

DRAFT: NOT FOR CITATION

Social Justice on the Ground in Cambodia

Melissa K. Booth

M.A. Candidate, Conflict Resolution

Monterey Institute of International Studies

September 25, 2009

Introduction

Justice is an extraordinary human concept. It simultaneously embraces intangible concepts of egalitarianism and harmony, while representing one of the most concrete and finite structures of modern society. Justice provides the dream of equality and balance, but often falls short of providing these ideals in

elites are exempt from judicial processes. Each is remarkable in its own right, and reveals the realities of justice and injustice in the country. These events and failures do not happen in a vacuum, however, and a historical trajectory is provided to illustrate the way in which impunity is institutionalized and normalized in Cambodian culture. Finally, an analysis of Cambodia's need for transitional, restorative, and retributive justice is explored, as well as the ways in which non-governmental organizations are filling in the gaps to bring a sense of justice to Cambodians.

“Prosecution, while necessary, is insufficient on its own. More is required. The more involves the neglected dimensions of a holistic theory of justice. In transitional societies it prioritizes the coexistence and restoration of relationships between former enemies as a basis for the prevention of the reoccurrence of human rights abuses and the restoration of the dignity and material well-being of victims” (Villa-Vicencio 2006, 388).

The Cambodian Justice System

“The justice system cannot be judged by the number of new laws which are approved or by how many workshops and conferences are held - it must be judged by how the courts deal with real people suffering real injustices, like Born Samnang and Sok Sam Oeun” (Naly Pilorge, Director of LICADHO 2008)

The following examples are not intended to be evocative solely as individual case studies, but to represent a microcosm of the much larger picture of injustices occurring in Cambodia. Although these particular cases are useful in that they exhibit corruption and mistreatment in various arenas of the legal sphere, there are many other similar and equally troubling cases occurring regularly in Cambodia. “It's like a cancer in society. It makes people feel vulnerable and powerless. Part of the violence we see in Cambodia, with people settling scores with weapons on a local level, is that they do not trust the system of justice” (Fawthrop and Jarvis 2004, 147). The absence of a functioning, trustworthy, and efficient justice system in Cambodia is directly linked to the continuation and escalation of violence. People who have no legitimate authority to turn to, or who are operating under that impression, are much more likely to seek retribution

for themselves or to accept powerlessness in the face of injustice. Without substantive rule of law and a solid legal backbone, Cambodians will continue to feel isolated from the rights provided to them in their Constitution and enshrined in International Law.

Born Samnang and Sok Sam Oeun

On January 22, 2004, Chea Vichea, the leader of the Free Trade Union of Workers of the Kingdom of Cambodia, was reading a newspaper near a kiosk in Phnom Penh. In the midst of the morning crowd, a motorbike carrying two men drove up next to him. Neither passenger was masked or cloaked in any way, and bystanders clearly saw the men's faces. One of the passengers disembarked and, at point-blank range, shot the union leader three times. The bullets hit Chea Vichea's head, chest, and arm, and he died instantly. The assailants sped off, conspicuously leaving behind the victim's valuables.

Chea Vichea's death was quickly publicized through national and international channels, largely because his life was also well known. Chea Vichea had a long history in politics and advocacy. In 1995, he was a founding member of one of the country's leading opposition parties, the Khmer Nation Party, renamed the Sam Rainsy Party (SRP) in 1998. He also became closely involved with the growing garment industry in Cambodia, championing worker's rights in the face of widespread abuses. In 1999 he officially resigned from his political post in the SRP and was elected to lead the Free Trade Union of Workers, where he served as president for five years. In the months before his murder, the union president received a number of death threats, and even went into hiding for a brief period at the behest of his colleagues. Chea Vichea reported the threats to the National Election Committee as he assumed them to be linked to his political affiliation, but received no heightened security or attention. After his death, Sara Colm of the Human Rights Watch Asia division explained, "Chea Vichea was one of the best-known and most outspoken voices for workers in Cambodia. This killing will not only send shockwaves through the labor movement, but it may also silence and intimidate opposition activists and journalists" (Human Rights Watch 2004).

Regardless of suspicious conjectures surrounding Chea Vichea's murder, the ensuing investigation is the epitome of Cambodia's flawed and failing justice system. The investigation, tarnished by political pressure and interference, the use of intimidation, and threats and torture by the police, significantly added to an existing climate of fear in

Phnom Penh following the killing itself (Amnesty International 2004, 8). Strange and questionable details of the arrests and subsequent trials continue to haunt Cambodia's human rights and justice record. First, police sketches of the alleged killers were released before any of the eyewitnesses to the shooting were interviewed (Amnesty International 2004, 8). Five days after the shooting, two men (who looked strikingly similar to the sketches), Born Samnang and Sok Sam Oeun, were arrested and charged with the union leader's murder. Born Samnang confessed to the murder, but immediately retracted his confession, claiming that he was beaten by police and coerced into admitting guilt. Born Samnang and Sok Sam Oeun both had corroborated alibis. The latter's girlfriend and her family confirmed that he was with them, sixty kilometers from Phnom Penh, at the time of the murder. The girlfriend and her mother were arrested shortly after giving this information. A trial began, and the investigating judge Heng Thirith dismissed the case for lack of evidence. Heng Thirith was subsequently removed from his position at the Phnom Penh Court, though the Supreme Council of Magistracy cited reasons unrelated to his court decision. He later confessed that by dismissing the case, he was ignoring pressure from a senior government official to pass the case on to trial (Amnesty International 2004, 10). The case was reopened in a Court of Appeal. Without any new evidence provided, and despite the accused men's continued assertions of innocence and allegations of police brutality, Judge Thou Mony overturned the earlier dismissal (it is remarkable to note that Thou Mony currently serves as a Trial Chamber Judge in the Khmer Rouge Tribunal).

