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Getting Away With Genocide? Transitional Justice in
Cambodia through a (post) Cold War Lens

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Deutsche Zusammenfassung

Zwischen 1975 und Januar 1979 wurden im damaligen kommunistischen Kambodscha durch die herrschende *Khmer Rouge* Verbrechen gegen die Menschlichkeit begangen. Nach der Befreiung (oder der Invasion) Kambodschas durch Vietnam im Januar 1979 wurde ein mögliches Genozidverfahren zum Hauptthema der neuen (pro Vietnam) Regierung. Erst im Jahr 2011 wurde der ehemalige Leiter des S-21s (Sicherheitsgefängnis) Kaing Guek Eav alias Duch zur 35 Jahren Haft für Verbrechen gegen die Menschlichkeit verurteilt. Das Tribunal ist das erste, international anerkannte Tribunal für die *Khmer Rouge* in Kambodscha. In dieser Arbeit wurde die Suche nach Justiz in Kambodscha zwischen 1979 und 2011 betrachtet.

In den 90er Jahren, nach dem Kalten Krieg, wurde die liberale Demokratie zum bevorzugten politischen System aufgrund des 'Sieges' Amerikas im Kalten Krieg. Damit wurde ‚transitional justice‘ als Lösung für ehemalige kommunistischen Länder, die sich zur Demokratie umwandeln wollten oder sollten, populär. ‚Transitional justice‘ verbindet das traditionelle Tribunal mit anderen Methoden z.B. Wahrheitskommissionen oder Entschädigungen und versucht Justiz für die Opfer des ehemaligen autoritären Regimes zu bekommen ohne den Umstieg (Transition) zur Demokratie zu stören. Dieses Konzept wurde in Kambodscha nur mit beschränkten Erfolg angewendet.

Im ersten Teil dieser Arbeit wurden die bisherigen angewendeten ‚transitional justice‘ Methoden genau untersucht. Im zweiten Teil wurde der Zustand der kambodschanischen Demokratie analysiert um festzustellen, ob ‚transitional justice‘ den Umstieg zur Demokratie verhindert oder verbessert hat. Im letzten Teil wurde die Politik Kambodschas im internationalen, regionalen und nationalen Kontext dargestellt um zu zeigen wie sehr die kambodschanische Politik von der Politik des Kalten Krieges und der ‚neuen liberalen Ära‘ beeinflusst wurde und wird. Das Ziel dieser Arbeit ist es die ‚Erfolge‘ und ‚Fehler‘ von ‚transitional justice‘ in Kambodscha ausführlich darzustellen.

Bis jetzt kann die Durchführung von ‚transitional justice‘ in Kambodscha nicht als erfolgreich eingeschätzt werden. Die Demokratie ist immer noch brüchig, Menschenrechte und politische Rechte werden nicht respektiert. Studien zeigen, dass die Opfer des Khmer Rouge Regimes noch nicht bereit sind, die Vergangenheit zu vergessen und den Tätern zu verzeihen. Die Regierung zeigt keine Bereitschaft andere ‚transitional justice‘ Methoden außer dem jetzigen Verfahren offiziell zu unterstützen. Die Zivilgesellschaft und NGOs in Kambodscha haben in der letzten Zeit Fortschritte gemacht, darunter Wahrheitskommissionen und Genozidbildung. Aber ohne Unterstützung der Regierung und das nötige Geld können sie diese Erfolge nicht auf das gesamte Staatsgebiet ausweiten.

Introduction

*"Out of our memory...of the Holocaust we must forge an unshakeable oath with all civilized people that never again will the world stand silent, never again will the world...fail to act in time to prevent this terrible crime of genocide....we must harness the outrage of our own memories to stamp out oppression wherever it exists. We must understand that human rights and human dignity are indivisible."*¹

In September 1979, United States President Jimmy Carter told the President's Commission on the Holocaust that the civilised world should 'never again' stand by and let genocide happen. However, between 17th April 1975 and 7th January 1979, the civilised world had done just that as the Khmer Rouge committed some of the "most brazen atrocities since the Third Reich" against its own citizens.² The number of Cambodians that perished under the Khmer Rouge regime is still debated, but most estimates place the number at around 1.7 million.³ After the fall of Phnom Penh to the Vietnamese on 7th January 1979, the Khmer Rouge no longer had *de facto* control of the country. However, they still continued to represent Cambodia at the United Nations until the end of the Cold War. Throughout the 1990s, the crimes of 1975-9 went unpunished. This impunity continued until 2005, when the Extraordinary Chambers of the Courts of Cambodia (ECCC) were opened to put senior Khmer Rouge leaders on trial for their crimes.

This thesis will analyse the attempts to gain justice for millions of Cambodians who were either killed, had relatives and friends killed or were physically or psychologically harmed by the Khmer Rouge regime. Justice attempts, or lack thereof, made before 1991 will be viewed through a Cold War lens, without which

¹ Jimmy Carter, Remarks at the Presentation of the Final Report of the President's Commission on the Holocaust, September 27, 1979.

² Maguire, P.H., *Facing Death in Cambodia*, Columbia University Press (2005), p2.

³ See Kiernan, Ben, *The Pol Pot Regime*, Yale University Press (2002), p458 for an estimate of 1,671,000. Michael Vickery has estimated a much lower 740,000, see: Vickery, Michael, 'How Many Died in Pol Pot's Kampuchea?', *BCAS*, Vol 20, No. 1, pp70-73. This has since been discredited due to a low 1975 population estimate. Despite the debate about the figure, the Yale University Cambodian Genocide Project continue to use the 1.7 million estimate, see: www.yale.edu/cgp accessed on 14th June 2011.

international politics regarding post-genocide Cambodia would not make sense to a twenty-first century observer. Attempts at justice made after the end of the Cold War will be viewed within the context of democratisation.

Pre-Khmer Rouge Cambodia

Before the genocide and attempts at genocide justice in Cambodia can be fully understood, it is necessary to understand how the Khmer Rouge were able to take power in 1975. In order to do this, it is important to understand Cambodia's socio-political climate as well as its position in regional and international politics before 1975.

Cambodia gained independence from France in 1953 and throughout the 1950s and 1960s the country was ruled by King Sihanouk.⁴ William Shawcross describes Sihanouk as presiding feudally over Cambodia as, "King, Chief of State, Prince, Prime Minister, head of the main political movement, jazz-band leader, magazine editor, film director and gambling concessionaire".⁵ After criticism of the monarchy's involvement in politics from the International Control Commission and Cambodian opposition leader Son Ngoc Thanh, Sihanouk abdicated in 1955 in order to circumnavigate criticism of his involvement in politics and run as a politician.⁶ Using his charisma and promises of a democratic government, Sihanouk won the 1955 elections.⁷

At the beginning of his time in office, Sihanouk used a policy of 'extreme neutrality', involving pitting Cambodia's neighbours against each other, which was not well received outside of Cambodia.⁸ The United States in particular disliked the extreme neutrality policy, characterised by Prime Minister Penn Nouth when he said, "Although we are not Communists, we do not oppose Communism as long as the

⁴ Throughout this thesis King Sihanouk is referred to as 'King Sihanouk', or simply Sihanouk, although he was officially Prince Sihanouk between 2nd March 1955 and 24th September 1993. Sihanouk once again became King on 24th September 1993 and reigned until his abdication on 7th October 2004. To avoid confusion the term King is used throughout.

⁵ Shawcross, William, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, Andre Deutsch, London (1979), p46.

⁶ Shawcross, William (1979), p49

⁷ Shawcross, William (1979), p49

⁸ Shawcross, William (1979), p51

latter is not imposed on our people from the outside", shortly after independence in 1953.⁹ William Shawcross contests that the United States pursued a policy of interference in Cambodia to convince susceptible sectors of society of Chinese interference in Cambodian society and Sihanouk's inefficiency and corruption in order to "win them to the free world".¹⁰

In 1963, Sihanouk's policy shifted to the left, which led to the United States branding Cambodia "pro-communist".¹¹ Sok Udum Deth argues that this move was triggered by a belief that the communists would eventually win the Indochina War and also by a mistrust of South Vietnam and Thailand, two countries that enjoyed US backing.¹² William Shawcross attributes the shift to Sihanouk's suspicion that his conservative army generals were becoming too "dependent upon both American aid and American attitudes".¹³ In 1963, Sihanouk cut off economic and military aid from the United States (totalling \$404 million between 1953 and 1963), nationalised banks and export-import trade.¹⁴ This was followed by the breaking off of political relations with the United States in 1965.

The break in relations with the United States meant that Cambodia had to court North Vietnamese and Chinese aid. In order to do this, Sihanouk made a 'secret pact' with the North Vietnamese and Chinese, which allowed the Chinese, Soviets and Czechs to use Cambodia to supply Vietnamese communists.¹⁵ David Chandler states that the terms of the secret alliance with North Vietnam allowed Vietnamese troops to be stationed on Cambodian soil and the Chinese and North Vietnamese to use the port of Sihanoukville to provide these troops with arms and food.¹⁶ In exchange, the North Vietnamese agreed to respect Cambodia's borders, leave Cambodians in

⁹ Shawcross, William (1979), p52

¹⁰ Shawcross, William (1979), p56.

¹¹ See Chandler, David, *A History of Cambodia*, Westview Press, Sydney (1992), p192.

¹² Deth, S, 'The Geopolitics of Cambodia during the Cold War Period', *The Journal of Explorations*, University of Hawaii Press, Manoa, Vol 9 (Spring 2009) pp47-53

¹³ Shawcross, William (1979), p60

¹⁴ Deth, S (2009), p47

¹⁵ Morris, Stephan J., *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War*, Stanford University Press, California (1999), p41

¹⁶ Chandler (1992) p194.

peace and avoid skirmishes with Cambodian troops.¹⁷ The United States and South Vietnamese were, of course, aware and angered of the presence of North Vietnamese troops and arms in Cambodia.¹⁸ This resulted the bombing of Cambodia (beginning with Operation Breakfast on 18th March 1969), in which US planes dropped approximately 540,000 tonnes of bombs and killed between 150,000-750,000 Cambodian civilians (estimates vary).¹⁹

The urban elite, including Sino-Cambodian businessmen and Cambodian bureaucrats and army officers, began to turn away from the Sihanouk government. Even members of his own government, including Prime Minister Lon Nol, were vocally anti-Sihanouk.²⁰ In June 1969, Sihanouk attempted to shore up his hold on power by renewing diplomatic relations with the United States, but this failed to have the desired effect. On 18th March 1970, the National Assembly of Cambodia voted unanimously to remove King Sihanouk from power.²¹ The Khmer Republic was proclaimed and it nominated General Lon Nol as its Prime Minister. There was public support for this move, especially among the educated classes, but David Chandler suggests this support was the result of wanting the North Vietnamese out of Cambodia, rather than intellectual support for the Lon Nol government.²² Lon Nol's government ordered the North Vietnamese troops to leave Cambodia, but this order was not obeyed.

Since returning from Paris in the late 1950s, the leaders of the Khmer Rouge (including Pol Pot and Ieng Sary) had been hiding in the Cambodian countryside and forming a Cambodian communist party. The Communist Party of Kampuchea (CPK) was founded in 1960 and spent the majority of the 1960s in hiding in the Cambodian countryside, gaining support among the disenchanted rural classes. It was in this period; Sihanouk nicknamed the CPK 'Khmer Rouge'.²³ In 1968, Khmer Rouge forces clashed with Sihanouk and Lon Nol's troops. David Chandler suggests the

¹⁷ Chandler (1992), p194.

¹⁸ Chandler (1992), p194.

¹⁹ Tully, John, *A Short History of Cambodia : From Empire to Survival*, Allen and Unwin, New South Wales (2005), p. 167.

²⁰ Shawcross, William (1979), p67

²¹ Shawcross, William (1979), p121

²² Chandler (1992).

²³ Shawcross, William (1979), p245

majority of these clashes were provoked by Sihanouk and Lon Nol, in order to justify retaliation against the communists.²⁴ At this point, the Khmer Rouge was closely affiliated with the North Vietnamese communists, and was able to seek shelter on Vietnamese soil.

After Lon Nol ousted King Sihanouk, he formed the Front Uni National du Kampuchea (FUNK), a united front with the Khmer Rouge. Ben Kiernan asserts that this united front was formed at the request of the Vietnamese communist party, who wanted to combine the two parties with significant rural support bases to mobilise Khmer peasant support for a revolution.²⁵ On the other hand, Shawcross states that it was the Khmer Rouge that approached Sihanouk, and that by forming an alliance they achieved, "national and international identity and appeal".²⁶

Whatever the reason for the Sihanouk-Khmer Rouge alliance, the harmony between the Cambodian and Vietnamese communist parties did not last until the revolution took place in 1975. David Chandler argues that after 1971 the Khmer Rouge became more self confident, resentful of Vietnamese leadership and started to operate under a motto of 'Cambodia for the Cambodians'.²⁷ In 1973, the North Vietnamese signed a ceasefire with the Americans that meant they would have to draw Vietnamese troops from Cambodia. The Khmer Rouge rejected the Vietnamese plea to observe the ceasefire, seeing it as a betrayal and believing they could overthrow Lon Nol alone. From this point on, Khmer Rouge forces were fighting Lon Nol and carrying out small attacks on any remaining Vietnamese soldiers in Cambodia.

On 17th April 1975, Khmer Rouge forces entered Phnom Penh and declared a revolution. Within days, all cities were evacuated, schools, hospitals, libraries and monasteries were closed, and money, clocks and reading glasses were banned. Angkar, 'the organisation' replaced religion or family as the 'caregiver' in Cambodian daily life and human communication was kept to a minimum. Ben Kiernan writes, "a

²⁴ Chandler, David, *Brother Number One: a political biography of Pol Pot*, Westview Press, Boulder Colorado (1992), p84.

²⁵ Kiernan, Ben, *The Pol Pot Regime: race, power and genocide in Cambodia under the Khmer Rouge 1975-9*, Yale University Press, New Haven (2002), p15.

²⁶ Shawcross, William (1979), p246

²⁷ Chandler, David, *Brother Number One* (1992), 95.

whole nation was kidnapped and then besieged from within".²⁸ Cambodia was to remain this way until January 1979.

How did the Khmer Rouge gain power?

One school of historiographical support suggests that the Cold War and external ideological influences led to the rise of the Khmer Rouge.²⁹ Ben Kiernan argues, "although it was indigenous, Pol Pot's revolution would not have won power without U.S. economic and military destabilisation of Cambodia".³⁰ He states the US bombing of Cambodia between 1970 and 1973 created a refugee class that were susceptible to the revolutionary propaganda of the Khmer Rouge.³¹ To support this argument, Kiernan quotes a 1979 interview with Chhit Do, a Khmer Rouge member who fled Cambodia in 1979. When asked if the US bombing helped the Khmer Rouge recruit supporters, he answered, "That was what made it so easy for the Khmer Rouge to win people over... It was because of their dissatisfaction with the bombing that they kept on cooperating with the Khmer Rouge, joining up with the Khmer Rouge, sending their children off to go with them".³² Therefore, this school of historiographical thought considers the US bombing of Cambodia to be the catalyst for the Khmer Rouge revolution in 1975.

Another school of historiographical thought argues that socioeconomic conditions in Cambodia under Sihanouk and Lon Nol contributed more to the rise of the Khmer Rouge than international influences from the Vietnam War and the United States.³³ Cambodian culture before 1975 comprised of three major segments: the government bureaucracy; the Buddhist clergy and the peasantry. Matthew Edwards states that there were not enough positions of valued status for all of the people that fulfilled the criteria them, and this coupled with improvements in education in the 1950s and 60s led to increased unrest in the population.³⁴ In addition to this, the numbers of landless peasants rose between 1950 and 1970. In 1961, the poorest 52% of the population

²⁸ Kiernan, Ben (2002), p8

²⁹ See Kiernan, Ben (2002) and Shawcross, William (1979).

³⁰ Kiernan, Ben (2002), p16.

³¹ By 1971 there were 130,000 new Khmer refugees, of which 60% stated the US bombing as the main reason they were displaced. In Kiernan, Ben (2002), p19.

³² Kiernan, Ben (2002), p23.

³³ See Edwards, Matthew, 'The Rise of the Khmer Rouge in Cambodia: Internal or External Origins?', *Asian Affairs*, Vol 35, No. 1 (2004).

³⁴ Edwards, Matthew (2004), p59

owned 6% of the land and the richest 6% owned 39% of the land.³⁵ These factors combined meant the Khmer Rouge could recruit from a wide base of dissatisfied rural workers with no ties to their villages and communities. From 1967 to 1973 Khmer Rouge guerrilla forces expanded from 2,500 to 60,000.³⁶

Khmer Rouge Ideology

In 1983, Vietnamese war correspondent Than Tin drew comparisons between Maoism and Pol Pot's ideology:

"Pol Pot's ideology was the same as Mao- a simple method of thought; an extreme point of view; an illusion without reality; subjectivist. They worshipped the role of the peasant- the nature of the peasants- the poorer the more radical and progressive.... They are anti-intellectual. They are religious in character- their leaders are like God- for example Mao and Pol Pot. This is feudalism in character. They believed that Maoism plus muscle equals success."³⁷

Like the Maoist ideology of the Chinese Communist Party, the Khmer Rouge viewed the agricultural working class as the true proletariat. This was heavily influenced by Chinese Maoism, which departed from European influenced Marxism by emphasising the rural working class rather than the urban rural class. In K.D. Jackson's 1978 assessment of the Khmer Rouge's propaganda (of which there was not a great amount) stated that the Khmer Rouge saw the dominance of the feudal landowners and city dwelling capitalist class as the root of all Cambodian problems.³⁸

David Chandler also argues "the most important intellectual [foreign] influence was probably the Cultural Revolution in China".³⁹ Indeed, there are similarities between Cambodia under Pol Pot and China under Mao during the Cultural Revolution. Firstly, the Down to the Countryside Movement in China in the late 1960s and early 1970s

³⁵ Delvert, J, *Le Paysan Cambodgien*, Paris (1961), p594.

³⁶ Jackson, K.D., Cambodia 1977 : Gone to Pot', *Asian Survey*, Vol 18, no. 1 (1978), pp19-26

³⁷ Tin, Than, 'Notes of Discussion with Than Tin, Deputy Editor of Nhan Dan, Former Editor of Quan Doi Nhan Dan, War Correspondent, Colonel in the Vietnamese People's Army, Two Talks', Phnom Penh, Cambodia (1 June 1983), p28.

³⁸ Jackson, K.D (1978), p77.

