

Narrative Justice

**A study of transitional justice in Cambodia discussed
on the basis of elements from Paul Ricoeur's
philosophy**

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of elements from Paul Ricoeur's philosophy**

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Preface

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1. Introduction

This dissertation explores ways in which Paul Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness and justice can help us to understand the phenomena of transitional justice better. Parts of this reconceptualization are summed up in the concept of narrative justice.

Using cases from Cambodia as the template, this thesis expands on Ricoeur's theories to reach a fuller understanding of how transitional efforts in post-conflict societies, and indeed efforts by international and local societies in general, influence and are influenced by the victims in these societies as they struggle to come to terms with their conflicting past and progress towards a future of peace and democracy.

I use critical realist modes of inferences to adopt and adapt Ricoeur's theories to build greater understanding and a new body of knowledge on transitional justice by developing the following broad themes: How a creative study of elements of Ricoeur's philosophy lends new meaning when interpreting themes and processes of transitional justice: In particular how Ricoeur's hermeneutic philosophy helps us understand how the processes are related to the victims searching for truth, justice and a peaceful future in former conflict societies and how this involves a reconfiguration of the meaning of the past.

I use Cambodia's efforts to emerge from the long, dark shadow of the Khmer Rouge as my original case study. My work draws upon primary research conducted and experiences gathered during a prolonged visit to the country.

War, genocide, violent revolutions and suppressive dictatorships are a historical reality. Sadly, this reality is still alive in different countries around the world today. Some societies have come beyond these horrors, but the task of reconciliation still burdens them. Various efforts designed to deal with the criminal past have been launched as a result. On an institutional level, examples of such efforts include national and international tribunals, and truth and reconciliation commissions. Two of the better known tribunals are the International Criminal Tribunals for the former Yugoslavia and Rwanda, established in the 1990s. Sixteen truth commissions have been held around the world since 1974, perhaps the best known among these is the South African Truth and Reconciliation Commission, also established in the 1990s. In addition to the tribunals and truth commissions, non-government organizations (NGOs) are often involved in documenting and archiving historical evidence of the violent past. Elsewhere, historical accounts are compiled for inclusion in education and reconciliation programs. Films, plays and other cultural media are also commonly

used as instruments to deal with the violent past. Other uniquely creative efforts have been used to promote truth, justice and reconciliation in former conflict societies. (By conflict society I refer to societies that have experienced or are experiencing war, genocide and other form of suppression). A common theme in these efforts is that histories of the conflicting, violent, criminal past are related to the present processes of dealing with the crimes, to empower victims to move towards a brighter future.

Separately, scholars have compiled extensive research and developed theories on the processes post-conflict societies can use to move on from the violent past, and establish a lasting foundation for a future of peace and democracy. About ten years ago, the term *transitional justice* was conceptualized to describe and understand these processes. Transitional justice today is a highly institutionalized field. Its original roots lie in the discourses that emanated from legal institutions establishing justice in former conflict societies. This knowledge is an important part of understanding transitional justice but, as I argue in this thesis, it is not sufficient. Thus I plan to discuss in this thesis how supplementary theoretical perspectives adapted from Ricoeur's original texts on historical consciousness, emplotment, narrative identity, memory, forgiveness and justice may help us to understand parts of what the established literature fails to explain.

Early theoretical accounts of transitional justice were based on legal studies emerging from the work of tribunals. The academic nature of this output meant that these theories failed to explain how the transitional justice processes were actually related to the individual expected to be part of the transition from the conflicting past. To understand this, we need to address the phenomenon of transitional justice from interdisciplinary and complex theoretical perspectives. Too much institutionalized respect for disciplinary boundaries, especially as propounded by Western legal institutions, may prevent a global and holistic understanding of transitional justice. I draw upon the work of Ricoeur to overcome some of these obstacles. A leading philosopher in post-war Europe, Ricoeur has given us theories that tap into many of the philosophical debates needed to understand how transitional justice is related to the individual.

Practical approaches to achieve the goals of transitional justice also are becoming increasingly creative and polyphonic. Therefore, the phenomena of transitional justice need to be addressed from interdisciplinary as well as new theoretical perspectives. What are needed at this stage of the development of transitional justice into a more coherent field of study are more holistic, creative and

theoretical accounts and conceptual frameworks that help us understand the various processes. Lambourne (2009:47) writes:

What is needed is a revolution in thinking that challenges the dominance of western legal discourses and creatively and inclusively develops new ways of conceiving of accountability mechanisms that provide a more comprehensive and holistic experience of justice.

This thesis is an attempt to fill part of this knowledge gap in the existing literature on transitional justice.

