

Lund University
Centre for East and South-East Asian Studies
Masters Programme in Asian Studies
Southeast Asian Track
Spring Semester 2010

Justice and The Khmer Rouge: Concepts of Just Response to the Crimes of the Democratic Kampuchean regime in Buddhism and The Extraordinary Chambers in the Courts of Cambodia at the time of the Khmer Rouge tribunal.

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Abstract

The purpose of this study was to analyze two approaches to concepts of a just response to the atrocities of Democratic Kampuchea as they are presently operating in the Extraordinary Chambers in the Courts of Cambodia and in Khmer Buddhism. It assessed what Buddhism and the ECCC offer in answer to Cambodians' justice needs and where both ways of conceiving justice overlap and diverge. The research was a qualitative study from a constructivist perspective using semi-structured in-depth interviews with the monastic community, an official at the ECCC and a group of therapists at an NGO working with survivors. It concluded that in order to answer the justice deficit left by the Khmer Rouge era a polyphonic response working at a micro and macro level, involving both an official process and others rooted in local cultural dynamics is required in order to provide survivors with ways to express their suffering, receive acknowledgement of it, and have their persecutors held to account. Both Buddhism and the ECCC offer ideas on retributive and restorative modes of justice that are complementary to each other and provided a way to calm minds that are still deeply wounded 30 years after the end of the regime.

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Acknowledgements

I want to thank all of the staff at The Lund University center East and Southeast Asian studies. Most of all I wish to thank my supervisor, Dr. Monica Lindberg Falk, who has given me so much support and shown me much kindness. She has been a truly inspirational and kind tutor, I am deeply grateful to her.

Also at Lund University I wish to express my gratitude to Dr. Kristina Jonnsson, who has also aided me greatly over the course of my studies; it was her lecture (in December 2008) that originally inspired me to pursue Cambodian studies, without her initial recommendation of literature in answer to one of my questions I would not have gone down this road to study of Cambodia.

I owe much to the Staff at the Institute for Ethnic Studies (KITA) at the National University of Malaysia, for their support and feedback and in particular Prof. Puayliu Ong who helped me very much in finding contacts and very kindly brought me to her personal temple and introduced me to her friends- I owe her much thanks for her, warmth and assistance towards me, including helping me find both a doctor and a dentist when I was in Kuala Lumpur.

Outside of Lund University and the National University of Malaysia I want to thank Christian Oesterheld, Lecturer at Mahidol University, Bangkok, who provided me with much material, advice and generously shared his contact network and own studies with me. Also I want to thank the staff at the United Nations Economic Commission for Asia and the Pacific Library, in Bangkok who helped me to find rare material during my time interning there. I also wish to thank everyone at the Nordic Institute of Asian Studies for their generosity in providing me with my scholarship to work there in Copenhagen at the end of May and their feedback on my thesis.

In Phnom Penh I want to thank Dr. Judith Strasser at the Transcultural Psychosocial Organization (TPO) who helped me to arrange my interviews with TPO therapists and who gave me a copy of the DVD 'Testimonial Therapy'. Also at TPO I wish to thank the therapists at TPO, Pou-Maline, Taing Hum, Yaim Chamreun, Sarath Youn for their time providing me with a really insightful group interview.

Also I'd like to thank the staff at the Documentation Center of Cambodia public information room for helping me to find material.

I also wish to thank all those who granted me their time for my interviews. Of these I can explicitly name I want to thank Lars Olsen of The United Nations Assistance to the Khmer Rouge Trial (UNAKRT) / Extraordinary Chamber in the Courts of Cambodia (ECCC).

I wish to thank the many Venerables who gave me so much help and support over the last year. Due to my University's ethics code I am not able to name you, but I am deeply grateful to you for everything that you taught me and gave me.

I also particularly wish to thank those friends of mine in Cambodia who helped me with every day translation and helping find my way around Phnom Penh.

I want to thank my mother and my friends in the UK , Sweden, Malaysia, Thailand, Cambodia and Denmark for their support over the duration of writing this over 2009-2010.

List of Abbreviations

CPK	The Communist Party of Kampuchea
DK	Democratic Kampuchea
ECCC	The Extraordinary Chambers in the Courts of Cambodia
GLF	Great Leap Forward
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
KR	Khmer Rouge
RGC	Royal Government of Cambodia
S-21	Security Center 21
TPO	Transcultural Psycho-social Organization
UN	United Nations
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
US	United States

Introduction

On February 17th 2009, 30 years after the fall of Democratic Kampuchea (DK), the trials of senior figures of the ruling party of DK, (the Communist Party of Kampuchea (CPK), also known as the Khmer Rouge (KR)) began (BBC 2009).

The Trials occur in a specially created internationalized court operating within the Cambodian legal system : the Extraordinary Chambers in the Courts of Cambodia (ECCC)(ECCC,2006, p 17). The defendants stand accused of crimes committed during the DK era (April 17th 1975-January 7th 1979) (Becker, 1998, p 555-556), the charges emanating from both Cambodian Law (Murder, Torture, Religious Persecution) and International Law (Genocide, Crimes against Humanity, War Crimes, Destruction of Cultural Property, Crimes against Internationally Protected Persons) (ECCC: 2006, p 15).

It should be noted that while the KR were responsible for violence before and after these dates, when this study discusses the ‘DK/KR era’ it refers to atrocities in Democratic Kampuchea between the dates to which the ECCC’s jurisdiction is limited (ECCC, 2006, p 8).

The subject of this research is ‘justice’ in relation to the atrocities of the DK regime. It will examine how ‘justice’ is conceived, both by the ECCC process and in Theravada Buddhism; what these two conceptions offer to victims and re-emergent Cambodia; and the interplay between these two epistemologies of ‘justice’.

Purpose and Research Questions

In comparing two philosophical approaches to justice, one a formal internationalized legal process (the first such internationalized tribunal in a Theravada Buddhist society) the other a key cultural dynamic in Cambodia, (upwards of 90% of the population identifying as Theravada Buddhist) (Ciorciari and Sok, 2009, p303)), this thesis can assess how each perceives and provides for Cambodian ‘justice needs’ and where there is overlap and divergence in these understandings of justice; it will also demonstrate the relevance of both towards those who suffered during DK.

It discusses four questions:

What purpose does ‘justice’ serve in Cambodia in context of the atrocities of the Khmer Rouge and today’s Cambodia; what are Cambodia’s ‘justice’ needs?

What is the ECCC’s concept of justice with regard to the KR era and what does it offer survivors/victims?

What is the Buddhist concept of justice towards the atrocities of the Khmer Rouge and what does it offer survivors/victims?

How do these notions of justice toward the Khmer Rouge meet and diverge? Do they mutually reinforce each other ?

Methodology

Design and Aim

This study focuses on abstract themes : philosophies of justice, concepts of suffering and healing. Such themes are not quantifiable in ‘hard data’; a non-experimental design is the most appropriate. It does not aim to extract generalizability (Silverman, 2000, p 111) but takes a serendipitous approach, intending to make a ‘thick description’ from which understanding can be reasonably drawn (Moses and Knutsen, 2007, p 202-204).

It aims to understand how two views of ‘justice’ are applied to the horrors of the KR period, seeks to identify where they overlap or diverge, and asks what they offer the justice needs of a nation emerging from a dark history.

To achieve thick description and understand ideas of justice, it will use primary data, collected in person, and a large amount of secondary data. The research technique is that of grounded research (Bryman, 2001, p 390)

Two epistemologies of ‘justice’ are studied, Theravada Buddhism and the Law used in the ECCC- two forms of knowledge with different roots and institutional expressions; two ways to interpret and react to the horrors of the KR regime. Thus its position is interpretive, in particular the phenomenological stance of *Verstehen* (Bryman, 2001, p 13-14).Such an empathetic approach fits an attempt to understand

informants' perceptions of and reactions to historical events (Moses and Knutsen, 2007, p 153).

The thesis asks, 'What is the meaning of 'justice' to Cambodian society?' exploring what the two concepts of justice offer those who lived, suffered, and committed crimes during the KR period. It views the two concepts as moving towards the same goal - a just response to a specific calamity. However, both have different ways of conceptualizing and operationalizing separately developed epistemological understandings and reactions to the same events, and thus their methods in 'practicing' 'justice' differ.

This is not a comparative study in the sense that it attempts to evaluate two concepts against each other. Rather, it seeks to understand how two concepts of justice operate simultaneously in a specific national and historical context.

Method of Data Collection

I spent five weeks in March and April 2010 in Phnom Penh conducting interviews and talking with those around me, as well as reading daily papers and watching local television news. At this time the first trial, of Kaing Guek Eav (Comrade Duch), former head of Tuol Sleng prison (security center 21(S-21)) had finished and the judges were considering their verdict. The Duch case was uppermost in peoples' minds when discussing the tribunal.

Semi-Structured Interviews

This study is ethnographic, using both primary and secondary sources. The primary data is based on five interviews with a total of eleven people. I interviewed six monks at their Pagodas in Phnom Penh; one was a group interview with three monks attending; the other two were one-to-one. I had one telephone interview with a Cambodian monk in the USA.

I conducted a group interview in Phnom Penh with four therapists working for an NGO, the Transcultural Psycho-social Organization(TPO), which works with Buddhist monks and the ECCC outreach department, and one one-to-one interview with an ECCC official working for the United Nations Assistance to the Khmer Rouge Trials (UNAKRT).

Since the study sets out to understand epistemological and ontological ‘world views’(Bryman, 2001, p332) all interviews were semi-structured (Bryman, 2001, p314-315) based on prepared questions (see appendix).

My initial decision was that interview subjects should be drawn from both the ECCC and the monastic community. Those contacts then assisted me in finding others. Thus material has been collected using ‘snowball sampling’(Bryman, 2001, p 98-99). Interviews enabled me to understand how the concepts studied here are understood by the subjects (Silverman, 2000, p 90). They are used in the text to support the analytical framework (Bryman, 2001, p 268)

Limitations

While most of my interviewees were conducted in English, one set at the Transcultural Psycho-Social Organization (TPO) required the presence of a translator. This may mean that that the precise words of the informant were not carried through from Khmer into English. I have indicated where interviewee’s words have been translated and (as in all other quotations) used the exact wording the translator gave me. The translator worked for the same organization (TPO), so the language, including technical terms, would be familiar,. While the precise wording may not have been carried through, I believe the thrust of what was said will have been well conveyed, with only minor amendments by the translator

My own role here should be mentioned (Reflexivity)(Seale, 2004, p 377-378). I am a white, western, young male. Most of my interviews with monks were with males who (except one) were around my own age (mid 20s to mid 30s), themselves either studying for masters degrees or having recently done so; this shared experience was perhaps an advantage. The interviews were conducted in their monastery quarters, except one interview on ‘Skype’ with web-camera with a Cambodian Monk studying in the USA.

My gender also perhaps ensured that cultural assumptions about gender relations (especially in context of Theravada Buddhism) were avoided. Being western was also perhaps advantageous as my informants were careful to explain cultural and religious issues I might have been assumed to know if I came from a Buddhist

country myself. In case of the one older monk I spoke to I behaved slightly more formally in deference to his age

TPO and the ECCC are international organizations, used to international academic researchers. Both these sets of interviews were in the workplaces of the organizations.

Finally, constructivist research such as this lacks a strict demarcation principle. Its focus is on agency and context and empathetic understanding. There are surveys on the Cambodians attitudes to the trials; I have employed them here. However, it would be impossible to trace the epistemological origins of attitudes using quantitative method and even if the same people were interviewed, their views might change in context (for example before and after a verdict) (Moses and Knutsen, 2007, p 285-287). I acknowledge that this is a study limited by time and word counts. There is far more to be studied.

Ethics

All interviewees gave their consent and were fully informed of my intended use of the data; all allowed me to use their words in the text. I have masked the identities of all the monks. The only people named are therapists working at TPO and the ECCC official. In both cases I was given permission by the informants to name them in the text. I make clear demarcation between my analysis and the informants own words.

Historical background the atrocities of Democratic Kampuchea

This section outlines the atrocities of the DK regime between April 17th 1974-January 7th 1979. It will establish a point of reference for later chapters.

The death toll of the DK regime is a matter of contention (Kiernan, 1996, p 456-460). Estimates range from 740,000 (Vickery's, quoted Kiernan, 1996, p 457) to Kiernan's estimate of at least 1.5 million (Kiernan, 1996, p 460). Heder places the figure around 1.7 million (quoted Ratner, Abrahams, Bischoff, 2009, p 313). Cambodian Prime Minister Hun Sen states that the figure is over 3 million (quoted ECCC, 2006, p 1). The Yale Cambodian Genocide Program points to an approximate figure of 21% of the population as it stood in April 1975 (1.7 million) (CGP, 2010). The exact figure is, and will probably remain, unknown; however, between 1.5 and 3.5 million

died from torture, execution, starvation or disease, mostly as a product of decisions taken by KR during the DK regime (Fawthrop and Jarvis, 2004, p 3-4).

KR ideology combined ideas from abroad, Marxist-Leninism, Stalinism, Maoism, nationalism, post-colonial theory (Jackson, 1988, p 241-243) and (unconsciously at least) from Cambodian autocratic political tradition of the god-kings of Angkor (Bit, 1991, 3-4)

Fanatical ideological literalism was paramount in policy formulation, regardless of consequences for the population (Jackson, 1989, p 44). Karl Jackson (Jackson 1989, p 39) identifies four components to KR ideology: total self reliance (similar to the North Korean *Juche*) (Chandler, 1991, p 237); dictatorship of the proletariat; supremacy of the party (Jackson, 1988, P 242)); immediate economic and cultural revolution. Many policies adopted by what was called 'the organization' or '*Angkar*' (Becker, 1986, P 165) derived from China's 'Great Leap Forward' (GLF). The GLF aimed to skip transitional phases and achieve immediate communist society (Quinn, 1989, p 223-224). Despite warnings from the Chinese government that the GLF had been a disaster the KR did not learn from the Chinese experience (Jackson, 1989, p 63).