³⁹ Chandler, David, *Brother Number One: A Political Biography of Pol Pot*. Westview Press (1999), p66.

sent privileged young people to the countryside and to learn how to work is echoed in the evacuation of the cities in the first days and weeks of Khmer Rouge reign in 1975.⁴⁰ Secondly, Pol Pot's party showed equal lack of respect for cultural property and literature, as did the Maoists in China. It was forbidden for ordinary citizens to own clocks, books or reading glasses, and pagodas and cultural institutions (except Angkor Wat) were destroyed. David Chandler notes that Pol Pot was in China in the late 1960s and saw the Cultural Revolution in action, which is likely to have influenced him and his future plans.⁴¹

One aspect of the Cultural Revolution that was used in Cambodia was the concept of personality cult. The Maoist personality cult has been widely reported and analysed, and as such will not be discussed in any depth here.⁴² In contrast to Chairman Mao, Pol Pot kept a low profile during the Khmer Rouge years. David Chandler writes, "no biography of Brother Number One [Pol Pot] was ever broadcast over Phnom Penh Radio or published in *Tung Padevat*. No photographs of him appeared in party literature. No anecdotes of his childhood, his teaching career, or his time in the maquis entered popular folklore via speeches at political meetings. There were no plays or songs about him and no 'published thoughts'".⁴³ In short, the revolution in Cambodia and the whole Democratic Kampuchea movement was not tied to Pol Pot as a leader. Indeed, when the Constitution of Democratic Kampuchea was proclaimed in 1976, the Prime Minister was identified as 'Pol Pot', a rubber plantation worker.⁴⁴ It was not until 1977 that Pol Pot was identified under his real name, Saloth Sar, from photographs that were taken of him in China.⁴⁵ It was not until 1978 that Pol Pot allowed himself to be interviewed by journalists.⁴⁶ Therefore, Pol Pot managed to keep such a low profile that his real identity was not even known until the third year of his rule in Democratic Kampuchea, and it wasn't until the last year of his rule that interviews with him began to be published. This is a sharp contrast to the

⁴⁰ Chandler, David (1999), p70

⁴¹ Chandler, David (1999), p71.

⁴² For more information on Mao's personality cult in China see: Schifft, Melissa, *The Biography of a Chairman Mao Badge: The Creation and Mass Consumption of a Personality Cult*, Rutgers University Press (2001)

⁴³ Chandler, David, *Brother Number One* (1992), p158

⁴⁴ Chandler, David, *Brother Number One* (1992), p194

⁴⁵ Chandler, David, *Brother Number One* (1992), p195

⁴⁶ Chandler, David, *Brother Number One* (1992), p195

red book waving, Mao badge toting personality cult that surrounded Chairman Mao during the Cultural Revolution in China.

One of the reasons for the lack of personality cult could well have been the semi personality cult that surrounded Sihanouk during the 1950s and 1960s. While not as intricate as the personality cult surrounding Mao, Sihanouk managed to gain the support of the rural peasants by acting like a 'man of the people', "standing in village squares and mopping the sweat from his face as he swapped raucous jokes with the delighted peasantry".⁴⁷ When the Khmer Rouge came to power, they kept Sihanouk as a figurehead of the movement, to represent Democratic Kampuchea to the United Nations and win the "mass support which the rhetoric of the revolution had failed to engender".⁴⁸ Therefore, the Khmer Rouge already had a charismatic figure they could use as a figurehead, and didn't need to create a personality cult around Pol Pot.

In addition to his Maoist ideology, Pol Pot also favoured ultra-nationalism, where the Khmer race would be freed of its Cham, Vietnamese and Chinese influences and Cambodia would regain the splendour it experienced in the Angkor period. Elisabeth Becker draws comparisons between Pol Pot's Cambodia and the Angkor King Jayavarman VII, who ruled in the twelfth century, arguing that traces of Khmer nationalism can be found during this period.⁴⁹ Ben Kiernan states that Pol Pot "distorted and exaggerated the Chinese model just as he and his fellow communists drew on extremes of chauvinist and racist ideologies which had roots in traditional Khmer thinking".⁵⁰ Therefore, Khmer Rouge ideology can be viewed as an uneasy mix of Maoism and nationalism, creating a genocidal regime, in which only rural peasants of Khmer descent were not vilified.

The Khmer Rouge Legacy

On 7th January 1979, the Vietnamese Army marched into Phnom Penh, proclaimed the People's Republic of Kampuchea (PRK) and brought an end to over three years

⁴⁷ Shawcross, William (1979), p49

⁴⁸ Shawcross, William (1979), p247

⁴⁹ Elisabeth Becker, *When the War Was Over: The Voices of Cambodia's Revolution and its People*, New York, Simon and Schuster (1998) p200

⁵⁰ Ben Kiernan, "Why Pol Pot? Roots of the Cambodian Tragedy", *Indochina Issues*, No. 52, (December 1984), p3

of Khmer Rouge leadership in Cambodia. However, although the Khmer Rouge were physically removed from the capital city, their presence could be felt in Cambodia for decades afterwards.

Although the Khmer Rouge no longer maintained control of Phnom Penh, they did still control parts of Cambodian territory up until the early 1990s.⁵¹ The co-existence of PRK and Khmer Rouge troops was not a peaceful one. The Khmer Rouge forces combined with the Khmer People's Liberation Front (comprised mainly of Lon Nol's supporters) and FUNCINPEC (comprised mainly of King Sihanouk's supporters) and continued a guerrilla war against the PRK forces from the jungle on the border with Thailand. This guerrilla coalition was transformed into a political coalition known as the Coalition Government of Democratic Kampuchea on 22nd June 1982, and was recognised as the official government of Cambodia by the majority of Western and ASEAN countries.⁵² This is just one of the many Cold War influences on the Cambodian situation.

The violence continued unchecked until the Paris Peace Accords in 1991, which aimed to promote democracy and human rights in Cambodia. In 1992, the United Nations Transitional Authority in Cambodia (UNTAC) started repatriating millions of refugees who had been living along the Thai-Cambodian border since 1979. In the 1993 elections over 4 million Cambodians voted for a FUNCINPEC-Cambodian People's Party coalition.⁵³ Since 1993, the road to democracy has not been without obstacles, including limited political freedom and factional infighting between the various components of the coalition. Cambodia remains a politically unstable country where respect for democracy and human rights is lacking.⁵⁴

Research Questions

The ultimate aim of this thesis is to explore the extent the 'successes' or 'failures' of transitional justice in Cambodia. In order to do so, many other, smaller research questions must be answered. The first chapter will focus on the definitions of

⁵¹ Vickery, Michael, *Kampuchea: Politics, Economy and Society*, Pinter Publishers, London (1986), p168

⁵² Vickery, Michael (1986), p171.

⁵³ Morris, Stephan J. (1999), p226.

⁵⁴ The lack of democracy and human rights in Cambodia will be discussed in later chapters.

democracy and, in particular, transitional justice. The second chapter will focus on the theoretical and methodological framework behind this thesis, considering the questions 'How can the success or failure of transitional justice be measured?' and 'In which theoretical tradition does transitional justice operate?'. This chapter will also contemplate which measurements transitional justice has to fulfil to be considered 'successful', and answer the question 'what is success in a transitional society?'. The third chapter will consider which transitional justice methods have been implemented already, with a special focus on tribunals and attempts to historicise the past. Following on from this, the fourth chapter will attempt to analyse the success or failure of the methods described in chapter three. In the concluding chapter, the apparent failures of transitional justice in Cambodia will be viewed through a national, regional and international lens.

Definitions

What is transitional justice?

Laura McGrew sums up the move towards transitional justice by arguing, "As countries emerge from periods of armed conflict and mass violence they seek a balance between truth, justice, peace and reconciliation".⁵⁵

The concept of transitional justice gained popularity in the 1980s. Paige Arthur argues that the concept came directly out of interactions between human rights activists, lawyers, policymakers, donors, journalists and comparative politics experts concerned about human rights and the 'transition to democracy' in many of the formerly communist regimes.⁵⁶ By definition, transitional justice is an interdisciplinary field that requires expertise from many different subject areas. Knowledge of law, history, politics, human rights and geography are all required to fully understand the transitional justice process.

Unlike retributive justice, transitional justice seeks to balance the need to punish those responsible for crimes against humanity with the need to move towards a more stable future. Phil Clark defines six key concepts of transitional justice: reconciliation; peace; justice; healing; forgiveness and truth.⁵⁷

Reconciliation

Clark defines reconciliation as, "the rebuilding of fractured individual and communal relationships after conflict, with a view to encouraging meaningful interaction and cooperation between the former antagonists".⁵⁸ It means much more than just an end to conflict between two parties, instead focusing on *how* the two parties can rebuild

⁵⁵ McGrew, Laura, 'Transitional Justice Mechanisms', *Justice Initiatives : The Extraordinary Courts of Cambodia*, Open Justice Society Initiative (Spring 2006), p140.

⁵⁶ Arthur, Paige, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Human Rights', *Human Rights Quarterly*, Vol 31, No.2 (2009), p324

⁵⁷ Clark, Phil, 'Establishing A Conceptual Framework: Six Key Transitional Justice Themes', in Clark and Kaufman (eds), *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, Hurst Publishers, London (2008), p191.

⁵⁸ Clark (2008), p194.

relationships and live harmoniously in the same society without risking further conflict.

Peace

Clark identifies two different types of peace: negative and positive.⁵⁹ Negative peace follows a ceasefire or end to violent conflict and aims for the short-term shoring up of the new non-violent situation. Positive peace is a longer term, sustainable process in which the protagonists are encouraged to build mutual trust and requires "building deeper mechanisms in a community to ensure that combatants do not return to conflict".⁶⁰ Positive peace usually follows negative peace.

Justice

Scholars also recognise two different types of justice: retributive and restorative. Retributive justice aims at punishing perpetrators of crimes, whatever the cost. Some authors believe that retributive justice is an essential part of transitional justice, because states have a legal obligation under international law (for example, the Genocide Convention) to pursue the conviction and punishment of perpetrators.⁶¹ Diane Orentlicher suggests that a failure to prosecute the perpetrators of grave human rights violations sets an unhappy precedent for the future and "vitiates the authority of law itself, sapping its power to deter proscribed conduct".⁶²

Moreover, the failure of a new democracy to prosecute the human rights violations of a former regime may undermine the democracy itself, especially when the impunity is to appease the military or other remnants of the old regime. When the new democracy asserts its power by using civilian legal institutions to prosecute former regime members, it asserts its power over the old authoritarian regime. Indeed, Phil Clark (among others) suggests that the culture of impunity was a major factor in the Rwandan genocide, as political leaders were able to push the boundaries without being punished until they committed genocidal crimes.⁶³

⁵⁹ Clark (2008), p196.

⁶⁰ Clark (2008), p196

⁶¹ See Orentlicher, D, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime', *New York Law Journal*, Vol. 100, No. 8 (1991), pp2562-8.

⁶² Orentlicher, D (1991), p2542.

⁶³ Clark, Phil (2008), p195.

Restorative justice, unlike retributive justice, does not see criminal prosecution as the be all and end all of justice, but rather just as one tool in the justice toolbox.

Restorative justice places importance of the reintegration of offenders into society and giving offenders the opportunity to rebuild relationships with their victims.

Gerry Johnstone argues that restorative justice, "revolves around the idea that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make all offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented".⁶⁴ Restorative justice is usually undertaken as part of negotiated justice, where the community affected is involved in deciding who should be punished and how. This varies from formal justice, which is normally undertaken in a courtroom setting. In a transitional justice setting, both retributive and restorative justice could be of use.

Healing

In most transitions from authoritarian rule to democracy, especially where violent conflict was involved, victims often suffer from severe psychological, physical or emotional trauma. Mahmood Mamdani argues that the Hutu perception of themselves as victims in the twentieth century provided a foundation for the Rwandan genocide, as this helped them overcome their victim status.⁶⁵ This comparison shows how important the concept of healing is to transitional justice, in order to prevent any future human rights violations.

Forgiveness

Clark suggests that the concept of forgiveness is one that is not often discussed, because of its religious connotations.⁶⁶ Some critics argue that forgiveness is the complete opposite to punishment, urging survivors to "move on" and forget about what has happened. However, Clark suggests that forgiveness requires a (public) recognition of the crimes committed and the victims must be given the opportunity to

⁶⁴ Johnstone, Gerry, *Restorative Justice: ideas, Values, Debates*, Willian Publishing, Cullompton (2002), pix.

⁶⁵ Mamdani, M, *When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda*, Princeton University Press (2001), ch.4, 5 and 7.

⁶⁶ Clark, Phil (2008), p201

seek punishment for the perpetrators. Only then can the victims overcome the injury inflicted upon them and seek to restore the damaged relationships. However, forgiveness, unlike reconciliation, does not necessitate reconciliation of the parties.⁶⁷

Truth

Clark identifies three phases to the truth process: truth telling; truth hearing and truth shaping.⁶⁸ Truth telling can take place in a truth commission or as evidence in a tribunal. It is the public act of articulating the truth as the victim sees it. Truth hearing focuses on the reception of the truth being told in the truth telling phase. These two phases make up a whole in the post-conflict dialogue. Truth shaping is an exercise often undertaken by historians and politicians, who reinterpret the 'truth' for social or political gains.

All of these six concepts are important when devising a transitional justice approach, and form the basis of the mechanisms used to administer transitional justice.

What mechanisms are available for transitional justice situations?

In order to achieve these goals, transitional justice mechanisms comprise of more than just the traditional trial before court. Transitional justice can comprise of one or many of the following: truth commissions; reparations; vetting; memorials and museums (the historicisation of the difficult past); historical projects and literature and trials. This thesis will concentrate on the use of tribunals, truth commissions and historicising the past. Descriptions of all the methods are given below:

Truth Commissions

Truth commissions seek to document and preserve the evidence of wrongdoings in the past, in this example the actions of the Khmer Rouge. They seek to provide a fuller picture of the past and to establish exactly who played what role in the violent society, rather than just focusing on the main leaders of the atrocities. The aim of a truth commission is not to collect evidence for potential trials, but to rather create an atmosphere of transparency and truth that helps the healing process. Laura McGrew argues that a truth commission is very unlikely to take place in Cambodia because too many people currently in power fear it would implicate them in the Khmer Rouge

⁶⁷ Clark, Phil (2008), p202.

⁶⁸ Clark, Phil (2008), p204.

atrocities.⁶⁹ She states although Cambodians state their biggest wish is to know the 'truth' about the Khmer Rouge years, they have been surprisingly unsupportive of the idea of a truth commission when surveyed.⁷⁰ For a truth commission in Cambodia to be successful, there would have to be a lot of public education to increase public support. However, the extent to which a truth commission would further the goal of creating stability and peace in Cambodia is questionable.

Reparations

Patrick Pearce defines reparations as a mechanism that "provides compensation to victims of human rights abuses, usually in the form of money, but also as material, medical or educational benefits... Reparations are intended to repair the past damage to improve a victim's or survivor's lot in a material way".⁷¹ Reparations pose a practical problem in Cambodia, in that there were approximately 1.7 million victims of the Khmer Rouge rule, and the Cambodian government can definitely not afford to pay out reparations to the families of all 1.7 million victims. The second problem is with the definition of 'victim'. Does 'victim' only mean those that died under Khmer Rouge rule, or does it include those mentally or physically affected?

Vetting

Vetting as a method of transitional justice involves removing people from positions of power and responsibility to ensure that the government and security services are capable of providing a stable and peaceful environment.

Historicising the Past

Historicising the past through literature, photography, museum exhibitions, art or another medium provides a clear break between 'then', when the atrocities were carried out, and 'now', i.e. peacetime.

Trials

In addition to the other methods of justice, the traditional criminal trial occupies an important place in any transitional justice attempt. Trials can provide victims with closure and a certain element of revenge. Trials must be carried out sensitively to

⁶⁹ McGrew, Laura (2006), p143

⁷⁰ McGrew, Laura (2006), p144

⁷¹ Pearce, Patrick J., *Transitional Justice Basics*, Human Rights Institute of Burma (2003), p8

avoid breaking the fragile peace in countries where public and political support is split.

What is democracy?

The questions 'What is democracy?' and 'How can democracy be measured?' are central to the discussion about how successful transitional justice has been in Cambodia.

The Collins English Dictionary defines democracy according to the following five principles:

- "1. government by the people or their elected representatives;
2. a political or social unit governed ultimately by all its members;
3. the practice or spirit of social equality;
4. a social condition of classlessness and equality;
5. the common people, esp. as a political force".⁷²

This definition highlights the fact that the government in a democracy must be elected by the *all* people (through universal suffrage and the election of representatives). It also highlights that all citizens, at least legally, should be equal.

The dictionary definition of democracy is not dissimilar to some of the definitions offered by political scientists. David Beetham defines democracy by looking at the 'core ideas or principles embodied in the historical conception of democracy as "rule of the people" ', and comes to the conclusion that "popular control" and "political equity" are the core ideas connected with democracy.⁷³ The phrase 'popular control' suggests that the population has the ability to choose the government (through elections), and 'political equity' suggests that all citizens are equal and each citizen has one vote, and one vote only. Sartori suggests that popular participation (both through voting and running for office) and equality are important, but majority rule,

⁷² "democracy." *Collins English Dictionary - Complete & Unabridged 10th Edition*, HarperCollins Publishers, accessed at Dictionary.com <http://dictionary.reference.com/browse/democracy>, on 23rd June 2011.

⁷³ Beetham, David, 'Auditing Democracy in Britain', *Democracy Audit Paper No. 1*, Human Rights Centre, University of Essex (1993), p6.

freedom, consensus, competition, pluralism and constitutional rule are equally important.⁷⁴

It is therefore evident that even within the field of political science, there is no single, universally accepted definition of democracy. This thesis will therefore combine the definitions offered above. The definition of democracy used in this thesis will include: the ability of all adult citizens to participate in elections to choose their government (universal suffrage); the ability for every voter to run for public office; the formation of government based on majority rule; the ability for all citizens to live freely (within the law) and the fair use of constitutional rule.

The definition of democracy as stated above overlaps with the concepts of human rights and freedom, concepts key to transitional justice. One index used to measure freedom, democracy and human rights, Freedom House, states that its definition of freedom is heavily influenced by the Universal Declaration of Human Rights (1948).⁷⁵ Its entire text will not be quoted here, but the Declaration allows for the freedom of expression, religion and assembly, the freedom from torture and the right to education and participation in the government.⁷⁶ Therefore the term democracy is not just a form of government, but also a concept tied up with freedom and human rights. Therefore, all of these issues will be taken into consideration when discussing how successful transitional justice has been in Cambodia.

⁷⁴ Sartori, G, *The Theory of Democracy Revisited*, Chatham House, New Jersey (1987), p184.

⁷⁵ Freedom House, 'What is freedom?', accessed at <http://www.freedomhouse.org/template.cfm?page=265#2> on 23rd June 2011.

⁷⁶ The full text of the Universal Declaration of Human Rights can be accessed here: <http://www.un.org/en/documents/udhr/index.shtml> . The freedoms and rights listed in this thesis are the rights taken by Freedom House from the Declaration, see <http://www.freedomhouse.org/template.cfm?page=265#2> (accessed 23rd June 2011).

Transitional Justice: A Theoretical and Methodological Framework

Transitional Justice as an extension of Democratic Peace Theory

Transitional justice is inspired by Democratic Peace Theory, which holds that democratic states are less likely to go to war and commit genocide than autocratic states. Immanuel Kant first brought this idea in his 1795 work *Perpetual Peace*. Although Kant favoured constitutional republics rather than democracies, he held that citizens would not vote to go to war unless in self-defence.