Broadly presented I do this in three stages. First I establish the scientific philosophical ground for gaining new knowledge of the phenomena of transitional justice. I do this in Chapter Two, where I present and discuss the basic ontological and epistemological elements of one of this thesis' main goals, which is to generate new creative theoretical accounts and conceptualizations of transitional justice. I present abduction and retroduction as two related modes of inference that guide how I go from the basic conception and pre-understanding of the phenomenon of transitional justice to arrive at new creative re-conceptualizations and theoretical accounts of the phenomenon.

Secondly I present transitional justice in a way that makes it open for theoretical re-description. Since the research project aims to deliver new and creative theoretical accounts of the mechanisms of transitional justice studied in relation to the individual expected to be part of the transition, I need to illuminate the complexity of the phenomenon of transitional justice by studying both the field of transitional justice, and presenting cases of transitional justice. I do this in Chapters Three and Four.

I spent about four months in Cambodia in 2008, studying different cases and formats of transitional justice efforts. I spent time with a group of victims as they participated in the first public hearing at the Khmer Rouge tribunal, and I interviewed several other victims. These cases are the empirical framework for my effort to create new theoretical accounts about the phenomenon of transitional justice.

Finally I generate new theoretical accounts of the phenomena of transitional justice by re-conceptualizing Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness and justice in such a way that they help us to understand common themes and mechanisms of transitional justice better. I do this in Chapters Five to Nine, relating some of this theoretical study to parts of the empirical findings. In the final chapter I complete the theoretical inferences by presenting narrative justice as a theoretical concept that would fill parts of the knowledge gap in our understanding of transitional justice. I do not present

narrative justice as a full-fledged theory, but as a theoretical concept that can help us to understand better how the various transitional justice processes work together and in particular how they are related to the individual expected to take part in the transition. In establishing the theoretical concept of narrative justice I interpret the theoretical reconceptualizations in relation to the empirical findings from my field trip to Cambodia.

In Chapter Two I present the different stages of my research project in more detail when presenting an exploratory model of research based on critical realist modes of inference.

1.1 Why Ricoeur?

As already stated, part of the research theme of this thesis is to show how Ricoeur's hermeneutic philosophy lends new meaning to post-conflict transition, adding new perspectives on how transitional justice involves a reconfiguration of the meaning of the past. I show how Ricoeur's general attempt to solve this hermeneutical question help us to understand better common themes and mechanisms of transitional justice.

Ricoeur presents multiple hermeneutic detours that help us understand how the victims may interpret the transitional justice processes they are expected to be part of. For Ricoeur, interpretation does imply inter-subjective relations that collectively determine the meaning and value of the text or narrative. Interpretation is not a subjective internal reflection, but it involves inter-subjective mediated contexts of meaning that include history. This is how Ricoeur opens the way for understanding how the victim's interpretation of the conflicting past should happen in relation to what I later describe as transitional justice narratives. The fact made clear by Ricoeur that interpretation is not a subjective internal reflection reminds us of how we must pay attention to the particular context and pre-supposition of each speaker and each reader (Kearney 2004:5). One consequence of this, when adapted to understanding transitional justice, is that it clarifies the processes and mechanisms of how the individual relates to the transitional justice processes.

I try to show how Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice help us to understand the victim's context and pre-suppositions for interpreting what I describe as the transitional justice narratives. It also enables me to interpret the context of the transitional justice institutions and initiatives from a narrative perspective that help me to understand how victims interpret the transitional justice processes. One example of this is the

understanding of how the victims may or may not view the tribunal or documentation center as a legitimate provider of truth and justice when interpreting the transitional justice narratives presented by the institutions. An understanding of how the inter-subjective relations between the Khmer Rouge victims are intertwined with various “broader” inter-subjective relations mediated by the NGOs, social groups, the tribunal, and the documentation center makes it easier to appreciate how the transitional justice processes are related to the individual.

Ricoeur’s theories of narrative illuminate how, in the absence of a publicly communicated and legitimized collective history of the crimes of the past, and amid a lack of legitimate institutional judgement and condemnation of the violent past, the inter-subjective relations may have established a disempowering context of interpretation that prevents the victims from leaving the violent conflicting past behind and moving towards a brighter future. Such a background allows me to examine potential constructive effects of the transitional justice narratives as frameworks for re-interpretation of memories, and disempowering stories of the conflicting past.

These examples could be studied as hermeneutic problems. From this perspective I find Ricoeur’s theories fruitful. They bring a better understanding of how the processes under study relate to the individual expected to be part of the transition.

I adopt and adapt elements from Ricoeur’s philosophy to show how studying transitional justice from a narrative perspective helps us to understand how narratives of the past, present and future serve a constructive function in the transition, providing more comprehensive re-contextualization and re-interpretation of the memories of the conflicting past – i.e., how the transitional justice narratives influence people’s reflection upon memory of the conflicting past in relation to the present transitional situation, potentially forming new constructive orientations towards the future.

