

Mediating memory: ‘justice’ and ‘reconciliation’ at the Extraordinary Chambers in the Courts of Cambodia

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Memory is central to the aims and work of war crimes trials: reckoning with past wrongs, acknowledging past sufferings, and reconciling previously divided communities. This paper reflects on examples of how the two principal normative strategies at the Extraordinary Chambers in the Courts of Cambodia (ECCC) – ‘justice’ and ‘reconciliation’ – are mediated with the public. Through this lens the paper brings into question how memory in Cambodia today can exist in conflict between state sanctioned and localised accounts of the past. The paper focuses on work conducted by a Cambodian NGO, the Centre for Social Development, in preparation for and on the day of the Pailin public forum on ‘Justice and Reconciliation’, held 24th October 2008. The Pailin public forum is of particular interest because the city is principally comprised of former Khmer Rouge members and was the home to a number of senior Khmer Rouge leaders now indicted by the ECCC. The case is therefore instructive for understanding how i) an authoritative reading of the past can materialise at the ECCC, but actually be mediated with the public through civil society outreach and ii) the varying perspectives through which groups contest, resist or accept the particular organisation of memory propagated by the ECCC. I suggest this has serious implications for the realisation of the ECCC’s normative strategies of ‘justice’ and ‘reconciliation’.

The Extraordinary Chambers in the Courts of Cambodia

The Extraordinary Chambers in the Courts of Cambodia (ECCC) were established in 2006 to prosecute under international and Cambodian law “senior leaders” and “those most responsible” for crimes perpetrated during the Democratic Kampuchea (DK) ‘Khmer Rouge’ regime. The court is one of a ‘new wave’ of mixed tribunals, comprised of both international and domestic staff, that seeks to maximise a sense of domestic ownership over proceedings. As of June 2009, the ECCC had indicted and charged five persons for crimes against humanity, war crimes and torture, with the first trial of ‘Duch’, the former head of the S-21 interrogation facility, ongoing.

The composition of transitional justice mechanisms tends to emerge in ways which favour existing hierarchies of power. The ECCC is no different to this pattern. The restricted mandate for prosecutions – personally to “senior leaders” and “those most responsible”, and temporally to the 1975-1979 period – was a crucial factor in obtaining consent from the Cambodian government and mobilising international support for the trials (Ciorciari 2006). In the first instance, by ascribing blame only to senior leaders, the trials do not jeopardise the domestic politics of reconciliation by stigmatising large numbers of ‘lower-level’ perpetrators. Moreover, the temporal mandate precludes proper institutional scrutiny of the human rights abuses that occurred during the broader Cambodian conflict spanning in different guises, the period from 1945-1999 (Kiernan 2002); a period including purges against left-leaning dissidents under the Sihanouk regime in the 1960’s, pogroms

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against ethnic Vietnamese during Lon Nol's Khmer Republic (1970-1975), the hundreds of thousands killed by the illegal carpet bombing of Cambodia by the US in 1973, the widespread use of forced labour and detention without trial by the People's Republic of Kampuchea (PRK) (1979-1989), and the continuing Khmer Rouge perpetrated massacres of civilians that occurred after their removal from power in 1979 (whilst the group was seated at the UN and supported directly and indirectly by the international community).

The premises of the ECCC mechanism, therefore, reveal the court as an explicitly political means of reckoning with past violence. Moreover, a close look at the ECCC's construction of culpability shows how neatly war crimes trials organise memory: they ask us to remember highly particular events through (necessarily) factual/forensic – rather than contextual or historical – discourses, ascribing them moral meaning in highly specific ways. Tasked with the goals of providing 'justice' and 'reconciliation', the ECCC is as much about forgetting as it is about remembering.

Civil society outreach: Public forums on 'justice' and 'reconciliation'

The ECCC has been widely criticised for its failure to properly conduct public education in its work. The 2009 Berkley study, 'So We Will Never Forget', found that a majority of ordinary Cambodians (85%) had little or no knowledge of the ECCC (improving outreach was a key recommendation of the study). In this light, it is unsurprising that Cambodia's burgeoning NGO sector has taken the lead in conducting outreach for the ECCC and engaging local populations in the judicial process, often with the endorsement and participation of ECCC staff.

The Centre for Social Development (CSD) is one such organisation. CSD has been conducting provincial public forums for local populations in Cambodia on issues of 'justice' and 'reconciliation' since 2000. As Chea Vannath – then CSD director – notes on the initial forums, '...the idea was to ask whether a trial of former Khmer Rouge leaders should or should not be held' (2002:304). Today, whilst the forums retain a strong emphasis on 'facilitating dialogue on issues of justice and reconciliation' within a 'safe environment', the creation of the ECCC in 2006 has meant that the forums are now less able to accommodate debate about whether justice is or is not *necessary*, as they did in 2000. 'Justice' at the ECCC is now the dominant discourse that lends itself to the delimitation of what can and cannot now be said about the KR period (and publicly, I would argue, the protracted 1945-1999 civil conflict altogether). Rather, following the establishment of the ECCC in 2006, the forums are predisposed to disseminate information about the ECCC mechanism and how 'justice' and 'reconciliation' follow from this. Moreover, the attendance at the forum of 'authoritative' voices from the court – judges, prosecutors, defence staff etc – means that discussion at the forums is further constrained, resembling more a question and answer session than a 'forum for open dialogue'.

