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Introduction

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Introduction

The quest to address the legacy of mass violence is a politically complex endeavor that does not necessarily foreground the needs or desires of victims. Indeed, victim claims may contradict the motives of those in power or become overshadowed by the drive to establish international legal norms and regimes of justice. The international push for a tribunal to hold accountable those responsible for the deaths of some 1.7 million Cambodians from 1975-79 did not begin until after the fall of the Soviet Union. Until that time, Cold War politics shielded the former Khmer Rouge from prosecution; indeed a reconfigured Khmer Rouge coalition claimed Cambodia's place at the United Nations even after the Vietnamese drove the brutal regime from power in 1979. Co-Prime Ministers Prince Norodom Ranariddh and Hun Sen wrote to the UN in 1997 requesting the creation of a tribunal — some claim to intimidate remaining Khmers Rouge into defecting to the current government — but changed his position soon afterward. Nonetheless, international pressure for a court continued and, after a series of lengthy negotiations, the Cambodian government and United Nations reached an agreement in 2003 to establish the Extraordinary Chambers in the Courts of Cambodia (ECCC), more commonly known as the Khmer Rouge Tribunal (KRT).

Hun Sen agreed to the tribunal against a backdrop of mounting international criticism of his regime's widespread human rights abuses and corruption.[1] Dunncan McCargo refers to the ECCC as "the play-within-a-play" that characterized the political drama between Hun Sen and the international community.[2] From the start, Hun Sen sought to limit the scope of prosecutions to create a narrative of the Khmer Rouge regime that assigned culpability to a small group of elite actors. Members of the international community pushed for more widespread prosecutions and sought both retributive justice and truth recovery. For transnational human rights organizations and a larger international community, the KRT processes are anticipated to produce spillover effects that would transform the judicial system, and perhaps usher in a gradual regime change in this impoverished country.[3] Truth recovery, they also hope, would facilitate a process of national "reconciliation," which is mentioned in the June 2003 agreement between the United Nations and the Royal Government of Cambodia.[4] As the KRT draws to a close, its impact on victims, politics and international norms has only begun to be debated. Thirty-five years since the crimes took place and with over $200 million spent on two trials to date, how has this court affected justice for genocidal violence, national reconciliation, historical truth and the culture of impunity in Cambodia?

This special issue of *Genocide Studies and Prevention: An International Journal* addresses such questions through new analysis and reflection. The following essays provide an even-handed analysis of the KRT's contributions and limitations. The politics surrounding the court's establishment, political interference from the Cambodian government and a lack of resources have all constrained the tribunal's accomplishments, particularly in meeting the multitudinous needs of victims.

Alexander Hinton's article provides insight into the significance of the KRT to victims of S-21 and how the "deeply personal" struggle of healing and truth seeking does not necessarily align with the priorities of the transitional justice community. Drawing on his unique access to late S-21 survivor Vann Nath during the Duch trial, Hinton emphasizes the importance of the painter's Buddhist beliefs, arts (to educate the public through the painting of atrocities committed at S-21), his confrontation with a former S-21 guard, and his testimony against Duch.[5] Vann Nath's unique personal journey over time led him to internalize the Buddhist precept of *karma*, a cosmic justice.[6]

Hinton argues that the tribunal's limited temporal jurisdiction puts forth "a 'truth' bleached of historical processes and an understanding of the factors that enable the Khmer Rouge rise to power."[7] Indeed, transitional justice mechanisms such as the KRT that offer sweeping promises of truth, justice, personal healing and national reconciliation, are bound to fail. Yet supporters push forward with such efforts as part of a "transitional justice imaginary."[8] In essence, practitioners and supporters of internationalized courts such as the KRT are incentivized to represent the court as a success both to satisfy donors and to secure their membership in the transitional justice community.[9] In its discursive representation, this transitional justice community places greater emphasis on constructing a linear narrative of transition from a barbaric society to a modern liberal democracy. Supporters of the KRT can thus claim agency in shaping this normative discourse of human rights