1.2 Transitional justice narratives

Throughout the thesis I use the concept “transitional justice narratives”. The concept refers to the narratives that describe the transitional justice processes. By the concept of “narrative” I do not mean the history and stories of the conflicting past in Cambodia itself, but rather the telling of these stories and histories as part of a transitional plot, both as oral tales and written narratives. (By “conflicting past” I refer to the conflict-ridden past, not the historical controversies of how to narrate the past).

Tribunals, documentation centers and NGOs relating the conflicting past to the present provide narratives to assist and empower the victims and the society as a whole

to become oriented towards a brighter future. While a historical narrative can be interpreted on its own terms as an account of historical events, transitional justice narratives relate the past, present and future. This could be understood as a transitional plot where a conflicting past is followed by a “break” in the plot, which leads on to a brighter future. This is how the concept of transitional justice narratives is to be understood in this dissertation.

I adapt Ricoeur’s mimetic model of emplotment to understand how the history and memories of the conflicting past in Cambodia are related to an imagined future of lasting peace and democracy, in order to establish the configured present transition. The narratives that are communicated about this transition or transformation by legitimate institutions recognized as being part of transitional justice processes are my “transitional justice narratives.”

2. Research design and method

This chapter addresses three tasks. First, I highlight ontological and epistemological considerations essential for studying the research theme. Next, I present the methodological approaches used when studying these phenomena. Finally, I discuss potential biases and limitations of these approaches.

Before I look at this from a formal philosophical perspective, I describe my pre-understanding, from where my intuitions originated and inspired me to come up with the research theme. I believe this platform will reveal the strength as well as the potential bias inherent in my approach to the research theme.

2.1 Pre-understanding

My pre-understanding is that studying transitional justice policies and processes from a narrative perspective that relates the past, present and future can make them more relevant. This pre-understanding is both a product of my work experience at a Norwegian center for historical learning, and my exposure to peace-building efforts as reported worldwide and selective readings of theory. Reading elements of the French philosopher Paul Ricoeur's theories of narrative embellished this pre-understanding.

Even though my formal academic background is economics and psychology (bachelor degrees), and political science (master's degree), the academic home discipline of this thesis is philosophy. I first started to read philosophical texts with the aim of helping me reflect more systematically about the constructive role and function of narratives relating the past, present and future when I started to work as researcher and later as head of research and development at the historical learning and peace-building center in Norway called "Stiftelsen Arkivet". This institution, located in the city of Kristiansand in southern Norway, was established to memorialize and educate the public about the brutal events that took place at the location during World War II, when it served as the headquarters as well as a prison and torture place used by the German secret police, the Gestapo. The museum in the basement was constructed with the aid of some of the former Norwegian prisoners with the purpose of telling stories about what happened here, and conveying the historical context of these events. The ultimate goal of this is to prevent similar outrages from occurring in new forms in the future. Storytellers at the museum seek to achieve this goal by relating the past to the present, in an attempt to form attitudes and knowledge that may strengthen the foundations for a future of lasting peace and democracy.

Different NGOs, like Save the Children, Amnesty International, Red Cross and the United Nations Association of Norway, are located in the building collaborating on projects that share a common goal of “never again” to war, genocide and crimes against humanity. The various educational and research projects conducted here provide a solid basis to understand the histories of the conflicting past. The related obligation to learn from this serves as the foundation for gaining new knowledge about other conflict societies.

My first task at the institution was to conceptualize the processes and dynamics taking place when the past, present and future are related as part of the didactics of the guided tour at the museum. To answer these questions, I started reading about historical consciousness and historical learning processes. This led me to reflect on the role of narrative both in historical constructions and in understanding how the visitors relate to the narrative and the story-telling in the reconstructed torture cells and exhibitions at the museum.

My initial idea for a research project was to study how the school children and students who visit the museum as part of their extra-curricular school activities relate to the story-telling. I appreciated that this may have an expected as well as unexpected effect on them, and I wanted to better understand this process. When I started to develop a design for such a study by conducting some preparatory interviews, I realised that to understand how the school children and students interpreted and related to the narrative and story-telling, I needed a more complex theoretical perspective. I then started reading about the relationship between narrative, identity and historical consciousness.

This reading established in my mind that historical learning does not have a linear perspective. Rather, I had to include theories and methods that explained how the narrative identity, memory and prejudice of each individual are part of the historical learning processes expected to happen. Based on this I started to read books that could enlighten me on these issues.

Since the main focus of this thesis is to explore how Ricoeur’s theories of historical consciousness, emplotment, narrative identity, memory and justice lend new meaning to understand transitional justice processes, I do not present the first broad readings of theories in a systematic manner. However, I will point at some examples of theories that partly formed my pre understanding. Again, since I did not read those in any structured manner, but rather sporadically in the years before I started to work on the thesis, I do not present this as a structured preparation.