The CSD public forums today now also include a preparatory visit to Phnom Penh to tour the Tuol Sleng Museum of Genocide Crimes, Cheoung Ek Killing Field, and the ECCC court buildings by a section of the participants. The visit is therefore structured in such a way as to demonstrate 1) the factual evidence of KR atrocities (the 'truth'), 2) a site that is of significant symbolic and iconic memorial importance dedicated to those atrocities ('the nation'), and 3) to then demonstrate the now authoritative (and seemingly *obvious*) moral response to those atrocities ('justice' at the ECCC). As one CSD staff member remarked, the rationale behind the visit to the Phnom Penh sites is to

provide 'high quality information about the Khmer Rouge' and to 'activate' participants' memories in preparation for the public forum in order to maximise involvement.

Visiting sites of atrocity: Tuol Sleng and Cheoung Ek

Tuol Sleng Museum of Genocide Crimes and Cheoung Ek Killing Field are the two principal national memorial sites dedicated to the atrocities of DK. Before the DK regime Tuol Sleng was a high school compound and the Cheoung Ek site, located just outside Phnom Penh, was an old Chinese cemetery. Both sites were discovered in the period following the 1979 Vietnamese intervention in Cambodia and, as evidence of Khmer Rouge atrocities, both sites were put to use in purchasing support for the newly founded PRK regime: domestically the sites were displayed to caution against a return of the 'genocidal' 'Pol Pot and Ieng Sary clique', thus personalising responsibility for the DK crimes around senior leaders of the Khmer Rouge to fit the PRK's 'reconciliation' policy of the 1980's; internationally the sites were projected as a means of legitimating the Vietnamese intervention in Cambodia on humanitarian grounds (Hughes 2006). Today, both sites have provided crucial evidence for the ECCC prosecution, yet the principal functions of Tuol Sleng and Cheoung Ek are as tourist attractions. The vast majority of visitors are non-Cambodians (Williams 2007). Because of their distinctly political histories and uses, and arguably now as commoditised representations of DK, the two sites exist in a complex state within the Cambodian moral imagination.

On 7th October 2008, a group of around sixty residents of Pailin were brought to Phnom Penh to tour Tuol Sleng, Cheoung Ek, and the ECCC. The group included a significant number of former lower-level Khmer Rouge. As Williams (2007) has suggested, because there is little textual supporting information on display at Tuol Sleng or Cheoung Ek, it is the 'primary artefacts' of atrocity that make the sites persuasive. At Tuol Sleng, these technologies of display include photographs of corpses found in cells when the site was first discovered; torture implements and shackles which remain in place as they were left in 1979; and in building B displays include the highly iconic 'mugshots' taken upon the entry of those interred at the centre. At Cheoung Ek, visitors walk between mass graves, with shards of bone and clothing littering the pathways, before being confronted by a large memorial displaying some 8000 skulls behind glass casing in a Buddhist stupa.

Tuol Sleng and Cheoung Ek make very particular claims about generalised national suffering in Cambodia at the hands of a few Khmer Rouge leaders intent on genocide. In doing so, each site moves beyond an 'evidential factual/forensic' role to one that also speaks to a 'historical/contextual' 'truth' of the DK regime. In this vein, they also provoked very particular responses from the public forum attendees. One participant attended exceptionally as a former student of Tuol Sleng high school. As the tour had reached the last block of the museum he began publicly denouncing the trial (despite his self-identification as a 'victim that lost many relatives; when I am here, I am shaking with anger'). The former student's reaction to Tuol Sleng is instructive about the diversity of lenses through which ordinary Khmers question the legitimacy of, or are critical of, the ECCC. His dismissal of the ECCC as an effective enterprise arose in the first instance from his feeling that the evidence presented at Tuol Sleng was so overwhelming he could not understand the delay in prosecutions and the protracted legal process.

