“MOVING FORWARD THROUGH JUSTICE”

HUMAN RIGHTS AND MEMORY POLITICS IN JUSTICE AND RECONCILIATION

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The Extraordinary Chambers in the Courts of Cambodia (ECCC) has been positioned by both practitioners and scholars of transitional justice as the principal institutional site for Cambodia’s confrontation with its legacies of political violence. Proponents of the ECCC have suggested that its work will contribute to the realisation of broader governmental aims: providing justice for victims, building the rule of law, enhancing Cambodia’s judicial system, facilitating reconciliation, abreaction and catharsis, and, preventing the recurrence of human rights abuses on the scale of those perpetrated by the Khmer Rouge (KR). The efficacy of the ECCC in doing so has been the subject of much attention. Specifically, the composition of the ECCC, a mixed domestic and international body, has emerged as a vexed issue for commentaries on Cambodia’s transitional justice strategy (Menzel 2007; Claussen 2008; Banner 2009). The tension between the ‘international’ and ‘domestic’ makeup of the court has been framed as a conflict between the political interests of the Royal Government of Cambodia in restricting prosecutions to a handful of individuals and (purportedly apolitical) efforts to ensure the realisation of international standards in the legal process.

While acknowledging the importance of commentators’ concerns over the influence of the RGC, this essay will sketch a number of ways to analyse the relationship between the international and domestic characteristics (and politics) of Cambodia’s confrontation with mass political violence beyond a narrow legal question of political interference in the ECCC’s process. Specifically, consideration of how discourses of justice and reconciliation are articulated, formalised and practised reveals enmeshed and interpenetrating international and domestic rationales and imperatives that destabilise the neat distinction of ‘international’ and ‘domestic’ interests commonly thought to flow from (and be embodied by) the ECCC’s institutional structure.
The representation of Cambodia as a problematic site of post-atrocity governance through specifically international legal and therapeutic\(^1\) human rights tropes has been foundational to the validation of the ECCC as an intervention on the past. One feature and effect of these tropes is a tendency among commentators and practitioners to pathologise the Cambodian body politic – and, by proxy, the Cambodian subject – as dysfunctional, traumatised, amnesiac, and passive in its relationship to memories of past political violence (see, for example, Chandler 2008). In particular, the veridical hierarchy of ‘international standards’ in the critiques of legal procedure at the ECCC positions Cambodia as incapable of autonomously responding to its past in a ‘transparent’ manner. Justifications of the ECCC as a pedagogical and capacity building exercise for Cambodia’s judicial system are notably symptomatic of this tendency.

The representation of Cambodia as a dysfunctional political space reproduces and mirrors discourses of intervention, supervision and management by external actors that became particularly pronounced during the United Nations Transitional Authority for Cambodia period (1991-1994), whereby a similar simplification of complex post-conflict subjectivity served to rationalise specific forms of international intervention (Hughes and Pupavac 2005). Today, related conceptual frameworks of amnesia and denial are visible as implicit themes in outreach materials deployed by and for the ECCC: a nationally distributed ECCC poster claims, “It’s time to set the record straight”\(^2\) and the Documentation Centre of Cambodia – described by one commentator as ‘synonymous with public memory’ (Caswell 2010: 38) – provides examples that draw on therapeutic metaphors through maxims such as “breaking the silence” (overcoming repression) and “searching for the truth” (retrieval of memory) in publications, public events and outreach.

Two issues are striking here. First, the collaboration of legal and therapeutic knowledge is notable in the positioning of the ECCC as a social enterprise that can ameliorate a particular post-conflict malady (one ECCC motto is the progressive claim to facilitate “moving forward through justice”). Second, these are examples of internationalised human rights tropes framing the meaning of a local post-conflict setting through particular lenses that can then be re-appropriated and deployed by local actors (i.e. civil society groups).

\(^1\) Moon has noted that, “[…] some therapeutic assumptions are in the process of being consolidated into new human rights” (2009: 86). Specifically, rights to ‘acknowledgement’ and ‘truth’ borrow heavily from a therapeutic framework and have become prominent within discourses surrounding the ECCC.


