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## **Literature and Genocide in Cambodia**

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The primary potential benefit of the Khmer Rouge Tribunal lies in its ability to affirm and create the ideals of a just society. The KRT is concerned primarily with affirming the view that certain practices of Democratic Kampuchea (DK) are unacceptable in a just society. These practices include, but are not limited to the following: mass murder, mass displacement, implementation of slave labor, destruction of human relationships, and the destruction of culture and religion (KRT information pamphlet, 15). By placing the perpetrators of these acts on trial, the KRT effectively labels these acts as crimes. Because the current government of Cambodia is sponsoring the trials, it places itself in dialectic opposition to these crimes. It thus seeks to create itself in the image of a just society.

The implication of this image is that the society engaging in the prosecution (the Kingdom of Cambodia) and the societies otherwise supporting the trials are therefore just societies. However it is important to remember that the conclusions affirmed by the trials (i.e. what is unacceptable in a just society) are not necessarily to be practically and actively applied either by the ruling regime or by the international community. To draw an analogous example, the United States endorses the Universal Declaration of Human Rights. This document was largely derived from the conclusions of the Nuremberg Trials. It is widely agreed to represent the ideals of a just society and as such serves as a primary reference for international law. These trials (actually, military tribunals) assessed the criminal nature of the actions of senior officials of the Axis powers during the period of 1939-45. The judgment given was that the actions of these officials (including mass murder, mass displacement, and cultural destruction) were crimes. Consequently, this judgment was affirmed by the United Nations and was expressed as the Universal Declaration of Human Rights.

Yet despite public endorsement of the Declaration, the United States consistently violates its principles. For example, Article 5 of this document states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." However, many actions of the United States are not in accordance with this article and indeed show a blatant disregard for it. Recent examples include the abuses at Abu Ghraib prison in Iraq and the experiences of those subjected to the CIA's policy of extraordinary rendition. Torture is even officially sanctioned- as could be seen in the training manuals of the School of the Americas (now the Western Hemisphere Institute for Security Cooperation), a US sponsored training camp for Latin American military. Thus, a society can simultaneously endorse an ideal and disregard its practical application. It is for this reason that I believe the term image is justified when discussing the potential benefits of the Khmer Rouge Tribunal. I do not use "image" to suggest that those conducting the trials are concerned with simply "appearing" just. Rather, I think the term "image" is warranted because these trials are primarily concerned with affirming the criminal nature of past actions rather than the active implementation of just policies. I believe however that the image of a just human society, even if its ideals are not always practically applied, is beneficial for several reasons.

The first benefit of the image of a just society is the feeling of stability and security it engenders. This feeling is actually essentially illogical. The fact that the current Cambodian government, or even the international community, condemns the “crimes against humanity” described above provides little immediate recourse should another DK- style regime be instituted. This point is well illustrated by the fact that the Universal Declaration of Human Rights, which condemns crimes against humanity, was created in 1948- nearly 30 years before the ascendance of Pol Pot’s Khmer Rouge. Yet its existence, its principles, did nothing to stop the crimes committed in Democratic Kampuchea. It is the philosophy of the regime in power, not the judicial ideals of any other regime that is of immediate practical importance. However, simply knowing that such practices are condemned is enough to give people the security they need for day to day living. As is pointed out in our lecture notes: “faith and trust in the benevolence of the world...is essential for everyday living.” (Chigas, 6, “The Evidence: Cambodian Survival Literature”). People need to believe that they will not be subject to arbitrary death and torture in order to go about their lives.

In terms of the KRT, the image of a just society has both domestic and international implications. Domestically, the image of contemporary Cambodia as a just society could be extremely beneficial to the survivors of DK. Conviction of the DK leaders would let the survivors know that their suffering was a crime- i.e. that their suffering was a morally wrong imposition upon them. It would enable them to categorize what happened to them as a crime. If what happened to the survivors is not categorized as a crime, then two options remain to them for the classification of their suffering.

