

# What kind of justice long after genocide?

As the tribunal for the Cambodian Genocide attempts a measure of accountability, **Linda Banner** looks at the influence of culture on justice in Cambodia.

*During the twentieth century, 170 million people died through acts of genocide or mass atrocity, this is in contrast to some 40 million people who died directly through war (Rummel, 1997).*

This staggering figure relating to genocide should prompt the questions of what accountability measures should be put in place to deal with these acts and what support should be offered to transitional governments struggling in the aftermath of such devastation?

From 1975-1979, 1.7 million Cambodians died as a result of the actions of their fellow Cambodians. These events have been called the Cambodian Genocide. The people who caused the genocide and who committed the atrocities in it are collectively known as the Khmer Rouge, under the leadership of Pol Pot. The figure of 1.7 million represents 20 per cent of the Cambodian population in 1975. Yet only in 2008 was a hybrid tribunal called the Extraordinary Chambers of the Courts of Cambodia (ECCC) established to offer some acknowledgment that the events actually took place and to enact a measure of accountability for the few remaining key perpetrators.

The reasons for the long delay are complex. Looking at the events of the genocide and its aftermath is a starting point. Pol Pot's radically communist Khmer Rouge regime was responsible for the almost complete destruction of Cambodia's societal, institutional and physical infrastructures. The Khmer Rouge forcibly evacuated to the countryside the citizens of whole towns and

cities. People were executed for not working hard enough, collecting or stealing food, grieving over the loss of relatives or expressing religious sentiments. Peasants overseeing the evacuees in the countryside used pick axes to carry out the executions, whilst others perished from the hazardous conditions (Gellately and Kiernan, 2003).

Most scholars and professionals, including teachers, doctors and lawyers, were killed, fled abroad or simply disappeared. Historical and religious archives were destroyed. Ethnic groups such as, Chams (Moslems), Vietnamese, Chinese and foreigners such as the Thai and the Lao were particularly targeted (ibid). The Buddhist clergy (sangha) was decimated and fewer than 3,000 of Cambodia's 65,000 monks survived the genocide (Morris, 2000). The killings continued until the Vietnamese overran the Khmer Rouge in 1979 and took control of Cambodia.

The Cambodians were 'rescued' in 1979 by a regime that was allied to the Soviet Union. The Peoples Republic of Kampuchea (PRK) set up by the Vietnamese in 1979, was condemned by the UN, US, China and their allies who proceeded to rebuild Pol Pot's army in Thailand and so ensured that civil war in Cambodia continued for a further ten years (Etcheson, 2005).

The breakdown of the Soviet Union in 1989, of which Vietnam was a client country, created conditions for several years of regional and, later, UN efforts to resolve the continuing conflict among the various Cambodian factions. The eventual result was the

Paris Peace Accords of 1991 which authorised the presence of the United Nations Transitional Authority in Cambodia (UNTAC). UNTAC organised an election in 1993 that resulted in a fragile coalition that, to date, has failed to address the question of war crimes accountability. In 1997 Hun Sen, the Prime Minister of Cambodia, asked the UN to provide international assistance to set up an international tribunal to try the remaining leaders of the Khmer Rouge (ibid). The remnants of Khmer Rouge military forces were given amnesties and integrated into the Cambodian armed forces in December 1998. Pol Pot died in 1998 without ever having been brought to justice

In attempts to provide a measure of justice after genocide, various models have been used but all are based on Western cultural perspectives which may have little meaning to an Asian culture. The West as a culture looks to the future and derives much of its perspective from the Enlightenment and the basic concept of individual human rights. Part of this concept also includes the ideas of competitiveness, technological innovation and finding solutions to problems. Western responses to mass atrocity encompass a range including 'justice' and 'truth' with 'vengeance' and 'forgiveness' at the extreme end of possible responses. In most Western countries the 'rule of law' is adhered to and as an ideal it includes the proposition that no person or particular branch of government may rise above the rules enacted in law. Trials must comply with due process to ensure fair and legal procedures. It is advocated as a model for legal systems round the world but many may want to question if this is the right model for all countries.