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and democracy, forging a sense of "shared belonging" to a larger transitional justice community.[10] Throughout the KRT proceedings, complex histories of the Cambodian genocide were truncated by the court's temporal jurisdiction and legal design to produce a "truth" that suits the transitional justice discourse. However, this kind of "truth," as Hinton argues, "directs attention away from social praxis and the ways in which the meaning and understanding of such transitional justice processes are negotiated on the ground."[11]

Helen Jarvis, who served as Chief of the Victims Support Section of the ECCC (widely known as Victims' Unit) from June 2009 to June 2010,[12] provides insight into the struggle of this small, under-resourced and understaffed office to meet the enormous demand for victim participation in the KRT proceedings. According to Jarvis, the ECCC was "completely unprepared" for direct participation by Civil Parties[13], a limited form of victim participation and symbolic reparations that owes its existence to a 2006 negotiated compromise between judges from the civil and common law systems.[14] The office, Jarvis suggests, was unprepared for its success, as its outreach campaign received active support from at least five local civil society organizations, including the Documentation Center of Cambodia (DC-Cam).[15] As Civil Parties increased from 90 victims (22 went on to testify in court) in Case 001 to 3,850 in Case 002, the financial support from the ECCC could not keep pace, leaving the Civil Party legal representation to the mercy of donors' goodwill.[16] For the sake of efficiency, the Plenary Session of judicial officers revised the court's Internal Rules in February 2010, consolidating Civil Party representation in Case 002, a much more complex undertaking than Case 001.[17] In Jarvis' view, this new approach provided a "more coherent framework for Civil Party legal representation" because "individual Civil Parties still retained their own co-lawyers, and "the Lead Co-Lawyers gave opportunities to these co-lawyers to speak in court."[18]

Referencing *The Long-Awaited Day*, a video made for the Victims' Unit, Jarvis contends that victims who participate in the KRT are motivated by a search for justice, acknowledgement of Khmer Rouge atrocities and dissemination of historical truth for younger generations.[19] The participation of some 4,000 Civil Parties may be considered one of the ECCC's main contributions to the development of transitional justice. Yet, as Jarvis concludes, had the issue of victim participation been given "sufficient attention and weight at the time of the establishment of the court," a great deal of anxiety, disappointment, and suspicion could have been avoided.[20]

Wendy Lambourne makes a convincing case that despite its flaws, the ECCC does have a meaningful role to play, especially when coupled with NGO-led processes. Drawing on data gathered from interviews in 2009, she weighs the ECCC's positive impact, particularly the "symbolic and psychological benefits of survivors of having their suffering officially acknowledge at last"[21] with its severe limitations in transforming domestic legal capacity and the local rule of law. Echoing Jarvis, Lambourne emphasizes the importance of "official acknowledgement" by the tribunal of Khmer Rouge crimes and of victims' suffering. However, she underscores the fact that the court is by design ill-equipped for "truth recovery" and, perhaps worse, limits opportunities for former Khmer Rouge leaders' acknowledgement of wrongdoings, which might provide some closure to victims.[22] Notably, she argues for "a more pragmatic approach to international justice that closely responds to the perceptions and expressed needs of locally affected communities."[23] Lambourne goes on to question both the rationale and benefit of pursuing cases beyond Case 002, as many human rights organizations desire. Relying on her interviews with survivors in January-February 2009, and surveys conducted by DC-Cam around the same time, she doubts that the majority of Cambodians would welcome an expansion of the cases under investigation.[24]

Legal scholar Randle DeFalco makes a strong case that the five suspects under investigation in Cases 003 and 004 qualify as "most responsible" for crimes committed by the Khmer Rouge. These include Meas Muth (Army General), Sou Met (Army General), Ta An (Deputy Secretary of the Central Zone), Im Chaem (District Chief), and Ta Tith (Deputy Secretary of the Northwest Zone). DeFalco uses the examples of the Special Court for Sierra Leone, International Criminal Tribunal for the former Yugoslavia and International Criminal Court to demonstrate a relatively consistent set of criteria that qualify those "most responsible" according to the suspect's seniority and gravity and scale of offenses committed.[25] DeFalco suggests that political motives offer a powerful potential explanation for Cambodian resistance to Cases 003 and 004; in addition, financial concerns may be sapping the interest of foreign donors.[26]