Democratic Peace Theory gained popularity in the 1970s, when a number of academics undertook empirical studies to try and prove that democratic states were less likely to go to war with other democracies than with autocratic states. Jack S. Levy argues, "absence of war between democracies comes as close as anything we have to an empirical law in international relations."⁷⁷ Michael Doyle explains this by arguing that democracies have to face their electorate when deciding to go to war, and so conflicts between democracies are likely to be solved by discussion rather than war.⁷⁸ Although traditional Democratic Peace Theory focuses only on inter-state relations, some proponents have argued that democracies are less likely to suffer from intrastate tension and genocide than other forms of government. Harff concludes that genocide and politicide are rare in democracies, and Rummel contends that the more democratic the state, the less likely it is to commit democide.⁷⁹

Democratic Peace Theory became popular in the 1970s but it was Francis Fukuyama's 1989 article *The End of History?* (and follow up book *The End of History*

⁷⁷ Jack S. Levy, "Domestic Politics and War," in Robert I. Rotberg and Theodore K. Rabb, eds., *The Origin and Prevention of Major Wars*, Cambridge, Cambridge University Press (1989), p. 88.

⁷⁸ Doyle, Michael, 'Liberalism and World Politics', *American Political Science Review*, Vol. 80, No. 4 (December 1986), pp. 1151- 1169

⁷⁹ See Harff, Barbara , "No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955". *American Political Science Review*, Vol 91 No. 1 (2003), pp57–73 and Rummel, Rudolph J., "Libertarianism and international violence". *Journal of Conflict Resolution* Vol 27 No 2 (1983), pp27-72

and the Last Man) that brought it back to the fore at the end of the Cold War. In the following excerpt, Francis Fukuyama summarises how many intellectuals and (Western) statesmen viewed events of 1989:

"What we may be witnessing is not just the end of the Cold War, or the passing of a particular period of post-war history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government."⁸⁰

At the time of writing this, the Berlin Wall had not yet fallen and Gorbachev still ruled the Soviet Union. However, a clear sense that the West had 'won' and its way of government (the liberal democracy) had been declared as "the final form of human government".⁸¹ Although he did not directly argue that democracies are less likely to go to war with each other, he did express hope that the spread of liberal democracy and therefore the declining importance of ideology would lead to a more peaceful world.

Democratic Peace Theory has formed the basis of US foreign policy since the end of the Cold War. National Security Adviser Anthony Lake remarked that America's post Cold War policy should be to expand democracy, peace and economic prosperity worldwide because, "democracy and market economics hold sway in other nations, our own nation will be more secure, prosperous and influential."⁸² This follows the Democratic Peace premise that non-democratic states are 'troublemakers' and should therefore be democratised to avoid conflict. Military interventions in Iraq and Afghanistan have been explained by the United States, as well as more covert attempts to spread democracy, have been justified with democratic peace logic.

Democratic Peace Theory has been criticised heavily for a variety of reasons, including the fact it does not account for the link between rising gross national product

⁸⁰ Fukuyama, Francis, 'The End of History?', *The National Interest* (Summer 1989), p1.

⁸¹ Fukuyama, Francis (1989), p2

⁸² "Remarks of Anthony Lake," Johns Hopkins School of Advanced International Studies, Washington, D.C., September 21, 1993 (Washington, D.C.: National Security Council Press Office).

and peace.⁸³ However, Fukuyama's revival and application of the theory to the post Cold War world, as well as the presence of the theory's rhetoric in United States and UN policy shows that it formed the basis of Western policy towards transitional states during the 1990s. Therefore, the theory has to be considered when analysing the sudden change in US (and UN) policy towards Cambodia and the Khmer Rouge after the fall of the Cold War.

How can the success (or failure) of transitional justice be measured?

The first question that arises when trying to measure the success or failure of transitional justice is what constitutes success in the Cambodian situation. To measure the success of transitional justice, the six aims of transitional justice (reconciliation, peace, justice, truth, forgiveness, healing - discussed in the last chapter) must be considered. Ultimately, success for transitional justice means that the transitional society is united, the crimes of the past have been at least forgiven, if not forgotten, and the truth is known. There should be no continuing rifts between the victims and the perpetrators from the old conflict.

As it is impossible to objectively measure the extent to which the 'truth' is known, or whether reconciliation has been achieved, this thesis will analyse the extent to which the Cambodian people feel these goals have been achieved. To do this, two surveys of Cambodian victims undertaken by the Behandlungszentrum für Folteropfer Berlin (BZFO - Treatment Centre for Torture Victims in Berlin) undertaken in 2008/9 and 2010 will be used.⁸⁴ The merits of these surveys will be discussed in a later chapter.

However, the results of these surveys do not consider whether or not the ex-Khmer Rouge soldiers (still in the majority in some areas of the country) feel that they have been forgiven by society as a whole, nor whether they are ready to reconcile. Existing surveys on the subject of transitional justice or the genocide tribunal in Cambodia are very victim centred and exclude the perpetrators. This shortcoming is

⁸³ For a thorough criticism based on historical events see: Layne, Christopher, 'Kant or Cant : The Myth of Democratic Peace', *International Security*, Vol 19. No.2 (1994), pp5-49.

⁸⁴ Behandlungszentrum für Folteropfer Berlin, *The Survivors' Voices: Attitudes on the ECCC, the Former Khmer Rouge and Experiences with Civil Party Participation* (December 2010).

recognised but, due to practical constraints, cannot be rectified in order to provide a more balanced analysis in this thesis.⁸⁵

As discussed in the previous chapter, transitional justice aims to support the transition from violence to democracy, providing justice for the victims of violence without derailing the transition to peace, freedom, democracy and human rights. As transitional justice does not just aim to gain convictions in a court setting, any analysis of its effectiveness has to look at more than just its success rate in court. To this end, this thesis will use data from three main data sets to support analysis of the extent to which Cambodia has been able to move from genocide, through the Vietnamese controlled communist regime of the 1980s to the present democratic state it is now. The following three data sets will enable an analysis of the extent to which the Cambodian state respects the human and political rights of its citizens, as well as enabling the reader to chart Cambodia's progress from 1976 to the present day:

Polity IV

'Polity' is a weighted score that is derived from evaluations on the competitiveness and regulation of political participation, as well as the openness and competitiveness of executive (civil service) recruitment and constraints on the executive. The scale runs from -10 (very autocratic) to 10 (full democracy).⁸⁶

Freedom House Scale

The Freedom House Scale has two measurements: political rights and civil liberties. According to Freedom House, political rights include the right to vote, the right to compete for public office and the right to elect representatives.⁸⁷ Civil liberties include the freedom of speech and expression, organisational rights (for example, the right to form trade unions), the rule of law and personal autonomy. Countries are rated on a scale of 1 (free) to 7 (not free). An overall assessment of whether a country is free or not free is also given.

⁸⁵ Practical constraints include: language and translation difficulties; difficulties obtaining interviews with (ex) Khmer Rouge members and financial restraints.

⁸⁶ All information on the Polity IV scale was taken from their website:

<http://www.systemicpeace.org> accessed on 23rd June 2011.

⁸⁷ All information on the Freedom House Scale was taken from their website:

<http://www.freedomhouse.org/template.cfm?page=265#2> accessed on 23rd June 2011.

Political Terror Scale

The Political Terror Scale uses the same data (from the US State Department and Amnesty International) as the CIRI PHYSINT scale, but measures the extent to which human rights violations (wrongful imprisonment and torture) have spread in the country. The scale ranges from one to five, and each level is described at length: level one means the country is under secure rule of law and murders and human rights abuses are rare; two means there is a limited amount of imprisonment for non-violent political activity but torture or murder is rare; three means there is extensive political imprisonment and executions and torture based on political opinion are common; four means that human rights abuses have expanded to affect a large proportion of the population and murder and torture are a normal part of every day life; lastly, five means the human rights abuses have spread throughout the entire country and the leaders of these countries will stop at nothing to achieve their ideological goals.⁸⁸

These three data sets will be analysed and used to determine whether democracy, respect for human rights and political freedom have improved since the implementation of a transitional regime in 1991. However, these data sets will be used as guidelines, rather than a definitive judgement on the standard of Cambodia's democracy. The reason for this is that all of these data sets are not without their drawbacks. The Freedom House index in particular has been criticised for containing Cold War and free market biases, thus placing the United States higher than countries with stronger welfare systems, such as Sweden.⁸⁹

The data sets have also been criticised for their under or over specification, i.e. the requirements a country has to fulfil to be considered democratic.⁹⁰ For example, while Freedom House uses 'socioeconomic rights', 'freedom from gross socioeconomic inequalities' and 'property rights' as indicators of democracy, Polity IV

⁸⁸ Information from the Political Terror Scale website, accessed at <http://www.politicalterror scale.org/about.php> on 5 May 2011.

⁸⁹ Bollen, Kenneth, 'Political Rights and Political Liberties in Nations : An Evaluation of Human Rights Measures 1950-1984', *Human Rights Quarterly*, Vol 8, No. 4 (1986), p585-86

⁹⁰ Munck and Verkulien, *Measuring Democracy: Evaluating Alternative Indices*, paper prepared for delivery at the 2000 Annual Meeting of the American Political Science Association (2000), p23.

does not.⁹¹ The differences between the indices stems from the fact there is no universally accepted definition of democracy, and therefore each index takes different factors into consideration. For this reason, three indices (Freedom House, Polity IV and the Political Terror Scale) have been taken into consideration and will be used as guidelines, rather than definitive judgements on Cambodia's democracy.

⁹¹ Munck and Verkulien (2000), p24.

Transitional Justice in Action

"Reconciliation means healing and closure. Tell the whole story—let it become a uniting force for Cambodians. But if you push it all onto one side or one party—that doesn't work. Do the tribunal. But let the people speak the whole truth. Open the discourse. Don't be square and single-minded about the law. The civil war parties should come together and do something. A peace museum, a joint reconstruction, write the history book together. Relive the horror, condemn the atrocities but [you] also need side-activities."⁹²

This statement by Johan Galtung, the Norwegian founder of the discipline peace and conflict studies, highlights the need for a multi-faceted approach to transitional justice in Cambodia. In the three decades between 1979 and the present day, the various governments in Cambodia and other international bodies such as the UN have used a number of different transitional justice mechanisms to help the Cambodian people deal with the past atrocities. These initiatives will be described below.

Trials

While traditional tribunals are only one of the possible mechanisms on offer by transitional justice, rather than the be-all and end-all in traditional justice situations, they still have a role to play. Since 1979, there have been two major attempts to bring the Khmer Rouge to justice via the court system: the People's Revolutionary Tribunal of 1979 and the Extraordinary Chambers of the Courts of Cambodia from 2005 onwards.

The People's Revolutionary Tribunal

The People's Revolutionary Tribunal took place in Phnom Penh in 1979. Pol Pot and Ieng Sary were tried *in absentia*, and convicted of genocide. The trial was conducted without international support, as the Vietnamese backed government of Cambodia, the People's Republic of Kampuchea (PRK), was not recognised outside of the

⁹² Johan Galtung, "The Theory and Practice of Reconciliation", public lecture, Phnom Penh, May 22, (2006).

communist world. The trial was dismissed as a "show trial", attempted to justify Vietnam's military intervention in Cambodia.⁹³

However, the presiding judge and government official, Keo Chanda, argued that the purpose of the trial was to try "the Pol Pot-Ieng Sary clique for the crime of genocide will on the one hand expose all the criminal acts that they have committed and mobilize the Kampuchean people more actively to defend and build up the people's power, and on the other hand show the peoples of the whole world the true face of the criminals who are posing as the representatives of the people of Kampuchea".⁹⁴

The trial attempted to place itself within a United Nations (read: Western) legal framework by invoking the Convention on the Prevention and Punishment of the Crime of Genocide as its legal basis. Article 8 of the law that established the Tribunal stated that the Tribunal was, "in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide", and seeks to prosecute the "criminal acts of the Pol Pot - Ieng Sary clique committed prior to its signing".⁹⁵ In the preamble of the same document, attention is drawn to the fact that the Declaration of the National Unified Front for the Salvation of Kampuchea (i.e. Vietnamese troops and the PRK) on December 2, 1978 promised to 'sternly punish' all "revolutionary ringleaders, who stubbornly oppose the people", but also to the fact that "genocide is also defined in international law".⁹⁶ This clearly highlights the need for a trial to gain support for the new government from the Cambodian people (by promising to sternly punish 'revolutionary ringleaders') on the one hand, and on the other hand from the international community by placing emphasis on the PRK's willingness to use international law.

⁹³ De Nike, H.J., Quigley J., Robinson, K.J. (eds), *Genocide in Cambodia : Documents from the Trial of Pol Pot and Ieng Sary*, University of Pennsylvania Press, Philadelphia (2000), p8.

⁹⁴ Keo Chandra, 'Press Conference of the Minister of Information, Press and Culture, Chair of Legal Affairs Committee', 28th July 1979, printed in De Nike, Quigley, Robinson (eds), *Genocide in Cambodia* (2000), p47.

⁹⁵ Document 1.01 'Decree Law No. 1 : Establishment of the People's Revolutionary Tribunal at Phnom Penh to Try the Pol Pot-Ieng Sary Clique for the Crime of Genocide', in De Nike, Quigley, Robinson (eds), *Genocide in Cambodia* (2000), p47

⁹⁶ Ibid, p45.

Pol Pot and Ieng Sary were found guilty of genocide and were sentenced to death and the government was required to confiscate their property. These sentences were never realised because the People's Republic of Kampuchea never managed to capture the two Khmer Rouge leaders, who were in hiding in the Thai jungle. Pol Pot died of a heart attack in his sleep in 1998 while under house arrest after hearing rumours that the Khmer Rouge leadership were willing to turn him over to an international tribunal; it has been suggested he committed suicide or was poisoned but these claims cannot be verified.⁹⁷ In 1996, Ieng Sary was given a royal pardon for charges made by the People's Revolutionary Tribunal. He is currently facing trial for crimes against humanity, among other charges, in Cambodia. The current tribunal, the Extraordinary Chambers of the Courts of Cambodia, as well as Ieng Sary's royal pardon and subsequent retrial, will be discussed later.

The Extraordinary Chambers of the Courts in Cambodia (ECCC)

On 21 June 1997, the Cambodian government issued a request to the UN for help to set up a tribunal to try the Khmer Rouge for crimes against humanity.⁹⁸ In December 1997, the UN General Assembly passed a resolution asking the Secretary General to consider the Cambodian request.⁹⁹ This resolution recommended that the Secretary General appoint a team of experts to analyse the legal standpoint and evidence for such a trial. This group of experts first visited Cambodia in November 1998, after the death of Pol Pot in April 1998. On 9 December 1998, the General Assembly passed another resolution, praising this appointment of experts and expressing hope that further measures will be introduced, aimed at "bringing about national unity, strengthening democracy and addressing the issue of individual accountability".¹⁰⁰ On 25 December 1998, two high ranking Khmer Rouge leaders, Khieu Samphan and Nuon Chea, surrendered. By the end of 1998, therefore, the attempts to gain justice in Cambodia were looking fruitful.

⁹⁷ John Gittings and Mark Tran, "Pol Pot 'killed himself with drugs'," *The Guardian*, Thursday 21 January 1999. accessed at <http://www.guardian.co.uk/world/1999/jan/21/cambodia> on 14 June 2011.

⁹⁸ Statement by the UN Legal Counsel Hans Correll at a press briefing at the UN headquarters in New York (8th February 2002), accessed at <http://www.un.org/News/dh/infocus/cambodia/corell-brief.htm> on 14th June 2011.

⁹⁹ UN General Assembly, Resolution on a Cambodian Tribunal, Doc.A/RES/52/135 (12 December 1997)

¹⁰⁰ UN General Assembly, Resolution on Cambodia, Doc A/RES/53/145 (9 December 1998)

This potential could not only be seen in the United Nations, but also within Cambodia itself. Despite its initial reservations, the Royal Cambodian Government created its Khmer Rouge Task Force on 20 August 1999. This task force was to work on drafting a law to allow for a genocide tribunal. Australian and UN legal experts assisted the task group.¹⁰¹ The Cambodian government passed a law creating the Extraordinary Chambers in the Courts of Cambodia on 10 August 2001. This law allows for the prosecution of Khmer Rouge members for acts of wilful killing, inhumane torture, destruction of cultural property and wilful denial of fair trials, amongst other crimes.¹⁰² This law was welcomed by the United Nations, who promised legal and financial support for the project.¹⁰³

However, on 8 February 2002, the UN withdrew from negotiations with Cambodia over fears that the judiciary planned by Phnom Penh "would not guarantee the independence, objectivity and impartiality that a court established with the support of the United Nations must have."¹⁰⁴ After months of negotiation between the UN (General Secretary Kofi Annan took part personally) and the Royal Cambodian Government, a draft agreement between the United Nations and Cambodia was written in March 2003.¹⁰⁵

This agreement established the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, which would be responsible for prosecuting the surviving leaders of the Khmer Rouge for crimes against humanity between 17 April 1975 and 7 January 1979.¹⁰⁶ The agreement stated that all chambers of the Extraordinary Chambers

¹⁰¹ Yale Cambodian Genocide Project, *Chronology 1994-2004*, accessed at http://www.yale.edu/cgp/chron_v3.html on 23rd May 2011.

¹⁰² Royal Government of Cambodia, Amended Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC Law), (2004) accessed 11 May 2011 at http://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf

¹⁰³ UN General Assembly, Resolution on Cambodia, Doc. UNGA A/RES/56/169 (19 December 2001)

¹⁰⁴ CNN News, 'Cambodian PM tells UN to think again', 11 Feb. 2002, accessed at http://articles.cnn.com/2002-02-11/world/cambodia.unations_1_phnom-penh-hun-sen-khmer-rouge?_s=PM:asiapcf

¹⁰⁵ Yale Cambodian Genocide Project, *Chronology 1994-2004*

¹⁰⁶ Aforementioned document can be found under: ECCC, 'Draft Agreement initialled by their Excellencies Hans Correll and Sok An (17th March 2003), accessed at

would include Cambodian and international judges, with the Cambodian judges having the majority. In total there should be seventeen Cambodian judges and twelve international judges, and every decision requires a majority and the agreement of at least one of the international judges. Cambodian law would be applied in all three chambers, as well as international law, but in case of a disagreement, international law would prevail. This agreement ensured that the quality of the Cambodian judiciary would meet UN standards, and allowed for the establishment of the Extraordinary Courts in January 2006.¹⁰⁷ Therefore, the ECCC's emphasis on Cambodian law differentiates it from other courts responsible for prosecuting crimes against humanity (for example in Rwanda or the former republics of Yugoslavia), which follow purely international law.

Problems for the Prosecution

Since, and even before, the ECCC's inception in 2006, the International-Cambodian hybrid courts have encountered problems and obstacles that could make it difficult to secure convictions.