To achieve self-reliance society was set to work in the rice fields on the premise 'if we have rice we have everything' (Jackson, 1989, p 42-48). Cambodia's economy was restructured in weeks, the 'logic' being that if self-sufficiency in food could be achieved further modernization could follow (Becker, 1986, p 166). Despite the policy's almost immediate failure the KR persisted, resulting in mass starvation (Jackson, 1989, p 63-64). Self-determination was so central to the KR ideology that as the population were dying, DK refused food/medical aid from its closest ally, China (Becker, 1986, p 170).

Money was banned; the population was not paid; no leisure time was allowed; communes ate (if at all) in communal halls, and lived in barracks (Kiernan, 1996, p 163-164). Cambodia became a slave labor camp (Becker, 1986, p 167). Everyone had to wear the same uniform, have the same haircut (Bit, 1991, p 81).

Foreigners were expelled (Kiernan, 1996, p55). Cultural ‘emancipation’ and the re-starting of history required a complete break with, indeed the destruction of, everything that came before (Becker, 1986, p 188).

The KR project was to ‘Create a society with no past and no alternatives’ (Sihanouk, 1980, quoted Jackson, 1989, p 58), re-working historical narratives to favor Marxist-Leninism (Chandler, 1999, p 106-109), starting society and the national narrative again at ‘year zero’ (Poethig, 2002, p 24-25). This meant the destruction of traditions deemed ‘capitalist’, ‘class-oppressive’, ‘bourgeois’ (Hinton, 2008, p 62).

Religion, custom, and culture were targeted; literature was destroyed, dancing, art, music, crafts and those who practiced them mostly killed (Boyden and Gibbs, 1997, p 115-116). Books, photos, private property were banned. Those not working hard enough, or not expressing fervent zeal for the revolution, or complaining about conditions, were said to suffer ‘memory sickness’ (pining for bourgeois ways). The cure was execution. For the KR this had the added benefit of removing unrevolutionary memories from the Khmer body politic (Hinton, 2008, p 62-64).

Religion in particular was repressed. KR ideology was deeply anti-clerical. Buddhism, central to Cambodian life, community and social welfare provision, was nearly obliterated (Harris, 2005, p 229); religious institutions were destroyed *en masse* and monks forced to disrobe and work in collectives (Suksamran, 1993, p 141). The monastic community was particularly vulnerable, as their roles as community leaders, teachers and possessors of foreign and ancient knowledge (what the KR were seeking to destroy) marked monks as traitors (Yamada, 2004, p 213). Of 80,000 monks in 1975 only 3000 remained alive by 1979 (Harris, 2001, p 75-76). Traditional culture was replaced with ‘revolutionary culture’ (Becker, 1986, p 205)

Society was restructured, all city dwellers relocated to the countryside (Vann, 1998, p 12-13). People were categorized - the only valid professions being peasants, soldiers or workers (Becker, 1986, p 27); life was devoted to labor with all other ‘distractions’ (education, religion, family, reading, entertainment cooking, the pursuit of money) banned (Becker, 1986, p 162-167). The KR distinguished between ‘new people’ (urban professionals, *ancien regime*, people ‘new’ to the revolution, who lived in the areas controlled by the previous government, the Khmer Republic) and ‘old people’ (the peasantry, revolutionaries, those who lived in KR-controlled areas during

the civil war preceding the KR takeover) (Becker, 1986, p 226). ‘Intellectuals’ were ‘counterrevolutionary’ – anyone with knowledge deemed irrelevant to the new order (anything other than labor or soldiering) was potentially subversive; thus, doctors, teachers, lawyers, journalists, artists etc were the first to go to the ‘killing fields’ (Fawthrop and Jarvis, 2004, p 14) (Becker, 1986, p 162-167).

KR ideology was xenophobic; ‘being Khmer’ was central to the status of ‘old person’ (Kiernan, 1996, p 26). Chinese, Vietnamese, Thai, Laotian minorities living in Cambodia were marked out as not properly Khmer (Becker, 1986, p 249-251). Initially the KR allowed some ethnic groups to be included if any cultural marker distinguishing them as an ethnic group was abandoned and they assimilated (Becker, 1986, p 211); yet, as time moved on and the KR attempted to further ‘purify’ the revolution, ethnic groups were targeted (Kiernan, 1996, p 260). ‘Alien culture’ such as the Cham Muslim minority (initially courted by the KR) was later destroyed (Mosques demolished, the Koran burned) and the Chams subjected to genocidal policies (Becker, 1986, p 251-252).

Everything was under *Angkar* control, (Kiernan, 1996, p 167). Individuals could not be loyal - only classes were loyal (Becker, 1986, p 210). The family unit was viewed as subversive, private, a distraction from work to be broken up (Becker, 1986, p 184). Children were more useful if taken away, or encouraged to spy on their parents and witness their executions. Children went to indoctrination school by age 12, so the next generation would be ideologically pure, free from previous cultural influence. Children were taught to enjoy killing, learning how to torture animals to ensure prolonged agony (Quinn, 1989, p 237). Marriages was arranged by the party. *Angkar* aimed to ‘clean’ Khmer culture (no drinking, no pre-marital sex, no gambling, no dirty jokes) (Jackson, 1989, p 66-68).

The method to enforce total dominance was ‘revolutionary violence’ (Becker, 1989, p 209). Rather than attempting to persuade the population of revolutionary ideology via education, media propaganda and personality cults, as other Communist regimes, the KR used only violence and fear (Jackson, 1988, p 243). Believing they had identified two reasons for the failure of the GLF (opposition from within the Chinese Communist Party and the size of China making policy difficult to implement) the KR killed all opposition in the party and ensuring the population was always under

surveillance; this was achieved by relocation of all urban dwellers to manageably sized, easily monitored rural collectives, where fear kept them compliant(Quinn, 1989, p 230-231). Law was severe and procedure-less. Minor ‘offenders’(complaining about lack of food, sluggish performance at work, having sex outside marriage) were executed (Jackson, 1989, p 243). People daily witnessed death and torture of friends, colleagues, strangers and family (Bit, 1991, p 85) alongside the rampant disease and nationwide famine resulting from KR policy.

Enemies (spies, class traitors, counterrevolutionaries, the CIA, the Vietnamese) were perceived everywhere (Becker 1986, p 170-183). The KR was a small organization (14,000 members and an army of 68,000 - insufficient to maintain control)and as such paranoid about secrecy as to size, membership and leadership; it maintained an illusion of permanent surveillance - no one knew who *Angkar* /the organization were; most people believed them to be everywhere; a common phrase was ‘*Angkar* has the eyes of a Pineapple’ (Boyden and Gibbs, 1997, p 32)

The KR paranoia and wartime footing led to many deaths; each policy failing was blamed on ‘subversive elements’(Hinton, 2005, p 11). The constant quest for a ‘pure’ revolution resulted in purge after purge (Becker, 1986, p 211).The KR’s ‘enemies’ list proliferated, beginning with leaders of the former regime, class/party traitors, ethnic groups, religious and intellectuals (Ratner,Abrams and Bischoff, 2009, p 310-311). The list shows undefined, abstract groups. In a paranoid atmosphere and a failing state, anyone could fall into any category. Between 1975-1976 most killings were purges against those affiliated with the previous regime; during 1976-1979 the focus switched to those with ‘bourgeois tendencies’ - not explicit opponents of the regime but ‘objectified’ enemies (Chandler1999, p 41-76). Obsessed with ‘enemies’ (Kiernan, 2007, p ix-x)the regime sent the Sentebal (security police)(Chandler, 1999, p 3) to purge thousands of local officials, their families and associates; ‘ethnic cleansing’ and purges intensified in the face of local rebellions and the dawning of interstate war with Vietnam (Kiernan, 2007, p x-xi). After forced ‘confessions’ in torture facilities across the nation, prisoners (if they had survived) were taken to the ‘killing fields’(Hinton, 2005, p 11).

David Chandler’s *Voices from s-21* lists the experience of survivors :

Beating (by hand, with a heavy stick, with branches, with electric wire), cigarette burns, electric shock, forced to eat excrement, forced to drink urine, forced feeding, hanging up-side-down, holding up arms for an entire day, being jabbed with a needle, paying homage to images of dogs, having fingernails pulled out, scratching, shoving, suffocation with a plastic bag, water tortures (immersion drops of water onto forehead) (Chandler, 1999, p 130).

The legacy of DK remains; a generation of doctors, educators, people who would be prominent in any reconstruction program, are dead (Fawthrop and Jarvis, 2004, p 14-16). When the Vietnamese took Phnom Penh in 1979 they found the corpse of a country. Collectivization had ruined agriculture, schools and hospitals were destroyed, along with their staff : of 20,000 teachers in 1975, 7000 remained, of 450 doctors only 45 were still alive. Infrastructure (electricity, roads, sanitation, communications) was irreparable; there was no industry; hundreds of thousands of children were orphans (Hughes, 2005, p 20). The greatest scar was the effect of almost four years of famine, mass killing, torture, family breakup, cultural destruction, genocide - the destruction of self-identity (Bit, 1991, p 81). Most Cambodians in their 30s and 40s have witnessed such events (Boyden and Gibbs, 1997, p 32). Approximately 2 million people suffer from Post-Traumatic Stress Disorder (PTSD) (Unac, 2006, p 158)

This general overview of policy decisions that resulted in millions of dead fails to capture the enormity of what happened in DK. There are hundreds of thousands of testimonies that illustrate how this period was experienced in individual lives. Below is a poem displayed in Toul Sleng (former prison and torture center) now the site of the Cambodian Genocide Museum, that conveys a better sense of that time and how people experienced it than I am able to in a historical summary.

“The New Regime” by Sarith Pou

No religious rituals.
No religious symbols.
No fortune teller.
No traditional healers.
No paying respect to elders.
No social status. No titles.

No education. No training.

No school. No learning.
No books. No library.
No science. No technology.
No pens. No paper.

No currency. No bartering.
No buying. No selling.
No begging. No giving.
No purses. No wallets.

No human rights. No liberty.
No courts. No judges.
No laws. No attorneys.

No communications.
No public transportations.
No private transportations.
No traveling. No mailing.
No inviting. No visiting.
No faxes. No telephones.

No social gatherings.
No chitchatting.
No jokes. No laughs.
No music. No dancing.

No romance. No flirting.
No fornication. No dating.
No wet dreaming.
No masturbating.
No naked sleepers.
No bathers.
No nakedness in showers.
No love songs. No love letters.
No affection.

No marrying. No divorcing.
No marital conflicts. No fighting.
No profanity. No cursing.

No shoes. No sandals.
No toothbrushes. No razors.
No combs. No mirrors.
No lotion. No make up.
No long hair. No braids.
No jewelry.
No soap. No detergent. No shampoo.
No knitting. No embroidering.
No colored clothes, except black.
No styles, except pajamas.

No wine. No palm sap hooch.
No lighters. No cigarettes.
No morning coffee. No afternoon tea.
No snacks. No desserts.
No breakfast [sometimes no dinner].

No mercy. No forgiveness.
No regret. No remorse.
No second chances. No excuses.
No complaints. No grievances.
No help. No favors.
No eyeglasses. No dental treatment.
No vaccines. No medicines.
No hospitals. No doctors.
No disabilities. No social diseases.
No tuberculosis. No leprosy.

No kites. No marbles. No rubber bands.
No cookies. No Popsicle. No candy.
No playing. No toys.
No lullabies.
No rest. No vacations.
No holidays. No weekends.
No games. No sports.
No staying up late.
No newspapers.

No radio. No TV.
No drawing. No painting.
No pets. No pictures.
No electricity. No lamp oil.
No clocks. No watches.

No hope. No life.
A third of the people didn't survive.
The regime died.

Defining suffering, Defining justice.

This section discuss what purpose does 'justice' serve in context of mass atrocity?
What are the 'justice needs' in such a context?

To assess the justice needs of post-atrocity society, one must analyze how that society, and individuals caught up in mass atrocities, have experienced suffering; and what justice solutions offer victims. Once the experience is assessed in terms of how it was endured and can be expressed and understood, one can define how it can

be dealt with in terms of ‘justice’ by providing definitions - what is meant by ‘justice’, what is the purpose of ‘justice’, what is ‘justice’ supposed to offer?

This section will provide theoretical frameworks drawn from selected articles in two volumes of essays (*Violence and Subjectivity* and *Social Suffering*). Both deal, from various disciplinary perspectives, with how violence and suffering affect the lives of those who have endured traumatic experience. This section will outline how such suffering can be dealt with in terms of modes of justice.

No Theory of Suffering.

Due to its structure and subjects this thesis has automatically created a framework for examining how trauma (torture, enslavement, abuse under the KR) is experienced and what ‘treatment/ remedy’ is offered (ECCC justice and Buddhism) in today’s Cambodia (Kleinman, Das and Lock, 1997, p x). However, a flaw in this construction must be acknowledged. The Nazi Holocaust scholar Langer describes the ‘clinical’ approach to addressing ‘treatable trauma’. He regards the notion of ‘treatment’ of survivors of such atrocity as a fallacy. No process in medicine, law or religion can deal with the truth of an ordeal on the scale of the atrocities committed in Cambodia or against European Jews in the 1940s. Horrific memories are not a symptom of illness that can be treated; forgetting is not a cure; and there is no ‘liberation’ from the past. People who have suffered cannot be ‘freed’ from trauma, nor do many wish to forget (Langer, 1997, p 54-55). Holocaust survivors/Cambodians have to live with the memory of the evil they encountered for the rest of their lives; it is not something to be ‘got over’. It is important to differentiate between being defined by a massive trauma (in Langer’s view inevitable for victims of atrocity) and being ‘disabled’ by it (people can function, whilst carrying their pain with them). The effects of atrocity upon a person or community have to be understood if effective assistance is to be provided. Ultimately what occurred is abominable and defies reasoned explanations, or the ascription of ‘meaning’ promulgated by ‘the tiresome cliché about people who do not learn from the past [being] doomed to repeat it’ (Langer, 1997, p 59). The Holocaust was not an isolated event from which we have learned. Cambodia, Bosnia, Rwanda, prove humanity has learned nothing. Analyzing mass atrocity within Enlightenment meta-narratives about ‘human progress’ attempts to normalize something which is not a norm of the human experience, though a permanent feature

of human history (Langer, 1997, p 53). The illogical/irrational (the murder of millions) cannot be made to fit into logical /rational explanatory frameworks seeking to provide orderly analysis and visions of hopeful futures. Langer argues that the survivors of atrocity continue in a vein of toleration, of living with their trauma and private continued endurance - it is this understanding of living with the abuse committed toward the person/community that efforts of renewal must develop (Langer, 1997, p 58-63). This is a bleak outlook. Langer concludes that the only wise outlook on the future is that of ‘alarmed vision’ : genocide will recur; humanity has not progressed; we must be alert for the clues to mass atrocity prior to its inevitable recurrence, in order to prepare a response.

