranging from US$ 20,000 to US$ 185,000, depending on their personal circumstances or ordeal. The Court also rewarded the remaining subclass that suffered torture the aggregate amount of US$ 251,819.811 to be divided pro rata; the remaining subclass that suffered summary executions, US$ 409,191,760 to be divided pro rata; and, the remaining subclass that suffered involuntary disappearance (and are presumed dead) the aggregate amount of US$ 94,910,640 to be divided pro rata.[3)]

In addition to awarding US$ 776M in compensatory damages, the Court also awarded the human rights victims US$ 1,197,227,417.90

3) In the United States District Court, District of Hawaii, "Final Judgment" in Re: Estate of Ferdinand E. Marcos Human Rights Litigation, MDL 840, January 27, 1995, par.3

in exemplary damages to be divided pro rata, to make an example for the common good. Furthermore, the Court added prejudgment interest of ten per cent per annum from April 7, 1986 when the case was first filed to January 1995 when the case or class suit finally ended. Judge Real reasoned out that this award was due to the diminution of the victims' awards for the long time it took between when the injuries were committed up until an entry of judgment was made. The award also took into consideration the value of the money that were compounded by inflation and the depreciation of the Philippine peso to the US dollar which is in accord with laws of the state of Hawaii. The judge, now imbued with the language of the new international human rights regime, noted that this was done in "manifestation of the objectives of international law which is to make human rights victims whole for their injuries."[4)]

The Final Order did not stop at granting financial rewards to the victims. Aside from setting an example that human rights violations do not pay, it wanted to make sure that such a landmark judgment is enforceable. The Court granted plaintiffs their petition for a Permanent Injunction. The Court noted with disappointment however that in spite of an earlier (temporary) injunction, Imelda Marcos and the Swiss banks involved (Credit Suisse and Union Bank of Switzerland) did not cooperate with its effort to recover Marcos assets in Switzerland in order to compensate the human rights victims. In fact, Imelda Marcos, the Court noted, entered into two agreements with the Republic to transfer and split all the Estate's assets. Judge Real then ordered the Estate, the two Swiss banks, and the Republic from transferring or concealing the said assets and all other assets that shall be collected whether by execution or settlement shall be held and disbursed by the Court. Now that the trial part had passed and was greatly in favor of the human rights victims, the time has come for the difficult part of dispensing justice to them - — enforcing the decision (Casiple 1999 and 2000).

The class suit, in spite of the many obstacles and challenges,

4) Ibid., par.5

was able to achieve many objectives based on what it has set out to do when it was first filed in 1986. First, the case was able to give the victims a sense of justice, even if the suit was tried abroad, for all other victims even those not included in the class suit. In fact, there was a lot of sympathy and goodwill towards the human rights victims and the case in general, even from those in high government positions who were themselves victims of imprisonment and torture.

Second, the class suit was able to expose the violations of Marcos and his family. It gave the Filipinos and the world a glimpse of the heinous crimes the Marcos family committed. Third, the class suit proved that Marcos, and dictators in general, are not beyond the reach of the law. The suit was able to deny them safe haven in the US. Fourth, the landmark case was a contribution to international jurisprudence on human rights and thus to the strengthening of a human rights regime in the world. It was the first class action human rights suit in history and it was also the first time that plaintiffs were awarded compensation from their torturer or from the person responsible for their ordeal. Until the class suit, never before has a former head of state been found guilty of human rights abuses in a regular court and that the award given by the Hawaii district court for exemplary damages represents the largest personal injury award in history.

Yet, the class suit had many limitations. First, the trial did not produce the catharsis necessary for victims to tell their ordeal and confront their tormentors, thus effecting closure. Of the 10,059 victims listed in the original complaint, only 137 individual cases were selected at random by a computer to represent the whole class. Fewer still were able to testify in court during the trial period. There was no way of fully knowing what transpired and who were accountable for their sufferings. The US court's jurisdiction did not extend to the military who were directly and personally involved. Had it been possible, a truth commission may have been better for the victims if the intention is in attaining closure.

If ferreting out the truth during the trial was not satisfactory, so is redress. The trial was civil in nature and not criminal. The trial did not put the perpetrators behind bars. Similarly, the cases filed in the Philippines did not prosper for various reasons. Even if there was intense pressure for the Marcos family to issue an apology, this could not be had for in the absence of criminal conviction, the Marcos family denied any wrongdoing. Thus, the victory gained from the class suit failed to provide satisfaction and closure to the victims.

Ⅴ. Conclusion

In spite of the many limitations and obstacles the genocide trial faced, what is imperative is that the process of putting to account the remaining leaders of the Khmer Rouge pushed through. Even if critics claim that the trial is an expensive exercise to cleanse Western guilt and could not produce the kind of justice the victims desired, the trial could be instrumental, at least, for symbolic justice. Educating the public, especially the youth, is a central objective of the trial. Coming up with a collective memory of the Democratic Kampuchea era could help the future generations of this dark past and perhaps make efforts to reform Cambodian political culture. Truth commissions or international criminal tribunal are not automatic ticket to reconciliation and may be unrealistic in the short-term. The truth may not lead automatically to justice. But without justice, there is no hope. It is not possible for a society to build a democratic future on a foundation of contested memories.

The search for truth in Cambodia owes much to the efforts of academics or scholars from other countries. In the aftermath of the destruction wrought upon the country by the Khmer Rouge, many Cambodianists took the painstaking task of documenting the events during the Democratic Kampuchea period, establishing what was necessary to know what transpired during that era and pave the way for the prosecution of the remaining leaders of the movement. Thus, even if the trials had many shortcomings, this

process in effect became the equivalent of truth telling. And even if reparations did not include a compensation package, the conviction of key leaders as well as the memorialization and international recognition accorded to the victims already offers satisfaction to the survivors and kin of victims.

The quest of the Marcos human rights violations for justice and compensation after the historic trial was not achieved because this came in conflict with the state's version of justice, or restitution, which was to run after the Marcos ill-gotten wealth and use this money to fund another important social justice concern - land reform. It was only in 2013 when reparations for the Marcos human rights victims was finally enacted into law - Republic Act 10368 or the Martial Law Human Rights Victims Reparations and Recognitions Act. The law not only provided financial compensation. More importantly the victims were given official recognition by the state. After all, the democracy that the Philippine enjoys today was due to the sacrifices of these victims. A museum funded by the government to remind the future generations of the memory of martial law is now in the process of construction.

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