Evidence

The first problem is a problem of evidence. The Khmer Rouge left a great deal of evidence behind them when they were overthrown in January 1979, including: mass graves; meticulous photographic and documentary evidence of victims and their fate and annotations on documents by party officials. These documents have been kept in a usable condition by the Documentation Center of Cambodia (DC-Cam), whose role will be discussed later on in this chapter.¹⁰⁸

However, the ECCC works within the Cambodian legal system, which is in turn based on the French system and varies significantly from the Anglo-Saxon legal system most international prosecutors, are familiar with.¹⁰⁹ Unlike the Anglo-Saxon

<http://www.eccc.gov.kh/en/chronologies/draft-agreement-initialled-their-excellencies-hans-corell-and-sok> on 23rd May 2011.

¹⁰⁷ United Nations General Assembly Resolution A/RES/57/228B (22 May 2003) accessed <http://unakrt-online.org/Docs/GA%20Documents/A-Res-57-228B.pdf> on 23 May 2011.

¹⁰⁸ A list of these documents can be found on the DC-Cam website, accessed at <http://www.dccam.org/Database/Lod/index.php> on 23 May 2011.

¹⁰⁹ For a detailed description of the Cambodian legal system see: Mong Hay, Lao, 'Institutions for the Rule of Law and Human Rights in Cambodia', *Article 2*, Vol.5 No 1 (2006).

legal system, which imposes heavy restrictions on which kind of evidence is admissible and which isn't, the Cambodian system relies heavily on investigatory judges, who decide on a case for case basis what evidence they want to use.¹¹⁰ These investigatory judges play a bigger role in prosecution than in the jury heavy Anglo-Saxon legal tradition, as they ultimately decide if there is enough evidence for them to pass the case onto a prosecuting judge. If the investigating judge is not sure that the case will result in a conviction, he or she is unlikely to pass the case on.¹¹¹ Therefore, it is of utmost importance that the individuals on trial can be found guilty on the basis of the documentary evidence, rather than relying on a sympathetic jury.

The second major evidence based problem stems from the fact the ECCC was first initiated three decades after the fall of the Khmer Rouge regime. DC-Cam was first founded in 2005, which still leaves sixteen years in between the fall of the Khmer Rouge and the reliable conservation of the documents by DC-Cam. It is therefore possible that the defence could argue the documents are unreliable, due to the fact they have passed through the hands of numerous governments and could therefore have been tampered with or falsified.

The problem of unreliable evidence has been raised a number of times by the defence teams for the five major suspects, most notably regarding the use of Vietnamese video footage in the trial against Kaing Guek Eav (aka Duch). The video footage, allegedly filmed by the Vietnamese as they liberated prison S-21 (which Duch controlled), shows images of decapitated corpses, torture instruments and scenes of Vietnamese soldiers saving two infants and two children from the central compound. The trial chamber of the ECCC denied the inclusion of this footage in the case on grounds that the reliability of the footage is disputed and it is unlikely that authenticity verification could be obtained within reasonable time.¹¹²

¹¹⁰ Fawthrop and Jarvis (2004), p213

¹¹¹ Fawthrop and Jarvis (2004), p214

¹¹² Decision on the Vietnamese Film Footage Filed by Co-Prosecutors and on Witnesses CP/3/3/2 and CP/3/3/3 accessed on 21 May 2011 at http://www.eccc.gov.kh/english/cabinet/courtDoc/388/E5_10_5_EN.pdf

However, despite isolated problems with evidence (especially evidence obtained from the Vietnamese government), the ECCC prosecutors have been able to use a large database of verified evidence made available by DC-Cam.

Witnesses

Just as the documentary evidence could have been changed throughout the course of the last three decades, the reliability of the memories and statements from witnesses could be called into question. In 2004, Tom Fawthorp and Helen Jarvis wrote about the possibility of including witness statements from the People's Revolutionary Tribunal (PRT) of 1979 in the ECCC procedures.¹¹³ In order to do this, the prosecutors would have to prove that the PRT team did not ask leading questions to provoke incriminating responses from witnesses. As discussed earlier, the PRK had a vested interest in the success of the PRT, as the conviction of Khmer Rouge leaders showed the Vietnamese invasion was out of legitimate concern for the Cambodian people, rather than the cynical imperialism it was painted as by the Western media.

Who should be prosecuted?

Another question central to transitional justice is who should be prosecuted. In cases like Cambodia, where many citizens were somehow involved (either knowingly or unwittingly, either voluntarily or forced) in the mass killing of their fellow citizens, it would be both technically impossible and politically and socially unwise to prosecute every person who had a role in the killings. Thus the question arises, how should transitional justice decide who should be prosecuted for the crimes?

The Khmer Rouge Law on the Establishment of the Extraordinary Chambers (ECCC Law) states that:

"The purpose of this law is to bring to trial *senior leaders of Democratic Kampuchea and those who were most responsible for the serious crimes and violations* of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979".¹¹⁴

¹¹³ Fawthorp and Jarvis (2004), p214.

¹¹⁴ The Kingdom of Cambodia, 'The Amended Khmer Rouge Law on the Establishment of the Extraordinary Chambers' (2004), accessed on 21 May 2011 at

Therefore, it is clear that only senior Khmer Rouge leaders can be prosecuted and not any foreign countries or members of the Vietnamese sponsored People's Republic of Kampuchea that ruled Cambodia after the fall of the Khmer Rouge.

The problem for the prosecution is who can be considered a 'senior' member of the Khmer Rouge. The ECCC Law, the Cambodian government or the United Nations offers no further definition of the phrase 'senior leader'. However, Prime Minister Hun Sen has made it clear that he will not allow any more cases after Case 002, stating it would put peace in Cambodia at risk.¹¹⁵ At present, only two cases have been presented to the ECCC: Case 001 (Kaing Guek Eav aka Duch) for crimes connected with S-21 Security Prison in Phnom Penh and Case 002 (Ieng Sary, Ieng Thirith, Nuon Chia and Khieu Samphan) for more widespread crimes during the Khmer Rouge era. Cases 003 and 004 are currently being prepared, but the names of the defendants and the crimes supposedly committed are closely guarded secrets. It remains to be seen if these cases will be allowed to commence.

What can be prosecuted?

In the ECCC Law of 2004, a number of different international and Cambodian treaties, laws and codes were named as possibilities for the ECCC prosecution team. These options will be discussed below.

Genocide as defined by the Genocide Convention (1948)

In criminal proceedings, transitional justice uses both national and international law to bring the perpetrators of crimes against humanity to justice. Here, one main international convention, the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, comes into play. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948) defines genocide as:

"...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

http://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf , Italics added.

¹¹⁵ Goldstone, James A., 'No Justice in the Killing Fields', *New York Times*, published 26th April 2011, accessed 14th June 2011 at <http://www.nytimes.com/2011/04/27/opinion/27iht-edgoldston27.html>

- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.¹¹⁶

Cambodia has been party to the United Nations Genocide Convention since 14 October 1950.¹¹⁷

It is important to note that the Genocide Convention defines genocide as the removal, or attempted removal, of ethnic, national, racial or religious, but significantly not political, group. The stated aims of the Khmer Rouge were to remove obstacles to the revolution. This aim has led to many commentators to argue that, although the killings were tragic and numerous, they do not constitute genocide because a *political* group was targeted.

In a 1989 article for *Human Rights Quarterly*, Hurst Hannum argued that the killings in Cambodia did constitute genocide because the Khmer Rouge did not just target political groups, but national, ethnic, religious and racial groups as well.¹¹⁸ He states that the Khmer Rouge targeted the Cham ("a non-Khmer people of Malayo-Polynesian stock"), and these killings can be seen as an attempt to destroy the Cham ethnic group in Cambodia.¹¹⁹ He states that the Khmer Rouge started a policy of Khmerisation in areas of Cambodia under their control as early as 1973. This policy included forcibly removing Cham children and placing them under the care of Khmer families. The forcible transfer of children of one ethnic group into another ethnic group is considered genocide under the terms of the Genocide Convention.¹²⁰ In 1975, the Khmer Rouge leadership stated, "from now on the various nationalities do not exist any longer in Kampuchea".¹²¹ The Cham people were subjected to torture, execution and inhumane living conditions. From a pre-1970 population estimate of

¹¹⁶ UN, *Convention on the Prevention and Punishment of Genocide* (1948), accessed <http://www.un.org/millennium/law/iv-1.htm> on 20th April 2011.

¹¹⁷ Hurst Hannum, 'International Law and the Cambodian Genocide: The Sounds of Silence', *Human Rights Quarterly*, Vol. 11, No. 1 (1989), p94

¹¹⁸ Hannum (1989)

¹¹⁹ Hannum (1989), p86

¹²⁰ UN, *Convention on the Prevention and Punishment of Genocide* (1948), articles 2 and 3.

¹²¹ Becker, *supra* note 2, p253

700,000, only approximately 200,000 Cham survived the Khmer Rouge era.¹²² These deaths can be seen as evidence of Khmer Rouge genocide against an ethnic group.

Hannum also provides evidence of genocide against religious groups, predominately but not exclusively, Buddhists. The Democratic Kampuchean Constitution provided the right to worship according to any religion but prohibited "all reactionary religions that are detrimental to Democratic Kampuchea and the Kampuchean people".¹²³

Therefore, the right to worship was *de jure* secured under the Khmer Rouge; *de facto*, however, all religions were viewed as "reactionary" and prohibited and Buddhism was subjected to "eradication in less than twelve months".¹²⁴ Religious practices were forbidden, temples were used as warehouses or execution facilities, Buddha images and religious artefacts were destroyed and a large number of monks were executed. In 1975 there were approximately 60,000 monks in Cambodia; in late-1979 there were just 1,000.¹²⁵ In 1978, the Minister of Culture and Education Yun Yat stated that Buddhism was incompatible with the goals of the revolution and was "a relic of the past, forgotten and surpassed".¹²⁶ This evidence leads Hannum to argue that the destruction of the Buddhist monkhood is "precisely the kind of act the Genocide Convention was formulated to proscribe and prevent".¹²⁷

Lastly, the Khmer as a national group were also victims of genocide. The Genocide Convention does not state that a member of a national group killing other members of the same national group is not genocide. Large numbers of Khmer people were killed between 1975-79, some because of their political leanings or social status. For example, army officers and civil servants from the previous regime were among the first to be targeted by the Khmer Rouge.¹²⁸ However, many more working class Khmer people without connections to the previous regime were killed by the Khmer Rouge because they were "worthless ones" and seen as obstacles to the purification of the Khmer race.¹²⁹

¹²² Hannum (1989), p87

¹²³ Hannum (1989)

¹²⁴ Hannum (1989) p88

¹²⁵ Hannum (1989)

¹²⁶ Hannum (1989)

¹²⁷ Hannum (1989)

¹²⁸ Hannum (1989) p89

¹²⁹ Hannum (1989) p89

Therefore, there is significant evidence to show that the common presumption that the Khmer Rouge killings were purely political is false and that the Khmer Rouge did in fact commit genocide against national, religious and ethnic groups within Cambodia between 1975 and 1979.

The United States government has also lent credibility to the view that the Khmer Rouge did actually commit genocide. The 1994 Cambodian Genocide Justice Act states, "The persecution of the Cambodian people under the Khmer Rouge rule, [when] the bulk of the Khmer people were subjected to life in an Asian Auschwitz, constituted one of the clearest acts of genocide in recent history".¹³⁰ The Genocide Convention is also listed in the 2004 Law on the Establishment of the Extraordinary Chambers (article 4), as a potential law the ECCC could invoke against the suspects.¹³¹

Is Cambodia obliged to prosecute?

The Khmer Rouge crimes in Cambodia violated the Genocide Convention, to which Cambodia was party. Thus the question arises, is Cambodia (or any other state in this situation) obliged to prosecute the remaining Khmer Rouge ringleaders under the Genocide Convention, even if doing so would risk the tentative peace?

Article IV of the Genocide Convention states:

"Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."¹³²

This places the responsibility of prosecuting the Khmer Rouge firmly with a "competent tribunal of the State", i.e. the Cambodian Courts, or another international alternative that Cambodia has accepted.

¹³⁰ US Genocide Justice Act (1994), Public Law No. 103-236, para 573 (b) 4.

¹³¹ ECCC Law (2004), article 4.

¹³² UN Genocide Convention, Article IV

Has *ne bis in idem* been violated?

Ne bis in idem is the legal principle that the same person cannot be tried for the same crime twice. This principle is important to the case of Ieng Sary, as he has already been tried for genocide on the basis of crimes committed between 1975 and 1979.

Both Cambodian and international law contain references to *ne bis in idem*, whereby international law offers clearer guidelines of when a retrial is possible and when not. The principle is enshrined in the International Covenant of Civil and Political Rights and the Rome Statute of the International Criminal Court. In Article 20 of the Rome Statute, the retrial (in any court) of a person who has already been convicted or acquitted by the ICC is forbidden, except under the following circumstances:

- The person was tried in another court purely to avoid being called before the ICC.
- The original trial was not conducted independently, fairly, impartially or in accordance with the due process of international law, or in any other circumstances that were inconsistent with the aim of bringing that person to justice.

Cambodian law offers no direct reference to *ne bis in idem*; neither does the ECCC Law of 2004.

In 1979, the People's Revolutionary Tribunal found Pol Pot and Ieng Sary guilty *in absentia* of genocide and sentenced them to death. Even though the People's Revolutionary Tribunal was regarded as a 'show trial' by the West, these convictions carried some legal weight in Cambodia. As a result of this, King Sihanouk had to offer a pardon for the crime of genocide to Ieng Sary to secure his defection to the government in 1996.¹³³

As previously discussed, the People's Revolutionary Tribunal explicitly invoked the Genocide Convention (1948) as the basis of the genocide charges. Therefore, the ECCC encountered the problem of whether or not Ieng Sary could be tried for the

¹³³ Royal Decree of the King Norodom Sihanouk regarding 'A Pardon is Granted to Mr Ieng Sary' (1996), accessed at http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E51_8.1_EN.PDF on 20th May 2011.

same crimes twice, once in 1979 and once by the ECCC. As Ieng Sary is due to face trial in the summer of 2011, it is obvious that the ECCC panel has decided he can be tried for the Khmer Rouge era crimes twice.

The official ECCC answered the question 'Have any of the senior Khmer Rouge leaders been tried before?' with the following statement:

"In 1996, the King granted a pardon to Ieng Sary for the sentence imposed when the People's Revolutionary Tribunal tried him for genocide. It will be up to the judges to decide on the scope of this pardon. In addition, other charges may be brought against him on the evidence available."¹³⁴

This statement places the responsibility for trying Ieng Sary again firmly with the ECCC judges, but also hints at other charges. These charges include crimes against humanity, the violation of the Geneva Convention and the violation of the Cambodian Penal Code (1956). In 2010, Ieng Sary was indicted with all of the crimes mentioned above with the obvious, meaningful exception of the violation of the Genocide Convention.¹³⁵ It has not been confirmed whether this decision was taken because convictions under the Genocide Convention are considered unlikely (based on the strict criteria of the 1948 text) or because Ieng Sary has already been found guilty of genocide in the Khmer Rouge years. However, Ieng Sary has not been singled out as the only defendant not to face trial for genocide crimes under the Genocide Convention.

Despite not being charged under the Genocide Convention, Ieng Sary claimed that the royal pardon conferred upon him by the King in 1996, as well as the amnesty offered to the Khmer Rouge under the law that outlawed the party in 1994, meant that he could not be tried by the ECCC. The pre trial chamber of the ECCC rejected these claims on 11 April 2011 on the grounds that "the 1979 trial was not conducted by an impartial and independent tribunal with regard to due process requirements".¹³⁶ This comment makes reference to the Rome Statute, which states that if the first trial is not impartial or independent, a second trial does not violate the

¹³⁴ ECCC FAQs, accessed on 21 May 2011 at <http://www.eccc.gov.kh/en/faq/have-any-khmer-rouge-senior-leaders-been-tried> .

¹³⁵ ECCC information on the indictment of Ieng Sary, accessed on 21 May 2011 at <http://www.eccc.gov.kh/en/indicted-person/ieng-sary>

¹³⁶ ECCC Pre Trial Chamber, *Decision on Ieng Sary's Appeal*, 11 April 2011

ne bis in idem principle. The decision also takes into account leng Sary was tried *in absentia* in 1979, which contravenes article 14 of the 1966 International Covenant on Civil and Political Rights ("to be tried in their own presence and to defend themselves in person or with the assistance of counsel of their own choosing") quoted in 2004 ECCC Law.¹³⁷

The pre-trial chamber also found that the royal pardon was only a guarantee leng Sary would not be executed or have his property taken away, as was prescribed by the 1979 decision, and not a guarantee against any further trials. With this statement by the pre trial chamber, the issue has been put aside but leng Sary and his counsel could still dispute any conviction on these grounds in summer 2011 when the case comes before the trial chamber.

1956 Cambodian Penal Code

As the Khmer Rouge never repealed the existing 1956 Penal Code, it was technically in force for the full duration of the Khmer Rouge period. The Khmer Rouge Law, which established the ECCC, identifies the following crimes and articles of the 1956 Cambodian Penal Code as relevant to the ECCC procedures:

- a) Homicide (found in articles 501, 503, 504, 505, 506, 507 and 508)
- b) Torture (found in article 500)
- c) Religious Persecution (articles 209 and 210).¹³⁸

The decision to include the Cambodian Penal Code in the list of laws contravened by the Khmer Rouge is a conscious one, as it emphasises the Cambodian role in the ECCC procedure and makes it clear the ECCC is not just an international war crimes court prosecuting in solely accordance with international law.

Every suspect except Duch has been charged with homicide, torture, and religious persecution within the meaning of the Cambodian Penal Code from 1956. Judges in Case 001 (Duch) were not able to agree on whether charges under the Cambodian Penal Code were necessary on top of the international law charges, and therefore

¹³⁷ ECCC Law (2004), article 35.

¹³⁸ ECCC Law Article 3 (2004)

Duch's objections to being charged under Cambodian law were accepted and struck from the charges list.¹³⁹

Crimes Against Humanity

Crimes against humanity were first mentioned in the Nuremburg trials of 1945 and more recently have been used in the International Criminal Tribunals in Yugoslavia (1993) and Rwanda (1994). However, this charge was first explicitly enshrined in a convention in 1998 Statute of Rome. Crimes against humanity are defined in the Statute of Rome as:

" any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity".¹⁴⁰

As one can see, in comparison with the definition of genocide per Genocide Convention (1948), the definition of crimes against humanity is wide and encompasses the Khmer Rouge crimes without question. All five accused have been charged with crimes against humanity, and one of the five (Duch) has already been found guilty of these crimes.