For example, one of the first books I read on historical consciousness was the book by John Lucas (2005) titled *Historical Consciousness. The Remembered Past*. Here Lucas discusses the evolution of historical consciousness analyzing the meaning of the remembered past. Other books like *Theorising Historical Consciousness*, edited by Peter Seixas (2006), addresses topics like historiography and historical consciousness, history didactics and historical consciousness, and the politics of historical consciousness. The different contributions to this book helped me to understand the complexity and also the practical implication of historical consciousness. None of these books address the theories of Ricoeur.

Other books about historical representation and narratives, for example Hayden White's *The Content of the Form: Narrative, Discourse and Historical Representation* (1987) made me aware of Ricoeur's theoretical takes on essential elements needed to explain the phenomena of transitional justice. In this book White refers extensively to Ricoeur's theories of narrative, historiography and time to explore the question of narrative in representation of the absent historical past, how narrative need to be studied in relation to the question of historical interpretation. Particularly the chapter titled "The Metaphysics of Narrativity. Time and Symbol" in Ricoeur's *Philosophy of History* addresses these questions. For example, White shows, by interpreting Ricoeur, how one cannot represent the meaning of historical events without symbolizing them. Here he refers to Ricoeur's statement that historicity is both a reality and a mystery. From this he points to how, for Ricoeur, narrative is a means for symbolic events without which historicity cannot be indicated.

Reading such books in relation to my practical experiences of working at the Arkivet peace foundation made me think of a dual approach to studying of historical learning processes. On the one hand, the story-telling could be studied as a basic narrative with a plot. On the other, the individual brings his or her own stories and memories which are incorporated into the interpretation of the narrative.

It was with this impetus that I started to read about the processes of establishing a tribunal in Cambodia to deal with the brutal history of the Khmer Rouge regime. What immediately became obvious was that the expected main effect of a tribunal in post-conflict Cambodia was to establish historical narratives that could legitimize the suffering of the victims, and help them relate their own personal memories to a bigger historical context. I learnt that it was forbidden to educate Cambodian school children about Khmer Rouge history, and the reports I read bore stories of confusion and lack of historical consciousness about the conflicting past.

As the tribunal was established, my interest increasingly turned towards Cambodia. I first thought about doing a comparative study of the historical learning processes in Norway and the historical learning processes, or lack thereof, in Cambodia. This could have been an interesting comparison to illuminate the relationship between time and history. However, when I learnt more about the struggles in Cambodia I realized that such a comparison would be almost impossible, because the historical and cultural dimensions of the two nations are so different.

Still, my original interest in transitional justice from the narrative perspective had made it clear to me that the theories would be strengthened if the transitional justice processes and policies were studied from a narrative perspective, relating them to the individual expected to be part of the transformation from a conflicting past towards a peaceful and democratic future. As this pre-understanding became stronger, I decided to shift my focus entirely to Cambodia and the newly established Khmer Rouge tribunal.

When I went to Cambodia in December 2008, I had already developed a wide set of theoretical assumptions and expectations of what I was going to find. This represented a methodological challenge. I did not go to Cambodia with a mind like a blank sheet of paper. I went there with a creative set of theories in my mind. I had by now started to read elements of Ricoeur's philosophy.

In the following sections I argue how this starting point becomes a benefit when I adopt a critical-realist approach to the research theme.

2.2 Critical realism

As stated in the introduction I attempt to show how adapting a creative study of Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness and justice helps us to understand the processes and mechanisms of transitional justice.

This task requires that I base the choice of methodology on scientific philosophical perspectives that allow me to both use and construct theory throughout the whole research project. The research theme and related questions of how the individual may relate to the transitional justice processes in such a way that they form constructive orientations towards the future are very broad with many possible explanations. I am therefore basing the thesis on a scientific philosophical position that allows me to focus selectively on some basic elements of the processes involved in interpreting the phenomena of transitional justice. The goal is not to cover all possible

aspects, but rather to engage critically with particular aspects that I argue are missing in the established explanations. What allows me to isolate particular aspects, which could simply be described as narrative perspectives relating past, present and future, is the status and value of theory in research provided by critical realism.

Danermark et al. (2002:116) list some central starting points of critical realism, concerning the relation between theory and observation/data that stresses the value of theory in research:

1. We can never understand, analyze or categorize reality without using a theoretical language of concepts.
2. The concepts are constantly being developed.
3. The development of concepts pre-supposes an (intransitive) reality independent of these concepts.
4. The relation between theories/theoretical concepts and the properties or objects the concepts are referring to is not unambiguous and simple; nor is it arbitrary. All theoretical descriptions are fallible, but not equally fallible.
5. Theories and theoretical concepts are developed in relation to the experiences we obtain when we use them to understand reality.