The first option is that the suffering was deserved. The second is that their suffering was nothing more than a result of chaos, an arbitrary occurrence. Both of these categorizations are much more difficult for the survivor to come to terms with than the view that they were victims of a crime. People have a need to confirm their innocence in order to come to terms with their suffering. This trend can be seen in the refusal of responsibility for the DK atrocities from the lowest to highest ranks of the Khmer Rouge. Roy Baumeister notes: “Many perpetrators regard themselves as victims. In their accounts, in their recollections, and probably even in their most sincere gut feelings, many perpetrators see themselves as people who have been unjustly treated...” (Ea, 10). The second categorization, that the suffering was a result of arbitrary chaos, is perhaps even worse. Accepting chaos is not only to accept the past suffering, but to accept that future suffering cannot be prevented. This idea is the subject of some of Cambodia’s most heart- rending poetry. Sath Bunrith, in “The Cambodian People’s Lament” writes: “Oh, Futility!/ Is this life’s meaning/ Or just our destiny?” (47). The KRT, and the image of the just society it represents, could potentially take away both guilt and chaos from the suffering of the DK survivors, and thus allow them to come to peace with their suffering.

The image of a just society created by the KRT may bring the “benefit” of international investment in the Kingdom of Cambodia. If the government of Cambodia is seen as sufficiently in tune with international standards of human rights and due process under the law, it is likely that foreign investors will be interested in developing their businesses in Cambodia.

Second, I believe the image of a just human society is beneficial because it creates just standards against which actions can be measured. These just standards allow for the shortcomings of all

other societies to be exposed. I believe that the first step to achieving a truly just society is first to recognize what characterizes such a society. Imagining what constitutes a just society is extremely difficult. However, the injustices of a society can provide the opportunity of conceptualizing the just standards. Thus, the Khmer Rouge Tribunal may be used to realize what practices are unacceptable in a just society. If the KRT affirms that the actions of the DK were crimes, then standards of international law will acquire more weight. In addition, those who commit similar crimes may come to be equated with the crimes condemned by the KRT. For example, the name Hitler has practically become a byword for evil in our society, and the Holocaust a standard against which all other unjust acts are measured. I think this is primarily a function of the Nuremberg Trials and the international condemnation of Hitler's atrocities. Thus, the mass murders in Rwanda and Sudan, and even in Cambodia itself, have entered popular consciousness as comparable to the Holocaust. Although such identification can oversimplify the underlying political situations, overall I think the natural recoil associated with the events named above is justified. I think it is possible that if the crimes of the DK are condemned in a manner similar to those of Hitler, it is possible that these crimes will become more unconscionable, and less widespread.

For example, the subject of torture has currently been under much scrutiny, particularly in regards to the United States. As noted earlier, the United States has repeatedly sanctioned torture both officially and unofficially. Indeed, during the same period of time that Pol Pot ruled Cambodia, the United States government was involved in Operation Condor, a plan for the systematic political repression of dissidents to several South American dictatorships, including Argentina, Uruguay, Paraguay, and Chile. J. Patrice McSherry notes: "In Condor operations, combined military and paramilitary commandos "disappeared" refugees who had fled coups and repressions in their own countries and subjected them to barbaric tortures and death. Security forces in the regions classified and targeted persons on the basis of their political beliefs rather than illegal acts. The regime hunted down dissidents and leftists, union and peasant leaders, priests and nuns, intellectuals, students, and teachers as well as suspected guerillas..." (McSherry, 38). The methods used to repress dissidents included arbitrary arrest, executions, and torture including beatings and electric shocks. This is quite comparable to some of the most publicized atrocities committed in DK- the torture of political opponents in Tuol Sleng prison. These methods of torture included beatings, electric shocks, starvation, and water tortures (Ea, 41). The current interest in the use of torture has been instigated by the abuses revealed in US military policy in regards to suspected "terrorists" (Abu Ghraib, Guantanamo Bay, etc.). I think that if torture acquires the instinctive recoil that "genocide" now has (thanks to Hitler) it could cease to become an acceptable form of behavior, whether it is expedient or not. If the atrocities of Tuol Sleng against the regime's political opponents are sufficiently and publicly condemned, perhaps the use of torture by any government will become more unacceptable. Thus, slowly, an image of an ideal world where crimes against humanity does not occur can perhaps lend itself to becoming a reality.