Geneva Convention (1949)

The fourth Geneva Convention was written in 1949 with the aim of giving protection to civilian victims of war. The ECCC Law (2004) also gives the Extraordinary

¹³⁹ For more information on the debate between the international and Cambodian judges on this issue see Trial Chamber, *Decision on the Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes*, the case of Kaing Guek Eav alias Duch, 26 July 2010

¹⁴⁰ The Rome Statute of the International Criminal Court, Article 7 (1998)

Chambers the power to charge suspects with grave breaches of the Geneva Convention. The law lists:

"Wilful killing;

- Torture or inhumane treatment;
- Wilfully causing great suffering or serious injury to body or health;
- Destruction and serious damage to property, not justified by military necessity

And carried out unlawfully and wantonly;

- Compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- Wilfully depriving a prisoner of war or civilian the rights of fair and regular trial;
- Unlawful deportation or transfer or unlawful confinement of a civilian;
- Taking civilians as hostages." ¹⁴¹

Kaing Guek Eav, aka Duch, the head of S-21 prison in Phnom Penh, was also found guilty of grave breaches of the Geneva Convention on 26th July 2010. Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan also charged with grave breaches of the Geneva Convention.

The Hague Convention (1954)

The ECCC Law also makes provision for the Hague Convention (1954) to be used to prosecute the destruction of cultural property during the Khmer Rouge era. Thus far, the ECCC has not charged any of the suspects under the Hague Convention.

Convictions

Since 2006, the Courts have indicted five Khmer Rouge members, Kaing Guek Eav, Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith. Only Kaing Guek Eav, the governor of Tuol Sleng Prison in Phnom Penh (the major hub of torture activity between 1975-1979), has been tried and convicted of crimes against humanity and grave breaches of the Geneva Convention (on 26 July 2010). The other four Khmer Rouge members are due to face trial in the summer of 2011.

Truth Commissions

In 1999, the UN Group of Experts in Cambodia recognised that, "telling a

¹⁴¹ ECCC Law (2004), Article 6.

story beyond that concerning the defendants alone, including one that includes the historical context of the atrocities and the roles of many actors" could be of use in a transitional justice scenario.¹⁴² To date there has been no official truth telling commission (following the Chilean or South African example) set up by the Cambodian government.

However, local NGOs have taken the initiative and have set up 'truth forums'. The Cambodian Center for Social Development (CSD) has set up a number of public forums in which victims and Khmer Rouge cadres come together to discuss the ECCC's work. These forums give normal citizens a voice. The first CSD forum was held in Battambang on 27th January 2000 and was attended by 120 Khmer Rouge members. Two further forums were held in Phnom Penh and Sihanoukville in 2000, and in 2006 three further forums were held in Pailin, Kampot and Kratie. Each forum discussed different topics and very different opinions were expressed in each of the forums.

The forums that took place before the ECCC was set up in 2005/6, i.e. in Battambang, Phnom Penh and Sihanoukville, focused on the need for a trial. In Battambang many Democratic Kampuchea (DK, i.e. Khmer Rouge) officers argued against the idea of a trial, suggesting that they would cause more division and may violate the 1994 amnesties under the anti-DK laws.¹⁴³ In the Phnom Penh forum, 83.8% of participants agreed that the Khmer Rouge must be tried, and 56.6% argued the trials should encompass the years before 1975 (including the American bombing of Cambodia, which some say contributed to the popularity of the Khmer Rouge) and after 1979 (the Vietnamese years).¹⁴⁴

By 2006 the ECCC had been established and the discussion at the forums turned to the education of the Cambodian public. It was argued that the Cambodian public as a whole knew too little about the ECCC process, what actually happened under the Khmer Rouge and the role of China, Russia, Vietnam and the United States in the

¹⁴² United Nations Group of Experts for Cambodia, *The Report of the Group of Experts*, 70–71, paras. 199–210.

¹⁴³ Marcher, Anette and Yin Soeum, "Khieu Samphan Wants to Go Public," *Phnom Penh Post*, February 4–17, 2000.

¹⁴⁴ Marcher, Anette and Yin Soeum, "Forum Calls for Trials—No Date Yet for UN Team," *Phnom Penh Post*, March 3–16, 2000

atrocities.¹⁴⁵ In Pailin some participants raised the question of whether or not members of the current government would be tried for their participation in the Khmer Rouge genocide.¹⁴⁶

A Comparison with Chile

In contrast to the Cambodian government, the Chilean government (under President Patricio Aylwin) have shown full support for the two truth commissions investigating murders and disappearances under the rule of General Pinochet. The first truth commission, The National Commission of Truth and Reconciliation, was established within months of the end of Pinochet's reign in March 1990 and published its full report, known as the Rettig Report, in February 1991. This report claimed that 2,279 people had been killed by the Pinochet government for political reasons.¹⁴⁷ The first part of the follow up National Commission on Political Imprisonment and Torture (the Valech Report) was published in November 2004. The second part of the Valech report has been classified as secret and will therefore not be published until 2054 and cannot be used as evidence in any trials.

Unlike the Khmer Rouge in Cambodia, Pinochet was still militarily and politically present in Chilean political life at the time of the truth commission and afterwards. Until 1998, Pinochet remained Commander in Chief of the Armed Services and also held 'senator for life' status and was immune to prosecution under the 1978 amnesty law passed by the *junta*.¹⁴⁸ Facing these obstacles to prosecution, it is easy to see why the newly elected Chilean government decided upon a truth commission with amnesties rather than attempting to bring Pinochet to trial in 1990.

¹⁴⁵ Thet Sambath, "Ex-KR Say Judges from CPP Would be Biased," *Cambodia Daily*, May 23, 2006.

¹⁴⁶ Former Khmer Rouge participant (unnamed), CSD Public Forum on National Reconciliation and the Khmer Rouge, Pailin, March 16, 2006 found in Bartu and Wilford, *Transitional Justice and DDR: The Case of Cambodia*, International Center for Transitional Justice (2009)

¹⁴⁷ The National Commission for Truth and Reconciliation Report accessed on 19th May 2011 at http://www.usip.org/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

¹⁴⁸ Robertson, Geoffrey, *Crimes Against Humanity*. Penguin Books (2006) p336

However, the situation in Cambodia different and as such makes it harder to justify offering amnesties for truth tellers in a truth commission. Firstly, the crimes in question took place over thirty years ago and most of the perpetrators (except for the senior leaders) have been successfully reintegrated into society and those around them do not know their identity as executioners or prison wardens. In most cases, these low level Khmer Rouge were forced to commit these crimes through fear for their own life. An example of this can be seen in this story related by an NGO worker in Cambodia:

"I had a young Cambodian who worked with me. He told me he was living near the Thai border and his family was starving. The families were living in extreme poverty. One couldn't go out while the other did because they wore the same clothes. When he was 9 years old he was recruited as a soldier. The Khmer Rouge took these kids, told them they would give them food. These kids were then brainwashed. They were the real killers. They taught them to kill with sticks -- forced them to do this."¹⁴⁹

In addition to this, many Khmer Rouge cadres defected to the government in 1994 when the government outlawed the Khmer Rouge and offered those who came over to the government amnesty and government posts.¹⁵⁰ This could explain the government's reluctance to start a truth commission, if large numbers of civil servants would be implicated. Therefore, in Chile the truth commission was started within months of the end of the Pinochet regime, before the perpetrators had had a chance to reintegrate into Chilean society. In Cambodia, the fact that the abuses were widespread, undertaken by ordinary adults and children under duress and the fact that most of the Khmer Rouge leaders and cadres have surrendered and defected to the government means that a government sponsored truth commission is very unlikely to take place. Even if it was to take place, the benefit of exposing perpetrators that have now reintegrated themselves is questionable.

¹⁴⁹ Story found in McGrew, Laura, 'Khmer Rouge Voices', *On The Record Cambodia*, Vol 6, No 8 (2000)

¹⁵⁰ Fawthorp and Jarvis (2004), p105

Historicising the Past: Tuol Sleng Genocide Museum and Choueng Ek (aka 'The Killing Fields')

Where is the past remembered?

The site the Tuol Sleng Genocide Museum now occupies was a high school that was transformed into Cambodia's most notorious torture and execution camp (known as S-21) under the Khmer Rouge in 1975. It is estimated that over 14,000 people were brought to S-21 between 1975-79, all of whom were photographed and tortured until they confessed to whatever crime they had been accused of.¹⁵¹ All but three detainees were executed, either on site or at the nearby Choueng Ek (killing fields).

S-21 was opened as a genocide museum in 1980 by the new Vietnamese backed regime. The museum consists of four buildings, buildings A, B, C and D. Building A contains individual torture cells, including the torture equipment the Khmer Rouge used to torture confessions from their victims. On the wall of each cell, there is a picture of a corpse that had been tortured to death there (original Khmer Rouge photographs). In building B, there are 100s of mug shots of prisoners that were taken by the Khmer Rouge when admitting the new prisoners into S-21.



Mug shots of victims on display in S-21 Genocide Museum¹⁵²

Building C contains the tiny cells and shackles where the prisoners were held. It also contains information boards about living conditions in S-21. Building D houses the art work of Vann Nath, a prisoner who escaped death by painting portraits of Pol Pot. These works of art depict the many different ways prisoners were tortured. Building D

¹⁵¹ Williams, Paul, 'Witnessing Genocide: Vigilance and Remembrance at Tuol Sleng and Choeung Ek', *Holocaust and Genocide Studies*, Vol. 18 No. 2 (2004), p237

¹⁵² Image found at <http://www.chrison2wheels.com/2008/11/tuol-slung-s-21-prison-and-khmer-rouge.html>, accessed on 21st June 2011.

also housed Mai Lam's famous 'Map of Cambodia', a map of Cambodia with many skulls and bones and rivers painted blood red. This map was removed in the early 2000s because it was considered too graphic.¹⁵³ The entire museum makes a big impact on the visitor. Firstly the bare cells and photographs in buildings A and B have a sobering effect, and the quantity of information and graphic images in buildings C and D are designed to shock and provoke reactions.

Choueng Ek is one of more than 500 killing fields uncovered so far in Cambodia. It is located about 10km from Phnom Penh and was opened as a genocide memorial museum by the Vietnamese in 1980. There are dozens of minimally labelled mass graves containing items of clothing or human bones. The visitor is free to decide how they would like to view these, as there are no official guides and no signposts suggesting a route. Many trees are dotted around the killing field, and some have been labelled to reveal their function, for example 'Chankiri tree against which executioners beat children'. In the middle of the site is a 30m high pagoda with glass walls, filled with over 8,000 human skulls. This pagoda was built in 1988 and the visitor can enter the pagoda and walk around inside, so the skulls can be viewed from inside and outside.



¹⁵³ 'Victims' Shrine Made of Skulls is Dismantled by Cambodia', *New York Times* (11 March 2002), accessed <http://www.nytimes.com/2002/03/11/world/victims-shrine-made-of-skulls-is-dismantled-by-cambodia.html?src=pm>

The site also has a small hut where films about the killing fields are shown in Khmer, English and French.

Why are these crimes remembered?

In January 2008, Louis Bickford from the Memory, Memorials and Museums Program (MMMP) at the International Center of Transitional Justice interviewed Choueng Ek visitors about their motivations for visiting, and responses to, the Choueng Ek site.¹⁵⁶

In the survey, the two most popular answers to the question 'What do you believe the purpose of this memorial site is?' were 'to educate Cambodian and international visitors' and 'preserving memory'.¹⁵⁷

However, as Louis Bickford notes, the site remains largely unchanged from its 1980s state.¹⁵⁸ Opened by the People's Republic of Kampuchea, the memorial site had a hidden message of 'support the government or the Khmer Rouge might come back', to the Cambodian people. Bickford argues that this helps account for the sometimes-horrific descriptions of the execution methods used, and the constant condemnation of the Khmer Rouge throughout the site.¹⁵⁹ The Khmer Rouge is referred to as a "genocidal clique" both in Choueng Ek and S-21, using similar language to that used in the 1979 People's Revolutionary Tribunal and the PRK era. Apart from emotive language, very little is said about the Khmer Rouge, its leaders or its ideology at either of the sites.

The question of why the sites have not been updated since the PRK times (1979-1991) remains open and has not been answered by the Cambodian government or DC-Cam.

¹⁵⁴ Image found at <http://confusedramblings.blogspot.com/2009/08/holiday-in-cambodia-pt1.html>, accessed on 21st June 2011.

¹⁵⁵ Image found at http://www.123rf.com/photo_1311073_the-killing-fields-genocide-museum-at-choeng-ek-cambodia-victims-skull-remains-on-display.html, accessed on 21st June 2011.

¹⁵⁶ Bickford, Louis, 'Transforming a Legacy of Genocide: Pedagogy and Tourism at the Killing Fields of Choeung Ek', Memory, Memorials, and Museums (MMM) Program, *International Center for Transitional Justice* (2009), p8.

¹⁵⁷ Bickford, Louis (2009), p8.

¹⁵⁸ Bickford, Louis (2009), p10.

¹⁵⁹ Bickford, Louis (2009), p10.

Who is remembered?

In S-21 and Choueng Ek the main focus is on the crimes committed, rather than the victims. Both sites offer very little biographical information on the victims. Even in S-21, where mug shots of all prisoners are on display, the names of the victims and perhaps the age is the only information the visitor is privy to. Some respondents to the Bickford survey commented that they would like more information about the victims, like in other Holocaust and genocide museums.¹⁶⁰ Some common suggestions to improve the Choueng Ek site focused on the victims, including:

- Mounting photos or paintings of the victims near the mass graves
- Showing or telling stories about the victims
- Posting information about daily life under Pol Pot
- Displaying more artefacts from the victims, except for the scraps of clothing that litter the site.¹⁶¹

These changes had not been made in August 2010.

Who remembers?

Until the end of the Cold War, S-21 was mostly visited by local people searching for information about their relatives, or by foreigners from the Soviet bloc. Since 1993 and the establishment of the Kingdom of Cambodia, the visitors have mainly been from Taiwan, Germany, the US, Japan, Germany and France.¹⁶² The entrance fees for both sites are waived for Cambodians, and are kept at \$2 for international visitors (August 2010).

What is remembered?

Unlike present day Holocaust museums, especially the United States Holocaust Museum in Washington DC, the two Cambodian genocide museums focus more on the methods of torture and death itself, rather than the victims. In the Holocaust memorials it also took a long time for the focus to shift from the methods to the victims. In his study of Yad Vashem in Israel, the United States Holocaust Museum in Washington DC and Topographie des Terrors in Berlin, Matthias Hass describes the differences between the three Holocaust memorial centres and examines the

¹⁶⁰ Bickford, Louis (2009), p13.

¹⁶¹ Bickford, Louis (2009), p17

¹⁶² Williams, Paul (2004), p238

differences in focus.¹⁶³ He argues that in Berlin the focus was on telling a history of the organisations operating under the Nazi regime, and any information about the perpetrators or the victims is kept short and relevant to the history of the institutions and buildings.¹⁶⁴ He states that in the United States, the Holocaust is remembered through a lens of American values and 'never again' principles, and in Israel, the history of the Holocaust is presented within a wider history of European, and later Israeli, Jews.¹⁶⁵ He suggests that each memorial site in Germany has a different function, for example Topographie des Terrors is responsible for telling the institutional history, whereas Gedenkstätte Sachsenhausen tells the history of concentration camps and the Holocaust memorial statue in Berlin concentrates on the Jewish victims.¹⁶⁶ However, the memorial statue in Berlin was only opened in 2005, and this shows the time lag between the event itself and the remembrance of the victims rather than just focusing on the perpetrators and institutions. The same could be true of Cambodia.

Paul Williams suggests that by providing each visitor with a picture and a biography of a Holocaust victim, the US Holocaust Museum seeks to engage the visitor with the victim and provoke empathy.¹⁶⁷ He suggests because it is unlikely that international visitors will visit the two Cambodian sites as a personal tribute to lost relatives (in the way the perhaps might in Europe or the US), the Cambodian sites had to be made so they could be experienced as "theaters of gruelling historical spectacle rather than sanctuaries for private tribute".¹⁶⁸

The Bickford team interviewed a number of different people from different countries, including 14 Australians, 7 Cambodians, 7 New Zealanders, 6 Americans, and 4 Spaniards. Most visitors agreed that the 'raw' state of the Choueng Ek site (for example, the lack of technology or interactive guides) makes the site more shocking

¹⁶³ Hass, Matthias, *Gestaltetes Gedenken : Yad Vashem, the United States Holocaust Memorial Museum und die Stiftung Topographie des Terrors*, Campus Verlag, Frankfurt (2002)

¹⁶⁴ Hass, Matthias (2002), p372-3

¹⁶⁵ Hass, Matthias (2002), p373-4

¹⁶⁶ Hass, Matthias (2002), p373-4

¹⁶⁷ Williams, Paul (2004), p242

¹⁶⁸ Williams, Paul (2004), p242

and more effective.¹⁶⁹ The information on how victims were tortured and killed is shocking for most Western visitors, who are more used to the brief information regarding these subjects offered by Western Holocaust museums.

Historicising the Past: Genocide Education

After the Khmer Rouge regime fell in 1979, there was a significant lack of personnel qualified to teach genocide education to the victims in Cambodia. During the Khmer Rouge years, 75% of the teaching staff, 96% of tertiary education students and 67% of all primary and secondary school pupils were murdered or died of malnutrition or disease.¹⁷⁰ Therefore, education as a whole was dealt a blow by the Khmer Rouge. In addition to the lack of teaching staff, education took a decidedly more political turn during the period between 1979 and the end of the Cold War. These changes can be traced in the Cambodian school history curriculum.

School History Curriculum

Under the PRK, the Cambodian genocide occupied a pivotal role in the school curriculum in Cambodia.¹⁷¹ Since the end of the PRK rule, the genocide and education about the Khmer Rouge era has been notably absent.¹⁷² The current DC-Cam director said, “the younger generation has the right to know their own history and the government has the obligation to provide the whole truth. For example, in the history book for Grade 9 [ages sixteen and seventeen] there is only one paragraph about the Khmer Rouge.”¹⁷³

During the PRK years (1979-1989), genocide education and the Khmer Rouge both took centre stage in the Cambodian school curriculum. Khamboly Dy argues “In post-genocide Cambodia, genocide education became a political tool for parties competing for power”.¹⁷⁴ He argues that children in PRK controlled areas were told

¹⁶⁹ Bickford, Louis (2009), p9.

¹⁷⁰ Clayton, Thomas, 'Building the New Cambodia : Educational Destruction and Construction under the Khmer Rouge 1975-9', *Journal of Education History*, Vol 38. No. 1 (1998), p8

¹⁷¹ Long Pannavuth, Project Officer, Cambodia Justice Initiative, interview by the author, Phnom Penh, March 2006.

¹⁷² Etcheson Craig, *After the Killing Fields* (2006), pp1–2

¹⁷³ Youk Chhang, “Fighting for the Sake of Truth and Justice,” *Phnom Penh Post*, September 14–27, 2001.

¹⁷⁴ Dy, Khamboly, 'Teaching Genocide in Cambodia: Challenges, Analyses and Recommendations' accessed at

that Khmer Rouge soldiers were monsters that killed people and drank their blood, and children in Khmer Rouge controlled areas were told talk of a genocide was a myth fabricated by the Vietnamese in order to gain control. In PRK controlled areas even school textbooks were strongly politicised. In one year one reading book published in 1979, there were two sentences about the Khmer Rouge regime:

"Our people supplied foodstuffs to the soldiers who were sweeping up the traitors Pol Pot-leng Sary clique."¹⁷⁵

In addition to this, slightly older pupils (year two and three) were taught the Khmer Rouge killed three million people (as opposed to the 1-2 million estimations) and were subjected to images of Khmer Rouge soldiers disembowelling people.