Born Samnang and Sok Sam Oeun were eventually found guilty of murder at the Phnom Penh Municipal Court in August 2005, and an Appeal Court hearing in April 2007 upheld their convictions. Displaying brazen contempt for evidence, the Appeal Court disregarded a written statement by Va Sothy, the owner of the newspaper kiosk and prime witness to Chea Vichea's murder, declaring that Born Samnang and Sok Sam Oeun were not the men she saw that morning. The owner was too afraid to come forward during the Municipal trial; in fact she fled Cambodia for fear of her role as witness. She later released a detailed description of the events she witnessed on the day of the murder, including meticulous physical descriptions of the assailants. She described her surprise at seeing Born Samnang and Sok Sam Oeun being accused,

“I understood that the fake murderers had been created, because I could clearly remember the faces of the murderers and they were not the same as the pictures publicized. Given that the fake murderers are in prison and the real murderers go unpunished, and that the judicial system cannot be trusted, I will be killed if I continue to live in Cambodia and I will never have an opportunity to tell the truth to the nation and international community about the murder of Mr. Chea Vichea and the arrest of the innocent men instead of the real murderers. I, therefore, decided to leave Cambodia with great sadness and regret and to seek asylum from the United Nations in Thailand” (Va 2006).

Va Sothy added to her account that, “About one month later, the real murderer who killed Chea Vichea came to my newsstand and looked at some newspapers. I turned to face [him] and was astonished and frightened to see that he was the murderer who shot Chea Vichea. The murderer stared into my face and then went to his motorbike and drove away” (Va 2006).

The sentence for the conviction of Born Samnang and Sok Sam Oeum was twenty years in prison. Following the convictions being upheld in 2007, the two men waited for seventeen months for the Supreme Court issue a verdict on their case. By law the Supreme Court is to issue a verdict within six months of receiving a case. On December 31, 2008, the Supreme Court cited gaps in the investigation of the earlier trials, and the two men were released after serving four years in detention. Without the consistent and overwhelming pressure from Cambodian advocacy groups and international human rights watchdogs, it is unlikely that such an outcome could have been attained. Based on widespread underreporting of judicial abuses and entrenched cultural tolerance of unscrupulous police officers and judges, it is probable that many other similar cases never make the news at all.

Nhim Sophea

Nhim Sophea, Prime Minister Hun Sen’s nephew, was involved in a criminal scandal in October of 2003. Nhim Sophea was racing cars through Phnom Penh with friends after leaving a party, but one of the vehicles hit a parked truck from which two men were unloading coconuts. One of the struck men was killed. A crowd quickly gathered around the scene, and one of the partygoers began firing an AK-47. Two

bystanders were shot and killed in the melee, and witnesses identified Nhim Sophea as the gunman (Doyle 2004).

Nhim Sophea was charged with voluntary manslaughter. A trial was held, but was never publicly announced. As a result, another person, who was never apprehended by police, was held responsible for the murder in absentia. Charges against Nhim Sophea were dropped to involuntary manslaughter, and he was sentenced to eighteen months in prison. Relatives of the victims were reportedly paid \$8,000 and did not testify before the court (Leuprecht 2004, 10). In August 2004, a second private hearing took place at the Court of Appeal, and all charges against Nhim Sophea were dismissed. The Prosecutor did not appeal the case.

Aside from the questionable outcome, the secret hearings were in breach of Cambodia's domestic law and international legal obligations. "An open hearing is an indispensable and fundamental right of the general public in a democratic society -- with very few and clearly defined exceptions -- to ensure that justice is done and seen to be done. It is essential in ensuring that impunity is not afforded to those who abuse human rights" (Amnesty International 2004). A United Nations Human Rights report that came out in December 2004 pointed out that the case immediately following Nhim Sophea's in the Phnom Penh courtroom was the trial of a man charged with stealing 2,700 riel, or \$0.65. He was sentenced to four years in prison after his mother was unable to pay \$1,000 to secure his release. (Leuprecht 2004, 10).

Mapping the Path of Justice

Cambodian survivors have experienced powerlessness in its ultimate form. Because there have been no acceptable outlets to relieve the origins of fear or offer protection to its intended victims, individual initiative to seek redress has focused on insurgency techniques repeating the predilection to resort to violence (Seanglim, 85).

The period of the Khmer Rouge regime from 1975-1979 is often viewed as the default culprit when identifying the root causes of the fragmented and fragile justice system in Cambodia today. Although the three years, eight months, and twenty days of Democratic Kampuchea drastically reshaped and redefined the country and the

population in violent and enduring ways, there is a larger context to Cambodia's institutionalization of impunity. Pol Pot does not stand alone against the backdrop of responsibility, but is joined by a swath of national and international actors who, during the genocide and since, have taken part in political decisions that continue to mire the country in legally suspect and corrupt conduct. The intricacies of political affiliations and overlapping accountability are so complex and subtle that the Cambodian government, the United Nations, and other international actors are all loath to kick up the dust of genocide again. In the name or under the guise of peace and reconciliation, the country has often overlooked the possibility and demand for justice to prevent a vigorous examination of its past. By studying a cross-section of time since the fall of Pol Pot's regime in 1979, it becomes apparent why politicians and government officials fear the light of inquiry being shone into the shadows of Cambodia's history.

During his brutal reign, Pol Pot attempted to create a communist Cambodia in which all members of society except peasants and indigent farmers were marked for eradication. He instituted an extremist agrarian revolution that exalted the previously disenfranchised and underprivileged class to a level of command, while forcing the rest of Cambodians to work in collective labor camps. Almost anyone could be designated as an enemy of the party and executed, but professionals, academics, artists, monks, and students were especially targeted. People who wore glasses were killed simply because of the education their glasses represented. The impact this affront to education and intellectualism had was devastating, and legal professionals were all but destroyed. After the fall of Phnom Penh in 1979, only seven lawyers trained in the pre-1975 period remained (Fawthrop and Jarvis 2004, 41). "Not only did this chronic lack of qualified lawyers hamper efforts to collect evidence back in 1979, but its legacy continues to cast a long shadow over the country's weak legal system today" (41). The loss of legal knowledge, intellectual leaders, trained legal personnel, and even papers and typewriters (40) has meant a slow transformation out of tyranny and a seemingly insurmountable hurdle to bringing justice to the Khmer people. The demographics of the country today are an obstacle too, as seventy percent of the population is under the age of thirty, signifying a lack of seasoned and highly educated professionals. Nevertheless, Cambodia's political and social issues cannot be attributed to three years of violent

conflict, but rather are embedded in thirty years of political struggle and social injury. The following historical analysis intends to underscore the massive and inextricable influence the years following the Pol Pot regime had on Cambodian political institutions and the concept of justice.