Social science discourses on torture, such as Foucault’s ‘revenge of the sovereign’ analysis(Chandler 1999, p 117), provide frameworks for the analysis of abuse by identifying it within metanarratives; however, social science theory and ‘the dualisms of social analysis’ (Kleinman, Das and Lock, 1997, p xix) prove insufficient for dealing with extreme suffering since they are limited by frames that cannot possibly capture what it is to have been a victim of such abuse (Daniel, 1996, p 350)(Langer, 1997, p 54).

Das goes further; she describes the attempt to draw ‘meaning’ out of suffering as the constructed discourse of the powerful (Das, 1994, quoted Lawrence, 2000, p 200). Academia and policy too often demand a ‘big theory’ / metanarrative and explanation. However this is not feasible in relation to a country where everyone has their own story, own life narrative, and own way of conceptualizing, dealing with and representing their experience (Daniel, 2000, p 362-363). This thesis has to abandon any master narrative. Theory here is a methodology, not a framework.

Conceptual/epistemological frames are examined with reference to their implications for individual and communal ways of coping with the past (Das and Klienman, 2000, p.16-17).

Expression

Expression of the experience of extreme suffering often eludes victims, who feel words cannot truly express what they underwent. Speechlessness is itself a product of extreme violence (Daniel, 2000, p 350) Language and available vocabulary fail to provide adequate expression (Langer, 1997, P 54). Methods – whether judicial

mechanisms, academic analyses or therapy - utilized to deal with suffering demand verbal recitation of experiences that defy speech. Daniel illustrates how courts require victims to express what they have suffered so justice can be operationalized:

“Official: Tell! Tell [me] about your situation.

Laborer: How can I describe it? It won't even come in to my mouth[it does not conform to words]

Official: ...If you don't say it, it will mean that nothing is the matter”

(Daniel, 2000, p350)

Responding to Das's article on women's suffering during the partition of India (Das, 1997, p 67-93) Cavell says that finding a language to discuss pain has proven an intangible task for the social sciences and asks why (Cavell, 1996, p 93-94). Part of ethnography is highlighting modes of expression that do not fall into standardized academic and/ or liberal internationalist discourses (Asad, 1997, p 286). Lawrence (Lawrence, 2000, p 198-199) discusses religious ritual and ceremony as major factors in the political and moral process of expressing suffering - providing humanistic and spiritual outlets rather than legal 'objectivity' or what he calls academic 'thirdness' (the tendency in academe to prioritize generalizability and 'reason') (Daniel, 2000, p 348). Daniel defines *Anthroposemiosis* (Daniel, 2000, p 350) as essential to being human – that is, 'human awareness of signification' – (semiosis being the transmission and receiving of signals that carry meaning and information) (Daniel, 2000, p 350) Unlike animals we know not only what we know, but also that we know it. Verbal communication or its absence is core in anthroposemiosis; silence may signify the desire to conceal knowledge, or the deliberate withholding of information to get the attention of the world (by not speaking the silent one is forcing the question 'why are you not communicating?', silence being the most distinctive sound in a 'noisy world'); but silence enforced on oneself can be denial of one's own humanity -by not engaging in anthroposemiosis one is reducing oneself to the level of *zoosemiosis* (animal society/ communication) (Daniel, 2000, p 350-351).

Given the difficulties of expressing experience, what modes of representing one's story are open?-Daniel outlines four ways of 'representing' :

i-**Representational language**-language literally representing what it describes.

ii-**Constitutive Language**- acknowledges that language can represent, but not entirely; meaning has to be tacitly negotiated within society

iii- **Expressive language** -attempts to harmonise representational and constitutive language to express both ontological reality and epistemological thought. This admits cultural nuance and acknowledges that the expression of one's story is to recall and transmit from 'the ruins of memory'(Langer1991, from Das and Kleinman, 2000, p 12).

iv-**Genealogical language**– this addresses the disjunction between 'subaltern' narratives and the metanarratives of institutional bodies (such as courts) working within specific discourses. The reality as experienced by the individual is given voice - even if it does not fit the dominant paradigm (Daniel, 1996, p 356-363).

Murray describes how 'authoritative accounts' of atrocities with overarching discourses/historiographies subordinate voices that do not fit the authorized narrative (Warren, 1998, p 310). Attempts at state level to secure 'reconciliation' can be concerned less with truth than attempting to return life to pre-war existence (Last, 2000, p 329) Ways to deal with suffering, if they do not fit the officially sanctioned state concept of reconciliation, must happen outside public discourse. Last, describing the Nigerian civil war in the 1960s, explains that once the official set of blanket apologies had been issued, (supposedly applicable to the amorphous section of society labeled 'the victims') state mechanisms to deal with traumatic experience were officially concluded. Healing traumatic memory and individual and community level restoration had to be accomplished away from state sanctioned reconciliation and enacted at a grassroots level (Last, 2000, p 316-317, p 323-324,p 329-330).

The 'politics of recognition' are key. Victims/survivors of atrocity need to discover how to express their suffering and have it recognized. This allows the individual ownership of their story; recognition means asserting one's own experience, whether or not it fits the borders of the official narrative or 'collectivization ' of suffering. Similarly blanket apologies are meaningless unless connected with acknowledgement of individual pain (Das and Kleinman, 2000, p 10-14).

The issue emerging from the establishment of a definitive / state sanctioned narrative of atrocity is that there remains what Das terms a 'poisonous knowledge' (Das, 2000, p 208) of its legacy (mistrust, betrayal suspicion) within communities. Das describes how her subjects cope with the 'poisonous knowledge' infecting communities through 'descent into everyday life' (Das and Kleinman, 2000, p 10). In situations of extreme oppression people have to 'unlearn' normal reactions (e.g.: we must not react when we see murder or hear screams from next door); avoidance of what one knows will bring pain (e.g. speaking out if witness to violence) becomes hard-wired into the brain (Young, 1997, p 254). The capacity for normal interpersonal relationships dissolves and is difficult to recover, especially in post-atrocity society where former perpetrators may fill senior posts. This in itself undermines the ability to 'regain a sense of pre-calamity normality' (Das and Kleinman, 2000, p 8).

Suffering has two meanings in common discourse: firstly, physical pain : this is pan-species- any creature with a nervous system can suffer pain if subjected to negative stimulation; secondly, psychological/existential/spiritual pain, based on social codes and contexts (Amputation of a limb is painful and traumatic, but if performed in a hospital to treat gangrene the pain is different from that administered by a torturer to extract information). How pains are coped with depends on context. The interrelationship between physical and mental pain leads to the psychological creation of 'traumatic memory' rooted in physiological experience. Fear is an evolutionary mechanism to avoid pain; fear is informed by the recollection of events one knows through experience, witnessing or empathic understanding. Fear is carried through life and once hard-wired is difficult to remove (Young, 1997, p 258).

Acknowledgment and Memory

Iris Chang's seminal work *The Rape of Nanking* describes the forgetting of an atrocity as 'a second rape.' The atrocities committed in wartime China have until recently been largely ignored, censored or denied by the Japanese government and 'revisionist' scholars and victims made a diplomatic political football by their own government. The lack of acknowledgement or apology not only denies the victims their rightful voice (Chang, 1997, p 199-225), but ignoring, refusing to acknowledge someone's pain, or calling witnesses liars is an act of violence in its own right - Chang's 'second rape'. Cavell comes to a similar conclusion : not to respond to

someone's report of the pain they are suffering/have suffered is to deny the pain exists or matters, and ignoring it is a passive act of violence (Cavell, 1996, p 94).

Suffering is re-experienced in memory, aggravated with each denial of pain suffered, even many years after the events that caused it. Memories of extreme violence disrupt chronological time (Das and Klienman, 2000, p 12) Langer describes how people in the Nazi camps assumed death was imminent. One of his subjects told him 'our conversations were not building a future, what we were going to do when we grew up, you know how kids talk, I'm going to be this or that. Our hope was that when our time comes, we will die by the bullet, so that we will suffer less.' (Langer, 1997, p 59) The concept of long-term future no longer applies; this mentality does not leave victims who survive; they perceive themselves as outliving the duration of the camps' operations, but not the mentality that grew from their experiences: they continue to inhabit that 'durational time' (the time they spent in the camps) long after physically leaving. Langer reports that some survivors of the holocaust ask to be buried in the camps. He argues such a request is prompted by the memories that infest the minds of survivors to create a sense of 'missed destiny.' No one has ever truly tolerated living with their past experience of suffering; while time may literally and metaphorically close the wound, the scar remains. Time does not bridge the gap between life carrying on and the past: chronology is irrelevant; people will always carry the wounds and fears of the past with them (Langer, 1997, p 59-60).

Modes of Justice

Justice is an intangible concept with a multiplicity of meanings (Unac and Liang, 2006, p 134). Finding an all-encompassing definition of justice is beyond the scope of this study and arguably not possible.

However it can be uncontroversially concluded that modern concepts of justice generally refer to fairness (Unac and Liang, 2006, p 134). What would be a fair response to the suffering experienced?

The previous section outlined concepts of suffering and concludes that expressing, coping with and rectifying (if at all possible) the effects of suffering requires not a single discourse but a polyphonic approach by scholars and concerned bodies alike.

This final part of this section will discuss two modes of justice by which the needs of those who experienced suffering might be answered. I use the terms modes/styles when referring to how justice is implemented (Steiner and Alston, 2000, p 1131), rather than theories/philosophies, since both can be viewed and operationalized in different ways.

The first mode is that of Retributive Justice. This mode focuses on an individual who has committed a crime (and thereby inflicted damage on society). If that individual is found guilty he is then punished (fined, imprisoned, executed). This mode of implementing justice focuses on the relationship between the individual accused, the law and the body that enforces the law (the state or international courts). Thus a crime is not committed against a person but is an infringement of the law (Unac and Liang, 2006, p 134). In this dynamic victims are relegated to the role of witness to the crime; rather than addressing their needs, prosecutors utilize their testimony to secure a prosecution. It may give some satisfaction to the victim, in that the person who has committed violence against them is publicly held to account, the victim is able to provide their testimony publicly to be placed on record, and the criminal may be punished. However, since the legal system prioritizes crimes against the law rather than the victim, the other needs of the victim remain unaddressed. Dealing with suffering requires more than ensuring the perpetrators are punished; as previously discussed, it involves a profoundly complex set of emotional, spiritual and psychological issues (Thomas and Chy, 2009, p 215-216). Once a victim has played their part in a courtroom, they are still left with the damage that violence has done to them, and even the most extreme form of retribution against the perpetrator does not resolve these other issues. The rigid procedures of courts formulate narratives that may not fit lived experience (Das and Kleinman, 2000, p 10-14) (Daniel, 2000, p 350); this demands articulation that may be failed by a word-vocabulary alone (Langer, 1997, p 54).

The other mode this study will analyze is Restorative Justice. This can be complementary to retributive justice (restoration is difficult without punitive justice) (Unac 2006, p 159)). Yet restorative justice principally focuses on victims' needs rather than punishing perpetrators (Unac and Liang, 2006, p 135) Unlike retributive justice, with its clear framework of operation in legal structures, restorative modes are multiple and serve different needs, involving a variety of processes such as courts,

religious ceremonies, therapy, truth commissions etc(Linton, 2004, p 5-6). Restorative justice attempts to address victims' needs more directly than court procedures. One of its core aims is reconciliation. Reconciliation, again, has many meanings within different philosophical/ theoretical paradigms. It works on several levels. At a societal level, reconciliation facilitates community cohesion- enabling people who hate each other to live together(Unac, 2006, p 158). This is not the same as forgiveness or returning things to the way they were. Forgiving someone who has murdered your family is something even the most virtuous would struggle with (Linton, 2004, p 22) but reconciliation is '...a long and painful journey, addressing the pain and suffering of victims, understanding the motivations of offenders, bringing together estranged communities, trying to find a path to justice, truth and ultimately peace'(Desmond Tutu, quoted, Unac, 2006, p 158).

Reconciliation occurs at a personal level also; an estimated third of KR victims/survivors (approximately 2 million people) suffer Post- Traumatic Stress Disorder (PTSD). Individual reconciliation occurs in both public and private forums and via religious, legal and therapeutic methods with the aim of establishing internal peace (Unac, 2006, p 158-159).

A problem with the concept of reconciliation is that its goals are abstract; healing, truth, justice, peace, have no single definitions, and there is ambiguity as to what a 'reconciled'/restored society might be (Ciorciari, 2009, p 298) A theory of how to achieve reconciliation has become a principal aim within International Relations Theory (Linton, 2004, p 2). 'There is no road map for reconciliation, each society must discover its own route' (Desmond Tutu, quoted Ciorciari, 2009, p 298).Mechanisms for achieving restoration and reconciliation need to be rooted in the cultural dynamics of the country they are supposed to assist. Top-down theory and models would achieve little if reconciliation were to be relevant. Achieving reconciliation and societal restoration requires an organic grass roots approach as much as official frames (Ciorciari, 2009, p 303)

Difficulty in the expression of suffering has to be solved through the use of polyphonic discourse. While there may not be a cure for suffering, various modes of discourse allow coping mechanisms to be devised in a process of anthroposemeiotic

expression, whether verbal, non-verbal, procedural, institutional or ritual, through representative, cognitive, expressive and genealogical language.

The process of justice and reconciliation can be summarized as an attempt to ‘calm’ - a view shared by both Buddhist and judicial epistemologies (Harris quoted, Ciorciari and Sok, 2009, p 336) In seeking to provide expression and acknowledgement of suffering, accountability, apology and even retribution for a crime, both attempt to calm anger and the need for revenge, calm a mind plagued by horrifying memory, calm the hostilities that exist in communities, calm victims’ desperation at feeling unheard or unable to articulate their emotions. When this thesis asks how ideas of justice are working for those who suffer, it asks how the procedures (judicial or spiritual) affect the ability for the individual victim to achieve mental calm.