Critical realism came partly as a critique of positivistic claims that there should be a separation between empirical descriptive knowledge and normative claims about reality. Hume is perhaps the best known early representative of the position later adopted by positivists, that the only statements we can consider as true or false are statements made about empirical facts about the real world. This is based on a belief in reason's capability to make rational claims about the world. Statements of how things should be, in contrast, were viewed as subjective and emotional statements with no universal value.

Ever since Hume's separation between *is* and *ought*, the distinction has been part of positivistic and logical-positivistic arguments that hold that we cannot deduce normative claims from empirical descriptions. Critical realism criticizes this strict distinction, *inter alia*, on grounds that researchers have to try to understand how the two are related, rather than make a strict distinction between how things are and how they ought to be.

Critical realism is a philosophical concept referring to several schools of thought. The first two issues I discuss are related to critical-realist philosophical ontology about reality and critical-realist epistemological arguments of a pragmatic theory of truth. This has implications for my choice of research methods.

The newer approaches to critical realism are associated with the work of Roy Bhaskar (2008 [1975]) on a philosophy of science termed transcendental realism, and

particularly his philosophy of the human science, termed critical naturalism, which when combined lend a new interpretation to the umbrella term “critical realism”. A basic assumption of Bhaskar’s work is that in general, the object investigated must have real internal mechanisms that can be manipulated to produce particular effects. This stands in opposition to positivist and empiricist approaches, which seek to establish causal relationships at the level of events. Critical realism draws on Bhaskar’s distinction when arguing that causal mechanisms must be located at the level of generative mechanisms. These are not directly observable, however, so the only way researchers can gain knowledge about them and explain the mechanism is by using and constructing theories. Thus conceptualization becomes an essential part of research in the processes of illuminating the generative mechanisms that could better explain relationships between events. This does not mean that I arbitrarily choose what theories to use, however.

My choice of theories to explore the phenomena of transitional justice is based on reading of alternative theoretical perspectives, as mentioned earlier. Finally, I mainly focused on elements from Ricoeur’s philosophy after a broad reading of alternative theories. The main effect of this was that I became aware of how one needs to study the phenomena of transitional justice within the time dimension of past, present and future. From this I set out to explore how Ricoeur’s hermeneutic philosophy of a reconfiguration of the meaning of the past may lend new meaning to post-conflict transition. To do this I have to make creative theoretical claims about relationships and dynamics that are not directly observable. Accordingly, instead of just describing or mapping variations related to the events under study, my focus is on what new insights Ricoeur’s theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice may lend to a better understanding of transitional justice.

The reason I chose Ricoeur as my main theoretical source is that he has addressed many of the elements I have identified as important to understand the phenomena of transitional justice better. Ricoeur is concerned with relating the personal with the collective and historical in his writings on narrative, memory, history, identity and also in his writings on justice, where he aims to relate the philosophy of the capable subject with a political perspective on justice.

Critical realist theories of ontology and epistemology tell us that facts are not theory-determined, but that they are theory-dependent (Layder 2005:15). As a researcher, I acknowledge that there exists a world outside language. Nonetheless, it is only possible to gain knowledge about the world by making theoretical interpretations.

Later in this chapter I argue that the acknowledgement that there exists a world outside language is also an ethically relevant claim when studying genocide.

Central to a critical realist approach is to realize that conceptualization is a crucial part of social reality. I study conceptualizations, and how they relate to the phenomenon of transitional justice. My task is to interpret other people's interpretations of their experiences of the story-telling or narratives related to the tribunal. This double hermeneutic is present in all social science work. This implies that conceptualization is part of both the research process and the research object (Danermark et al. 2002:36).

Danermark et al. (2002:3) argue that method and theory cannot be treated as two separate entities of social science; theorizing is an inherent part of the research method itself, and our objectives of study are always theoretically defined. By adapting critical-realist ontology to the study of transitional justice, theory becomes essential to the whole research process. By adopting elements from Ricoeur's philosophy to theorize what could be described as generative mechanisms of the phenomena, theory serves a creative and constructive function relating past, the present and future. There are some normative questions related to this that I address later.

By enabling me to relate a specific philosophy of science to concrete methodological working procedures, critical realism provides a basis for my research design. The critical-realist ontology and epistemology outlined so far form the basis for the methodological considerations that guide my choice of method in practical research. The philosophical discussions of critical realism make it imperative to understand the relations between practice, meaning, concepts and language (Danermark et al. 2002:39-41).

When basing my study on critical realism I also take into account the temporal dimensions of the social phenomena I study. By turning the focus from events to mechanisms critical-realist ontology enables me to introduce Ricoeur's theories as part of the methodology of exploring the processes of transitional justice.