A second key feature of Cambodia’s ‘transitional justice’ strategy – with the ECCC at its heart – is the way that the aforementioned ‘international’ vocabularies of human rights, legal retribution and therapy are themselves ‘localised’. As discussed above, we can see how international human rights norms frame and are adopted by domestic actors to articulate the Cambodian past as a site that necessitates particular forms of intervention (punishment and remembering). Moreover, international human rights concepts and vocabularies exist alongside national imperatives and imaginaries in ways that are mutually interpenetrating. The jurisdiction of the ECCC as a retributive mechanism – predicated on the universalist imperative that perpetrators of human rights abuses must be punished – animates and recognises particular subject groups that are authorised, enabled or constrained to engage with the past in highly specific ways: the ECCC recognises particular victim groups for whom it can offer redress (which is itself a contested process\(^3\)), isolates particular perpetrators (restrictively to “senior leaders” and “those most responsible”) who it can punish or absolve, while allowing space for a broader spectatorship of the court process (within and beyond the courtroom). At the same time, the ECCC process has been articulated as a national concern and endeavour, licensing a far wider category of all Cambodians as victims of the Khmer Rouge (KR) (a key exculpatory feature of the multiple state and civil society led reconciliation initiatives). In doing so, the ECCC enacts a dual topography through which memory is governed, as a specifically narrow institutional space and through the broader imagery of a national confrontation with the past: “moving forward through justice” becomes as much a national prerogative as a human rights end.

The two spaces that the court generates – both ‘narrow’ and national – have had important effects in licensing subsidiary crucibles of intervention in the name of memory. Specifically, outreach and the wider public legitimacy of the ECCC (the connection between an institutional process and a public imagination) have been problematised as a key concern for the success or failure of the court (Pham, Vinck et al. 2009). While the ECCC is considered the central site in administering Cambodia’s confrontation with its past, a range of groups have been drawn into a broader ‘transitional justice’ process: international and domestic civic, mental health, and human rights NGOs play a central role in educating the Cambodian

\(^3\) An example of this can be found in the decision to bring charges of genocide against four senior leaders on behalf of Cham Muslim and Vietnamese minorities but not the Khmer Krom ethnic grouping. See ‘Khmer Krom deserve justice as well’ Phnom Penh Post, 29th September 2010, Mahdev Mohan and Laurel E Fletcher.
public about the ECCC and KR period, soliciting participation in the ECCC process, at the same time as critically monitoring proceedings for ‘fair trial’ standards and assessments of ECCC outcomes. This division of labour specifically fuses internationalised assumptions and human rights concepts with locally particular conventions and norms. Psychological support strategies that are rooted in (Western) therapeutic conceptual frameworks now operate ‘on-site’ at the ECCC for witnesses and complainants⁴ and are visible in more devolved outreach strategies that are intended to encourage participation in the ECCC process (Manning forthcoming 2012). Such strategies are notable in the way they have attempted to ‘localise’ concepts of trauma and Post-Traumatic Stress Disorder (PTSD) through culturally specific ‘coping strategies’ such as meditation, prayer, or dialogue with community and religious leaders (CSD 2008).

As a final comment, it is worth noting the ways in which retributivist human rights vocabularies and therapeutic assumptions about trauma operate subservient to and within parameters defined by particular international and domestic political interests. Elsewhere in this working paper series John Ciorciari (2008) has concisely unpacked how the political framing of the ECCC’s temporal and personal jurisdictions guard the interests of (potentially culpable) international and domestic actors: only a handful of senior leaders are to be punished in the name of reconciliation to avoid stigmatising lower level KR (and, according to some, protect members of the ruling party), and the delimitation of the 1975-1979 period precludes scrutiny of serious violence perpetrated by both domestic and international actors immediately before and after KR rule. The jurisdiction of the ECCC must be understood as contingent and conditional (as should any notions of justice and reconciliation that follow from it). It is striking that retributivist and therapeutic human rights vocabularies are amenable conduits for the articulation of such politics. The ECCC, an intervention rationalised in the name of human rights, formalises a de facto amnesty for lower level KR, actually reproducing a longstanding politics of reconciliation apparent during Cambodia’s civil war. ECCC outreach materials have heavily emphasised the point that ‘lower level KR have nothing to fear’.⁵ Outreach by NGO partner groups frequently addresses former lower level KR as victims of the regime (Manning forthcoming 2012) and research sponsored by domestic civil society groups has emphasised similar equivalences between ‘perpetrators’

⁴ See the Transcultural Psychosocial Organisation on ECCC support (accessed 15th April 2011) http://www.tpocambodia.org/index.php?option=com_content&view=article&id=48&Itemid=60
and ‘victims’ (Ea and Sim 2001). The complementarity of therapeutic trauma concepts is notable in rationalising the need for the ECCC as an intervention on a traumatised body politic (as a form of integration). Moreover, devolved ECCC outreach initiatives that imagine the post-conflict Cambodian subject through a therapeutic vocabulary obscure concerns about the origins of traumatic events (for example, as caused by the civil war rather than the KR period) and serve to displace conventional questions about retribution for crimes perpetrated beyond the ECCC’s temporal jurisdiction. The licensing of a wider category of post-conflict social trauma through an internationalised set of therapeutic assumptions is powerfully exculpatory as a transitional justice strategy (Moon 2009) but also dovetails neatly with a political jurisdiction that is framed subject to the interests of influential international and domestic actors.

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References