On January 7, 1979, Vietnamese forces marched into Phnom Penh and captured the city, effectively ending the rule of communist Democratic Kampuchea. The occupying forces immediately helped establish the People's Republic of Kampuchea (PRK) with less radical members of the Khmer Rouge, who had defected from Pol Pot a few years prior and sought Vietnamese military intervention. Hun Sen, the current prime minister of Cambodia, is one of these early defectors (Chandler 2008, 277).

Unfortunately for many of the Cambodians who were yearning for change, the PRK did not politically distance itself in a meaningful way from the one-party rule of Democratic Kampuchea (Chandler 2008, 280). Many of the surviving educated Cambodians were distrustful of foreign control and the unpleasant continuity with socialism they saw in their country, and between 1979-1980 many left in voluntary exile for the Thai border (281), constituting the final blow to the educated and professional population.

Political underpinnings are simply inextricable from the landscape of Cambodia. The remnants of the Khmer Rouge, previously forming Cambodia's Communist Party (CPK), still lurked along the Thai border in the west of Cambodia. Western powers, especially the United States and China, refused to recognize the Vietnamese presence in Cambodia and instead allowed the Khmer Rouge to hold on to Cambodia's seat at the United Nations. "China and the United States supported this state of affairs so as to punish Vietnam for invading Cambodia, standing up to China, and defeating the United States" (Chandler 2008, 281). To these countries, Pol Pot's Democratic Kampuchea was preferable to an extended Vietnamese power.

After much international support for the emergence of an opposition party in Cambodia, in 1982 the Coalition Government of Democratic Kampuchea was unveiled. The new party consisted of Prince Sihanouk representing the royalist tradition and various members of the then-dissolved Communist Party (CPK). Even Ieng Sary and Pol Pot were included as officials in this new political party that swore itself to have forgone socialism and embraced capitalist practices (283). The remainder of the decade was spent

in battle between this new coalition government (with funding coming from China, the US, and Thailand) and the Vietnamese forces. Thousands were killed along the Cambodia-Thai border. By the first days of 1990, the coalition forces had captured and were controlling much of the northwest and southwest of Cambodia. Antipersonnel mines were widely planted and villages were raided and occupied by both sides, and the insurgency intending to remove the foreign invader wreaked the lion's share of its havoc on ordinary Khmers (284). Once again, as in the 1970s, Cambodian citizens were caught in a vicious crossfire.

In September 1989, the Vietnamese completely withdrew from Cambodia. The ruling party they had established, the PRK, had attained relative stability and self-sufficiency in the country, and Soviet backing had all but dried up in the wake of Soviet crises in 1989 (285). For the first time in decades, there was a sense that peace could be around the corner. In July 1990, the U.S. ceased support for the coalition government's representation in the United Nations. "Some hoped that the breakthrough would involve a massive intervention by the United Nations, which might establish a caretaker regime pending national elections...these hopes were fulfilled by decisions made at the international conference on Cambodia that convened in Paris in October 1991" (286).

Under the Paris agreements, a temporary government was established in Phnom Penh comprised of members of the incumbent regime and delegates from the opposition factions. Reflecting what would later become similar criticisms of the U.N.-Cambodian hybrid Khmer Rouge Tribunal, UNTAC "arrived too late and moved too slowly to gain the respect it needed from the Cambodian factions" (287). The United Nations presence was not effective in heralding change, especially as there were no demands enforced on the Khmer Rouge who still clung to outposts on the Western border. When asked to disarm, the communist faction refused, and UNTAC did nothing to engage the group about this direct affront to the stability they were meant to oversee. This period is indicative of the cracked justice system in Cambodia, as "over two hundred unarmed people were victims of politically motivated assassinations. None of the offenders was ever arrested or brought to trial" (288).

The Khmer Rouge became more fragmented as soldiers defected to the new national army. Ieng Sary, or Brother Number Two, defected to Phnom Penh where he

was welcomed with a royal pardon. Pol Pot eventually ushered in his own political demise by staging a fierce attack to eliminate Son Sen, a close associate that he accused of treason. “The assassination, which involved killing Son Sen’s children and grandchildren, shocked middle-ranking Khmer Rouge cadre, who assumed they might be next” (290). Pol Pot feared arrest or castigation for his dramatic act and fled, but was captured and put on trial a second time. Cambodia had done away with the death sentence shortly before the Vietnam withdrew, and Pol Pot was condemned to life imprisonment. He died under house arrest in 1998.

The United Nations did proclaim one victory though. The elections of 1993, held under United Nations’ supervision, surprised Cambodians and international observers alike by being unaccompanied by any substantial violence. Even more shocking though was the outcome of the elections: the incumbent CPP lost to the royalist party FUNCINPEC. Not surprisingly, Hun Sen and his CPP refused to accept their defeat and, knowing the United Nations would compromise to protect the fragile peace, demanded to be incorporated into a system wherein both parties would jointly rule (288). Cambodia was thereafter officially represented by two Prime Ministers, Prince Rannaridh and Hun Sen. Compromises such as these have been common in the wake of elections since this precedent in 1993.