To show how I do this I introduce a model of explanatory social science developed initially by Bhaskar within critical realism. However I borrow the model from Danermark et al. (2002:109-111) who have integrated different parts of Bhaskar's original model into a model of six stages in an explanatory research based on critical realism where abduction and retrodution are the essential modes of inference (Danermark et al. 2002:106). I do not understand these different stages in the model proposed by Danermark et al. (2002) as complete separate stages in how to

conduct the practical research project, but rather as guidelines for how to structure a social research project based on critical realist theory. This is in line with how Danermark et al. (2002) present the structure of the model, stressing that in actual research presentation the different stages overlap and relate to each other. Even though elements of the different stages presented below are parts of different chapters, I believe it is fruitful to present them as separate stages to highlight how I use Ricoeur to critically interpret and explain the phenomena of transitional justice.

Stage 1: Description

According to Danermark et al. (2002) an explanatory social science analysis usually starts by describing the concrete events or situations under study making use of everyday concepts. I start the research by describing the concrete field of transitional justice and presenting the transitional justice efforts and challenges in Cambodia in general in Chapter Four. In the final chapter I describe the complexity and particular elements of transitional justice that I critically engage throughout the thesis as part of exploring the research theme.

Stage 2: Analytical resolution

In this stage of the research project I separate particular components of the phenomena of transitional justice, making them open for interpretation and theoretical re-descriptions. I do this in Chapter Three when I present the field of transitional justice, focusing on what could be described as narrative elements of transitional justice. Part of this is to identify what I present as knowledge gaps in the existing transitional justice literature. By further highlighting in Chapter Six what could be described as narrative elements of transitional justice and in particular how the individual relates to the transitional justice processes through narratives, I separate particular components of transitional justice that eventually enables me to say something new about the phenomena. The same goes for how I present the cases of transitional justice in Cambodia.

As pointed out by Danermark et al. (2002) it is never possible to study anything in all its different components. Therefore, accordingly we must in practice confine ourselves to studying certain components but not others. The result of the analytical resolution is that I am able to isolate particular narrative components/aspects of the phenomena of transitional justice and the related cases making them open for theoretical exploration as described in the next two stages.

Stages 3 and 4: Abduction/retroduction

Abduction and retroduction are forms of inference or thought operations that interpret particular empirical phenomena from a set of general ideas or concepts (Danermark et al. 2002). My aim is to integrate theorizing and empirical findings in a creative way that will contribute to new knowledge. This means that theory and method cannot be dealt with separately, but are seen as complementary throughout the research project. Danermark et al. (2002:95) write: “In a research practice guided by abduction, the interplay between theoretical re-description of cases and case study-based theory development is absolutely central.” For my research project, abduction means that I relate the phenomenon of transitional justice and the particular events from Cambodia to elements of Ricoeur’s theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice as a frame of interpretation/theory leading to a new supposition about transitional justice, summed up by the concept narrative justice. By interpreting the original ideas about transitional justice in the frame of a new set of ideas, I end up with a possibly deeper conception of transitional justice. Danermark et al. (2002:96) describe this inference, where I have to move beyond the empirical using theory to search for the basic conditions or circumstances for transitional justice to happen, as retroduction: “as a mode of inference by which we try to arrive at what is basically characteristic and constitutive of these structures.” From this it is possible to understand what are basically conditional elements of the general ideas and concepts of the phenomena.

As Danermark et al. (2002:92) argue, the foundation for abduction is creativity and imagination and the ability to form associations:

Besides comprehensive knowledge of established alternative theories, models and frameworks of interpretation, abduction requires a creative reasoning process enabling the researcher to discern relations and connections not evident or obvious – to formulate new ideas about the interconnections of phenomena, to think about something in a different context, an ability to see something as something else.

By critically abducting Ricoeur’s theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice I introduce new ideas of how individual phenomena studied through my case study experiences are part of the processes and internal relations of transitional justice (Danermark et al. 2002:96). By doing this I hope to fill parts of the knowledge gaps identified when studying the field of transitional justice.

Abduction and retroduction is about presenting, comparing and integrating several different theoretical interpretations and explanations (Danermark et al. 2002). To understand the complexity of the phenomena of transitional justice I have to form

many different theoretical hypotheses about the phenomena. This is why I do not focus on, for example, the theoretical assumption of the explanatory value of the concept of historical consciousness in isolation, but see this in relation to theories of memory and identity, eventually studying this in relation to theories of justice. As stated earlier, this is not based on an arbitrary selection of theories, but rather it is based on reading of alternative theories which guided me in the direction of Ricoeur's broad and extensive philosophical work.