After the end of the civil war (1991) and the election of the new government (1993), the history curriculum was overhauled and new school textbooks were written and released. Khmer Rouge history was notably absent. Khamboly Dy argues that the new government omitted the Khmer Rouge era history from the textbooks "for the sake of national reconciliation".¹⁷⁶ Even when the school curriculum was overhauled in 2000-2001, very little was written about the Khmer Rouge era. In one 9th grade textbook there were only five sentences about the Khmer Rouge era.¹⁷⁷ In the 12th grade textbook, there were three pages devoted to the genocide, covering topics such as political conditions, economy and the formation of the Khmer Rouge. The chapter ends by echoing the PRK textbooks: "This regime had more than three million innocent people killed... the DK plunged the entire country into a real catastrophe in three years, eight months and twenty days".¹⁷⁸

In 2002, even these scanty mentions of the Khmer Rouge era were removed from the 12th grade social studies textbook at the order of Prime Minister Hun Sen. Dy Khamboly suggests this is due to a difference of opinion between Prince Norodom Ranariddh and Hun Sen over the portrayal of the 1993 election in the textbook.¹⁷⁹ In the 2001 edition of the 12th grade book, there was no mention of the fact that

www.hurights.or.jp/archives/pdf/education12/hreas-12-12-cambodia.pdf on 21 May 2011, p134

¹⁷⁵ Dy, Khamboly, p135 (footnote 10)

¹⁷⁶ Dy, Khamboly p135

¹⁷⁷ Dy, Khamboly p135 footnote 13

¹⁷⁸ Dy, Khamboly p136 footnote 15

¹⁷⁹ Dy, Khamboly p136

Ranariddah's party Funcinpec won the first national election in 1993, while the People's Party victory in 1998 played a central role.¹⁸⁰ Ranariddah called for a revision of the textbook and the Ministry of Education responded by agreeing to the revision, but adding they would enlarge the Khmer Rouge history section.¹⁸¹ Due to the royal family's connections with the Khmer Rouge, this announcement is most likely to have angered Ranariddah and led to worry that the royal family would be portrayed in a bad light. Since this episode and the subsequent withdrawal of the textbooks, Cambodian students have been learning social studies without a textbook.

DC-Cam saw the lack of genocide education in the Cambodian curriculum and established the Genocide Education Project in 2004. This project ran until 2007 and resulted in *A History of Democratic Kampuchea*, a book about the Khmer Rouge regime aimed at educating the public, authored by Khamboly Dy. This book was distributed to 289 secondary schools in Cambodia, and the Cambodian government did not hinder the distribution process. Dy himself views this event as "the first fruitful move towards genocide education in Cambodia".¹⁸²

Other Methods

Reparations

If an accused person is convicted by the ECCC, victims may ask the court to make an order of reparations. Under Cambodian law, civil parties may claim compensation in criminal cases for damages they suffered from the crimes being tried. The judges have decided that individual financial compensation will not be possible in the ECCC.¹⁸³ However, the judges may award collective and moral reparations such as an order to publish the judgment in appropriate media outlets at the convicted person's expense or an order to fund any non-profit activity or service that is intended for the benefit of victims.

DC-Cam

The Documentation Center of Cambodia (DC-CAM) was established in January 1995, initially with \$500,000 USD from the Yale University Cambodian Genocide

¹⁸⁰ Dy, Khamboly p136

¹⁸¹ Dy, Khamboly

¹⁸² Dy, Khamboly p137

¹⁸³ BZFO (2010), p6

Program (although the funds were given to Yale by the US government). The United Kingdom and Sweden have both contributed generous amounts to DC-Cam.¹⁸⁴

DC-Cam aims to research and gather information about the period between 1975-9, mainly for educational purposes, but also to provide evidence for a "duly constituted legal body" (the ECCC hadn't been established at this point, so the legal body was purely hypothetical).¹⁸⁵ It is a non-profit, non-governmental, non-political organisation that brings lawyers, historians, activists and the general public together in order to "disseminate information on the Khmer Rouge regime based on our (sic) impartial inquiry into facts and history".¹⁸⁶

The official website of the DC-Cam uses emotive and powerful language to describe its mission, for example, "A society cannot know itself if it does not have an accurate memory of its own history. Toward this end, DC-Cam is working to reconstruct Cambodia's modern history, much of which has been obscured by the flames of war and genocide."¹⁸⁷

According to their own records, DC-Cam has catalogued approximately 155,000 pages of Khmer Rouge documents, 6,000 photographs and has approximately 400,000 pages worth of documents still to catalogue. It has mapped 189 prisons, 19,403 mass graves and 80 genocidal memorials throughout Cambodia.¹⁸⁸

Although the Cambodian government has been largely cooperative with DC-Cam, there have been a few instances of uncooperative behaviour. In 2003, after DC-Cam had put in an official request to review ninety reels of video footage from the Khmer Rouge years, these reels were sent to France from the Cambodian Ministry of Culture and Fine Arts' cinema department before the DC-Cam had the chance to

¹⁸⁴ Nick Lenaghan, "Moves to Get Pol Pot in the Dock," *Phnom Penh Post*, June 27–July 10, 1997, for a full list of donors and the projects they donate to see DC-Cam, Donors accessed at <http://www.dccam.org/Abouts/Finance/Finances.htm> on 23rd April 2011.

¹⁸⁵ The Documentation Center of Cambodia, About Us, accessed at <http://www.dccam.org/Abouts/History/Histories.htm> on 23rd April 2011.

¹⁸⁶ DC Cam, About Us.

¹⁸⁷ DC Cam, About Us.

¹⁸⁸ DC Cam, About Us.

review them.¹⁸⁹ This has led to suspicions that the reels contained incriminating evidence about the roles of some government members in the Khmer Rouge crimes.

Searching for the Truth

Searching for the Truth is a monthly magazine published by DC-Cam. It was first published in January 2000, and is distributed in Khmer, English and Cham. DC-Cam states that 80% of the 7,000 magazines published are distributed free of charge by themselves or other NGOs in the country.¹⁹⁰ Summaries of the Khmer monthly editions are published quarterly in English and sold in Phnom Penh and Siem Riep. The magazine aims to, "disseminates the Center's work to the public, facilitates discourse on issues related to the Khmer Rouge, and otherwise promotes justice and reconciliation in Cambodia".¹⁹¹

Hate Day

In 1982, the Vietnamese backed 'Salvation Government' created a 'Research Committee into the Crimes of the Pol Pot Regime'. The committee collected 1,166,307 signatures recommending that 20th May should be devoted to commemorating the "suffering inflicted by the regime of Pol Pot, Ieng Sary and Khieu Samphan".¹⁹² This day has been translated into English as the "Day of Hate", while some suggest "Day of Maintaining Rage" would be a better translation.¹⁹³ The day is still observed by the majority of Cambodians.

¹⁸⁹ Youk Chhang, "Missing Films from Democratic Kampuchea: A French Mystery," accessed at www.dccam.org/Archives/Films/Youk%20Missing%20Films%20from%20Democratic%20Kampuchea.pdf on 20 May 2011.

¹⁹⁰ DC Cam, Magazine : Searching for the Truth, http://www.dccam.org/Projects/Magazines/Magazine_Searching.htm

¹⁹¹ Ibid

¹⁹² McGrew, Laura (2006), p146

¹⁹³ McGrew, Laura (2006), p146

How successful has transitional justice been?

Have the Khmer Rouge members been successfully punished and reintegrated into Cambodian society?

In July 2010 the head of S-21 prison in Phnom Penh, Duch (Kaing Guek Eav) was found guilty of grave breaches of the Geneva Convention and crimes against humanity. Four other defendants are currently being tried. Therefore, from the viewpoint of traditional, retributive justice, the senior leaders of the Khmer Rouge have not been successfully punished.

However, using a template of transitional, rather than retributive, justice, whether or not the Khmer Rouge themselves and Cambodian society as a whole, feels the leaders have been successfully punished and reintegrated into Cambodian society plays a much more important role than raw convictions in the ECCC. These criteria are related to the aims of transitional justice discussed earlier, namely: reconciliation ('Is it possible for Khmer Rouge and victims to live side by side without risking further conflict?'); positive peace ('Is the conflict ongoing?'); justice ('Has justice been done?' or 'Do the Cambodian people feel justice has been done?'); healing ('Has the psychological trauma of the victims, and of the perpetrators, been addressed?'); forgiveness ('Has Cambodian society forgiven the Khmer Rouge?') and truth ('Has the truth been told?').

These six categories form the basis of analysis of the effectiveness of transitional justice in Cambodia. To answer the aforementioned questions, a 2010 report by the Behandlungszentrum für Folteropfer Berlin (BZFO or Berlin Centre for the Treatment of Torture Victims) will be used.¹⁹⁴ The report contains the results of two surveys. The first survey, completed in 2009, interviewed 1077 Khmer Rouge survivors (using two main criteria to define survivor status: born before 1975 and considers oneself a survivor of the Khmer Rouge years), of which 247 survivors had applied to be civil parties in one or more cases before the ECCC. NGO workers or Cambodian students specially trained by the authors undertook the interviews in the Khmer language. The

¹⁹⁴ Behandlungszentrum für Folteropfer Berlin, *The Survivors' Voices: Attitudes on the ECCC, the Former Khmer Rouge and Experiences with Civil Party Participation* (December 2010).

sample group represented all Cambodian provinces, both sexes, a wide age range and both literate and non-literate citizens. The survey only interviewed victims, and did not interview ex-Khmer Rouge soldiers or perpetrators of the crimes committed between 1975-79. As the survey was not random, but instead relied on volunteers, it is possible that the respondents were particularly interested in justice and the ECCC, and therefore viewed the ECCC more positively.

A second survey of the civil party applicants interviewed in the first survey was undertaken in November/December 2010. The purpose of this survey was to analyse the impact of the ECCC procedure on the willingness to forgive and reconcile. The results of this survey will be used in this chapter, but it is important to remember that the 2010 survey interviewed only those civil party applicants participating in the ECCC procedure that were interviewed in 2008/9. Therefore, the sample group is not representative of the sector of the Cambodian population that chose not to participate in these procedures.

Reconciliation

Two questions asked in the first BZFO survey are particularly relevant to the issue of reconciliation, namely: 'Are you ready to reconcile with the Khmer Rouge?' and 'Do you think reconciliation has occurred in your village?'¹⁹⁵ When asked if they thought reconciliation had happened in their village, 70.7% of respondents answered with a definitive 'not at all', while only 3.5% answering 'totally'. The results for both questions show no discernable difference between those participating in the ECCC and those not.

In answer to the first question, 47.9% of all respondents said they were 'not at all' ready to reconcile with the Khmer Rouge, with another 13.2% answering that they would 'rather not'. Only 13.2% said they ready 'to a large extent', and 3.2% said they were 'totally ready'. This question was asked again in 2010 and a marked improvement in the willingness to reconcile can be seen. 39.4% said they were 'not at all' ready, whereas 17.7% answered 'to a large extent' and 8.4% said they were 'totally ready'.¹⁹⁶ This suggests that those who participated in the Duch trial as civil parties are now more likely to reconcile with the Khmer Rouge than they were before.

¹⁹⁵ BZFO (2010), p31-32.

¹⁹⁶ BZFO (2010), p53

Whether this phenomenon can be extended to the population, as a whole cannot be ascertained based on the information available.

In the 2008/9 and 2010 surveys, participants were asked if they thought the ECCC would contribute to reconciliation in Cambodia. In 2010, after the Duch verdict, positive feelings towards the ECCC rose with 61% answering yes (58.8% in 2008/9); 34.8% answering in part (32.9% in 2008/9) and only 4.3% answering no (8.2% in 2008/9).¹⁹⁷ This suggests that the tribunal and the civil participation that went along with it helped contribute to a willingness to reconcile in Cambodia.

Positive Peace

When asked if there is still conflict between the Khmer Rouge and non-Khmer Rouge, 90% of respondents not participating in the ECCC (and 92.1% of civil party participants) denied this was the case.¹⁹⁸ Therefore, transitional justice in Cambodia is dealing with the aftermath of a conflict, rather than an ongoing one.

Justice

When asked if they thought the ECCC would contribute to reconciliation in Cambodia, 53.9% answered yes, 30.6% in part and 12.8% answered no.¹⁹⁹ This suggests there was great hope for the ECCC in 2008-9, before the Duch verdict was handed down.

In 2010, after the Duch verdict had been handed down, the BZFO conducted a second survey with the civil party interviewees to analyse the changes since the ECCC's first case. Duch was given a 35 year prison sentence, but this was cut down to 19 years on account of years already served. 38.7% of those surveyed in 2010 were 'satisfied' with this sentence, and 25.3% were 'very satisfied'.²⁰⁰ 24.9% answered that they were 'unsatisfied' or 'very unsatisfied'.²⁰¹

¹⁹⁷ BZFO (2010), p52.

¹⁹⁸ BZFO (2010), p30.

¹⁹⁹ BZFO (2010), p33

²⁰⁰ BZFO (2010), p47

²⁰¹ BZFO (2010), p47

Healing

When asked if they still feared the Khmer Rouge, 49% said 'not at all', and 8.8% said 'totally'.²⁰² 30.9% of civil party participants answered 'rather yes', as opposed to 23.9% of non-participants; suggesting participation in the ECCC proceedings increases the threat (perceived or otherwise) of repercussions from the Khmer Rouge.

When asked if they have feelings of revenge towards the Khmer Rouge, 34% answered 'not at all', 10.8% 'rather not', 14.8% 'in part', 21.3% to a large extent and 19.2% 'totally'.²⁰³ Interestingly, those participating in the ECCC felt more need for revenge (33.6% answered 'totally') than non-participants (14.9% answered 'totally'). This suggests either those who participate had pre-existing feelings of revenge towards the Khmer Rouge, or the ECCC procedures have brought the feelings out.

Forgiveness

When asked 'Did you forgive the Khmer Rouge?' 45.5% of all respondents answered 'not at all', while only 4% answered 'totally'.²⁰⁴ Once again, ECCC participants showed a tendency to not forgive the Khmer Rouge (56.3% answered 'not at all', compared with 42.3% of non participants). However, the total results show that the Cambodian people as a whole have not forgiven the Khmer Rouge for their crimes thirty years after the event.

Truth

There were no questions aimed at finding out the extent to which those surveyed felt they knew the truth about the Khmer Rouge crimes. However, the lack of a truth commission and genocide education in schools and the general population show that there has been very little attempt to educate the people about what happened between 1975-9.

²⁰² BZFO (2010), p29

²⁰³ BZFO (2010), p30

²⁰⁴ BZFO (2010), p30

Have democracy and human rights been allowed to flourish?

The overarching aim of transitional justice is to ensure justice without disrupting the transition to democracy. To help address the question of democracy and human rights in Cambodia, the three data sets discussed earlier will be used. The table below shows Cambodia's Freedom House and Political Terror Scale scores at nine different points between 1976 to the present day:

Year	Freedom House²⁰⁵	PTS²⁰⁶
1970	Data not available	Data not available
1976	6 (PR) 6 (CL) NOT FREE	5 (AI) 5 (USSD)
1978	7 (PR) 7 (CL) NOT FREE	5 (AI) 5 (USSD)
1981	7 (PR) 7 (CL) NOT FREE	3 (AI) 3 (USSD)
1985	7 (PR) 7 (CL) NOT FREE	3 (AI) 4 (USSD)
1990	7 (PR) 7 (CL) NOT FREE	3 (AI) 4 (USSD)
1995	6 (PR)	3 (AI)

²⁰⁵ Freedom House Scale is split into three scores: PR = political rights; CL = civil liberties and the freedom score (not free, partly free, free). Data for this table taken from the Freedom House website, accessed at <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7794> on 5 May 2011.

²⁰⁶ Data for this table is from the Political Terror Scale website, accessed at <http://www.politicalterror scale.org/countries.php?region=Eurasia&country=Cambodia> on 5 May 2011. They offer two different scores based on two different data sources: AI =based on Amnesty International sources and USSD = based on US State Department sources.

	6 (CL) NOT FREE ²⁰⁷	4 (USSD)
2000	6 (PR) 6 (CL) NOT FREE	3 (AI) 2 (USSD)
2005	6 (PR) 5 (CL) NOT FREE	3 (AI) 3 (USSD)
2009	6 (PR) 5 (CL) NOT FREE	3 (AI) 3 (USSD)

As the Political Terror Scale clearly shows, there was very little regard for human and civil rights in Cambodia during the Khmer Rouge years. In fact, from 1976 to 1979, Cambodia consistently scored a five on the PTS scale, meaning that the entire population was affected in some way by murder, disappearances and wrongful imprisonment and the Khmer Rouge leadership would stop at nothing to achieve its ideological aims. Since 1981, according to Amnesty International figures, Cambodia has scored a three, meaning while political imprisonment and human rights abuses are common, a relatively small proportion of the population (normally those who express their political opinions in public) is affected.²⁰⁸ This is a marked improvement from the Khmer Rouge era.

However, there has not been a tremendous improvement based on both the statistics from the US State Department and Amnesty International. The average score has been 3 since 1981, whereas one would have expected a dramatic improvement after the UN sponsored elections and new democratic government in the 1990s. However, events in Cambodian politics during the mid to late 1990s can explain these disappointing scores. In the May 1993 elections, a coalition between FUNCINPEC

²⁰⁷ This data is for 1995-1996. Between 1993-1995 the results for Cambodia were significantly better, with political rights (PR) at 4 and civil liberties (CL) at 5. Cambodia was considered to be 'partly free'. The sudden deterioration in democracy is partly due to the fact the Khmer Rouge were outlawed as a political party in 1994.

²⁰⁸ Definitions from the Political Terror Scale website, accessed at <http://www.politicalterror scale.org/countries.php?region=Eurasia&country=Cambodia> on 5 May 2011

(Prince Ranariddh) and the Cambodian People's Party (Hun Sen) was formed and remained intact until 1997. Each party kept their own military wings.