As sites that make generalised claims about national suffering under the Khmer Rouge, Tuol Sleng and Cheoung Ek are challenging for the Cambodian visitor because they depict Khmer-on-Khmer violence. A number of participants found the displays problematic in this regard, questioning the

‘nonsense’ of ‘people killing their own people’. The difficulty the participants had in rationalising the display of victims of Cambodian mass violence manifested itself through the lens of an offence to their sense of the Khmer ‘nation’. Moreover, the technologies of display – and in particular the display of human remains – made many participants uneasy. According to traditional Buddhist funerary practice, deaths from inauspicious circumstances require cremation as quickly as possible (Hughes 2006). Thus the public displaying of human remains – which usually only occurs for individuals of revered status – can be understood to emerge from an imperative to ‘re-know’ and acknowledge the victims of DK. At Tuol Sleng and Cheoung Ek this imperative, in practice, comes into conflict with traditional cultural approaches to death and mourning.

The ECCC Seminar

Following the tours of Tuol Sleng and Cheoung Ek, the participants were taken for a seminar at the ECCC with Reach Sambath of the Public Affairs Office. The seminar built upon the experience of the day, opening with a discussion of the displays at Tuol Sleng and Cheoung Ek, with Reach Sambath enquiring, ‘Those objects are real, everything is real. How closely did you watch the skulls?’ In response, one Pailin resident remarked ‘Close, very close, to ensure that they were real’. The fact that Tuol Sleng and Cheoung Ek are used to licence the ‘truth’ of DK betrays a tension in aligning ‘personal’ memories to generalised claims about collective experience. As Reach Sambath asked, ‘did you believe the killing was true?’, a woman from Pailin responded that relatives had told her about atrocities, but she had not witnessed anything. In reply, Sambath explained that ‘...no one could see the killing, the killing was kept secret. And people were afraid of the killing sites so they would not go near them.’ In this sense, Tuol Sleng as an evidential premise - cited as an example of ‘secretive’ and ‘unfamiliar’ violence - is then also extrapolated to generalise about experiences nationally, transcending the participant’s uncertainty about her local experience within a national explanatory framework.

By attempting to reinforce and establish the ‘truth’ and authenticity of Tuol Sleng and Cheoung Ek, the seminar was able to refocus around the imperatives used to validate the ECCC. In the first instance, the ‘proof’ of death plays to the need for ‘justice’, specifically thought through the lens of evidence and legal prosecution. As I have noted above, Tuol Sleng and Cheoung Ek lend themselves to this purpose because they portray culpability for DK ‘crimes’ to senior leaders only whilst remaining ambivalent about lower-level Khmer Rouge. This corresponds neatly to the current restricted ECCC prosecutions, and thus is also in fit with the politics of ‘national reconciliation’ because there is a *de facto* blanket amnesty for lower-level Khmer Rouge.

Public forum day

The Pailin public forum was held on 24th October, with over 150 local residents in attendance, alongside a number of ECCC and CSD staff. The morning session was dominated by questions concerning the ECCC mechanism itself, which indicates the visit to Phnom Penh had achieved some success in validating the perceived appropriateness of the ECCC as a necessary process. Despite this there remained some cynicism regarding the costs and procedural delays.

Whilst many of the Pailin residents were receptive to the work of the ECCC, dissent from this reading existed principally among those most familiar with the work of ECCC, and as the session continued it became clear that many former Khmer Rouge residents of Pailin were keen to disinter aspects of the

Cambodian conflict outside of the ECCC's temporal jurisdiction. In their minds, reconciliation hinged upon the mutual recognition of suffering at the hands of political violence outside of the DK period. In other words, reconciliation was contingent upon the acknowledgement of memorial accounts that run beyond – but are not necessarily in conflict – with the construction of culpability established at the ECCC.

This counter-conceptualisation of victim-hood for all of those involved in political violence within and outside 1975-1979 is what brings into question the legitimacy of the ECCC as a reconciliatory strategy because it presents alternative sets of 'victims' and 'perpetrators' that are incompatible with the politics behind the ECCC's establishment. This undermines the normative validity of the court because it is validated on a 'universal' claim that demands accountability and redress for all 'perpetrators' and victims of political violence.

Conclusion

The ECCC construction of 'justice' and 'reconciliation' is contingent on a 'neat' set of a few perpetrators and a largely vague understanding of all Cambodians as 'victims' of the 1975-1979 'rupture'. This portrayal of blame is reflected at Tuol Sleng and Cheoung Ek, and as such they are deployed to help persuade groups that participate in the public forums about the 'truth' of the DK period, and the need of the ECCC as a response to it. The success of these sites in disseminating a reading of the past in the name of the ECCC is very mixed because many of the forum attendees accepted the sites as 'true' and were still sceptical toward the ECCC as a valid or necessary exercise. Similarly, many participants were uncomfortable engaging with the Phnom Penh memorials, and yet were enthusiastic about the work of the ECCC. Whilst the CSD public forum secured some purchase in validating the ECCC as an acceptable endeavour among the Pailin residents, a number of attendees presented counter-claims to victim-hood as necessary for the realisation of 'true' 'justice' and 'reconciliation'. It is in the face of alternative narratives concerning political violence and suffering that the normative validity of the ECCC is at its most vulnerable.

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