Donald Beachler argues that the significant limitations of the KRT are hardly surprising when one closely examines the political underpinnings of the court.[27] For Beachler, the confluence of *Realpolitik* considerations and vested national interests dictates against a more complete process of justice and truth recovery. Many Western governments, including the United States, lack the political will to push for trials beyond Case 002. In fact, Beachler suggests that such governments have used Hun Sen's political interference in the court's judicial independence as an excuse for their "non-committal" stance on the issue of whether Cases 003/004 should be pursued.[28]

Two major world powers – namely China and the United States – are far more interested in persuading the Hun Sen government to support their strategic interests than they are in pushing for additional cases at the KRT. China needs Cambodia's support in its dispute with Vietnam and the Philippines over the South China Sea; meanwhile, the core interests of the United States and its Asian ally Japan have shifted in recent years from a focus on human rights and democracy to anti-terrorism, anti-drug trafficking, and countering China's influence.[29] The sobering lesson, as Beachler concludes, is that "politicians on national and international stages acted largely in their own self and national interests with regard to the ECCC. […]. The Cambodian genocide trials are hardly the first time that the imperatives of Realpolitik triumphed over concerns for truth and justice in matters of genocide and other mass killings."[30]

Most contributors to this volume conclude that the KRT can reveal only partial truths relating to the Cambodian genocide and that its legal proceedings are unlikely to improve the rule of law or culture of impunity in Cambodia. Nonetheless, the court may provide symbolic and psychological benefits to victims as they seek closure, an evolving and deeply personal process. We hope these pieces will help provide insight into the impact of the KRT thus far, even though we can only begin to assess its long-term legacy.

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End Notes

1. See Un Kheang, "The Khmer Rouge Tribunal: A Politically Compromised Search for Justice," The Journal of Asian Studies, Vol. 72, No. 4 (November) 2013: 783-792.
2. Duncan McCargo, "Politics by other means? The virtual trials of the Khmer Rouge tribunal," International Affairs, 87:3 (2011) 613-627
3. Lindsay Murdoch, "Gareth Evans Slams Abbott Government's Dealings with Cambodia," Sydney Morning Herald, March 1, 2014.
4. See Agreement Between the Untied Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, June 6, 2003.
5. Hinton, pp. 11-12.
6. Hinton, p. 13.
7. Hinton, pp. 6-8.
8. Hinton, p. 10.
9. Hinton, p. 10.
10. Hinton, p. 10.
11. Hinton, p. 11.
12. Jarvis's appointment in June 2009 as Chief of the Victims' Unit drew strong criticisms from the defense lawyers' team, the victims organizations, and some civil societies, for her bias against the Khmer Rouge because of her strong positions in her writing, the appropriateness of an "Australian citizen" as head of the victims' unit, and Marxism leaning beliefs. See Beachler's discussion of political scientist and genocide survivor Sophal Ear's criticisms against Jarvis's appointment as Head of the Victims' Unit in this volume.
13. Jarvis, p. 4.
14. Jarvis, p. 5.
15. Jarvis, p. 6.
16. Jarvis, p. 7.
17. Jarvis, p. 8.
18. Jarvis, p. 10.
19. Jarvis, pp. 3-4.
20. Jarvis, p. 13.
21. Lambourne, pp. 1, 11.
22. Lambourne, pp. 7, 10, 11.
23. Lambourne, p. 10.
24. Labmboure, p. 10.
25. DeFalco, pp. 9.-11.
26. DeFalco, pp. 3-4.
27. Beachler, p. 23.
28. Beachler, p. 15.
29. Beachler, p. 17.
30. Beachler, p. 24.