Even if the ideals of a just society cannot be immediately attained, they stand as an ultimate goal. Image is extremely important. Image not only shows what is possible, but it also can become self- fulfilling as described above. The importance of image in the role of the KRT is illustrated by the focus of the trials on the former leaders of Democratic Kampuchea, like Duch, Nuon Chea, Ieng Sary, and Khieu Samphan. The leaders are the symbols of the regime, and thus also

of the crimes associated with that regime. Stephen Heder describes Pol Pot as “a man whose name had come to symbolize impunity for unconscionable crimes.” (Heder, 4). Whilst linking specific crimes to regime leaders can be problematic, in the centralized and dictatorial power structure of the DK regime, accountability for crimes committed is easier to trace. For example, documents seized at Tuol Sleng and the Phnom Penh house of Nuon Chea implicate the DK leaders directly in torture and executions. George Chigas states: “A Khmer Rouge document attributed to Pol Pot dated December 20, 1976... pronounces the need “to expel treacherous elements that pose problems to the Party and to our revolution.”... The document indicates that the purging of suspected enemies of the revolution had already begun and that there was a clear directive from the Khmer Rouge leadership for them to continue.” (Chigas, “The Trial of the Khmer Rouge”). Thus, the “point” of the KRT is not exactly to punish the perpetrators for their crimes, but is rather to affirm that their actions were crimes.

Therefore, the greatest challenge to achieving this image of a just society is the perceived legitimacy of the KRT in determining the criminal nature of the actions of the DK. This first challenge to the legitimacy of the KRT is its legitimacy under international law. The normal Cambodian judicial system does not meet international standards. Although the 1993 constitution of the Kingdom of Cambodia provided for such measures as an independent judiciary, international opinion concludes that the implementation of these measures is substandard due to extreme corruption and lack of resources. According to the Cambodia Legal and Judicial Reform Project, Cambodia faces three problems in its judiciary system- “the absence of any coherent legislative reform program, the limited capacity to manage and implement the legislative reform agenda, and the total absence of any coordinating mechanism in the law making process.” (Cambodia Legal and Judicial Reform Project, 1). This assessment is echoed by a US State Department report published in 1999 described the Cambodian judiciary as follows:

A serious lack of resources and poor training contribute to inefficiency in the judicial branch, and in practice the Government does not ensure due process... The courts are subject to influence by the executive, and there is widespread corruption among judges, virtually none of whom receives a living wage (Chigas, 254, “The Politics of Defining Justice).

It would also appear that the flaws in the Cambodian judicial system have not improved significantly in the intervening years. In 2006, Transparency International rated the Kingdom of Cambodia 153rd out of 163 surveyed countries in their Corruptions Perceptions Index. Thus, in order for the Kingdom of Cambodia to try the former Khmer Rouge officials and have their judgments endorsed by the international community, it became necessary for them to ask for assistance from that international community.

In 1994, a change in the political climate enabled the United States to support the Cambodian government’s desire to put the surviving DK leaders on trial. Previously, the United States had used its influence to hinder this process, due to their policy of supporting the Khmer Rouge because of their restraining influence on Vietnam, a traditional enemy of the United States. Indeed, the US had in fact placed an embargo on Cambodia (then the People’s Republic of Kampuchea) since the overthrow of the Pol Pot regime in 1979. This embargo, which included UN, IMF, and World Bank aid, lasted until the withdrawal of Vietnamese military presence in Cambodia in 1989 (Chigas, “The Politics of Defining Justice.”). In 1993 however the election of

coalition government in Cambodia that satisfied all interested parties (namely, the United States and China) finally eliminated the political importance of the Khmer Rouge and enabled the United States to take the moral stand and to advocate their prosecution under international law. Legislation passed in April 1994 stated: "Consistent with international law, it is the policy of the United States to support efforts to bring to justice members of the Khmer Rouge for their crimes against humanity committed in Cambodia between April 17, 1975 and January 7, 1979." (Chigas, 250, "The Politics of Defining Justice."). The immediate effect of this endorsement was the creation of the Cambodian Genocide Program (CGP) and also of the Documentation Center of Cambodia (DC- Cam).