The ECCC and justice

This section provides a structural and procedural overview of the ECCC and describes its mandate. It then discusses the contribution the ECCC process can make towards addressing suffering.

ECCC Structure

The ECCC process took years of political wrangling and negotiation to establish (Ratner, Abrams and Bischoff, 2009, p 351-352). The tribunal is a hybrid court combining both international and Cambodian Laws. The staff are also mixed, both Cambodian and international. The court functions within the Cambodian legal system supplemented by the international system (McGrew, 2009, p 256-258) It should be pointed out that when reference is made to the ‘indigenous’ /Cambodian legal system, the ‘national’ law referred to is a product of colonial imposition. The French code, Harris argues, never fully integrated into Cambodian culture and aspects of it remain alien (Harris, 2007, p 238-239).

The court works at two levels, the Trial Chamber, made up of 3 Cambodian judges and two international judges, and the Supreme Court Chamber (to which appeals will be made) consisting of four Cambodian and three international judges. There is no jury (ECCC, 2006, p 10); all decisions are made, if not unanimously, by at least a

‘super majority’ (majority plus one) (Mc Grew, 2009, p 255-256). The court’s jurisdiction is limited to prosecuting those ‘most responsible’; under the UN-RGC agreement, between 5-10 senior leaders were deemed the ‘most responsible’ (McGrew, 2009, p 258) for crimes committed between April 17th -1975- January 6th 1979 (Ratner, Abrams and Bischoff, 2009, p 351-352)

The legal outreach officer Lars Olsen described the ECCC system to me:

“The whole system here is kind of an experiment....it is something new; this approach here has not been tried before- it’s based on national law, national procedure; it’s mainly conducted in accordance with the Cambodian criminal procedure- the subject matter/legal provisions like genocide is international. The system of international justice is very new-this is another attempt to address some of the shortcomings of the models of ICTR [International Criminal Tribunal for Rwanda/ ICTY (International Criminal Tribunal for former Yugoslavia)], where you had a process which was completely distanced from the people in the countries involved. First of all it happened in a completely different place (The Hague), and you had no national ownership of the process. Here its different, the UN is here on invitation, it is not force, and there is no Security Council resolution to set up this court. The whole process was due to an invitation to deliver this issue”(Lars Olsen, 18/03/10)

The tribunal attempts to deal with the remoteness of international law from victims, which has in the past excluded survivors from post- atrocity justice processes (Thomas and Chy, 2009, p 214). The outreach department and victims’ unit at the ECCC attempt, despite chronic underfunding (Ciorciari and Sok, 2009, p 322), to educate the population about the ECCC, and acknowledges the need to work within cultural parameters. The ECCC has put much effort into disseminating information, via the mass media and by bringing people to the courts in Phnom Penh, as well as providing seminars where the public can discuss the tribunal (Olsen, 10/03/10).

“We continue to bring people in a combined effort with outreach actually conducted in their village, we show them documentaries, give them talks/presentations- and then we bring them to a full day in Phnom Penh which includes a visit to s21 and they meet people from the prosecution, the defense, and they can ask any questions they want.

The Key to organizing all these things is coordination with districts and communities- this is a very hierarchical country, so we move to play ball with the official structure of the community-vital to organize people, there are people in village and communities we target for the villages for partnership - the Monks, they are on the local level, we have also have made use of monks and pagodas, as they are meeting points for local communities-another aspect of the outreach is regular –we have in the past –we will do a regional field trip monthly each month, pagodas and monks are always part f this kind of field trip, monks have a creditability in the community

which makes it easier to these people, if the monks are involved in disseminating information about the tribunals, we will have activities in the pagodas, we educated the monks so that they can educate others- then it's visiting schools in the district, it's village meetings and so on, we have different levels on this face to face outreach- the resource situation is bad, the budget has increased for the outreach budget.”(Olsen, 10/03/10)

The ECCC introduces internationalized concepts into the Cambodian legal system, and also ideas of how to confront the past. In ‘playing ball’, with key figures in local cultural dynamics, such as interaction with the pagodas, what is being manifested is the process of ‘glocalization’ (Clarke, 2006, p 5), which works towards achieving a cultural understanding of international concepts. By working with monks, for example, the universalism of international law is given a Buddhist framework that ‘religion-izes’ the process (Ledgerwood and Un, 2003, p 540). In a society like Cambodia, where corruption is rife in public institutions, the international dimension of the court legitimizes the process (Linton, 2004, p 25) A trusted process that has people’s confidence in it is better able to address the needs of survivors, the UN’s presence establishes that confidence. (Olsen, 10/03/10)

Incorporating individual suffering into the court’s considerations and allowing a forum for the expression of grievance at a procedural level has been a groundbreaking innovation in the ECCC. It is the first internationalized process of its kind to include a ‘civil party’ function into the process; this addresses the problem of the relegation of the survivors to mere tools for the prosecution. Civil parties offer victims the chance of ‘moral and collective reparations’(Ciorciari and Sok, 2009, p 319); if not individual reparations, these would take the form of a monument, a park, etc.; many have requested items pertaining to development, such as funding for schools or hospitals (Thomas and Chy, 2009, p 249). Civil party suits are supposed to offer better victim participation –yet this comes with restrictions; victims are defined as those ‘who suffered psychological or physical or material injury –directly due to the offence or personnel’; this excludes many (Thomas and Chy, 2009, p 249). The process has also been fraught with problems and inflexible procedures. Some have been excluded by late submission of a complex form many find difficult to fill in. Civil party has had to come to grips with legal formality that is often alienating. While the potential of its concepts has not been fully realized the civil party mechanism has attempted to ‘humanize’ the legal process. However it seems

bureaucracy, procedure, and legal formality have hindered its working (Thomas and Chy, 2009, p 244-254). The procedure is vague, and the 4000 civil parties are represented by only two lawyers (Ear, 2010).

Justice and the 'Official Narrative'

A major flaw of the ECCC is its constraints. The tribunal took so long to establish due to a complex set of factors both internal and external. Cold War power politics ensured that the KR was officially recognized as the legitimate government of Cambodia; the KR kept their seat representing Cambodia at the UN, and 71 nations, including the USA, China, and the UK, recognised the Pol Pot government as the rightful government of Cambodia. With continued recognition in the UN of the Peoples' Republic of Kampuchea (PRK) (a Vietnamese satellite state), the KR could not be tried in an international court of criminal law. In failing to recognize the Vietnamese-backed PRK, the nation was also cut off from vital reconstruction aid, effectively handicapping redevelopment for another decade (Fawthrop and Jarvis, 2004, p 25-38). The global community maintained silence regarding the atrocities of the DK era for the duration of the Cold War (Fawthrop and Jarvis, 2004, p 37).

The other factor causing difficulties in setting up the ECCC was that until 1998 the country was still engaged in civil war. The Khmer Rouge fled to the jungle around the Thai border, and waged war in Cambodia until 1998 (Hughes, 2005, p 20). Peace was prioritized over justice; the RGC provided an amnesty for KR defectors (6624 in total). Ending civil war was the priority (McGrew, 2009, p 255). By granting former KR soldiers immunity from prosecution, 'reconciliation', in the sense of ending conflict, occurred; however the suffering experienced had not been recognized; justice was not served (Ciorciari and Sok, 2009, p 316).

The agreement to prosecute only 'the most responsible' and limit the timeframe of the ECCC jurisdiction reflects the desire to construct and maintain an official historical narrative limiting responsibility for atrocities of the DK era to a few individuals. This is shown, firstly, by external pressure from governments themselves 'not clean'. For example, the USA bombing of Cambodia in the 1970s resulted in a refugee crisis and 100,000 deaths; it was this war crime that catapulted the KR to power (Mahmet, 1997) (Coates, 2005, p 344) The Chinese, along with 71 other nations, supported the KR (Becker, 1986, p 170; Fawthrop and Jarvis, 2004, 27). The UN system failed

Cambodia (Fawthrop and Jarvis, 2004, 38). No nation with a tarnished history in relation to Cambodia wishes to be reminded of it. Steven Heder argues that in attempting to establish an international accountability process the UN was pressured to accept a compromise (Heder, 2002, from Mc Grew, 2009, p 254) by an international community keen to remove themselves from the story.

Secondly, despite the ECCC process having been ‘invited’, the RGC was reluctant to have a process at all. Hun Sen’s preferred solution was that Cambodians should ‘dig a hole and bury the past’ (Hun Sen, 1998, quoted McGrew, 2009, p 253) The Cambodian government’s signing of the Paris Peace accords in 1991 (officially ending the civil war and occupation by the Vietnamese) legally bound the RGC to uphold international law; thus it was legally compelled to prosecute atrocities - ‘international crimes’, falling into the jurisdiction of international criminal law, (Steiner and Alston, 2000, p 1132)) occurring within its own territories (Abrams, Bischoff and Ratner, 2009, p 341). The international community also began to tie the fulfillment of its obligations to the treaty to development aid (Fawthrop and Jarvis, 2004, p.239) The RGC favored a compromise whereby they would retain a great deal of control in order to curtail any potential ‘fallout’(Mc Grew, 2009, p 250).

The RGC has been eager to maintain the official story of the KR era for two reasons. Firstly, it is concerned that extensive prosecution of lower level KR cadres would lead to reemerging violence; the Prime Minister in part fuels this fear (Olsen, 10/03/10) Secondly, several currently serving officials in the ruling Cambodian Peoples Party (CPP) have links to the KR, either having actively participated in the KR movement or having made unsavory backroom deals with its senior figures (McGrew, 2009, p 271) This has hindered truth-telling. Mr. Taing Hum of the Transcultural Psycho-Social Organization (TPO), an NGO working with victims of the KR, said to me in interview that attempts at reconciliation between victims and perpetrators are hindered as some of the victims stay silent because some former KR rank high in the present government- “*the victim cannot say something, but is keep silent*” (Taing Hum, 12/03/10).

By limiting itself to five senior living members (ECCC, 2004, p 6-8) the ECCC excludes any lower/middle ranking KR from prosecution. Research by the International Center for Reconciliation shows Cambodian citizens consider the

limited scope of prosecutions insufficient. During the regime the KR leadership were distant and unknown, whereas lower and middle ranking officials were seen every day; it was they people witnessed committing mass murder and it is they who are still free and living in the community. In not holding these lower/middle-ranking officials to account, the ECCC is seen by Cambodians as failing to deliver justice (Saltsman and Vichhra, 2007). This echoes Heder's point that the construction of the process has been designed with an eye to political expediency (Heder, quoted McGrew, 2009, p 254).

Limitations on Expression

Thus the strict parameters of the ECCC limit the narrative to preclude survivors' ability to fully relay their suffering. The ECCC was a negotiated agreement between the UN and the RGC; survivors have not had a say in the kind of process that they wish; as such the ECCC, rather than analyzing the suffering of survivors and responding with a process to deal with it, has offered only a prescriptive (Thomas and Chy, 2009, p 232). In answer to this criticism Lars Olsen responds:

“Well again there are so many opinions, even if you ask survivors; asked in the first trial some said that the number of those prosecuted was unimportant, what is important is someone is held accountable and the process can help answer question of why did this happen – why did they treat us this way, whether it's 5, 10 or 50 wouldn't make much of a difference, most realize its unfeasible to do a mass prosecution, of low or middle rank, this could have devastating effects on the reconciliation, It has been clear from the beginning during the negotiations that this should be limited, very few would argue that prosecutions should be expanded to included a lot of people, there are some discussion on whether a few more should be prosecuted. We know little about the 5 additional ones – up to the co-investigating judges-we are going to deal with the ones who orchestrated this, it's not easy to assess the direct- for people to accept this, people ask what about the guy who I saw kill my father, brother whatever. It is a challenge, but at the same time I have seen nothing to see that this is undermining the creditability” (Olsen, 10/03/10)

International Law restricts vocabulary. Language in a law court has to be representative language; this in itself restricts how people can express themselves- many feel too 'uneducated' or inarticulate to fully participate as witnesses (Thomas and Chy, 2009, p287).

“I agree that some of the concepts of international criminal law are strange- not just here- I think very few in Europe have little idea of what is genocide, what are crimes against humanity- how is this proven, how do you convict? The mechanism here is an international community solution enforced, but more based around the local tradition

and system and supplemented with international laws and the systems –this is the first time- the other places where you have tried hybrid law is where you supplement international law with local law. Hopefully we learn something from this process – it’s a work in progress, the most interesting thing is whether or not in the future the international community want to channelize this kind of process to ICC or actually do things ‘in country’ as we do here”(Olsen, 10/03/10)

A point of particular contention is the use of the term ‘genocide’. Genocide is a widely applied term when discussing what happened to all Cambodians murdered in DK; it is how most Cambodians view to the crimes of the KR. Yet the legal charge of Genocide only applies to some sections of the community- the Chams, Thais, Chinese, Vietnamese targeted in ethnic cleansing policies. But what about the rest of society? The majority of the victims of the killing fields were Khmer, killed by Khmer for (mostly falsified) political reasons (Kiernan, 2007, p x-xi).

International law regarding genocide came as a response to a particular point in history (the Nazi Holocaust) and was written with what the Nazis did in mind. The Holocaust in this sense is central to the episteme of genocide law. The 1948 the United Nations Convention on the Prevention and Punishment of Crime of Genocide (UNCPPCG) fails to address the situation experienced in Cambodia (Abrams, Bischoff and Ratner, 2009, p 322). While the KR could be (and are) charged with genocide (as defined under the UNCPPCG) in relation to KR policy towards ethnic minorities and religious groups, the deliberate killing of Khmers during DK would be dealt with through law on Crimes Against Humanity (Schabas, 2001, p 475).

This is more than a point of semantics; the word and charge of genocide carries with it a gravitas no other international crime does; not to use it limits the gravity of the crimes of the KR in relation to the entire population (Abrams, Bischoff and Ratner, 2009, p 325). Not enforcing to history that KR policy resulting in the death of millions was ‘genocide’ is upsetting to those wishing to stress to Cambodia’s future generations, and the world, the severity of the crimes committed (Fawthrop and Jarvis, 2004, p 53-58).

