

LAWYERS IN CONFLICT AND TRANSITION

RESEARCH INSTRUMENT CAMBODIA

Background

Project is a comparative one looking at role of lawyers in conflict and transition – Cambodia, South Africa, Israel/Palestine, Chile and Tunisia. It emerged from work in Northern Ireland. Interested in the role that lawyers play during a conflict, in defending and promoting human rights, engaging with civil society, litigation strategies as well as during a transition. Themes (1) lawyers, legal culture and the legal community in Cambodia; (2) rebuilding the legal community following the Khmer Rouge period; (3) the role of lawyers as political actors within and outside the courtroom; and (4) the Extraordinary Chambers of the Courts of Cambodia and dealing with the past. Explain anonymity and consent, and digital recording. Also ask if they have any questions about the project before we start.

Lawyers, Legal Culture and the Legal Community

- (For Lawyers) What motivated you to become a lawyer? What are the characteristics of a typical (Cambodian) lawyer? How would you describe the **legal culture** in Cambodia? What has shaped that legal culture (e.g. the style of legal education, the violence of the past, the nature of the Cambodian state)? How important are key personalities (e.g. the chief judge, head of the bar council) in shaping a legal culture?
- How are lawyers seen by the public in Cambodia? Are lawyers ever seen as arrogant? Do Lawyers bring hope for a better Cambodia?
- What is the relationship like between lawyers and the state in Cambodia? How do lawyers see the state? How should they?
- What is the influence of the colonial legacy on Cambodian legal culture? Can you give examples please (practicalities, cultural traits – accents, language, dress, ceremony)? To what extent, if any, can the colonial legacy still be seen / felt in the Cambodian legal system?
- How would you describe the role of the Bar Association in Cambodia? Have they been a force for good in this society? How effectively does the Bar keep its independence from the state?
- What does the phrase 'rule of law' mean in Cambodia? How important was and is the rule of law to the reconstruction of Cambodia? In what ways has international support for the rule of law (a) helped or (b) hindered Cambodia?
- To what extent is the legal system (courts, judiciary, legal collectives etc.) free from political / state / military control?
- What does justice mean for victims in Cambodia? To what extent does the Cambodian legal system deliver justice for victims of the genocide or other human rights abuses? What are the main obstacles?
- Gender in the Cambodian legal community? - Is law (and are lawyers) responsive to issues of gender? What influence does gender have on legal culture? Are women fully integrated into the legal profession, as judges, as lawyers, in the Bar?

LAWYERS IN CONFLICT AND TRANSITION RESEARCH INSTRUMENT CAMBODIA

- The role of the international – are human rights part of Cambodian legal culture? Are they ever perceived as ‘belonging to’ the West or ‘neo-imperialist’? More generally, what use is the international community or international contacts to local actors? Do lawyers who have international contacts or knowledge have a particular status? Would Cambodian lawyers use international human rights arguments in the local courts? Are Cambodian judges receptive to such arguments? Are lawyers ‘brokers’ (maybe channels?) between the local and the international?

Khmer Rouge (1975-79)

- Cambodia is quite unique in that it is a place where a whole generation of lawyers were almost all murdered by the Khmer Rouge. What effect did killing so many lawyers have on Cambodian society? Probe how completely was the rule of law abandoned under the Khmer Rouge? Was there a local or informal system of justice? How was the Khmer Rouge system able to function without law or lawyers?

After the Khmer Rouge [Vietnamese and PRK (1979-91)]

- How does one rebuild a legal community from scratch after such violence? Where did lawyers go to get help to shape and develop the ethics, values, norms, practical aspects of professional lawyering after the KR? What were the biggest challenges for the legal community after the Khmer Rouge period? (E.g. establishing a functioning legal and judicial system: key obstacles and challenges obliteration of lawyers, resources, precedent)?
- (for some) Are lawyers a help or a hindrance in complex political negotiations (e.g. establishment of the ECCC? – other examples) probe

Cause Lawyering and Civil Society

- We are particularly interested in activist lawyers, those who work for or with civil society groups, or victims, or social movements who litigate on their behalf, help them with strategy – sometimes call ‘cause-lawyers’ [For lawyers] Do you see yourself as such a lawyer? Why did you become a cause lawyer? Doing such work, how does one maintain ‘neutrality’? Does professionalism mean neutrality in Cambodia? How does one balance competing obligations (to your client, a social movement, your community, livelihood etc.) Is it possible to divorce the work of a lawyer on controversial topics from politics?
- What types of cause (maybe use activist) lawyers have emerged (public interest lawyers, political lawyers, legal activists) in what areas e.g. gender, land or property rights, protection of trade unionists, dealing with the past? Do lawyers play an active and progressive role in Cambodian civil society, or are they mostly interested in making money? Do lawyers tend to dominate civil society organisations – have the loudest voices with the most technical information or