In 1997, the United Nations began to take an active role in assisting the Kingdom of Cambodia in prosecuting the DK leaders. Although Cambodia was in fact under UN jurisdiction from 1989 to 1993, the UN Transitional Authority in Cambodia (UNTAC) did not have the authority to prosecute members of the Khmer Rouge. In 1997 however, the UN passed resolution 1997/49 that essentially stated they were willing to help in the creation of a body to try the former Khmer Rouge leaders. Further progress was made in 1998, when the UN secretary- general formed a committee to determine if bringing the Khmer Rouge leaders to trial was a possibility. (Chigas, "The Politics of Defining Justice.").

In 1999, impetus was added to the excruciatingly slow process of forming a tribunal by the apprehension of both Ta Mok and Duch (Kang Kek Iev). Finally, in 2001 the Cambodian National Assembly created the Extraordinary Chambers in the Courts of Cambodia (ECCC), for the express purpose of prosecuting crimes that occurred under DK. The Cambodian National Assembly insisted that the trials be held in Cambodia and were run primarily by Cambodians. According to the Deputy Prime Minister of the Kingdom of Cambodia: "Cambodia invited international participation due to the weaknesses of the Cambodian legal system and the international nature of the crimes, and to help in meeting international standards of justice." (KRT information pamphlet, 3). Thus, an agreement between Cambodia and the international community was eventually reached. I would argue that the extensive process described above indicates that the first challenge to the KRT, that of achieving legitimacy under international law, has been sufficiently met.

The second, and far greater challenge to the legitimacy of the KRT, is its legitimacy under what I would term moral consistency. This legitimacy is severely challenged by the politicization of the entire process. A case in point is the legitimacy question surrounding the 1979 trial, conducted by the PRK, in which Pol Pot and Ieng Sary were both found guilty of the crime of genocide. The People's Revolutionary Tribunal that conducted the 1979 trial would at first glance appear to satisfy the requirements of international law to an equal degree as that of the KRT. Like the KRT, the People's Revolutionary Tribunal based their prosecution on both domestic and international law, particularly citing the Convention on the Prevention and Punishment of the Crime of Genocide. The trials themselves were conducted according to the precepts of civil law that was inherited from the French. This law provided for internationally recognized standards of justice, including the right of the defendant to legal representation. The People's Revolutionary Tribunal also included a number of foreign participants, including 24 court officials and lawyers and 29 media correspondents (Chigas, "The 1979 PRK Trial"). One of the defense lawyers was in fact an American- Hope R. Stevens, the co- president of the National Conference of Black

Lawyers of the United States and Canada. These facts would seem to suggest that the People's Revolutionary Tribunal was quite as qualified to pass judgment on the former DK leaders as the Khmer Rouge Tribunal of the Kingdom of Cambodia.

However, the politics involved overruled the legitimacy of the People's Revolutionary Tribunal. The People's Republic of Kampuchea was established when the Vietnamese succeeded in driving Pol Pot's Khmer Rouge out of power. Thus, the PRK was under Vietnamese influence and sustained substantial Vietnamese military presence. The United States in consequence refused to recognize the Tribunal or its judgments because it was under the control of the Vietnamese (its traditional enemies). Perversely, the United States supported the Khmer Rouge as a bastion against Saigon. The United Nations and other Western powers followed suit. For years, the United Nations seat for Cambodia was occupied by a Khmer Rouge appointed by Pol Pot. From the other side of the question, the PRK also had a political motive in trying the "Pol Pot/ Ieng Sary clique". Acceptance of the judgment of the PRK would have also meant tacit acceptance of the PRK itself. Thus, the PRK sought to legitimize itself by demonizing its former opponents. This can be interpreted as a classic case of victor's justice. However, the Nuremberg Trials were conducted under similar circumstances and with much less foundation in international law, yet their conclusions were not refuted.

This politicization of proceedings that are ostensibly upholding the universality of basic human rights has continued up to the present. George Chigas notes, in reference to the 1994 law passed by the Cambodian National Assembly outlawing the Khmer Rouge:

We see here how Hun Sen [then the prime minister of the Kingdom of Cambodia] cleverly manipulated the terms of right and wrong in the interests of political expediency and power. By passing the 1994 law, the Hun Sen government was not concerned with making the Khmer Rouge leadership accountable for the crimes committed between 1975 and 1979. Instead, it was using the resources at its command to bring about the final downfall of its longstanding enemy (Chigas, 250, "The Politics of Defining Justice.").