Both official state narratives and the technicalities of international law restrict how people conceive their suffering and the events of the past by streamlining discourses. Survivors are thus not expressing their suffering in their own terms but on the terms

of institutions. The ECCC focuses on the major players, and is a limited process. Truth and Justice are not necessarily intertwined in the ECCC. The historical record the ECCC will generate through its proceedings will be 'top heavy', stressing leaders' roles over those of lower cadres. It falls to the grass roots, NGOs, and scholars to discuss the full enormity of the DK era and the suffering experienced at local and individual level(Ciorciari and Sok, 2009, p.321-322).

ECCC Justice?

The ECCC identifies as important the fact that there is a process and that it is through international law that 'justice' and a response to suffering and traumatic memory can be addressed.

"It should be obvious to anyone that this process is not only about a trial. It's about finally holding someone accountable, finally addressing the past in Cambodia that has not been done for 30 years, and obviously reconciliation and healing are related parts of the court/.../ so yes, the main point is to hold people accountable, but national reconciliation fact finding and searching for answers for the Cambodian people is obviously important(Olsen, 10/03/10)

The ECCC has been mandated by the RGC working in conjunction with the United Nations (UN) to

".../provide Justice to the Cambodian people, those who died and the survivors. ...fair trials will ease the burden that weighs on survivors. The trials are also for the new generation - to educate Cambodia's youth about the darkest chapter in our country's history. By judging the criminals most responsible, the trials will strengthen rule of law and set an example to people who disobey the law in Cambodia and to cruel regimes worldwide. By supporting and learning about justice we can all contribute to the reconstruction of our society" (ECCC, 2006, p 5).

Such ideals are not accomplishable by one process alone; but the ECCC does foster an atmosphere conducive to justice and reconciliation (Unac, 2006, p 159-160).However, a just outcome for the ECCC is more than just process for its own sake. Tribunals in the aftermath of atrocity allow victims an outlet for anger. A trial is an acknowledgment of the suffering experienced, an acknowledgment that something should be done to react to it; and a process pushes for someone to be accountable for the damage they have inflicted. The desire for revenge is channeled through a process that concludes by punishing the guilty. The process of forgiveness or reconciliation is not within the scope of courts (Minow, 1998, p 1143).

For those who suffered, seeing some justice is important; there is a need for accountability and punishment. Thus retributive justice offered by courts is important (Ciorciari and Sok, 2009, p 318). As an observer I heard several people comment that they thought the defendants should be executed. The desire for punishment is clear. Some have been critical that the ECCC is too lenient with the KR.

“I’m sure if you asked people who think that the KR should have the death penalty, I’m not sure there would be a majority but there would be a sizable number- people discuss this when they come here- “why when we see the defendants on TV are they wearing nice civilian clothes not prison uniforms -we had to wear black uniforms for four years; why is he allowed to wear civilian clothes-it’s like why are you giving these people food in prison, they starved us, they should have the same”(Olsen, 10/03/10).

The rights or wrongs of capital punishment or the way prisoners are treated is beyond the scope of this study; however what is clear is that there is a desire amongst survivors that the KR should be punished for what they did.

The Tribunal does have value in its own right, despite its flaws; surveys carried out by the University of Berkeley, California, found that 87% believe ECCC should address the KR Legacy; 74% believe that the process would contribute to justice for the victims; 67% believe the process would aid reconciliation (quoted Ciorciari and Sok, 2009, p 335). Finally holding someone to account is important.

“Well you need to look at the contest/.../ this has not been a topic of discussion- people would just not talk about it, would try to forget it – it is difficult to start a truth commission so long after- people who knew what happened are just not around anymore. This is the way the government chose to deal with the issue; it’s ultimately up to the people and country what kind of process they want. Most people who talk the Truth and Reconciliation model here argue this would be an addition not a substitute and is up to Cambodians if this is something necessary”(Olsen, 10/03/10)

A principal flaw has been that the ECCC system was created, not via consultation with survivors, but as a compromise negotiated away from the public by the UN-RGC, and reflects political agendas and the desire to keep the scope of the tribunal limited (as is the RGCs wish). The small budgets of the victims’ unit and the outreach section suggest their establishment to be an afterthought to make the process seem more relevant; this is unfortunate as the work of these departments is what makes this process relevant and useful to Cambodia(McGrew, 2009, p 259).

Sophal Ear, a scholar and Cambodian refugee working in the USA, argues that the

tribunal is a waste of money, unresponsive to real need, corrupt and politicized. No one can answer Sophal Ear's point when he reflects on the kind of reparations that he would like : 'I should have said that I would like my father and brother back; no amount of compensation can do that'(Ear, 2010).

I'm not saying hallelujah! everything is great. I was wondering myself when I came here-does it really matter what we are doing?- but it says something. Duch was below the level of a senior leader, why would people in Cambodia care- but they do-70-80 year old people are traveling for 5 hours to come here, just for one day, and what they say is like, finally someone is being held responsible for the crimes committed against us; we see this more and more, they realize that the people who are being punished(Olsen, 10/03/10)

Any process attempting to deal with mass atrocity must address the suffering. The two concepts of justice dealt with here (retributive and restorative) are modes by which that suffering can be addressed. The tribunal does provide voice, historical record, accountability and punishment. Thus it does go some way to 'calming the mind' and answering the condition of suffering. The ECCC does have some role in answering suffering, but it is not in itself a total process. International law cannot be the only way to deal with trauma.

Khmer Buddhism and justice

This Chapter will discuss how justice is conceived in Buddhism and what Buddhism offers in addressing suffering. Buddhism is not just a religion in Cambodia but a central aspect of Khmer culture and morality (Bit, 1991, P 24) entwined into everyday life. Monks are a center point in community life. When families/groups have problems monks act as mediators, when individuals face crisis, difficult emotions, a run of bad luck and even bad dreams it is to monks many first go for consultation (Ven. Five, 12/03/10). Buddhism is a key point of reference for any event/process in Cambodia.

Core Concepts in Buddhism

Firstly the thesis will describe Buddhist concepts referred to throughout : Suffering, Karma and Metta.

Buddhism defines life in terms of *Dukkha*, roughly translated from Pali as unsatisfactoriness/ suffering. *Dukkha* encompasses all that is unsatisfactory with

mortal life. Birth is *dukkha*, as it begins the cycle of pain and suffering characterizing human life, followed by illness, sickness and death- these compounded by the sorrow, pain, grief and despair that accompany the cycle of life and the pain inherent in human identity in its five aspects (body, feeling, memory, thoughts and consciousness)(Mills, 1999, p 20-26). The Four Noble Truths are:

- 1- Life is suffering(*dukkha*)
- 2- Suffering is caused by craving - desires leave one unsatisfied
- 3- Desire that is the cause of attachment, hate and illusion can be transcended, enlightenment (*nirvana*) and the way out of *dukkha* and rebirth can be attained.
- 4- The path out of *dukkha* is via the Noble Eightfold Path (right understanding, intention, speech, action, livelihood, effort, mindfulness and concentration)(Harvey, 2000, p 37).

It is the 'goal' of Buddhism to escape from this cycle of *dukkha*, and attain *nirvana* by following the Noble Eightfold Path(Harvey, 2000, p 33).

Karma means action and its results. Karma is the law of cause and effect- any action (good or bad), will produce a karmic response. Karma is linked to the concept of 're-birth'; when an individual comes into life (human or animal) their character and situation (poverty/wealth, stupidity/brilliance etc) will be a result of their actions of the past - that individual's destiny is self- created. One constructs one's future destiny by reacting to present circumstances. If one is poor in the present existence, but charitable, this would make for good "merit" (good karma) that will be received in kind at some point, in one's present or future existences. Karma is not something that one is bound to forever.

The aim in Buddhism is the abandonment of self; once someone is not attached to himself or herself as an individual, they can be liberated from *dukkha* and the woes of being attached to something impermanent (e.g. a human body) (Humphreys, 1984, p 105-106, p127).

Metta (loving kindness) is active goodwill, the radiation of love to all, friend, enemy or person one is ambivalent toward (Humphreys, 1984, p 127).

A Buddhist Country?

Cambodia is a constitutionally Buddhist country and most people identify as Buddhist, yet it is questionable how much Buddhism is understood (Boyden and Gibbs, 1997, p 68): *“Unfortunately many Cambodians never learn properly these things [the core tenets of Buddhism]- they have heard something but they never learn properly; they practice Buddhism by custom, by tradition, by imitation but most of them never learn properly.”*(Ven. Six, 14/03/10)

This is perhaps the central problem of the Buddhist approach to Justice and the alleviation of suffering. Understanding of (and belief in) Buddhist philosophy is required to make it useful. Without such understanding its application is limited.

“But for ordinary people, they do not know or realize the teaching, it is difficult for them to control their emotion, but with instruction, by practicing meditation, one can live in peace, can change... the problem is that having no knowledge or education or institution, or very little, it is a problem for people to understand things to understand life, to liberate from their suffering, understanding things as they are”(Ven. Six 14/03/10).

This need to expound core tenets of Buddhism is the major challenge faced by monks in culturally bereaved Cambodia. In the Buddhist Philosophy of Justice Karma is key.

Karma in Action

“Karma is a natural law; no one can escape from natural law, everyone gets justice without corruption/.../Natural law will produce a just result; for example we have committed a crime, sometimes we can escape the conventional code, state law, but not the result done by ourself- sometimes no result in the present but one day it will produce, one day or in some existence”(Ven. Two, 11/03/10).

Dr. Sophal Ear described the sentiment of many of the survivors in Cambodia:

As an observant Buddhist/.../ my mother probably had the last word. She always said that no matter what happened to the Khmer Rouge leadership in their current lifetime, Karmic justice would prevail in the next: They would be reborn as cockroaches. I am certain that this belief has helped millions of survivors cope with the reality that, after more than three decades since the fall of the Khmer Rouge, not a single leader has been held to account.”(Ear, 2010)

In this way Karmic Justice does satisfy those who believe that those who have committed great acts of wickedness and seemingly have escaped justice will receive back what they have done in kind (Mills, 1999, p 35). Being reborn in a miserable existence - such as a hungry ghost or an animal - or suffering in one of the hells until rebirth occurs after a long time, is in itself a retribution for one's crimes, and in this sense may satisfy the desire to see one who has caused misery as receiving the just reward for their actions. However, Karma is not punishment for what Abrahamic religions conceptualize as sin (Mills, 1999, P 34-55). Karma is the process of receiving like-for-like, a cause (an action) and effect (karmic wages) relationship (Ven. Six, 14/03/10); performing a good action cannot expunge the effects of a bad (and vice-versa); Karma is a process of receiving the 'fruits' of one's actions, good or bad, at some point, in some existence (Harvey, 2000, p 15-18).

"Suppose I do bad action in the past it will come back to me/.../ If we do any action we will get a result accordingly; this also is justice /.../ bad action means it will come back, but we can by means of labor change our path of karma; I can do good ...to reap a benefit now or later/.../ good karma requires labor also, we have to make good karma" (Ven. Three, 11/03/10).

This way of viewing the world does offer accountability for one's action; while the parameters of the ECCC confine prosecution and retribution to only a limited number:

"Karma functions natural la, not human justice... Karma functions independently. The destiny of each being now and in the future, and life after life depends on this law." (Ven. Six, 14/03/10)

Thus even lower cadres not facing prosecution in the ECCC will face their Karmic fruits at some point. There is no collective responsibility in Buddhism; individuals are responsible for their own karmic future (Bit, 1991, P 22).

Pou Maline of TPO told me :

"Early after 1979 some of the victims are still angry with the perpetrators and have revenge - but some of the victim can find a reconciliation process for themselves in terms of Buddhism, regarding to the statement of the Buddhist of Let It Go, or to find peace requires us to find peace in ourselves, that we find peace in ourselves rather to find revenge which would lead to no peace at all. /.../ Some of the victims believe in Karma- if you do bad you will receive bad, so they know that the perpetrator will receive their bad Karma" (Mrs. Pou-Maline, translated by Sarath Youn-12/03/10).

Coping

Buddhism is able to provide coping mechanisms to address suffering, anger and societal division:

“we teach people about seeing things as they are. We have meditation sessions ..., these help people to learn to see things as they are/.../When we see things as they are we accept them, we learn to lead a good and principled life and to accept impermanence. Suffering, injustice are impermanent. War, suffering etc. is suffering, nothing else. Buddhism is about suffering. Buddha teaches all I teach you, suffering and the cessation of suffering. The way to freedom from suffering”(Ven. Six, 14/03/10).

In Buddhism there are three universal factors, impermanence, suffering (unsatisfactoriness) and non-self (nothing is of substance); if one can understand this and reconcile it with life's experiences, one can understand how to be liberated from dukkha. This is 'seeing things as they really are'. Seeing the world as other than impermanent and unsubstantive will only heighten the delusion of a false reality that in turn creates illusionary desires and attachments that only heighten dukkha (Thera, 2000, p 291-292).

Langer identified the disruption of durational time as a product of suffering and argues that Holocaust survivors, for example, continue to live in the past (Langer, 1997, p59-60). The Buddhist response to this is that the acknowledgement of impermanence is key to freedom from the past. (Ghosananda, 1992, p41)

“Eliminate and overcome anger- anger can become an object of meditation- everything that happens in the mind and the body –just notice it, see it clearly and let go, don't attach-because everything is impermanent, mental and physical phenomena, anger, hatred, love, a thousand emotions in a day, they rise and fall, all impermanent, we just notice and recognize them, seeing things as they are and let go.

Why attach to one, to possess something? The attachment is a cause of suffering, craving and attachment, clinging, we should liberate from these things-anger/.../ this is the method to finish with everything in the mind, just make mental notice of each instance, what this feeling arises, and falls away- usually immediate. When we are a neutral observer, we can notice and see impartially, as a neutral observer of these emotions – to live in the present moment, live here now, this - in the present moment/action- to cope with their suffering they should know what is suffering, what its cause; when Buddha reached enlightenment he discover Four Noble Truths - suffering, cause of suffering, the cessation of suffering, the way leading to the cessation of suffering –this is the principle/essence of Buddha's teaching “(Ven. Six, 14/03/10).