Hun Sen himself is exemplary of the continuum of impunity and the seemingly impossible break with unjust political history. He holds power tightly to him, and the CPP has often strong-armed its position in the government, forcing jointly-ruling members to assume more symbolic roles in political decisions and policies. Also, Hun Sen has a particular affinity for reconciliation when it comes to the Khmer Rouge, preferring to join forces with former enemies than to judge them. “Perennial tensions between the CCP and FUNCINPEC were exacerbated by Hun Sen’s acceptance of so many Khmer Rouge defectors into the national army, and in effect into his entourage (290). In July 1997, Hun Sen staged a coup de force against FUNCINPEC troops in Phnom Penh. Over a hundred supporters and officials were killed, several after being arrested and tortured. In the lead up to the 1998 elections, “opposition parties were given no access to the electronic media and were not allowed to campaign in the countryside. Opposition party workers were harassed, and several died under suspicious

circumstances. None of the perpetrators of violence in the coup was brought to justice (291). It was also Hun Sen who, in 1996, requested a royal pardon for Ieng Sary's 1979 death sentence (Fawthrop and Jarvis 2004, 137). "Under Hun Sen, no officials have ever been convicted of corruption, and no one suspected of political assassinations has ever come to trial" (Chandler 2008, 293). Providing the consummate example of Hun Sen's disinterest with justice in the wake of the Khmer Rouge atrocities, the prime minister is quoted as saying, "It we bring them [Khmer Rouge officials] to trial it will not benefit the nation, it will only mean a return to civil war. We should dig a hole and bury the past" (Fawthrop and Jarvis 2004, 135). Authors Tom Fawthrop and Helen Jarvis name this as the "defining moment in Cambodia's culture of impunity" (135).

What is especially remarkable is the continuity of the same political actors and forces in Cambodia for the last thirty-five years. It would be counterintuitive and antithetical for the government to want to uproot the past and sincerely explore themes of accountability and culpability, thereby denying the possibility for dismantling impunity and legal deficiency. Normalized and cultural impunity requires an entire support structure, a network of actors and institutions that prop up and maintain the appearance and the constancy of the status quo. "While the military or police might directly engage in violence, they depend on other governmental branches, such as courts, to protect them from accountability (Penrose 1999). For the security of all parties involved, the network of impunity in Cambodia is woven too tightly to allow anyone to pass through. "Even a senior CPP government official stated the FUNCINPEC Secretary of State Ho Sok was murdered while in police custody inside the Ministry of Interior headquarters in July 1997. No one has ever been arrested, although an eyewitness implicated a high-ranking police officer" (Fawthrop and Jarvis 2004, 147). With this kind of contaminated model being displayed by the top ranks of government and society, how can Cambodians expect to find justice?

The need for Justice in Cambodia

'Transitional justice' is an often ill-defined realm that encompasses a multitude of discrete, though overlapping, and often conflicting themes. Given the complexity

of issues surrounding rebuilding societies after mass violence, the immense confusion about what 'transitional justice' entails is perhaps inevitable (Clark 2009, 191).

One of the most overt issues with the Cambodian justice system is found in the simple fact that effectual legal frameworks have only been laid on top of an otherwise damaged system. Without uprooting the causes of injustice, exposing the culture of impunity, and addressing the cracks in the foundation, no successful or sustainable legal institutions can be built. The disconnection from justice that Cambodians feel and experience is hardly confronted or explained, largely due to the sticky web that shrouds and entangles much of the country's political history and associations. No one wants to take responsibility for the genocide; in fact, the word was considered taboo during the United Nations Transitional Authority presence in Cambodia (Fawthrop and Jarvis, 103).

Although the goal of transitional justice is primarily to incorporate all citizens back into society, in Cambodia there are much more complex reasons for the government and the international community to want perpetrators to remain uninvestigated, and for the memory of the slaughter of two million people to fade into history. Achieving peace has, for some, been at the expense of seeking justice. "Although not incompatible philosophical concepts, peace, justice, and reconciliation are built on quite distinct intellectual foundations and their definitions are impacted by rather intangible theological and ethical concepts, cultural differences, and psychological emotions" (Rae 2009, 3). To attempt to meld all of these crucial components is a difficult task fraught with pitfalls.

Even though the Khmer Rouge Trials are underway in Cambodia, there are other forms of justice that can accompany this solely retributive process. Today, after the inundation of atrocities that occurred during the twentieth century, it is widely believed that survivors of war and massacre must be allowed to truthfully confront the crimes and perceive that justice has been done in order to avert violence from manifesting in the society again. "Victims/survivors tell us that in order to combat personal mistrust and loneliness they need to have the conspiracy of silence ended, to know what occurred. They also tell us that their personal healing requires shared mourning and a shared sense that this memory is preserved as a part of human consciousness" (Sullivan and Tiffit 2006, 338).

Components for Healing in the Wake of Massive Trauma

Perspective	Goal
Individual	The reestablishment of the victim's equality of value, power, esteem, dignity.
Societal	Relieving the victim's stigmatization and separation from society.
National	Repairing the nation's ability to provide and maintain equal value under law and provisions of justice.
International	Asserting the commitment of the international community to combat impunity and provide and maintain equal value under law and the provisions of justice and redress.

(Danieli 2006, 343)

Transitional justice has become a common term in discussions of peacebuilding in divided societies. Based on the notion that victims of atrocities require acknowledgement of the truth of their victimization, and that society as a whole requires the ability to heal and reintegrate all of its parts, transitional justice is seen as an effective tool for circumventing more divisive retributive justice processes. In an attempt to quell any remaining hostilities in the wake of conflict, transitional justice may provide amnesty for certain individuals who perpetrated human rights abuses. Central and South American truth commissions offered political and social elites amnesty in exchange for the truth about human rights violations, while in South Africa apartheid leaders were granted amnesty in exchange for truth about their crimes against the country's majority black population.