In 2007, the global political climate has altered sufficiently that the politicization of the KRT has less to do with geopolitics than previously when the US doctrine of "containment" of the Vietnamese communist threat overshadowed all other concerns. Today, the political impact of the KRT is rather focused on gaining the confidence of the international donor and the international business communities, as previously discussed.

Thus, I think it is fair to state the KRT has little legitimacy as far as moral consistency is concerned. This is illustrated most pointedly by the extremely narrow mandate it has assumed. The official information pamphlet of the KRT asks the question: "What about the countries that supported or were involved with Democratic Kampuchea or countries that committed war crimes in Cambodia before 1975- will they go on trial?" To which the pamphlet answers: "No, this court can only try individuals for the crimes they committed during the Khmer Rouge period. It cannot try countries or organizations." (8). I think this is an explicit reference to Operation Menu, the US bombing campaign that targeted eastern Cambodia during the Vietnam War. Although estimates of the Cambodian victims of these bombing campaigns (not to mention the role the bombings played in bringing Pol Pot to power) run into the hundreds of thousands, it is unlikely

to say the least that any of the US officials that ordered the bombings (including Henry Kissinger and Richard Nixon) would ever be tried for crimes against humanity.

The question therefore remains if the lack of legitimacy in terms of moral consistency invalidates the conclusions reached by the KRT as to the criminal nature of the actions of Democratic Kampuchea's leaders. I would argue that it does not. I believe that the benefits of the image of a just society created by affirming the unjust nature of mass murder, mass displacement, and cultural and religious persecution remain, despite the hypocrisy of the regime handing down the judgments. As argued above, these benefits include the order derived from stability and security, the moral vindication of DK survivors, increased economic opportunities for the people of the Kingdom of Cambodia, and most importantly the creation and compilation of just standards from which may ultimately be derived a truly just society. The challenges to these benefits address the underlying legitimacy of the KRT to pass judgment. I believe that the written standards of international law that the KRT upholds give sufficient legitimacy to the judgment. However, I would argue that the judgments of the People's Revolutionary Tribunal are by the same token equally valid.

In conclusion, I believe that the potential benefits of the KRT are valid and are realizable even given the challenges they face. However, I would like to add that their strength and benefit does not lie in the conviction of the individuals (Nuon Chea, Khieu Samphan, Khieu Thierry, Duch, and Ta Mok) concerned. The actual trial and punishment of these individuals is what I would term negative justice. That is, it is merely an affirmation of what should not be done. Negative justice will never be complete. You are never going to be able to put all perpetrators of crimes against humanity on trial, even leaving aside the questions of relative guilt, motive, power structure, etc. Henry Kissinger and Richard Nixon and Deng Xiaoping are never going to go on trial for deciding that Cambodian lives were expedient to their cause. In the end, what is the point of a trial except to prove, publicly, that the action concerned is unjust? I do not believe that retribution is the point of a trial. What after all could a fitting punishment be for a man such as Duch? An eye for an eye, the code of Hammurabi, is no longer applicable in our modern age. Nor do I believe that deterrence is the point of a trial. According to the KRT information pamphlet "the trials will strengthen our [Cambodia's] rule of law and set an example to people who disobey the law in Cambodia and to cruel regimes worldwide. If criminals know they will be held accountable, they may be deterred." (5). However, I would argue that for Nuon Chea say, the possibility that he would be placed on trial thirty years after the fall of his regime when he was nearing the end of his life anyway would not have deterred him from his actions in the DK. Indeed, the possibility that they might be overthrown was the catalyst for many of the DK's worst atrocities, including its cannibalization of its own ranks of cadre.

Instead, I would argue that the point of a trial lies solely in the statement of what is just and what is unjust. The point of a trial is that it gives access to an ideal. True justice is not about the prevention or punishment of crime, but about providing an alternative to injustice. It is in this that the true potential benefit of the KRT may be found. If the ideals of a just society are confirmed often enough, perhaps they will not be acted on in the past, but in the present.