The application of this in terms of human suffering, (such as the experience of living under the KR) was expounded to me by Ven. Three,

“This can be said, that the role of Buddhist monks is to propagate the welfare and happiness for the world, but to Cambodia, What is the Buddhist monk’s role in Cambodia? According to Vannaya rules[the monastic code] –duties of Buddhist monks

1-restrain Buddhist people[laity] from doing bad

2-help people to do good

3-protect people with loving kindness and compassion-protect people

4-teach them the darma [Buddhist doctrine]

5-make the darhma/teachings easy to understand

This is the role of the monk in society, we have many other Buddhist discourse for mental healing. Buddhism can provide much about spirituality to help mental disorder and stress –after cessation of Khmer Rouge regime many Khmer Rouge feel sadness, remorse for action, and we can say this is a kind of mental problem. In Buddhism we can provide encouragement in providing teaching- in Buddhist psychotherapy we have many techniques to give them counseling.

I have one example from an American man, he said to me/.../he had eye problem; he went to see the doctor and it took a long time to treat his eyes, but it was impossible, blood was spreading all in his eye. The doctors told him it may cause you to lose your eye /.../ one day he gave up treatment, doctor told him without treatment he will go blind, he asked how long will it be before I go blind, the doctor told him within a year. This man had great suffering because of his eye and the words that he would go blind [being told he would go blind was as much a thing to suffer as the pain of the actual condition] but later on after he meditate, he know that there was something in his feeling- he was able to reduce his suffering and distress through meditation- his eye was still the same but he can be better than before because of his meditation, it makes his mind calm down.

In the same way the Cambodian people who suffer under Khmer Rouge, then Buddhism can provide the same technique to them for spirituality.” (Ven. Three, 11/03/10)

Agencies for Calming, Khmer Buddhism and Culture

Khmer Buddhism’s history is uniquely complex, and cannot be monolithically defined. It came near to destruction under the KR and was heavily regulated under the PRK (Harris, 2005, p 229). Within the Cambodian Sangha (community of Enlightened Followers - monks)(Mills, 1999, p 3) opinion is divided over the role of monks in society (Harris, 2006, p167). Animism is common and blends into Buddhism at a grass roots level (Bit, 1991, p 98). Brahminism has also centrally informed Khmer culture(Boyden and Gibbs, 1997, p 16). Ever since the liberalization

of religious practice in 1989, Buddhism has found multiple expressions; cults that re-define Buddhism in practice and doctrine have emerged and intertwine with the re-emergence of nationhood and identity (Marsdon and Guthrie, 2004, p 171). I have observed. Monks are often consulted in conjunction with ‘spiritualists’ or ‘magic men’. Bertrand discusses how spirit mediums are often asked to channel parami (good spirits) to assist those that died during DK, to pacify and educate these roaming dead who are perceived not to have found peace due to their violent deaths and continue to perturb the living. This serves a therapeutic function allowing survivors to lay to rest the ghosts haunting their present. This process is seen as initiated by the Buddha to aid reparation of collective trauma experienced by both living and dead (Bertrand, 2004, p 166). Culture and religion are not static entities. Individuals conceive situations according to their cultural contexts; Buddhism, a central dynamic in Khmer culture, does shift (Boyden and Gibbs, 1997, p 67-68). Historically embedded concepts of cultural practice establishes what Wendy James calls a social “archive” from which new discourses are devised and applied to the present (Wendy James, quoted from, Boyden and Gibbs, 1997, p 16). TPO has actively engaged in the process of anthroposemiosis in its work dealing with the trauma of survivors. Part of TPO’s work actively engages in Buddhist cultural dynamics to facilitate its mission of responding to suffering. In answer to my question, ‘How is Buddhism incorporated into the techniques?’ Mr. Yaim Chamreun answered:

“/.../ what we are doing is testimonial therapy /.../ we are trying to use Buddhist ceremony to help them [Survivors] come to terms with their past. Most of them lose their family in the Khmer Rouge time...didn’t have chance to say goodbye to their family as well as living apart from them, with no chance to do something for these dead people. What we are trying to do is testimonial therapy by helping them to write their story on paper to bring their memory into paper, and we involve them in Buddhist ceremony, in this ceremony there are two stages, the first stage /.../ we do sort of a blessing for the dead, this happened as part of the healing process allowing them to come to terms with part of their past, allowing them to say goodbye to their relatives and their beloved ones. But then we have this delivery ceremony where we have blessing by the monks - the monks ask for the painful story from the people, so the people offer their painful stories to the monks, the monks then bless the written document (the testimony) and give it back to survivor/.../ in this way it seems that they can in Buddhist believe that if the monks ask them all these painful stories - it’s away from them. So this is partly how we integrate the Buddhist Monks into our therapy” (Yaim, 12/03/10).

TPO produced a DVD that filmed such a ceremony. In it Mr. Tong Soeung Hun, a TPO counselor, explains the ceremony to the participants:

“According to Buddhism, when people die we need to hold a funeral in order to say goodbye. However we could not do so. Today we have the opportunity to dedicate this ceremony to them as a way to say goodbye. This ritual is a way to bless them. When they are blessed those who died during the Khmer Rouge regime may take care of us. They will take care of the survivors who are living in Cambodia, especially in this time of the Khmer Rouge Tribunal, so that they can get full justice and freedom”(taken from Testimonial Therapy DVD, 2010).

A victim hears their testimony read aloud by a TPO counsellor. The monk is handed this testimony and ties a red string bracelet to the victim’s wrist, gives them a blessing and hands back the testimony (Testimonial Therapy DVD, 2010).

Ceremony is an agency through which survivors can engage with traumatic memory and involve the dead. The blessing of the dead, key to the ceremony, provides them (and therefore their families and friends) with the dignity they were denied under the KR. Dignity may not be justice exactly, but it is acknowledgment; by asking them to ‘*take care of the survivors who are living in Cambodia, especially in this time of the Khmer Rouge Tribunal*’ the ceremony incorporates the dead into a time when justice is being realized in the ECCC. For the survivors saying goodbye is important, a way to address their pain and give it expression. They take part in anthroposemiosis - claiming the act of conscious self-expression that defines their humanity. Expression of this deeply spiritual and personal kind is impossible within the ‘representative’ linguistic confines of the ECCC. If pain can find an outlet and be sanctified via ritual, part of what it is to seek out justice is being enacted.

Given the extent of the KR destruction of traditional culture and the growing influence of ‘western values’, many fear traditional culture has been irretrievably lost. The older generation(those who endured the DK era) fear that the young will never have or understand Khmer culture(Boyden and Gibbs, 1997, P 115). In engaging with a ceremony asserting traditional culture, participants retrieve what has been stolen and deal with cultural bereavement. Psychiatrist Maurice Eisenbruch discusses how the loss of culture, the deprivation of all traditions, imprisons people in their past. The one place culture continues to exist is the past - even the time where it was stolen from the individual; thus it pains them to let go of that past, as they feel

that they are not only losing their cultural identity but also betraying the dead (Eisenbruch, quoted Boyden and Gibbs, 1997, p 147).

Restoration

Buddhism has been at the forefront of restorative action. Ven. Maha Ghosananda (former supreme Patriarch in Cambodia and Nobel Peace Prize nominee) led the Dhammayatra Peace Walks through Cambodia following the re-sovereignization of the country in the early 1990s. The Walks were initially a symbolic attempt to bring back Cambodian refugees from the Thai border. They were an extremely dangerous exercise, but with great symbolic potency. Neither the Thai or Cambodian governments initially approved (Harris, 2005, p 208). In the early 1990s Cambodia was still in the midst of civil war; the Dhammayatra was very dangerous as it required the walkers to pass through KR-controlled zones. Monks were attacked and even killed (Poethig, 2004, p 204-205). The Walks were a form of meditation (Poethig, 2004, p 203) one reason for them being to meet with the KR and ‘/.../walk until our enemies became our friends’ (Moon, quoted Poethig, 2004, p 205). Linked to this was the Buddhist concept of *Metta* (Loving Kindness). Ghosananda’s solution to the suffering of the KR era was to employ *metta* to calm and cool the hatred generated in Cambodia (Poethig, 2004, p 203):

“I do not question that loving one's oppressors -- Cambodians loving the Khmer Rouge -- may be the most difficult attitude to achieve/.../but it is the law of the universe that retaliation, hatred and revenge only continue the cycle and never stop it. Reconciliation does not mean that we surrender rights and conditions, but rather that we use love in all our negotiations” (Ghosananda, 1992, p 69).

The Peace Walks were an exercise in reconciliation and reclamation of the nation and its culture. Employing the concept of *metta* was a proactive process that sought to destroy anger, revenge, hatred (Poethig, 2004, p203) seeking to “shoot people with bullets of loving kindness” (Ghosananda, Quoted from Poethig, 2004, p203)

Anger and the desire for revenge is identified by Ghosananda’s movement as a source of conflict. Ghosananda used the metaphor of boiling water, “If we leave boiling

water sitting for some time, it naturally begins to cool. Sometimes we boil with anger, but we can cool down gracefully by contemplating loving kindness, anger's opposite"(Ghosananda, 1992, p 58) By walking through KR controlled areas of the nation the Peace Walks re-engaged with former enemies; it was an attempt to reconnect the KR with the rest of re-emergent Cambodia, reclaim the nation and begin a process of confronting, to use Das's term, "poisonous knowledge" (Das, 2000, p 208) by "descending into everyday life" Das and Kleinman, 2000, p 10). There is nothing more mundane /everyday than walking.

The problem of personal and societal restoration is approached through Buddhist technique for both victims of the KR and the former Cadres themselves:

"During Buddha times he helped violence with compassion. We should help violent people to be liberated from greed, hatred and illusion. Not to revenge. Help them - those who are responsible for crime should receive special education to liberate them from these evils.

These three roots of evil that force people to commit bad actions – forgiveness we should show, as they are under these influences /.../ people who have hatred and anger suffer a lot.

Justice no revenge, learn to see things as they are and leave it to the law of cause and effect

People have responsibility for their destiny, have responsibility to what happened to the country; we share responsibility, for common good or common bad, there are cause and condition of what happens.

Who are Khmer Rouge? Where they come from, how they live and work, and there are lots of things from outside, that are interdependent on action that caused the tragedy –we must learn from the past the present and future." (Ven. Six 14/03/10)

"/.../ after Pol Pot regime people may have desire to kill, some say that by killing someone else you can achieve a kind of happiness in the mind; but this is not the way; positive thought-the thought of renunciation- if some one is a killer/ robber etc, before becoming a monk I can do anything according to my desire, but after I have to renounce this in accordance with the vinya rule, renunciation is a good subject for someone who wishes to do something bad to someone else.

Non-ill will or loving kindness, this can be done, In Buddhism this kind of thought is a subject of meditation –during meditation retreat, for the first 4-5 minutes you must radiate loving-kindness, towards first yourself then to your beloved friend or parents, then to those you are ambivalent toward, then your hated persons – accumulation of loving kindness will calm down our minds, when we calm down we can practice

meditation easily, this can be applied to society also. Suppose you experience a sad situation, you can imagine the experience in meditation also – useful for people dealing with Pol Pot memories.

/.../ non-Violence; you can call this forgiveness- the thought of non-violence, every problem comes from the thinking process, everything in suffering, good and bad action come from thinking patterns;, if we can stop thinking no problem would arise, but there is no way to stop thinking; Buddha divided thinking into two, positive thinking and negative thinking. The thought of desire, after Pol Pot finished, a lot of Cambodian people had much suffering from starvation, from the corruption, many things occurred, so more or less people have a desire to do something, reconcile or revenge, but thinking can be done only when person practice their thinking. In negative thinking we have to give this up, if someone wants to escape a bad future existence we have to do good from now on. People can restore their minds through their thinking with faith in Buddhism and restore their thinking.”(Ven. Four11/03/10)

Buddhism offers an alternative mode and discourse from that of the ECCC for survivors to deal with their suffering. Karmic justice does offer the concept that eventually perpetrators will receive back their actions. Buddhist philosophy, ceremony and monks offer discourses through which suffering can be dealt with, communities reconciled, the mind calmed and the past made less intrusive. It is also a conduit through which foreign concepts (law and western therapy models) can be ‘glocalized’ to be relevant to the process of justice, reconciliation and healing.

ECCC- Buddhist Interactions, Meeting, Divergence, Reinforcement?

This final section will discuss how the two concepts of justice relate to each other.

Angulimala’s Story- told to me by a Venerable

Angulimala had killed 999 people; he was told that if he killed 1000 people he would be the most prolific killer in history. When he had killed 999 Angulimala decided to kill his mother as his 1000th victim, but upon coming across Buddha changed his mind and decided to kill Buddha instead. Angulimala frantically ran after Buddha, yet despite Angulimala running as fast as he could was unable to catch up with Buddha who was walking normally. Buddha had willed a mental power over Angulimala. Angulimala called after Buddha demanding that he stop. Buddha explained that he had already stopped and told Angulimala to do the same. This statement confused Angulimala. Buddha explained that by renouncing the killing of all living things he had stopped, unlike Angulimala who was obsessed with killing and by being so would never be able to stop.

Angulimala became a monk and a good man, yet people were still afraid of him. Part of a monk's life is the collection of alms- in this way they get the food they need. Yet when Angulimala went out to collect alms people fled in fear of him when they saw him approach knowing his reputation as a killer. Angulimala acknowledged to Buddha that this was inevitable given his past actions. Buddha told Angulimala that he had created so much suffering and that people shunning him was part of his karma Angulimala was receiving the fruit of his past actions

Everyday Angulimala went out to collect alms, everyday he was shunned not given food and people attacked him as in his present position as a monk they realized he would not retaliate.

The king came to Buddha to seek his blessing to kill Angulimala. Buddha asked the king would you kill him if he were dressed as a monk. The king said yes, but, reasoned the Buddha, if someone is a monk they are a peaceful person, would you kill a peaceful person. The king said no. Buddha explained that the king has to see Angulimala in the present moment. Buddhism is a way of changing and improving from moment to moment (Ven. One, 21/02/10).