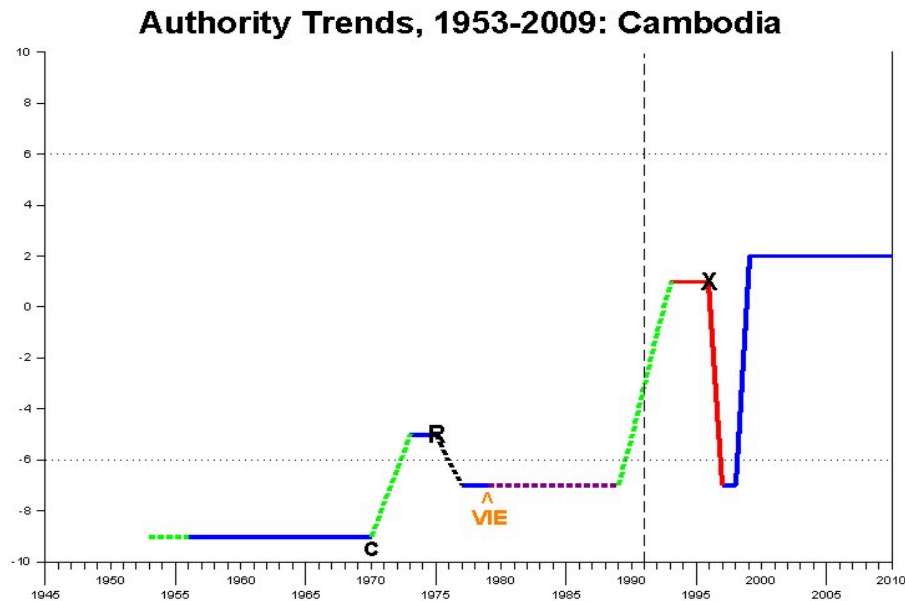
In 1997, factional fighting between the two coalition members broke out, which ended in a coup by Hun Sen and the CPP. FUNCINPEC members were forced into exile, and CPP forces shot those who refused. Between 40-60 FUNCINPEC military generals were assassinated during this period, which paralysed FUNCINPEC's military. In a country where 24% of the voting population admit they base their decision who to vote for purely on which party can best 'keep the peace', the state of the party's military can make or break an election.²⁰⁹

In 1998, FUNCINPEC leaders returned from exile and new elections were called but the run up to the elections was marked by violence and intimidation of non-CPP candidates.²¹⁰ Since 1998, the situation has been stable but the threat of inter party violence remains strong, the press is heavily censored and although technically a democracy, Cambodia scores very low on all political freedom scales shown.

Polity IV results between 1953-2009 are shown in the diagram below:

²⁰⁹ Hughes, Caroline, 'Cambodia's Performance', accessed at <http://www.phnompenh.um.dk/NR/rdonlyres/5CA62869-40F3-4B61-BDC4-6589B75900FB/0/CambodiasPerformance.pdf> on 6 June 2011, p8.

²¹⁰ BBC News, 'Cambodia Election Violence Condemned', 24th July 1998, accessed at <http://news.bbc.co.uk/2/hi/asia-pacific/138445.stm> on 2 June 2011.



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The Polity IV diagram represents the openness of politics in Cambodia, including political participation, participation in the civil service and the executive (either the King or government) and constraints on the executive. Between 1953-1970, King Sihanouk ruled Cambodia, and political participation was very limited, which accounts for the low score given by Polity. Between 1970-75 the US sponsored Lon Nol regime offered slightly more freedom (shown by the second green line) but the pattern was disturbed in 1975 by the Khmer Rouge (shown by the sharply decreasing black line). The Vietnamese sponsored PRK did not achieve a higher score than the lowest score of the Khmer Rouge, and scores only started to climb after the Paris Peace Accords in 1991. Scores continued to climb until 1997, when the Hun Sen government was accused of intimidating the opposition. Thereafter, scores began to climb and have been consistently around the 2 mark since 2000. According to Polity IV, +6 is considered a democracy and -6 an autocracy.²¹²

²¹¹ Diagram from the Polity IV website,
<http://www.systemicpeace.org/polity/cam2.htm> accessed on 23rd June 2011.

²¹² See Polity IV Country Report Series Explanatory Notes, at
<http://www.systemicpeace.org/polity/keynew.htm> accessed on 23rd June 2011.

Although there have not been great improvements in political freedom, democracy and human rights in Cambodia since the Paris Peace Accords in 1991, the scores also do not show any signs of democracy and human rights being put at risk by attempts to bring the Khmer Rouge to justice. In 2005, the ECCC began its activities in Cambodia and since then the scores in all three data sets have remained the same, suggesting that political rights, civil liberties and human rights have not been affected by the ECCC procedures.

Transitional justice aims to bring perpetrators to justice, while healing rifts, encouraging reconciliation while supporting the transition to democracy. If the BZFO survey statistics are taken to be representative of the Cambodian population, willingness to forgive and reconcile with the Khmer Rouge is still low, despite the three decades between the genocide and the present day. While the statistics show the ECCC has made a positive impact on the willingness to forgive and reconcile, this impact has been relatively small. The lack of reconciliation and forgiveness, the absence of a truth commission and the stagnant statistics relating to democracy and civil rights mean that transitional justice in Cambodia cannot be described as a success.

The (post) Cold War Context

1979-1994 : Genocide Justice Through A Cold War Lens

Cambodia's UN Seat

The question of who should represent Cambodia at the United Nations arose shortly after the Vietnamese invasion of Cambodia in January 1979. On 11th January 1979, one day before the declaration of the People's Republic of Kampuchea, an emergency UN Security Council meeting was called to discuss the Cambodian problem. Prince Sihanouk, under orders from Pol Pot, was flown in to New York (on a Chinese plane, with Chinese political and financial support) to argue that the Khmer Rouge should maintain control of the Cambodian UN seat.²¹³ In this meeting, China called for all foreign troops to leave Cambodian soil and the motion was passed with thirteen of fifteen countries in support.²¹⁴

In the months that followed Prince Sihanouk, no longer under Khmer Rouge control, changed sides on the UN seat issue and wrote an open letter urging all member states to vote against the Khmer Rouge. In reference to the continued recognition of the Khmer Rouge as the official representatives of Cambodia, he wrote:

"International morals have decidedly declined rather deeply today when honest people and whom we all know to be murderers, work together in perfect serenity".²¹⁵

He then called for the Cambodian seat to be left vacant until it can be established who the national government was. He was joined by Bulgaria, who challenged the Khmer Rouge's right to represent the Cambodian people, and by Congo, who also argued the Cambodian seat should be left open.²¹⁶

²¹³ Fawthrop and Jarvis (2004), p26

²¹⁴ Fawthrop and Jarvis (2004), p26

²¹⁵ Norodom Sihanouk of Cambodia, 'An Open Letter to Member States of the UN from Prince Norodom Sihanouk', dated September 1979, in Fawthrop and Jarvis (2004), p28.

²¹⁶ Fawthrop and Jarvis (2004), p28.

However, the China, the United States and other western nationals were putting force behind the pro-Khmer Rouge campaign. When the case was put before the Credentials Committee, US delegate Robert Rosenstock argued that the UN should not be concerned about how a country treats its own people, but rather about technicalities, and as the Khmer Rouge credentials had been accepted in 1978, they should be accepted again in 1979. He was quoted as saying, 'I was told to engineer the result on the Credentials Committee, so I engineered the result'.²¹⁷ The Credentials Committee found in favour of the Khmer Rouge six votes to three.²¹⁸

The last step for the Sino-American campaign was to get the Credentials Committee findings validated by the UN General Assembly. This vote took place in late 1979 and was passed 71 (notably from China, the United States, United Kingdom and Canada) votes to 35 (from the Soviet Bloc and some Non-Aligned Movement countries), with 34 abstentions from countries like Sweden and France.²¹⁹

Of the countries that abstained, some did so because none of the claimants had sufficient control of Cambodian territory to warrant the United Nations seat, and others did so out of humanitarian reasons. For these countries, it was impossible to vote in favour of a genocidal regime but equally as distasteful to vote in favour of an imperialistic Vietnamese regime. On the pro-Khmer Rouge side, anti Vietnamese spirit won out, with Robert Rosenstock (US delegation) explaining, "The choice for us was between moral principles and international law. The scale weighed in favour of law, because that also served our national interests".²²⁰ In other words, the threat of a 'domino effect' of Soviet sponsored Vietnamese communism in South East Asia was enough for the United States and other western nations to ignore their 'moral principles' and vote according to *Realpolitik*.

In addition to the 1979 vote, UN General Assembly votes on the Cambodian issue were undertaken at regular intervals in the 1980s. The general voting patterns of the

²¹⁷ Powers, Samantha, *'A Problem From Hell': America in the Age of Genocide*, Basic Books, New York (2002), p150.

²¹⁸ Powers, Samantha (2002), p150.

²¹⁹ For full analysis of the Cold War influenced voting patterns see: Amer, Ramses, *The General Assembly and the Kampuchean Issue: Intervention, Regime Recognition and the World Community 1979-1987*, University of Uppsala (1989).

²²⁰ Quoted in Fawthrop and Jarvis (2004), p30.

respective Cold War blocs did not change throughout this period, although there were some exceptions. Australia voted for the Khmer Rouge in 1979, but by 1980-2 it abstained from voting on the issue. In 1982, the new Coalition Government of Democratic Kampuchea (dominated by the Khmer Rouge, but also including King Sihanouk's FUNCINPEC and Son Senn) represented Cambodia at the UN and this decision was no longer challenged by Vietnam and the Soviet Union. As such, a Khmer Rouge dominated representation of Cambodia at the United Nations had become status quo.

Cambodia as a Victim of the Cold War

Sino-Cambodian Relations

Given the ideological similarities between the two Communist parties, Cambodia's strategic and geographic importance to China and the mutual enemy of Vietnam, it is perhaps not surprising that China was the Khmer Rouge's biggest international supporter, both between 1975 and 1979, and after the Vietnamese invasion.

As a result of Sino-Soviet tensions and subsequent Soviet aid to Vietnam, China sought to ally itself with the Khmer Rouge regime between 1975-79. Robert Ross claims that since the fall of Saigon (Ho Chi Minh City) in 1975, "China's one overriding objective has been to minimise Soviet influence on its Southern periphery".²²¹ By August 1975, there were already over 100 Chinese 'technical advisors' in Cambodia, and Pol Pot was receiving arms shipments through the port of Sihanoukville.²²² The number of advisors rose to 15,000 in 1978. With this number of advisors on the ground in the country, it is therefore difficult to imagine that the Chinese government stance that it did not know about the genocide before 1979 is true.

Deng Xiaoping publicly supported Pol Pot in 1984, when he said, "I do not understand why some people want to remove Pol Pot. It is true that he made some mistakes in the past but now he is leading the fight against the Vietnamese

²²¹ Ross, Robert, 'China and the Cambodian Peace Process : The Value of Coercive Diplomacy', *Asian Survey*, Vol 31, No 12 (1991), p1171

²²² Leszek Buszynski, *Soviet Policy and South East Asia*, Law Book Co of Australasia (1986), p220

aggressors.²²³ According to US intelligence, China gave Khmer Rouge \$100m in military support in the 1980s, which enabled them to fight the civil war with the Vietnamese backed People's Republic of Kampuchea.²²⁴ China even invaded Vietnam in February 1979, to put pressure on the Vietnamese to withdraw from Cambodia. However, the Chinese encountered more resistance in Vietnam than they had reckoned with and withdrew in March 1979, leaving the Khmer Rouge to fend for themselves.

Relations with China continue to play a pivotal role in Cambodia. Although traditionally an ally of the Khmer Rouge, Hun Sen and the Cambodian People's Party have been warming to the Chinese since the early 1990s. In 2006, Prime Minister Hun Sen described China as "Cambodia's most trustworthy friend".²²⁵ During the Paris Peace Agreements in 1991, both the CPP and FUNCINPEC were suspicious of Chinese involvement, and disappointed when not even the Chinese could stop the Khmer Rouge from reneging on their Paris Peace Agreement commitments in 1992.²²⁶

After the UN sponsored elections in 1993, China favoured FUNCINPEC and Prince Ranariddh (at that time the joint Prime Minister) but in 1996, as a result of FUNCINPEC's pro-Taiwanese attitude, swapped allegiances and favoured coalition partner Hun Sen.²²⁷ Since the 1997 coup, Sino-Cambodian relations have been steadily improving. In July 1997, the United States House of Representatives denounced the ousting of Prince Rannaridh and FUNCINPEC as a military coup, which resulted in a US led international opposition against Hun Sen.²²⁸ Despite

²²³ Kiernan, Ben, 'Cambodia's Twisted Path to Justice', *The History Place* (1999), accessed at <http://www.historyplace.com/pointsofview/kiernan.htm>

²²⁴ Ibid

²²⁵ Remark made at the conclusion of a two day visit by Premier Wen Jiabao 7-8 April 1996. Over 10 bilateral agreements were made during this trip, including \$600 billion worth of loans and grants. Reported in: Storey, Ian 'China's Tightening Relationship with Cambodia', *China Brief*, Vol 6, Issue 9 (2006)

²²⁶ Kosal, Long, 'Sino-Cambodian Relations', *Cambodian Institute for Cooperation and Peace Working Papers Collection*, No. 28 (2009), p6

²²⁷ Storey, Ian (2006).

²²⁸ United States House of Representatives, *Resolution 195*, passed 28th July 1997. This opposition also led to criticism from the UN and ASEAN delaying Cambodia's admission date (which was originally 10 July 1997).

international pressure, China remained silent on the issue and even delivered \$2.8 million worth of military equipment to Cambodia shortly after the July 1997 crisis.²²⁹

In addition to political support, China has provided a substantial amount of aid and investment in Cambodia since 1991. Between 1992 and 1998, China contributed over US\$46 million to Cambodia.²³⁰ All of this aid and investment was given without conditions, such as respect for human rights, fair governance or freedom of speech, which all other countries (including the US, Japan and EU countries) place on aid.

The Chinese have campaigned against any international involvement in a possible Cambodian genocide trial since the idea was first floated by US lawyers in the 1980s.²³¹ Etcheson emphasises the fact that for China to advocate holding a government responsible for millions of deaths during a revolution would be "a very dangerous precedent indeed".²³² China remains the only member of the Security Council that is not in favour of a tribunal. To combat the possibility of a Chinese veto, the efforts to establish a tribunal were made by the United Nations General Assembly.

Soviet-Cambodian Relations

After the unification of Vietnam in 1975, the Soviet Union was one of the biggest aid donors to Hanoi. As a result of tensions between Beijing and Hanoi, China cut off aid to Vietnam in 1978, leaving the Soviet Union as Vietnam's most important source of military and economic assistance. In June 1978 Vietnam joined the Comecon and in November 1978 the Treaty of Friendship and Cooperation was signed between Vietnam and the Soviet Union.²³³ The Soviet Union also provided a large amount of humanitarian aid to Cambodia. In 1987, the Soviets projected that aid to Cambodia between 1979-90 would reach 284 million rubles.²³⁴ High profile collaborations, such

²²⁹ Kosal, Long (2009), p8.

²³⁰ Cambodian Ministry of Commerce, *Cambodia Business and Investment Handbook 2000*, Phnom Penh (2000), p46.

²³¹ Examples of such advocates include Dr Gregory Stanton, Ben Kiernan and Hurst Hannum.

²³² Etcheson, Craig (2003), p14

²³³ US Library of Congress, *Country Studies: Vietnam*, accessed at <http://countrystudies.us/vietnam/61.htm> on 15th June 2011.

²³⁴ US Library of Congress, *Country Studies: Cambodia*, accessed at <http://countrystudies.us/cambodia/69.htm> on 15th June 2011.

as the Kampuchea-USSR Friendship Hospital, the Kampuchea-USSR Friendship Technical Institute and Russian language centres, were all funded by Soviet money.

As a result of close Vietnamese-Soviet relations, and even closer Cambodian-Vietnamese relations after 1979, it was perhaps inevitable that Soviet-Cambodian relations would grow closer as well. In 1983, the first trade agreement between the Soviet Union and Cambodia was agreed, increasing Soviet trade turnover in Cambodia from 71.8 million rubles in 1983 to 100.3 million rubles in 1985.²³⁵ In 1986, the two countries signed a trade and aid agreement. Therefore, the two countries were on good terms during the 1979-1990 period. There was no official military support from the Soviet Union to the PRK, as this was provided by Vietnam (using Soviet equipment and finance).

Despite the fact the Soviet Union channelled all military support for the PRK through Vietnam, Soviet support of Vietnamese intervention in Cambodia was a sticking point in Sino-Soviet rapprochement. In 1982, China outlined three conditions for rapprochement:

- reduced Soviet military presence along the Sino-Soviet border
- withdrawal of Soviet forces from Afghanistan
- withdrawal of support for the Vietnamese in Cambodia.²³⁶

In 1989, after a meeting between Deng Xiaoping and Mikhail Gorbachev (where complete withdrawal from Cambodia and free elections were discussed), Hanoi announced an initial 50,000-75,000-troop reduction, which would be followed by complete withdrawal by September 1989.²³⁷ This led Morris to write, "Vietnamese inability to eliminate the Cambodian resistance, combined with drying up of Soviet aid forced an end of the direct Vietnamese presence in Cambodia".²³⁸ Therefore, there was a negative correlation between Sino-Soviet relations and Soviet support for the Vietnamese and PRK in Cambodia.

²³⁵ US Library of Congress, Country Studies: Cambodia.

²³⁶ Mei, Yan, "The Maturing of Soviet-Chinese Relations", *Annals of the American Academy of Political and Social Science* (Autumn 1985), p74.

²³⁷ Young, Marilyn Blatt. *The Vietnam Wars: 1945-1990*. New York: HarperCollins (1991), p249.

²³⁸ Morris, Stephen J. (1999) *Why Vietnam Invaded Cambodia; Political Culture and the Causes of War* Stanford University Press, Stanford (1999), p221

US Foreign Policy

During the latter years of the Cold War, US Cambodian policy was largely dictated by the Reagan Doctrine, a policy of supporting anti-government guerrillas and resistance movements that helped to roll back Soviet backed communist regimes in Asia, Latin America and Africa. After the fall of Phnom Penh to the Vietnamese in January 1979, the Khmer Rouge forces fell into this category, and as such were supported by the United States on the Thai-Cambodian border.

In April 1975, as the Khmer Rouge took Phnom Penh, the Vietnam War was still fresh in the minds of US officials, and therefore anti-Vietnamese sentiment dictated their policy towards the Khmer Rouge. The meeting between the US Secretary of State Henry Kissinger and the Thai Foreign Minister Chatchai Chunhawan on 26th November 1975 gives an insight into US policy concerns in South East Asia during the Khmer Rouge period.²³⁹ In this meeting, Kissinger remarked:

"You should also tell the Cambodians we will be friends with them. They are murderous thugs, but we won't let that stand in our way. We are prepared to improve relations with them. Tell them the latter part, but don't tell them what I said before".²⁴⁰

This shows that the US was fully aware of the killings happening inside Cambodia, even though the meeting happened just seven months after the Khmer Rouge took Phnom Penh, but was prepared to ignore them. The reason for this is clear when Kissinger states, "We would like them [Cambodia] to be independent as a counterweight to Vietnam" and failing this, "We would prefer to have Laos and Cambodia aligned with China rather than with North Vietnam".²⁴¹ In a December 1975 meeting with Suharto of Indonesia, Kissinger repeated these sentiments, stating, "We don't like Cambodia, for the government in many ways is worse than Vietnam, but we would like it to be independent. We don't discourage Thailand or China from drawing closer to Cambodia".²⁴²

²³⁹ United States State Department, 'Memorandum of Conversation: Secretary's Meeting with Foreign Minister Chatchai of Thailand', 26th November 1975, document number 7524631.

²⁴⁰ US State Department, doc no. 7524631, p8.

²⁴¹ US State Department, doc no. 7524631, p3-4.