LAWYERS IN CONFLICT AND TRANSITION RESEARCH INSTRUMENT CAMBODIA

divert resources towards law that could be better used elsewhere or do they just respond to civil society leader's demands? What is the relationship like between lawyers and victim groups? Are lawyers ever inspirational in social movements? Are there any lawyers who stand out? Why, what makes them stand out?

- For those involved in litigation strategies on human rights issues, how effective is litigation as a tactic compared to other strategies - for example to political lobbying, demonstrations, or other tactics? Is litigation a good tactic to help people – to change people's lives? Can you pick one or two examples where you can say yes good lawyering, good litigation made a real difference to these people? What about the opposite – where litigation distracted people or resources that could have been better used or prevented change? Do we as lawyers sometimes hold out false hope to vulnerable people? Have you ever seen cases which have provoked a backlash on the ground where groups or individuals have suffered because of a court case succeeding? Was it worth it? What about the opposite, where a cases has failed but raised the profile of an issue which might be described as the triumph of failure?
- What in your view are the main obstacles to legal activism within the legal profession here? (Personal safety, effect on professional standing, legal culture, the objectivity of judges, corruption, resources, etc.)
- To what extent are cause lawyers on periphery or edge of the profession/professional associations? Are activist lawyers seen as trouble-makers – always litigating when people are trying their best to rebuild a society? By whom? What about within social movements – are they every seen as troublemakers there?
- What is your view of government lawyers? Can a lawyer who works for the government advance the cause of justice and equality? Would you work as a government lawyer? If not, why not?
- Do politicians sometimes abdicate responsibilities and expect lawyers to sort things out for them in your society? The legalisation of politics. Examples?
- Professionalisation of activism -any sense of activist lawyers becoming overly professionalised (too many suits?) Is this inevitable?
- Are there any kind of legal settings in Cambodia that lawyers should boycott because they are so unfair or corrupt (may be more relevant in Israel)? Where? Where do lawyers draw the line?

LAWYERS IN CONFLICT AND TRANSITION RESEARCH INSTRUMENT CAMBODIA

- Do many activist lawyers get funded by international donors? Does international funding of Cambodian activist lawyers have a notable impact on their local legitimacy? How?
- Cultural Capital Do lawyers have power or influence on local controversial debates? Does the state care about what lawyers say publicly? Does it listen to them? Does it try to influence or intimidate them? Do lawyers speak freely at Conferences or on the media? Do they use their power wisely?

The ECCC and Dealing with the Past in Cambodia?

- Is the ECCC capable of bringing justice to the victims of the genocide in Cambodia? What do victims mean by justice in the ECCC
- (Reification of perp\|victims?) Is the job of the lawyer any different when dealing with either alleged perpetrators of genocide or indeed victims of genocide than in an ordinary trial? E.g. particular sensitivities dealing with clients, expectations to engage in outreach work, dealing with international lawyers etc.? What are the differences and how do they impact on the lawyer?
- Have lawyers been guilty of raising expectations for justice amongst victims regarding the ECCC – of ‘overselling the product’?
- In what ways if any has the ECCC had a positive impact on the rule of law in Cambodia? Has it had any effect on lawyers are viewed in Cambodian society, either positively or negatively? Has it contributed to ‘capacity building’ in the Cambodian legal community? In what ways?
- Are there any tensions between the local and international lawyers who work in or with the ECCC? Are the international lawyers ever arrogant?
- (What’s it for?) Do the lawyers who work for ECCC believe that they are doing this for the Cambodian people or for broader international reasons such as reinforcing the rule of law, deterring other possible genocidal regimes etc.? Do you believe that these kind of mechanisms will actually deter other potential genocidal offenders? If not, then what are they actually for?

Ethics Questions

- Explain ethical commitment to put something back – two reports for local community – ask if they have any ideas which would be useful?
- Have you had any previous experiences (good or bad) with international researchers? Tell us about what made them good or bad in your view? Does international research actually help the people of Cambodia? Why did you agree to take part in this research?
- Are there questions / topics that we have missed or overlooked? Can we take your photograph? (If appropriate – can we film a short – 2-3 mins - synopsis of this interview?)