“This is a story that Monks teach- to show that an individual must live in the moment not in the past. We know this is not easy but it is needed, if we cannot live in the present we cannot be happy /.../ Most people in Cambodia will know the Angulimala story-a bad man who becomes a good monk. We also teach that forgiving is a great merit, forgiving and forgetting the past is a way we can clean our mind and heart. This is the great merit and blessing. How can I learn and be better if I live in the past. You will just be stuck there. In Buddhism we have to learn and practice forgiveness and living in the present and living with compassion, as this is an important quality in human being. A lot of people cannot forgive or forget, that's why lots of people are in trouble, but if they learn to live to forgive and forget with their own compassionate heart the world would be better. I'm not talking about civil justice system, but a spiritual justice system”(Ven. One, 21/02/10).

Ven. One told me this to illustrate how people should live in the moment, and how, if a person has changed, one should accept them as they are now, not as they were. Yet he concedes, as do all the monks I interviewed, that calming the mind, quelling anger and accepting people as they are is hard for many. Lars Olsen comments :

... there has been so much speculating (“Cambodia is a Buddhist country, are they really ready for western justice?”) I don't think you will find an answer to that

question-sure you will find people who believe more in Karma; just yesterday you had Sophal Ear's op-ed piece, basically he said /.../ most people are convinced that these people will be reborn as cockroaches anyway so that they will not be concerned- yes that's obviously an issue- but regardless of what Buddhists believe you will see that many people have strong feelings, that they want revenge- and they want to see people held accountable. From people who would like to see Khmer Rouge put in jail to those who actually want to come and beat them up – I'm not too concerned that this is a 'western thing'(Olsen, 18/03/10).

Buddhism does offer a way for people to cope and conceive justice and an ontology that assures that Karma will provide a return for wicked actions, regardless of the decisions human justice makes, rendering the decision of a body such as the ECCC superfluous (Harris, 2007, P 240). Buddhism says nothing of temporal judicial procedure (Ven. Six, 14/03/10).

However 'leaving it all to karma' and calming one's own desire for revenge requires a great deal of personal strength, and strong faith in Karmic justice. The ECCC offers an alternative to this way of conceiving the world, one that can deal with the need for retribution in this life.

The Angulimala story also illustrates another concept.

There are two kinds of results produced by our actions. One, we can see the justice in conventional law, when we commit a crime, like killing, action against the law of the state- this is "common karma" :we receive the result of breaking the law, by the police or being put in the jail, we can say this is one kind of justice, this is common justice of conventional law. Two, the natural law of karma that belongs to no one. When some one does something good or bad they will receive it – this is a philosophy of justice. We have to understand how it produces a result" (Ven. Two, 11/03/10).

Angulimala, unfed, shunned, targeted for revenge attacks, was in receipt of his Karma in this life. The same can be said of the KR on trial at the ECCC. They are in receipt of their Karmic fruits in this existence. In this way ECCC law can be understood as being part of Karmic law- the manifestation of, as Ven. Two labeled it, 'Common Karma.' It is through this concept that Buddhism and the ECCC can connect philosophically.

Filling the Gaps

Due to the legacy of the KR persecution of monks and heavy restrictions placed on the age that men could be ordained in the 1980s, today's monastic community is

mostly made up of young men; comparatively few monks are middle-aged or older (Ven. Five, 12/03/10); consequently some people tend to have less confidence in monastic wisdom than they did before 1975 (Boyden and Gibbs, 1997, p 105).

“...one thing people think is Cambodian monks are young and is not have much knowledge so therefore many do not go to Buddhist monastery to make consultation with Buddhist monks about how to treat mental disorders. My suggestion is that people should go to Buddhist monk whether he is young or old to get some advice of how to break mental disorder” (Ven. Four, 11/03/10)

The ECCC offers a different way of dealing with trauma; some survivors have more confidence in this process than they have in younger monks; or some feel that, rather than the entire process being put upon the shoulders of young men, the ECCC offers a way to deal with problems in conjunction with other solutions -including those provided by the monks. For example, Ghosananda's Dhammayatra Peace Walks are one of the most potent examples of restorative action within a Buddhist framework, providing a way for people to deal with the past through Buddhist rooted philosophies on forgiveness, seeing things as they are, alleviating anger and quelling the desire for revenge (Hinton, 2008, P 78-80). The Dhammayatra was not a purely 'indigenous' movement as it received backing from international NGOs attempting glocalized international 'universalist' agendas (Poethig, 2004, p 210).

The ECCC is a latecomer to the Cambodian reconciliation and justice process. The arrival of Universalist Human Rights discourses has created some disparities, as these concepts come with their own epistemological understandings of justice, healing and reconciliation which place an emphasis on judicial procedures (Hinton, 2008, p 78-80).

Re-traumatizing?

Ian Harris illustrates a controversy between the 'western' and Cambodian attitudes. The bones of the millions of victims of DK are memorialized in Cambodia. The King and Buddhist leaders have expressed the notion that the bones should be cremated (in accordance with custom) then placed in a national monument; this would allow re-birth both for the victims and for the nation. *‘What Buddhist man or woman accepts that, instead of incinerating their dead relatives one displays their skulls and their skeletons to please “voyeurs?”* (King Sihanouk 2004, quoted Harris, 2007, p 233). Those in favor of keeping skulls on display cite the need to preserve the evidence of

history, to educate the next generation - a warning like Langer's 'alarmed vision' (Langer, 1997, p 58-63). The idea of preserving history in the form of human remains for education and forensic use, to assess the level of human progress fits western historiographical discourse. (Harris, 2007, p 233-234). The international community has its own agenda to try mass atrocities (Olsen, 10/03/10); preserving remains for the international community's edification is difficult to justify if it causes distress to surviving relatives.

Has revisiting the past-created new problems? Has the ECCC undone work accomplished over the last 30 years within individuals and communities? There are legitimate fears that the ECCC could provoke new conflicts and revive personal traumas (Ciorciari and Sok, 2009, p 301).

"We have to prove that we are good now. People in society, some of them have already forgiven them. If you talk to people before the ECCC started they didn't care much about the KR. They lived in the same village, the same area together. It is some in the diaspora or foreigners that come to the villages and demand justice- in some way provoking a revenge culture, or re-orienting everyone back to the past again. But that is not to say that there I agree with that, but it is true in the Cambodian community-even in my village, the people who killed people in the past- they are still with us, and still live in our community and no one talk about them or why they kill in the past, because that is the past. But now people are talking about them, because everyone is talking about the KR and the ECCC, now the people are saying oh he's a bad man."(Ven. One, 21/02/10)

There is a question of whether the ECCC is reviving old issues and stirring up issues that have been laid to rest in this way; one could argue that the very process of having a tribunal is 're-traumatizing'

"/.../ but at same time psycho-therapy its part of the healing process, they can talk about it in a safe context and they can confront those painful stories, then they are on the right track according to psychological way to heal them ...there are many approaches to support them in this process. In the past we were trying to support them to express their feeling and painful story in a way that might normally... when they express their feeling it causes them pain, and we also afford them some treatment of dealing with this painful feeling/story -breathing exercise, relaxation and so on, also at the end of the story we provide them with a technical grounding, we bring them through the story but t the end we bring them back to the present and orient them to the future." (Mrs. Pou-Maline translated Mr. Yaim Chamreun 12/03/10)

"/.../reminding of the past is painful and brings about reaction, but normally we get them to a better feeling; for me I try to get them to express these feeling with someone they trust, not alone, if they do it alone, no one is there to support them." (Mr. Taing Hum translated by Mr. Yaim Chamreun, 12/03/10)

Lars Olsen discusses whether the ECCC process is actually reviving past traumas and provoking revenge:

“I’m sure that’s a concern, if you look at the quantitative surveys of those who regard themselves as KR victims, the majority are still not willing to reconcile with the former perpetrators/.../ The vast majority do support the tribunals; the tribunals are not socially controversial- the majority support the idea of pursuing senior leaders- I don’t think the court itself is in most communities has caused old traumas and differences to re-emerge.

For most people they don’t see this, for many it is clear this is a limited process for those who are most responsible- there are places, former stronghold of the Khmer Rouge where people are probably sincerely worried about this tribunal and that we will go after more people”(Olsen, 18/03/10)

Since there has been no process or attempt at a reconciliatory framework at national/official level over the past 30 years, people have had no choice but to get on with life; however, despite their ability to do so, and initiatives between communities (for example within pagodas) desires for accountability, truth telling, even temporal punishment do not wane; nor does the fact people get on with life mean society is reconciled. Despite its flaws ECCC can help achieve something lacking for 30 years (Unac and Liang, 2006, p 161). Division and ‘old wounds’ have never really gone away. What a trial can do is acknowledge suffering and channel anger through process (Ciorciari and Sok, 2009, p 301). Reports at this stage as to whether this process reopens old wounds are mixed; but in a nation where large numbers of the population are estimated to suffer PTSD (Unac, 2006, P 158) and people live alongside those who have killed their friends and family (Zucker, 2009, P 38) there is urgent need to address trauma and division. One cannot conclude that it is the tribunal’s fault if trauma re-emerges. It never went away, though it may hide beneath the surface. Zucker’s case study of a former KR cadre (Ta Kam) shunned in his village due to his association with the KR in the 1970s, illustrates part of the collective process of expunging the horrors and immorality of an entire generation (Zucker, 2009, p 37-38). For Zucker at least, it is not the tribunal per se that is reviving divisions, but there is, and will be, anger and division in Cambodian society, regardless of what is happening in a courtroom in Phnom Penh. This study’s conclusion here is mixed. A final piece of evidence is the 2002 survey by the Documentation Center of Cambodia (DC-CAM). This found the majority of people questioned do not seek revenge (68%); a sizable minority do (23%) (Linton, 2004, P 10). However, the survey preceded the trials and may not indicate more recent shifts

of opinion. However it does suggest many are not so consumed with anger that they seek to attack former KR.

Many victims of the DK era avoid discussing what happened; people try to forget (Testimonial Therapy DVD, 2010). Only in the last year has the history of DK been on the school curriculum; for the last 30 years it has been a conversational taboo (Olsen, 18/03/10).

However, the silence of victims does not indicate their contentment or their 'healing'. The fact that many do not engage with their trauma and remain silent is not because they have reconciled or even calmed their mind through meditation.

".../some who regard in terms of they are victims, you know the traumas they have been through – have own ways to cope [at the time], pretending to be blind/deaf, not to really speak at the time [ignore what's going on, pretend not to notice], this is also how people may act now, they just lost every self-confidence to speak out as human being, as victims of Khmer Rouge" (Mr. Taing Hum, translated Sarath Youn, 12/03/10)

Self-imposed silence (a learned survival mechanism for many during DK) is hardwired into the brain during times of extreme oppression and difficult to unlearn(Young, 1997, p 254) Withdrawal from anthroposemiosis is a matter for concern as it is a denial of one's own humanity. DK survivors were utterly stripped of their humanity. It can be argued that by not engaging in anthroposemiosis, people have imbibed what was drilled into them during DK, 'To keep you is no benefit. To kill you is no loss.'(KR slogan, quoted, Youk Chhang, 2007, p 6)). Non-engagement in anthroposemiosis may indicate that an individual is reducing themselves to the level of an animal. Being treated and labeled as an animal can make one consider oneself such(Daniel, 2000, p 350-351).

Part of the ECCC effect has been to break this silence. The tribunal contributes to this but has, by its very existence, kick-started other initiatives across Cambodia.

"This is what the NGOs are working on at this moment; there are some organizations working on this local level that are trying to have radio call-in shows and try to bring former KR soldiers to really give their statements about what they did, and how they felt, whether they had the choice..."

I think that all these processes and organizations happen because of the beginning of the ECCC, I think TPO would not work as it does today if there was no ECCC, we could not do this healing process, and if there is no ECCC, we cannot have reconciliation projects such as 'memory and culture' or other projects, I think partly

it's also the contribution of the ECCC, that when they are not directly involved, or didn't pay, or take into account at the beginning, but slowly this is a thing that they can take into consideration

The victims' unit coordinates organizations so we can work together, organizations and the ECCC are trying to integrate, coordinate plans, work together, so we can integrate activity and support each other.”(Mr. Yaim Chamreun, 12/03/10)

Buddhist monks' organizations such as TPO offer individual and social reconciliation that no legal process could. Guilt is not only felt by the KR cadres, but also by survivors, who feel guilt for surviving when their friends and family did not, or guilt over not leaving Cambodia when they could; such deep rooted fears can only be addressed through other mechanisms, and social restoration can only be achieved in this way outside a legal process (Bit, 1991, p 118). Individuals are still living in fear.

The Lower Cadres

Another aspect of the Buddhist ability to deal with former KR cadres in a way the ECCC cannot is rehabilitation. The ECCC strictly defines who is a victim in civil parties (even to the extent of the exclusion of non-KR) (Thomas and Chy, 2009, p 249).

“For me, and from experience, a part of reconciliation is that this former Khmer Rouge cadre. As well -- there are some members of them [the cadres] that identify themselves as victim of Khmer Rouge time, and witness proceedings, they also work closely with the direct survivors who were not involved in KR movement. Previous these [two groups] were fighting, “I'm a real survivor, but you are not real survivor, you worked with Pol Pot, but now you identify yourself as a victim” – now they are working together and come up with this civil party association- I think this is part of reconciliation process. I think that the tribunal itself provides tool,- with all the questions from the judge, there is finally some truth out of this tribunal; if they take – they make publish a report at the end, this can be placed in a museum, this can be an official book about the KR regime, and this can be soothing related to facts. Up to today most Cambodians do not know why KR happen and where they come from and if all this information, if it can be documented into a good book it can be important for all Cambodians.”(Mr.Yaim Chamreun, 12/03/10)

All the monks I interviewed agree former KR need special attention to liberate themselves from their past and the greed, hatred and illusion that dominated their lives (Ven. Six, 14/03/10).