Considerations of restorative justice are also useful in Cambodia. While retributive forms of justice emphasize punitive outcomes, restorative forms establish relationships between victims and perpetrators. Also, world-wide recidivism rates indicate that criminal justice, focusing primarily on punishment, has not been an adequate means of deterrence or rehabilitation. Though trials may provide a sense of closure and balance, they rely on judicial frameworks and legal expertise, which post-genocide Cambodia did not have until the very recent launch of the Khmer Rouge Tribunal. The outcome of the Tribunal will be fascinating to assess for its meaningfulness to survivors and younger generations. If many Cambodians achieve peace and renewal from the

Court’s findings, then retributive justice will clearly have played a substantial role in peacebuilding and reconciliation. Aside from the outcome and the impact of the Tribunal, justice must be felt in the daily lives of Cambodians as well, for reasons completely unrelated to and independent of the genocide.

Components of the Social Demand for Justice in Cambodia

Social Needs	Parties Involved	Content
Social Conflictivity	Equal Individuals	1. Conflicts due to daily interaction between equal parties.
	Unequal Individuals	2. Violence 3. Concentration of land by powerful persons 4. Ethnic discrimination 5. Political Affiliations
Abuse of Power and Violation of Individuals Rights	1.State Powers 2. Individuals 3. Authorities	1.Abuse of public force with loss of individual rights 2. Violations of due process of law 3. Corruption in legal process
Lack of good governance, corruption resulting in violations of social rights	1. Individuals 2. Public Services	1. Lack of enjoyment of social rights due to the failure of social investment 2. Lack of enjoyment of social rights due to corruption in the delivery of social services 3. Violation of social rights due to lack of transparency in the management of public resources.

(Yrigoyen Fajardo, et al. 2005, 62)

Currently, many citizens feel afraid of or apathetic toward the police and the courts. Some of the key obstacles to a functioning and widespread justice system in Cambodia are: 1) Most courts and prosecutors are centralized in the cities, while over 80 percent of the Cambodian population lives in rural areas. 2) As a corollary, the cost of transportation, legal representation, legal (and illegal) fees, and loss of workdays due to trial or travel, make participating in the formal legal system expensive and inaccessible 3) In cases of rape or domestic violence injuries, the cost for a forensic exam is assumed by

the victim and may be too costly and embarrassing for some victims (Yrigoyen Fajardo, et al. 2005, xi) 4) The lack of women legal professionals serves as a deterrent to women feeling comfortable approaching judicial officials. Of the 124 judges, twelve are women and of sixty-eight Appeal court prosecutors, one is a woman (59).

The problem in Cambodia is not the lack of a judicial framework or government refusal to cooperate with international law. The justice system in Cambodia has gone through a number of iterations since 1979 and laws protecting the rights of citizen and detailing the powers of the Courts do officially exist. For example, Article 39 in the Constitution of Cambodia of 1993, amended in 1999, establishes as a function of the courts the control of any state or social organs that threaten the rule of law: "Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts"(Yrigoyen Fajardo, et al. 2005, 18). Article 109 of the Cambodian Constitution states that "the judicial power shall be an independent power" and further specifies in Article 111 that "judicial power shall not be granted to the legislative or executive branches." Interestingly, the prevailing situation before 1993 was drastically different. Under that arrangement, the Ministry of Justice had a great deal of power, and even judges were subordinate to its decision-making. At that time, Cambodia was essentially ruled by a socialist dictatorship, and there was no separation of power between the branches of government. Despite the total restructuring in 1993, in practice the Ministry of Justice still controls the courts, even though it is in direct opposition to the Constitution. The influence of the Ministry of Justice is even more evident in political cases (Cambodia Human Rights 1998).

In 2003, the Council of Ministers adopted the Legal and Judicial Reform Strategy (LJRS) drafted by the Council for Legal and Judicial Reform. Its ultimate objective is to provide "justice for all Cambodians". This legal and judicial reform is part of a broader reform process that aims to reduce poverty and strengthen democracy in Cambodia (Yrigoyen Fajardo, et al. 2005, 36). The seven strategic objectives of the LJRS are: 1) improve the protection of fundamental rights and freedoms 2) modernize the legislative framework 3) provide better access to legal and judicial information 4) enhance the

quality of legal processes and related services 5) strengthen judicial services (judicial power and prosecutorial services) 6) introduce alternative dispute resolution mechanisms 7) strengthen legal and judicial sector institutions to fulfill their mandates. The LJRS also identified that public awareness must be made a priority. While the language evoked in the plan is inspiring, there must be a change in legal and governmental culture in order for the effects to be felt.

Extraordinary Chambers of the Courts of Cambodia (ECCC)

“The failure to prosecute the most serious human rights crime of all – the Cambodian genocide – has set the worst possible precedent and undermined the credibility of the entire legal system. A fair trial of the Khmer Rouge and the punishment of the guilty after due process is widely seen as the only way to lay the foundation for human rights” (Fawthrop and Jarvis 2004: 147)

The Extraordinary Chambers in the Courts of Cambodia (ECCC), also known as the Khmer Rouge Tribunal, is a legal authority ten years in the making and emerging thirty years after the crimes were committed. As Elizabeth Becker of the International Herald Tribune points out, “That is the equivalent of waiting until 1975 to try the Nazis” (Becker 2009). In 1997 Prime Ministers Hun Sen and Prince Rannaridh requested United Nations assistance in organizing the process for the Khmer Rouge trials, citing their concern that the nation did not have the legal or financial resources to hold trials in a purely Cambodian court. On June 6, 2003, the UN-Cambodia agreement was ceremoniously signed in Phnom Penh, and on July 19, 2007, prosecutors submitted a list of five charged individuals to the Tribunal’s co-investigating judges.

The hybrid tribunal is composed of both international and Cambodian judges. At the Trial Chamber, there are three Cambodian and two international judges, and at the Supreme Court Chamber there are seven judges, four Cambodian and three international. Under Cambodian law there are no juries, and there is no jury at the ECCC. All decisions are made by the judges, who try to reach a unanimous agreement on any decision made. If they cannot all agree, then a decision requires a ‘super-majority’. In the Trial Chamber four out of the five judges must vote for a conviction and in the Supreme Court Chamber

five out of seven judges must vote for an appeal decision. Every decision therefore must have the support of both Cambodian and international judges.