Stages 3 and 4 should be seen in relation to each other, because as Danermark et al. (2002) point out, in concrete research processes abduction and retroduction are closely related. The way I understand the difference between these two related inferences is that abduction is what enables the final concluding conceptualization of what could be described as the more underlying mechanisms of the phenomena. But again, this should not be seen as two separate stages. In other words retroduction follows and happens parallel to the abductive inference conceptualizing what is constitutive for the structures and relations highlighted from the re-description or re-contextualization of the phenomena based on elements from Ricoeur's philosophy (Danermark et al. 2002:96). For example; when adapting Ricoeur's theories I ask questions like: What makes the relationship possible where the past serves an orientative function for the future? Here I make use of elements from Ricoeur's theories of memory, narrative and identity to answer the question.

More specifically I use Ricoeur to explore what dynamics are related to the formation of historical consciousness in relation to transitional justice processes in post-conflict societies. These elements could be studied as basic conditions for transitional justice to happen. It is the abductive inference relating elements from Ricoeur's philosophy to the cases and empirical findings of transitional justice in Cambodia that allows me to identify and understand the fundamental generative mechanisms of transitional justice. On a more detailed level I identify these mechanisms as being part of social relations of how individuals relate to the transitional justice processes and to the tribunal in particular. What actions do they need to be part of for transitional justice to happen? What reasoning processes need to take place and what knowledge is needed? These are studied as circumstances and conditions for transitional justice to happen.

I use empirical data to read theory critically and re-interpret theory in light of the empirical findings. The creative abduction of Ricoeur makes it possible to read the empirical findings in new ways that would not be possible without prior theoretical abduction. This does not only mean that I use the empirical findings to confirm the

theory, but that I use the empirical findings to engage the theories critically. It is important to understand that the empirical data alone are not capable of explaining the basic conditions of the phenomena of transitional justice.

In other words retroductive modes of inference are applied to go from the observable, the empirical observations from my case study – through my re-contextualization of the events through an abductive inference – to arrive at new knowledge of what Danermark et al. (2002) call trans-factual conditions (what is beyond the empirical). This is how I apply and construct theory throughout the research project where the different methodological strategies described above are employed to try to find the answers to questions like: In what way do the selected theoretical aspects of Ricoeur's philosophy, highlighted from the abductive inference, help us understand underlying mechanisms of the phenomena of transitional justice? How is transitional justice possible? What properties must exist for transitional justice to happen? By introducing the concept of narrative justice I try to answer such questions. What makes this possible is the redescription of the phenomena of transitional justice made by the abductive inference in stage 3. However as Danermark et al. (2002) make clear, in actual research these two stages are closely related.

When making the creative abduction I base each chapter on a selected reading of what I see as particular relevant elements of Ricoeur's philosophy and other relevant theoretical perspectives that can help me interpret and understand better the more underlying processes and mechanisms of the phenomena of transitional justice. This is not an arbitrary selection, but rather based on the pre-understanding accounted for earlier. For example, in Chapter Seven I present Ricoeur's theory of emplotment to use this later as part of the creative abduction, eventually enabling me to understand, as part of the retroductive inference, what could be described as a more underlying mechanism of how the individual may relate to the transitional justice processes through narratives. However, as mentioned several times already, in practical research these inferential processes are intertwined.

To sum up stages 3 and 4:

Following an inductive logic I would not be able to discover how the cases of transitional justice in Cambodia and the related empirical findings are part of bigger more general processes or mechanisms of transitional justice. Induction would only allow me to generalize properties already given in the discussed data (Danermark et al. 2002:89). I rather need to draw conclusions from processes and mechanisms of transitional justice that are not directly given from the case study examples and interview data.

To do this I need to engage critically the phenomena of transitional justice from theoretical hypotheses and empirical data that allow me to go from one conception of transitional justice that I have identified as insufficient for leaning too heavily on juridical or procedural theories, to a different and hopefully fuller or deeper conception of transitional justice, summed up by the concept of narrative justice (Danermark et al. 2002:91). In other words, I start out by identifying concrete problems related to transitional justice in stage 1. In stage 2 I make them open to theoretical re-interpretation. In stages 3 and 4 I adapt Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice making theoretical hypotheses to explore how these help us understand different mechanisms of transitional justice.

Stage 5: Comparison between different theories and abstractions

In the final chapter I make a comparison between different theories and abstractions to describe the explanatory power of Ricoeur's theories as adapted and summed up in the concept narrative justice. The conclusion from this is not that narrative justice is a theory in competition with the established theories of justice describing how the tribunal may provide justice for the victims. Narrative justice is a complementary concept that can help us understand the phenomena of transitional justice from new perspectives. By introducing narrative perspectives to understand the transitional justice processes, narrative justice adds an additional perspective that can help us understand better the transitional justice processes. Narrative justice aims to explore underlying mechanisms of what happens when individuals relate to the transitional justice processes through narratives where the past is reconfigured in light of the present forming constructive orientations towards the future.

By using abduction and retroduction as inferential tools I make connections and illuminate dynamics not directly observable from my case study investigation. This culminates in the concept of narrative justice making general claims about the phenomenon of transitional justice.