“The killer will suffer from mental suffering, the one who is killed will suffer bodily. /.../ If you understand the actions in the past you can make amendment later. According to Buddhism, we can commit bad action without intention. If they [the lower cadre] do actions sometimes they think that they have not done bad action,

because of the top officers their leader[giving orders],but even though I do this unwillingly I still needed to still think they should ask people for forgiveness to the people.”(Ven. Four11/03/10)

“We know when someone commit wrongdoing, the remorse comes to the mind. So therefore, when they commit the crimes during Pol Pot regime, those member after Pol Pot regime collapse there must be remorse in their minds, there must be repentance; what should we as Buddhist practitioners advise them –for release from this- remorse and regret, They must think that they have committed grave crimes and know they will receive the result someday in some existence, therefore I want to draw attention to them thinking they must receive the results of bad action, because what we do we will receive. /---/ so in healing their thinking, their mental disorder, we Buddhist monks advise them that what they cannot escape, the results they will receive in karma, however we have the power to change by our thought/.../ we encourage them to do good things, even though these good things and bad things cannot be exchanged, but however we encourage them to do good and through this good – there are two discourses- karma is the result we cannot escape, however through our labor, through our thought, we can escape to have good some day, I think this is the best way to heal their thinking, their mental disorder” (Ven.Two, 11/03/10)

In the Vinaya rule (monastic code of conduct) a monk who commits a bad action must go to a senior monk or a colleague to confess, beg pardon and refrain from doing it again (Ven. Four, 11/03/10) *“To show reflection I think, by showing our confession, our shortcomings, by confessing to our friends and then we promise to do good, to do better”* (Ven. Two, 11/03/10). This ‘right speech’ is important and applicable to the wider community; lower cadres could apologize for the lack of mindfulness in their actions during DK. Such truth-telling and facing the consequences of actions are integral to Buddhist philosophy.

Helping former KR cadres come to terms with their actions and deal with their mental suffering provides a chance for individuals to change and acknowledge their past. If this could be achieved it would offer comfort to the nation. Ramji’s survey indicates 50% of Cambodians would be ‘happy with an in-court confession and apology’ (Ramji, quoted Harris2007, p 239).This resonates with the importance Buddhism attaches to ‘right speech.’ The ECCC process is criticized, yet it receives support from the monastic community and, according to qualitative surveys, the wider population(Linton, 2004, p 22-23). DC-Cam surveys found 67% wanted to talk about the KR regime, 73% expressed a desire for answers, and 81% cannot forgive, although 68% did not seek revenge (Linton, 2004, p 8-11).

This chapter has described how the ECCC and Buddhist philosophy and practice can reinforce each other. The ECCC proceedings have major gaps which civil society and Buddhist approaches continue to fill. Traditional healers and Buddhist philosophy offer explanations for suffering, and its alleviation, in ways imported models of restorative and retributive justice cannot (Boyden and Gibbs, 1997, p 149). Yet the ECCC works on a macro-level, and does assist in filling areas of dissatisfaction left by Buddhist grass roots work and NGOs. In reality both processes contribute to providing justice and reconciliation; restorative and retributive concepts are conceived differently but both are addressed in their different ways. Any single process of justice is unsatisfactory, but together the two can address Cambodia's justice needs in a holistic way.

Conclusion

This thesis set out to answer four research questions:

What purpose does 'justice' serve in context of the atrocities of the Khmer Rouge and today's Cambodia; what are Cambodia's 'justice' needs?

The study set out the horrors of the DK era; it is in this context that the conceptual framework driving this thesis - how suffering is experienced - must be read. This section identified that suffering cannot be 'theorized'; mass atrocity defies logical or academic explanation, nor does personal experience of torture fit a theoretical framework. Without a 'theory' the framework seeks to understand how suffering is dealt with and answered - by Justice. In a Cambodian context 'justice needs' mean the outstanding deficit of justice for the actions of DK.

Justice has many definitions but can be conceived here as 'a fair response' to the suffering, with two modes, retributive and restorative. Retributive justice punishes those who inflict suffering. Restorative justice restores individuals/society to functionality. In the Cambodian context, justice can be understood as a process of mental calming (Harris quoted Ciorciari and Sok, 2009, p 336).

Four aspects of suffering are discussed :

First, survivors of mass atrocity/ torture do not 'get over it' but live with their experience. Post-atrocity society continues in a state of 'alarmed vision' (Langer,

1997, p 58-63) regarding the future, and with ‘poisonous knowledge’ (Das, 200, P 208) that continues to determine behavioral patterns; though these can be unlearned, the ‘ruins of memory’ (Langer1991, quoted Das and Kleinman, 2000, p 12) remain. Durational time is forever disrupted by memory (Langer, 1997, p 59-60).

Secondly, expressing pain is a process of ‘anthroposemiosis’ challenging representational language. A polyphonic discourse is needed in the wake of atrocity to deal holistically with the past; this can be achieved via ‘genealogical’ language (Daniel, 1996, p 350-363).

Third, official narratives of histories, created for political reasons, restrict the articulation of pain. When such a narrative is developed people who do not conform to it are shut out of the ‘story’ (Last, 2000, p 316-330).

Fourth, when pain is ignored by the world / the community/the nation/posterity, this is an act of violence(Chang, 1997, p 199-225)(Cavell, 1996, p 94).

What is the ECCC’s concept of justice with regard to the KR era and what does it offer survivors/victims?

The ECCC hybrid system was conceived via the mixing of international and Cambodian law – a process reached not by assessing /addressing survivors’ needs, but through negotiation between the UN and the Cambodian government; the ECCC reflects the narrative of the DK era conceived by the Cambodian state and international community - both having reasons to be selective regarding the ‘story’. Lower KR cadres and international actors who helped the KR are not held accountable in the ECCC. This exclusion of actors from the narrative means that many who suffered are left out of the process. The ECCC’s concept of justice is thus exclusive. However, the ECCC does conduct outreach to overcome the remoteness of the legal process, keeping people informed by working in partnership with local figures. The civil party mechanism allows victims to be participants in court proceedings, not just witnesses for the prosecution, yet participation has been strictly limited. The majority of people support the ECCC, believing that despite major flaws it has the potential to offer both retributive and restorative justice, aiding reconciliation. Its biggest advantage is that it acknowledges suffering on a national

and international scale; acknowledgement, holding someone (even if not everyone) to account, channeling anger, all contribute to mental calming.

What is the Buddhist concept of justice towards the atrocities of the Khmer Rouge and what does it offer survivors/victims?

Buddhism focuses on *Dukkha* and how to escape it. It also promulgates the concept of Karma : even those not called to the ECCC to stand trial, or who have died unpunished (like Pol Pot) will in Buddhist terms receive back what they have done. This can placate those living alongside former persecutors, as they ontologically know that those who committed wickedness against them will receive a just response, thus defusing the desire for revenge.

Buddhism as core cultural dynamic in post-atrocity Cambodia has played a large restorative role at both low levels, such as personal consultations with monks, or nationwide events such the Dhammayatra. Buddhism as central community variable helps people ‘descend into the everyday’ (Das and Kleinman, 2000, p 10). The Buddhist concept of *Metta* offers a discourse of reconciliation. The Dhammayatra was a proactive example of *metta* working in dangerous circumstances to re-establish links with former enemies, facilitating national healing.

Buddhist meditation aids those who have suffered, calming the mind, quelling anger and helping them ‘see things as they are’(impermanent) – this helps them let go past horrors, renounce negative desires and not live in the past. Religious ritual offers an outlet for anthroposemiosis; it is an agency for both the expression and soothing of pain. Rituals and meditation are also ways to reclaim lost cultural heritage, and acknowledge the suffering of both living and dead. Khmer Buddhism especially has undergone tremendous upheaval; a mix of local beliefs, spiritualism and animism, it adds to the fluidity of religious practice and offers further opportunity for culture, reconnection with the past and commemoration.

Buddhism is an alternative discourse, unconnected with the ‘official’ DK narrative of the state. Where the ECCC would limit how (and if) sufferers might express their pain, Buddhism enables ‘genealogical’ expression. Buddhism was proactive in societal and individual reconciliation for years before the formation of the ECCC. It is however questionable how far Buddhism is truly understood by many of the

population; all my monastic interviewees expressed this concern. The relative youthfulness of the monastic community can also create the impression amongst older people that the monks are too inexperienced to deal with their problems. It is also worth pointing out that forgiving/ living with /tolerating former persecutors and one's past is hard even for the most devout. Many Cambodians desire to see human justice done.

How do these notions of justice toward the Khmer Rouge meet and diverge? Do they mutually reinforce each other?

Buddhism's philosophy of justice and the ECCC offer different means toward the same goal. Both reinforce each other and fill gaps left by the other's way of dealing with post-atrocity justice. For example, the ECCC has nothing to offer former KR cadres who express regret; Buddhism offers a path for individuals to come to terms with a bad past. The concept of '*Common Karma*' fits with the present attempt to prosecute the top KR leaders. Buddhist truth-telling and metta are also paradigms that can engage with and reinforce ECCC functions and aspirations. Buddhism is also a conduit through which international concepts on justice and human rights can be glocalized, and moulded to fit indigenous thinking.

Buddhism has been vital to the recovery of Cambodia but has not been able to totally restore the nation; people have used Buddhist techniques and philosophy to help them get on with life. However this does not mean they are healed or satisfied. The ECCC has sparked discussion and action to heal the past, and helped break silence; it will produce a written record for posterity. The ECCC offers a macro-process, of internationalized acknowledgement, accountability and punishment. Buddhist dynamics offer both a micro-process of individual and community reconciliation, and a macro-process of events like the peace walks. The ECCC and Buddhism are part of a necessarily polyphonic response to the crimes of the KR.

The Tribunals continue. At the time of writing the verdict on the first case is undecided. Four more (ageing) leaders await their time in the ECCC (if they live long enough). It is uncertain if more will be charged and what effect further trials, or the deaths of those awaiting trial, might have. There are still many former KR cadres in society, far younger than the leaders. Cambodia will not be rid of the DK generation for a long time. As Lars Olsen said, the process is an experiment in

international justice (Olsen, 18/03/10). Its lessons are still to be learned. Both monks and the ECCC may face new challenges arising from the prosecutions and immunities of former KR. This thesis has discussed an embryonic process, and cannot draw large conclusions, but it offers an analysis of the idea of Justice and relations between Buddhism and the ECCC process, to be utilized as the tribunal progresses into an unclear future.

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Ven. Six: Recorded Interview : March 14th 2010

Appendix

Interview Questions:

Questions to ECCC:

1-What is a just outcome for the tribunal? -What's the measure of success-what is the tribunals stated outcome ?

Can you explain the challenges of blending the objectives of the tribunal intentional and domestic systems at a socio-cultural level ?

2-How does out reach conceive work with Buddhist monks (if at all), and NGO groups ?

How is the ECCC/UNAKRT reaching out to communities, victims and society

3-How does the tribunal assess the justice needs of the populations ?

Some are frustrated/ critical of the limitations with regards to those facing prosecution (ANKOR, The party the KR). How do you answer critics that would like to see lower ranking/middle ranking KR, some of who have committed awful crimes and are still living in Communities?

4-what makes this tribunal meaningful to people and not just a tribunal for the sake of a tribunal ?

How can the ECCC fulfill justice/ reconciliation if these individuals are allowed to live with impunity?

5-Limitations of the tribunal – how do you address the shortcoming that leaves people unsatisfied (e.g. lower level cadres going unprosecuted)?

Is there are interaction with Buddhist in the county? In the Pagoda or inclusion of Monks in the outreach services-if so how is this operational zed- if not why not?

6-How is a sense of ownership instilled in the population by out reach ?

What is the goal of the ECCC, after the process is finished what are you hoping will have been accomplished in helping Cambodia?

How relevant is this process to wider society, how is a sense of ownership instilled by the ECCC/UNAKRT?

Questions to Monks

The two concepts that I am most interested in are Karma and Metta (loving kindness) as was of understanding justice and reconciliation-

At the core of all my questions is: How as a Buddhist practitioner you view 'justice? And in particular what is a just response to the Khmer Rouge currently awaiting trial in the ECCC?

What role can Buddhism play in Cambodia in the process of healing and providing closer to post- Khmer Rouge Cambodia?

Can you help to explain to me how ideas of revenge, justice and forgiveness work within a Buddhist framework?

How would you advise a lay person who came to you who had suffered under the KR who wanted revenge? How would you advise them to cope with their suffering and anger?

How would you advise a former member of the KR who had committed grievous crimes (murder, torture) on what his course of action should be?

Concepts of killing and Karma

What is the relationship between intention/motivation and Karma – for example- many claim that they were 'following orders' that they were they were made to kill and harm, and that if they had not carried out their orders they would have themselves been killed. In these cases how can karma be helpful in understanding their situation? Is their situation different to those who willingly participated?

The KR deliberately indoctrinated Children and even used children to kill adults, when one is brainwashed in such a way and has little understanding of the consequences of their actions what is the appropriate response?

How does the Buddhist ideas of 'justice' relate to temporal (human made) judicial concepts and institutions - do you think that a court system (such as the ECCC) has a role in helping to restore balance and provide justice?

The ECCC is prosecuting those who have been deemed to be “most responsible” (those who ordered killing but did themselves not kill such as Duch) what would be an appropriate resolution to those cases - how as a Buddhist can their crimes be viewed?

Reconciliation?

How can concepts of Karma / metta (loving kindness) be applied to helping in the process of reconciliation and acceptance?

Are there stories from the sutras/ the life of Buddha that can provide lessons for the KR case?

Questions to TPO

Is the ECCC aiding in reconciliation – or reopening old wounds, re-traumatizing people?

How is Buddhism incorporated in to the techniques?

ECCC is a legal process not a healing process – can legal process have a role in healing or is healing almost entirely up to originations such as TPO to facilitate healing- Can TPO live part from the legal process

Has there been ‘grass roots’, localized reconciliation between KR Cadres and victims, not to do with the ECCC, given the stick limitation of the ECCC?

Has the ECCC kick-started a process, rather than being a ‘complete’ process in its self- but because it exists it allows for other things to happen?

Were there a process that emerged out of society (in the towns and villages) that came out organically between 1979 and the ECCC’ s establishment?

How do people conceive their own suffering?

How to the people you work with view justice- how is justice defined? What’s a just to response the KR crimes?