Currently, there are five detainees being held at the detention center:

- Kaing Guek Iev, better known as Duch, and director of the S-21 interrogation and torture center.
- Nuon Chea, the “ideology man” and second to Pol Pot. Defected to the Royal Government of Cambodia in 1998.
- Ieng Sary, Minister of Foreign Affairs and member of the Standing Committee, also called Brother number three.
- Ieng Thirith, wife to Ieng Sary, and Minister of Social Affairs.
- Khieu Samphan, Head of State, Head of Parliament, a member of the Standing Committee. Defected to the Royal Government of Cambodia in 1998.

The Khmer Rouge Tribunal is trying national and international crimes. Under Cambodian law, the Court will try individuals for the offences of murder, torture, and religious persecution, while international crimes are genocide, crimes against humanity, war crimes, destruction of cultural property, and crimes against internationally protected persons. Two co-prosecutors (one Cambodian and one international) collect evidence and decide whom to charge and with what crimes. The co-prosecutors pass cases to the two investigating judges (one Cambodian and one international).

It is useful to remember that there was a Khmer Rouge trial already held once, during the period of Vietnamese occupation. The People’s Revolutionary Tribunal was created with the explicit intent of blaming the Khmer Rouge atrocities solely on two men, Pol Pot and Ieng Sary. The men were tried in absentia in August of 1979, and were found guilty and sentenced to death (Chandler 2008, 280). The PRK intensively focused on the atrocities of the Khmer Rouge because it was the basis of their legitimacy in the country. One of the missteps in the trial reflects the many judicial oversights to come in Cambodia’s future: for political purposes, the Vietnamese did not want the trial to cast a shadow over socialist policies in general (280). Instead, the trial became a farce, a mere symbol without substantive investigation, fair trial proceedings, or social catharsis. However, there were many witnesses who came forward to testify against the two men,

and an impressive amount of evidence was gathered, especially considering the country was emerging from total devastation.

In 1999 the Cambodian Government appointed a Task Force to prepare for the trials and negotiate with the UN. The Task Force is charged with considering the laws and standards necessary to establish a court to try those accused of genocide, cooperating with foreign lawyers and specialists in analyzing procedures, preparing the site, considering measures necessary for the maintenance of order during the time when the court is in session, and cooperating with the Supreme Council of the Magistracy in order to carry out the above tasks.

The case for Cambodia instituting a Khmer Rouge Tribunal is not difficult to argue. Aside from acknowledging, in a formal and public way, the atrocities of the genocide, the main advantages to a tribunal are to provide justice to victims and survivors and to contribute to Cambodia's rule of law (Fawthrop and Jarvis 2004, 143). Many people in Cambodia have a hard time understanding why they should be tried for a crime when the architects of one of the twentieth centuries most gruesome episodes have literally gotten away with murder (135). A Cambodian journalist commented on the importance of a tribunal to try the top Khmer Rouge cadre by stating, "It would be a lesson: that you cannot escape justice. It would be fair to minor criminals—thieves and robbers who have been tried for stealing a bicycle or stealing some money. I share the idea of releasing all these criminals if you don't put the Khmer Rouge killers on trial" (135). A failure to hold people accountable for human rights abuses may make it much harder for people to grapple with trauma and memories connected to the abuse. The Public Affairs officer of the ECCC explains that the tribunal provides, "fair justice, but not perfect justice." Many Cambodians embrace the idea that certain culprits are finally seeing repercussions for their heinous acts. A total of 23,742 visitors have observed the trial from the public gallery in the court room, making a daily average of 330 visitors.

The Tribunal also offers the opportunity to exhibit a functioning, efficient, and honest judicial proceeding to a Cambodian judiciary wracked by corruption and impunity. In an annual judicial review released by the Center for Social Development, more than one-quarter of Cambodian court defendants who were surveyed reported being tortured or coerced into confession. (Zakariya 2009). Ordinary people in Cambodia

simply do not have faith in the justice system. In the book “Getting Away With Genocide?” authors Tom Fawthrop and Helen Jarvis write, “The myriad reasons why Cambodia needs a tribunal can be broken roughly into two categories: to address the wide-ranging concept of justice for the victims and the survivors; and to contribute to the rule of law, accountability and the foundations of the Cambodian legal system” (143). For many, the chance to teach Cambodian legal professionals how to run a functioning system, while simultaneously showing Cambodians that functioning systems do exist, is a momentous opportunity. Conversely, there is a danger of the ECCC proceedings doing a disservice to the justice system if it does not maintain an unpolluted image. John D. Cirociari, senior legal analyst to the Documentation Center of Cambodia explains, “Political meddling in the verdict or corruption influencing decisions would not show Cambodians how justice is done, but would show them how injustice continues to be done” (France 24, 2009).

Unfortunately, charges of corruption first arose two years ago, namely that Cambodian staffers were required to kick back portions of their salaries to their superiors (Corey-Bolet 2009). These charges are currently under investigation. Also, in December 2008 concern arose in some observers when a Cambodian co-prosecutor, Chea Leang, would not agree with her international counterpart’s suggestion that the scope of investigation widen beyond the five named defendants. Instead of providing acceptable justification, such as lack of evidence or legal basis, her decision was “political in nature and aligned with the long-held views of the Cambodian Prime Minister who has long wanted to limit the trials to his political enemies and resisted efforts which might see people in positions of power (or whose patrons are) brought before the court.” (Hall 2009). It is disappointing that these two allegations mirror the two most prominent problems in the Cambodian justice system today: corruption and political interference.