Based on a human rights ethos, five main models of restorative justice have been used after mass atrocity, namely trials, truth and reconciliation commissions, lustration (which involves the mass disqualification of those associated with the abuses of the prior regime from holding office in the new government) amnesty and hybrid

tribunals. Apart from the hybrid tribunal, all other approaches have been attempted in Cambodia in an effort to achieve some measure of accountability – none to date have been successful.

Academics have explained the lack of accountability citing a number of reasons which include: the reluctance of superpowers such as US, China and their allies to engage in tribunals due to their financing of the Khmer Rouge; local politics such as the incursions into Cambodia by both Vietnam and Thailand; internal wrangling between political parties and the weakness of the government, as well as a lack of will due to their own connections to the Khmer Rouge; the failure of institutionalised international accountability mechanisms; a poor standard of law and endemic corruption; and considerations of national reconciliation (Etcheson, 2005). What is rarely debated however is the question of culture as a contributory factor.

South East Asia has a culture based on a 1000 year old history of rice farming. Here the culture looks to the past, to the family and to tradition. In Cambodia specifically there are strong beliefs in animism, the spirits, Buddhism and a concept of other worlds. In considering Cambodian culture we may find not only another dimension as to why methods of conflict resolution have been unsuccessful to date but also a way forward that might have more meaning to Cambodians themselves.

Over 90 per cent of Cambodia's 14 million people are adherents of Theravada Buddhism. Social inequalities historically have been accepted in Khmer-Buddhist thinking as the consequences of *kamma*, which is the belief that the rich and powerful are privileged because of merit in past lives and that the poor or disabled are in poor circumstances because of bad actions in former lives. Further, wrongdoing in this life will result in receiving their just desserts in the next life as a matter of karmic law. The Buddhist concept of forbearance (*khanti*) is also implicated in preserving unjust power structures at the expense of sustainable peace at

personal, community and national levels (Morris, 2000).

Buddhism teaches that victims should not take revenge, but leave justice up to *kamma*. Hun Sen and other government supporters amnestied some Khmer Rouge leaders in 1998 in order to end the civil war. They appeared to justify this with Buddhist notions of non-revenge: 'Bury the past' said Hun Sen in 1998 (ibid). Moreover in Buddhist teaching, forgiveness is linked to the wrongdoer's acknowledgment of sin as well as a change of direction. This is not a unilateral forgiveness achieved by the victim without the accountability of the wrongdoer. This balanced Buddhist teaching links forgiveness with acknowledgement, accountability and justice (*juttethor*). The Khmer concept of justice is tied to the *dhamma* (ethical teaching) and linked with the concept of *kamma*. Cambodia does not have a definition of justice as Westerners know it, Western justice is seen in Cambodia as revenge and this is problematic as Buddhist beliefs are based on conciliation and peace (Peou, 2006).

The Cambodian approach to conflict resolution is driven by the need for conciliation. When people fight, village chiefs try to reconcile them by talking to the parties in conflict to sort things out, though *not by following legal rules* (author's emphasis). Cambodian justice is informal as opposed to formal Western procedures and rules. Sorpong Peou states 'Cambodians don't have a clue of what formal rules are. They go with their instincts and they go with things they have done for centuries'. He also maintains that international criminal justice is limited in effect in Cambodia because there is a lack of collaboration with civil society. It is foreigners who run key institutions and it is the government and the UN who discuss the ECCC not Cambodians themselves. It is not that Cambodians don't care about justice but they are more cautious and more concerned with consequences (ibid).

The disjuncture between the formal rule of law and its focus on individual human rights in the West and the informal methods of social

control and its concentration on the well-being of the majority experienced in Cambodia mean that Cambodians have little understanding of how Western justice operates. Rule of law and human rights standards are important but they need to be implemented in such a way that indigenous people recognise

In conclusion, no amount of punishment, efforts at reconciliation, truth telling, forgiveness or amnesty can assuage the severity of the harms done in cases of genocide, but they can aid in recovery. When framing proposals for conflict resolution it should be in a way that does not compromise core principle but yet speaks to local culture and indigenous understanding. Culturally specific norms and universal principles require recognition for a genuine and acceptable human rights regime to be effective (Zifcak, 1999). It remains to be seen if the ECCC is able to incorporate some of these ideals and aid in Cambodia's recovery. ■

Linda Banner is a sessional lecturer in Criminology at Birkbeck, University of London.

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