²⁴² US State Department, 'Telgram from US Embassy in Jakarta to Secretary of State in Washington re: President Ford - Suharto Meeting', 6th December 1975, document number 051972, p3.

Therefore, even in 1975, the US was afraid the Vietnamese would gain influence in Cambodia, thus giving the Soviets another satellite state in South East Asia to counter this, they were willing to overlook politically motivated killings (and later, genocide) to ensure Cambodia remained independent or under Chinese influence. This support for the Khmer Rouge continued after they were ousted from power by the Vietnamese in 1979.

However, the United States never openly associated itself with the Khmer Rouge. Former U.S. National Security Advisor Zbigniew Brzezinski stated, "I encouraged the Chinese to support Pol Pot. Pol Pot was an abomination. We could never support him, but China could."²⁴³ This shows that the United States was very aware that it was a global campaigner for human rights, and associating with the Khmer Rouge would have damaged this image, but the Khmer Rouge and their anti-Soviet, anti-Vietnamese policies were still preferable to a Soviet orientated Vietnamese puppet regime.

Even towards the end of the Cold War, the US still backed the Khmer Rouge. After 1988, Thailand became more market orientated but were warned by U.S. officials that, "if Thailand abandoned the Cambodian resistance and its leader Sihanouk for the sake of doing business with Phnom Penh it would have to pay a price."²⁴⁴ United States dedication to the Khmer Rouge and the Vietnamese resistance can be seen through their dedication to ensuring the Khmer Rouge (or a coalition containing the Khmer Rouge) kept the Cambodian UN seat.

However, since the end of the Cold War, the United States has changed its policy. After Vietnamese withdrawal, United Nations intervention and the UN sponsored 1991 Paris Agreements that ended the Cambodian Civil War; the US has been willing to consider the idea of a tribunal. In 1994, the US Congress passed the Cambodian Genocide Act, which established Yale's Cambodian Genocide Program. This program collects information that could help any future tribunal, and has set up

²⁴³ Elizabeth Becker, *When the War Was Over*, New York, Touchstone (1986), p. 440

²⁴⁴ Kiernan, Ben (1999)

the Documentation Center of Cambodia, which collects data, witness statements and information about perpetrators.

Internal Problems : Border Clashes with the Khmer Rouge

Although Phnom Penh officially fell to the Vietnamese on 7th January 1979, the Khmer Rouge, and after 1982, Khmer People's National Liberation Armed Forces (KPNLAF) continued to attack PRK forces from their jungle base on the Thai Cambodia border until, and after, the Paris Peace Accords in 1991.

Khmer Rouge, and later Coalition Government of Democratic Kampuchea forces, continued to launch guerrilla attacks on PRK forces throughout the 1980s. These attacks were most frequent in old Khmer Rouge stronghold areas in the northwestern Cambodia (around the provinces of Battambang and Siem Riep). It is estimated that the Khmer Rouge National Army of Democratic Kampuchea (NADK) was comprised of 40,000-50,000 men (although official figures were never released), and the majority of the new members (those recruited after 1979) were recruited from the refugee camps on the Thai border.²⁴⁵ China supplied the NADK with ammunition and supplies, which were delivered by boat through Thai ports.²⁴⁶

Infighting between the Khmer Rouge and the other coalition members meant that the insurgents were not capable of overthrowing the Vietnamese forces. However, they were capable of causing day-to-day disruptions and create stalemate. This was enough to divert PRK attention away from governing the country and capturing the Khmer Rouge leaders and putting them on trial.

Regional Problems : Vietnam

As previously discussed, part of the reason for Khmer Rouge popularity in 1975 was their nationalist, anti-Vietnamese ideology. Soon after they seized power in April 1975, border clashes started on the Northeastern border. In 1977, these border clashes intensified, and in September 1977 over 1,000 Vietnamese civilians were killed in border attacks.²⁴⁷ In early 1978, the Vietnamese leadership decided to support the anti Pol Pot resistance. In May 1978, Radio Phnom Penh, the official Khmer Rouge radio station, announced that if every Cambodian killed at least 30

²⁴⁵ US Library of Congress, *Country Studies : Cambodia*

²⁴⁶ US Library of Congress, *Country Studies : Cambodia*

²⁴⁷ US Library of Congress, *Country Studies : Cambodia*

Vietnamese, only two million troops would be needed to eliminate the entire Vietnamese population.²⁴⁸ As a result of Khmer Rouge belligerence and massacres of ethnic Vietnamese within Cambodian borders, the Vietnamese invaded Cambodia on 22nd December 1978. On 7th January 1979, Phnom Penh fell and the People's Republic of Kampuchea (PRK) was set up with political, military and economic help from the Vietnamese. The PRK was commonly known in the West as a Vietnamese 'puppet regime'.

The military campaign and economic support for the PRK was largely financed by the Soviet Union, via Hanoi. In 1978, Hanoi received US\$800 million in military aid from the Soviet Union.²⁴⁹ This figure rose sharply to US\$1.4 billion in 1979, in order to finance the Vietnamese invasion of Cambodia.²⁵⁰ In 1985, this figure was US\$1.5 billion, which shows the cost of the Cambodian invasion and also the fact the Soviets were willing to pay for it.²⁵¹

Regional Problems : Thailand

Just four days after the Vietnamese overthrew the Khmer Rouge, Thailand's Prime Minister General Kriangsak Chomanand announced it would continue to recognise Democratic Kampuchea (and the Khmer Rouge government), rather than the newly proclaimed, Vietnamese backed, People's Republic of Kampuchea.

Thailand was also involved in a Sino-Thai effort to rebuild the Khmer Rouge and prime them to topple the newly installed regime. In 1979, the Chinese urged Chomanand to harbour Khmer Rouge refugees and to allow Thai territory to be used as a pipeline for arms and other supplies from China to the Khmer Rouge.²⁵² Helen Jarvis and Tom Fawthorp allege that, after 1979, a number of Thai army special units were set up with the sole purpose of coordinating with the Khmer Rouge and planning an anti-Vietnamese strike from Thai soil.²⁵³

²⁴⁸ US Library of Congress, *Country Studies : Cambodia*

²⁴⁹ US Library of Congress, *Country Studies : Cambodia*

²⁵⁰ US Library of Congress, *Country Studies : Vietnam*

²⁵¹ US Library of Congress, *Country Studies : Vietnam*

²⁵² Fawthorp and Jarvis (2004), p58.

²⁵³ Fawthorp and Jarvis (2004), p58.

1994-2011 : Genocide Justice at the 'End of History'

Regional Politics

Since 1989, there has also been a lack of consensus in the ASEAN on the topic of genocide trials in Cambodia. One of the most vocal members of the ASEAN is Vietnam, who views its work regarding a tribunal as accomplished after the People's Revolutionary Tribunal in 1979. Since the rapprochement between the People's Republic of China and the Vietnamese Communist Party, the Vietnamese have been less vocal on the topic, wary of China's strong opposition to another tribunal in Cambodia. However, the Vietnamese People's Army and its official newspaper were still highly critical of Hun Sen's suggestion that the Cambodian people should "dig a hole and bury the past", and published an article demanding a new tribunal after the surrender of Nuon Chea and Khieu Samphan, stating "crimes cannot be forgotten and must be punished".²⁵⁴

Cambodian Internal Politics

Since the Vietnamese troops withdrew from Cambodia in 1989, there has only been slow progress in genocide justice. The ruling party, the Cambodian People's Party (CPP) and the Khmer Rouge both trace their roots to the same founding conference in 1951, and the similarities between the Khmer Rouge and the Cambodian government do not end there. Craig Etcheson states that most of the CPP's senior members started their careers as low or medium level Khmer Rouge cadres who fled to Vietnam during Pol Pot's purges between 1975-9.²⁵⁵ Prime Minister Hun Sen is among this group. It is therefore not surprising that there was a lack of consensus within the ruling party about whether a tribunal should take place. Hun Sen continues to oppose any additional ECCC trials, seeing the current five detainees as the last cases for the genocide tribunal, and reiterated this point of view in a meeting with the UN Secretary General in October 2010.²⁵⁶

²⁵⁴ Ibid p12

²⁵⁵ Etcheson, Craig, 'The Politics of Genocide Justice in Cambodia : A Talk at the Montreal Institute of Genocide and Human Rights Studies', September 12 2003, p2.

²⁵⁶ Human Rights Watch, *World Report 2011: Cambodia*, accessed on 13th June 2011 at <http://www.hrw.org/en/world-report-2011/cambodia> .

Some elements of Cambodian politics have been traditionally supportive of the idea of a genocide tribunal. One element, named the 'Internationalists' by Etcheson, have long argued that UN involvement in a tribunal would be of great benefit to Cambodia in the form of bilateral and multilateral aid and would gain credibility for the Cambodian government on the regional and international stage. Etcheson also states the modernising faction within the CPP have traditionally been in favour of a tribunal, seeing it as an opportunity to remove undesirable elements of the party (i.e. those with Khmer Rouge associations) and to reinforce the need for a strong judiciary system.²⁵⁷ They view the lack of a competent judiciary as an impediment to foreign investment and economic development.

Outside of the ruling party, there are other elements of Cambodian politics that have argued for a tribunal. The Sam Rainsy Party opposed the government's planned tribunal, arguing instead that a UN sponsored Hague style tribunal that would charge the Prime Minister Hun Sen with genocide crimes.²⁵⁸ Etcheson argues that the Sam Rainsy Party enjoys "strong backing" from the Republican sector of the US House of Representatives, who see Hun Sen as the biggest obstacle to genocide justice.²⁵⁹ In addition, Prince Ranariddh has also stated that UN involvement would be necessary. After the UN withdrew from negotiations in February 2002, he stated, "I don't believe that the tribunal process will follow that required in a court of law and within a justice framework, even if there is participation of foreign judges".²⁶⁰ However, this statement should not be mistaken for support for the tribunal on the part of Ranariddh or his party FUNCINPEC, who have been ambivalent about their standpoint. The Prince was even absent for the final vote on the Khmer Rouge tribunal law, stating he had to attend a birthday party instead.²⁶¹

However, certain elements of both the ruling party and the opposition parties in Cambodia have traditionally opposed the idea of genocide trials. The 'Nativists' have argued against any UN involvement in Cambodian affairs, including the punishment of genocide. After over a century of foreign involvement in Cambodia (from French

²⁵⁷ Etcheson, Craig (12.09.2003) p5

²⁵⁸ Etcheson, Craig (12.09.2003) p5

²⁵⁹ Etcheson, Craig (12.09.2003), p6

²⁶⁰ Etcheson, Craig (12.09.2003) p6

²⁶¹ Etcheson, Craig (12.09.2003) p6

colonialism, Japanese occupation, US intervention to the most recent Vietnamese occupation), it is easy to see why some Cambodian politicians have been uneasy about the idea of more foreign involvement in Cambodia. In addition to this, the 'Rejectionists' in the CPP have argued that any reopening of old wounds (i.e. prosecution of the perpetrators of genocide) could be fatal for Cambodia's uneasy ceasefire between the Khmer Rouge and the government.

The Khmer Rouge has been giving weight to the argument that trials could jeopardise the ceasefire between the Khmer Rouge and the government. A Khmer Rouge spokesperson at a Battambang public meeting in January 2000 stated:

"Despite the end of the war, nobody can affirm that the war will not happen again in our country, especially random attacks that disturb development work. So, the peace we are enjoying today is still fragile"²⁶²

Similarly, Khieu Samphan, a former high ranking Khmer Rouge official who is now on trial by the ECCC, founded in 2005, stated in 1998 that, "If we have to say who was wrong and who was right, etc. etc, we cannot have national reconciliation. We cannot put an end to the war."²⁶³

Despite the official line of the Khmer Rouge, even before 2005 there was evidence to show that some members of the Khmer Rouge had started to question the events of 1975-1979. In January 2000, the Center for Social Development, a Cambodian NGO, organised a 'national reconciliation forum' in traditionally Khmer Rouge territory in Battambang City. 75% of the attendees were Khmer Rouge affiliated, and only one speaker spoke out in favour of the genocide trials. However, 75% of the same audience responded in favour of genocide trials of the old Khmer Rouge leaders in an anonymous questionnaire distributed among the crowd.²⁶⁴ Therefore, even within the Khmer Rouge party itself, and more so within Cambodian politics as a whole, there was no consensus on the genocide trial question.

²⁶² Etcheson, Craig (12.09.2003) p8

²⁶³ Etcheson, Craig (12.09.2003) p8

²⁶⁴ Etcheson, Craig (12.09.2003) p10

Concluding Remarks

Since its independence in 1953, events within Cambodia have been strongly influenced by regional and international factors. The Vietnam War, the Cold War and, most recently, the post Cold War push towards democratisation have all left their mark on Cambodia. The crimes committed by the Khmer Rouge during 1975-79 did not occur in a vacuum, and as such external factors have also affected how the genocide has been dealt with.

As previously discussed, some historians see the Cold War, and more specifically the impact of the Vietnam War on Cambodia as the catalyst for the genocide in Cambodia.²⁶⁵ This point of view does not discount the impact of Maoist ideology on the Khmer Rouge or deny the existence of a communist movement in Cambodia before the Vietnam War, but rather suggests that without the Vietnam War and the US bombing of Cambodia in the late 1960s and early 1970s, it is unlikely the Khmer Rouge would have been able to gain such a support base among the rural peasants in Cambodia. In other words, the impact of the Vietnam War on Cambodia allowed the Khmer Rouge to exploit dissatisfaction with the Sihanouk and Lon Nol governments and gain support for their unique, extreme brand of Maoist-nationalist revolution.

If the Cold War played a role in the Khmer Rouge's ascension to power, it played an even bigger role in the ensuing impunity regarding the excesses of 1975-9. It was Cold War tensions and Sino-Western suspicions of the Vietnamese in Indochina that ensured the Khmer Rouge could continue representing Cambodia at the United Nations, alone until 1982 and as part of a coalition until 1991. Chinese weapons and expertise meant that the Khmer Rouge could continue to fight against the Vietnamese sponsored PRK (also a Soviet orientated communist state) until well into the 1990s. The joint Sino-American effort to ensure Thailand and other ASEAN countries isolated Vietnam and Vietnamese influenced states (including Cambodia) both politically and economically was also successful. Throughout the 1980s, the PRK faced daily security problems in the form of skirmishes and clashes with Khmer

²⁶⁵ Kiernan, Ben (2002) is an example of this.

Rouge and other rebel forces and had to rely on economic support from Vietnam and the Soviet Union after Western and Chinese embargoes were imposed in the 1980s. This created a situation where the state had to fight for survival, and was in no state to search for (well hidden and protected) Khmer Rouge leaders, put them on trial and give victims justice.

The end of the 1980s and early 1990s, beginning with Sino-Soviet rapprochement and ending with the breaking up of the Soviet Union, brought in winds of change. The end of the Cold War, the beginning of the 'end of history' and the era of democratisation brought new challenges for the new, democratic Cambodian state. The idea that liberal democracy was the pinnacle of political development was seized. However, it was impossible to implement a successful liberal democracy, celebrating human rights, a strong and fair judiciary and political freedom, before ending two decades of impunity regarding the genocidal policies of the Khmer Rouge. Therefore, the triumph of the liberal democracy and the accompanying ideology gave the international community and the new Cambodian government impetus to implement a transitional justice scenario in Cambodia and seek justice for the millions of Khmer Rouge victims.

However, the transformation from authoritarian communist state to liberal democracy has not been as straightforward as hoped. As discussed while analysing the state of Cambodian democracy, there are still serious problems pertaining to political freedom, human rights and corruption. These problems do not just affect the quality of democracy in Cambodia, but also the effectiveness of transitional justice. Concerns have been raised about the independence of the judiciary, even among the Cambodian judges participating in the ECCC. Hudson Kingston states that Cambodian judges often face threats of violence if they do not rule the way they are supposed to, and even when they are allowed to rule fairly, the rulings are often not accepted by the government.²⁶⁶ Political involvement in the judicial system was evident in 2009 when Prime Minister Hun Sen said the tribunal should stop

²⁶⁶ Kingston, Hudson, 'Corruption, Marginalisation and Delay : What "Justice" Means In Cambodia', *Minnesota Journal of International Law*, vol. 20 (2011), p16.

prosecuting after the existing five detainees have been tried.²⁶⁷ In response to this, the ECCC's international judge Sylvia Cartwright stated, "comments, politically motivated or otherwise, which appear to interfere with [the court's] independence, should be deplored".²⁶⁸ However, in a country where the government regularly uses the judicial system as a means to repress its opponents, the possibility of political interference in the ECCC procedure has to be taken seriously.²⁶⁹

The future of transitional justice in Cambodia does not look bright if it carries on in its current form. Tribunal heavy justice, as seen in Cambodia, can only achieve so much. All senior Khmer Rouge leaders have either already been indicted, or are already dead, and the ECCC is under political pressure to finish its investigations. Yet studies have shown Cambodian society is still divided and the Khmer Rouge crimes have not been forgotten. Cambodian and international NGOs and civil society have made attempts to introduce other transitional justice mechanisms, such as truth commissions, genocide education programmes and symbolic reparations. However, there has been little or no governmental support for any of these initiatives, perhaps out of fear that the murky pasts of some members of the government will be exposed. It remains to be seen whether Hun Sen, the man who once said Cambodia should "dig a hole and bury the past", can summon up political courage and encourage a nationwide discussion about the Khmer Rouge years involving all levels of Cambodian society, perpetrators, bystanders and victims alike. Only then can Cambodia confront the past and look towards the future.

²⁶⁷ Goldstone, James A., 'No Justice in the Killing Fields', *New York Times*, published 26th April 2011, accessed 14th June 2011 at <http://www.nytimes.com/2011/04/27/opinion/27iht-edgoldston27.html>

²⁶⁸ Human Rights Watch, *Cambodia: Political Pressure Undermining Tribunal* (2009), supra note 43.

²⁶⁹ The government has brought lawsuits to shut critical newspapers down, and has also debarred lawyers representing opposition leaders, especially from the Sam Rainsy Party. For more information see: Kingston, Hudson, 'Corruption, Marginalisation and Delay : What "Justice" Means In Cambodia', *Minnesota Journal of International Law*, vol. 20 (2011), p30.

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University of Vienna, MA Global History and Global Studies, 2008-2011, award pending

Subject areas studied include: Contemporary History, Global History, Politics, International Development, East European History and Genocide Studies.

London School of Economics and Political Science, University of London BA (Hons) History, 2004-2007, 2:1 (66% average)

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I submitted a dissertation entitled: "A race in which our interest lies in neither coming first or last" – Anglo-GDR Relations and the Recognition Question during the Ostpolitik Era (1969-1973)"

Chelmsford County High School for Girls, Chelmsford, Essex (2002-2004)

I took A-levels in 2004, in the following subjects: History (A); English Literature (A); Economics (A); General Studies (A).

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Employment History

March 2009 - August 2011, Native Speaker Teacher in Vienna, Austria

I teach English to primary school children in primary schools in the 3rd district of Vienna. My base school is VS Kolonitzgasse.

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