There are of course other critiques of the ECCC which call in to question the sincere benefit and catharsis that the Tribunal is providing for average Cambodians. Most importantly, some people ask whether the trial of the top five Khmer Rouge cadre is enough to really have a meaningful impact on Cambodians. Also, a study done by Alex Hinton, Director at the Center for Study of Genocide and Human Rights, found that many Cambodians know very little about the trial, which he interprets as a sign of inadequate

outreach and awareness campaigns into the rural areas (France 24, 2009). If there is not ownership and awareness of the Tribunal and its findings by Cambodians, then the true purpose of the trial as a healing mechanism is lost. Even the location of the ECCC, which originally was to be housed in downtown Phnom Penh but instead is miles outside of the capital, represents the disconnect and invisibility of the body to many ordinary Cambodian citizens. Justice cannot just be “done,” it must be seen by the people.

A final point about the political echoes that are being heard within the Tribunal is the decision to indict and try Kaing Guek Iev, or Duch, first. On the surface it seems a clear cut and obvious choice: he is the only of the five detainees to confess his role in the Khmer Rouge and to be cooperative in providing testimony, which will likely contain damning evidence about the other four. Also, it is difficult for prosecutors to try such massive crimes as genocide or crimes against humanity, but Duch left behind a well organized cannon of documents at Tuol Sleng that can be used against him (Ciorcari, France 24, 2009). However, many critics, including the Advocacy Director of the Asia Division of Human Rights Watch Sophie Richardson, are not convinced that political motives did not drive the choice to put Duch on trial first. “The Court should have started at the top with Ieng Sary, but Duch is more politically expendable. The others have long and complicated histories with the current government, and the government may be stalling their trials” (Richardson, France 24, 2009). John D. Ciorcari adds that the political background generates a “hotly contested issue between the Cambodian government and the international community, in part because in 1990s the Cambodian government helped to dismember the Khmer Rouge insurgency by inviting certain Khmer Rouge officials into government and giving them pardon and amnesty. The government justifies this as required for reconciliation and peace” (France 24, 2009). Ieng Sary is a prime example of just such an official. Finally, Alex Hinton points out that the very decision to restrict the time the Court is investigating to 1975-1979, as well as to only try the top officials, is also a conspicuously political move (2009). Despite this, or perhaps because of it, the Tribunal still must be admired for finding the delicate balance between politics, stability, and justice.

John A. Hall of the Far Eastern Economic Review makes the following four key suggestions (Hall 2009) to thwart the potential loss of credibility if allegations and suspicions are not examined and confronted.

- Judges need to change the rule that Court decisions are made in secret, and ensure the court operates with total transparency without appearing to be a tool of the government, in the same way that domestic courts are often viewed. At a minimum, the ECCC must allow domestic and international monitors to witness this secret proceeding.
- An independent auditing company acceptable to both the U.N. and the Cambodians could conduct a detailed investigation with the specific mandate of identifying corrupt practices. The initial audit report would be circulated to the U.N. and the Cambodian government, senior ECCC management, and donor nations, with only an executive summary made public. Subsequent quarterly audits would, however, be published in full. This would provide an incentive to quietly “clean house” of the corrupt individuals and practices identified in the first report.
- Human rights monitors, NGOs and reporters must be allowed to keep their sources confidential. Such disclosure would undermine the tribunal by imperiling the safety of sources and chilling potential critics and whistleblowers.
- In those situations where a whistleblower is willing for her identity to be made public, or where her identity becomes known without her permission, there must be a clear guarantee that such persons will be free from all forms of retribution.

Seeds of Change: Filling in the Gaps in Social Justice

“It is uncertain if notions of human rights, pluralism, and the rule of law, concepts brought into Cambodia in recent years, have taken root in a significant way among those holding power in the country, who continue to act, as previous leaders have done, as if these imported concepts had no bearing on their behavior or on how the country is governed” (Chandler 2008, 300).

With the establishment of a western justice system (courts) during the French protectorate in the nineteenth century, there were two legal cultures precariously coordinated. “There were local legal practices, managed by local authorities according to local culture and customs, and there was the formal legal system, composed of the courts, and run by lawyers trained under the French legal culture” (Yrigoyen Fajardo, et al. 2005, 3). Much like today, the formal legal system mainly included the cities and urban areas of the country. During the Pol Pot regime from 1975 to 1979, the entire judicial system was destroyed, as was the local capacity to resolve conflicts (3). With the arrival of Vietnamese-backed PRK in 1979, legal cultures were imported from Russia and Vietnam that introduced important modifications to the formal system, but without fully re-establishing the judicial system. After the 1991 Paris Peace Accord and under the United Nations Transitional Authority in Cambodia-UNTAC, there was an effort to rebuild the judicial system. But there is still much to be done in terms of law reform to establish a comprehensive legal framework, institutional development, and capacity-building (3). Also, for the rebuilding effort to truly transform the judicial institutions and the culture of impunity in Cambodia, the Cambodian people must accompany the process through workshops, outreach, and media coverage. Cambodians should be given the chance to experience ownership of and empowerment in their justice system.

Cambodia provides consummate proof that a functional state depends on real rule of law. Despite the failures of the Cambodian government to impart free and fair justice, there is valuable and significant work being done by Cambodian and international NGOs to help fill in the gaps. Civil society has done a remarkable job of picking up the justice demands where the ECCC and government leave off. There are groups like Youth for Peace that encourage Cambodian youth to feel empowered by discussing their collective and individual stories. The organization works to build confidence and increase critical thinking in young people by providing a safe and dynamic space for them to learn about the Khmer Rouge and share an active and participatory voice. Youth for Peace is firm in its stance that if the youth does not know about or understand the genocide, then it could happen again.

Another extraordinary organization in Cambodia is the Documentation Center of Cambodia, or DC-Cam. The Center has amassed documents, testimonies, and histories

from the Khmer Rouge period since 1995. This invaluable storehouse of memories and narratives also publishes books and magazine that uncover the issues that otherwise weigh silently on Cambodians: truth, justice, and reconciliation. DC-Cam has worked diligently to stave of the loss of history and collective memory that the government seems willing to accept. “Public documentation of tragedies...affords the opportunity for public reflection on the human costs of conflict which may be denied or hidden in a militarized society. Such compassion for enemies can act as a powerful disincentive from future violence.” (Smythe 2007, 9)

The Tribunal, or any retributive justice mechanism, is only providing justice at one level. Correspondingly, justice is only one part of reconciliation. There are myriad factors involved in the rebuilding of a fractured society, and Cambodians require many more programs directed at accompanying them in the process. Social programs that are not necessarily aimed at justice, but rather strive to provide equity and opportunity for Cambodians are still doing a great service in establishing a sense of balance and fairness in the society. Education, religion, health, trauma, and dialogue facilitation are all creating a more even distribution of resources, which is directly linked to justice. There is a wide chasm separating the demand for justice and potential demand for justice (Yrigoyen Fajardo, et al. 2005, 92) due to a ubiquitous sense that the justice system will simply not provide benefits or equity. Many Cambodians prefer to avoid the trek to the courts or the potentially corrupt encounter with the police, and have become adept at alternative resolution techniques. But the legacy of dehumanization hewn onto the culture by the Khmer Rouge can only be wholly erased when government behavior reflects the government’s laws. The framework is there, it simply must be embraced and implemented.

Bibliography

Asia Regional Cooperation to Prevent People Trafficking. "Gender, Human Trafficking, and the Criminal Justice System." December, 2003.

Becker, Elizabeth. "When justice is delayed." *International Herald Tribune*, March 13, 2009.

Cambodia Human Rights. "The Ministry of Justice." September 23, 1998.
<http://cambodia.ahrchk.net/mainfile.php/19980314/66/>

Chandler, David. *A History of Cambodia*. Boulder: Westview Press, 2008.

Clark, Phil. "Establishing a Conceptual Framework: Six Key Transitional Justice Themes." In *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, edited by Phil Clark and Zachary D. Kaufman, 191-207. New York: Columbia University Press, 2009.

Ciorciari, John D., ed. *The Khmer Rouge Tribunal*. Phnom Penh: Documentation Center of Cambodia, 2006.

Corey-Boulet, Robbie. "ECCC Official to collect evidence." *The Phnom Penh Post*, September 24, 2009.

Doyle, Kevin. "Court Intrigue." *Time*, January 19, 2004.

Fawthrop, Tom and Helen Jarvis. *Getting Away With Genocide?* London: Pluto Press, 2004.

France 24 (Radio). "Is justice possible for Cambodia?" February 18, 2009
<http://www.france24.com/en/20090218-the-debate-is-justice-possible-for-cambodia-1>

Hall, John A. "Judging the Khmer Rouge Tribunal." *Far Eastern Economic Review*, March 2, 2009. <http://www.feer.com/politics/2009/march53/Judging-the-Khmer-Rouge-Tribunal>

Jones, Adam. *Genocide: A Comprehensive Introduction*. London: Routledge, 2006.

Kiernan, Ben. *Genocide and Resistance in Southeast Asia: Documentation, Denial, and Justice in Cambodia and East Timor*. New Brunswick: Transaction Publishers, 2008.

Leuprecht, Peter. "Advisory Services and Technical Cooperation in the Field of Human Rights: Situation of human rights in Cambodia." Report of the Special Representative of the Secretary-General for Human Rights in Cambodia. United Nations Economic and Social Council, Commission on Human Rights, sixty-first session, December 20, 2004.

Mu, Sochua. "Cambodian Democracy in Free Fall." Tom Lantos Human Rights Commission Testimony, September 10, 2009.

Opatow, Susan. "Reconciliation in Times of Impunity: Challenges for Social Justice." *Social Justice Research* 14 (2001): 149-170.

Penrose, M. M. "Impunity—inertia, inaction, and invalidity: A literature review." *Boston University Int. Law J.*, 1999, 17: 269-310.

Pilorge, Naly. "Born Samnang and Sok Sam Oeun: Innocent Prisoners—1,700 days behind bars." Media Statement, Cambodian League for the Promotion and Defense of Human Rights (LICADHO), September 23, 2008.

Rae, James DeShaw. *Peacebuilding and Transitional Justice in East Timor*. Boulder: First Forum Press, 2009.

Seanglim, Bit. *The Warrior Heritage: A Psychological Perspective of Cambodian Trauma*. California: Seanglim Bit, 1991.

Smyth, Marie Breen. *Truth Recovery and Justice after Conflict: Managing Violent Pasts*. London: Routledge, 2007.

Sothearith, Im. "Despite Woes, Tribunal Seen Helping Justice System." *VOA Khmer News* (July 10, 2009), http://www.voanews.com/Khmer/archive/2009-07/2009-07-10_voa4.cfm?CFID=295352385&CFTOKEN=36808880&jsessionid=de307e41d7cfe0a550894701221d15486c11.

Sullivan, Dennis and Larry Tifft. *Handbook of Restorative Justice*. London: Routledge, 2006.

Va, Sothy, trans. "Statement on the Killing of Mr. Chea Vichea." Translated August 10, 2006. <http://www.licadho-cambodia.org/news/files/VaSothyStatementTransEN.pdf>

Villa-Vicencio, Charles. "Transitional justice, restoration, and prosecution." In *Handbook of Restorative Justice*, edited by Dennis Sullivan and Larry Tifft, 387-401. London: Routledge, 2006.

Yrigoyen Fajardo, Raquel Z., Kong, Rady, and Phan, Sin. "Pathways to Justice: Access to Justice with a focus on poor, women, and indigenous peoples." UNDP Cambodia Report, Phnom Penh, 2005.

Zakariya, Tin. "Cambodia's Judiciary on Trial." *Radio Free Asia*, April 9, 2009. <http://www.rfa.org/english/news/cambodia/cambodiajudiciary-04092009111855.html>