Stage 6: Concretization and contextualization

According to Danermark et al. (2002) concretization involves examining how different structures and mechanisms manifest themselves in concrete situations. I do this in different parts of the thesis where I interpret the meaning these mechanisms have as part of interpreting the cases under study. I employ concretization and contextualization of the mechanisms of transitional justice at different stages of the research project. However, as part of the concluding chapter I try to show in more

practical terms how narrative justice is manifested, or could potentially be manifested, in the practical transitional justice processes in Cambodia. From this I also point at more general elements of how this knowledge may become useful in other transitional justice processes. Danermark et al. (2002) remind us that this stage of the research process is of particular importance in an applied science, distinguishing between the more structural conditions and the accidental circumstances

2.3 Case study and interviews

When conducting a case study there are many different analytical strategies one might follow. What strategy is best suited depends on the nature of the object studied, and variables such as level of control of the surroundings and complexity of the phenomena. The aim of my empirical investigation of the cases was not to acquire as much empirical detail about them as possible to make generalizations from the empirical variations alone. As explained above, to gain knowledge of the underlying mechanisms of the phenomena of transitional justice I need to use theory. The empirical data alone is not sufficient to gain knowledge to explain the phenomena.

To be able to use the empirical data as part of the theoretical interpretation of the mechanisms of transitional justice, I took care to ensure that each case study was generalizable to my theoretical propositions. The methods were constructed to generate empirical findings that could help me to critically and creatively engage the theories, not to test theories. This also means that the empirical data are expected to serve the purpose of constructing creative theoretical accounts that help us to understand the processes and mechanisms of the phenomenon of transitional justice. All this is in line with the critical-realist ontological perspective and the abductive and retroductive modes of inference that guide my research.

The main empirical case that I engage is the Documentation Center of Cambodia (DC-Cam) and its projects in co-operation with the Extraordinary Chambers of the Court of Cambodia (ECCC), commonly known as the Khmer Rouge tribunal. The DC-Cam is said to be the main reason why the tribunal was established. The center is involved in several different outreach projects that relate processes happening at the tribunal to individuals and groups of Cambodians searching for truth and justice. I present these in detail in Chapter Four. From a methodological perspective, I first explain how I approached the DC-Cam and its activities to compile empirical data.

My empirical findings are based on observations of the DC-Cam's activities, and reading the texts produced by the center describing the purpose and goals of the

different activities. I interviewed people who were taking part in the projects arranged by the center. I also interviewed a selection of Cambodian people, who represented the variety of individuals who were expected to reflect on and react to the transitional justice processes, but who were not taking an active part in the processes.

I selected interview participants who would provide knowledge about how various groups of Cambodians reflect on the transitional justice processes. There are many different ways of grouping the population, but I identified these broad groups:

- Middle-aged Cambodian men and women who experienced the Khmer Rouge/DK and who are taking an active part in the transitional justice processes.
- Middle-aged Cambodian men and women who experienced the Khmer Rouge/DK and who are not taking an active part in the transitional justice processes. Within this group I make a selection based on socio-economic status, since poverty and education are expected to influence how people reflect on the transitional justice processes.
- Religion is also expected to play a role in how these processes are interpreted, so I selected Buddhist monks as one particular group to be interviewed.
- Lastly, I identified the younger generation, who did not experience the Khmer Rouge/DK themselves, as a group to be interviewed. Here I made a selection from university students and younger people with a lower level of education or no education at all.

I had no intention of collecting data that would represent the whole population, let alone the various groups of the population. My goal was to conduct qualitative in-depth interviews that would allow me to understand how individuals relate to processes and mechanisms made open for both empirical and theoretical investigation as described earlier.

Since the point of in-depth interviews is to tap into a person's subjective views on the world and to understand how they create their lived experiences (Bryman 2004:53), and the interpretation they make to construct their everyday worlds and their identity, I needed to keep the interviews flexible and open enough to let the stories evolve as naturally as possible. I wanted to be flexible to follow the story-telling as it went along.

Because part of what I wanted to find out from the interviews was how people narrated their present situation and perspectives on the future in relation to the transitional justice narratives communicated by the DC-Cam, I did not operate with a fixed order of questions. Instead of operating with a structured interview guide with a prepared coding system, I prepared some key words and themes to address. These

were drawn from my theoretical assumptions about the phenomenon I studied. The main keywords and themes were:

- Memory and stories: How they relate to their own memory of the conflicting past and how they relate to other people's stories of the conflicting past. Keywords: *memory, story, conversations, limitations, truth, myth, forgetting*.
- History: How they reflect on history or the lack of history in making sense of their own memory and the story-telling of other people's memories. Keywords: *teaching in school, truth, knowledge, belief, family story, value, importance, future, next generation*.
- Narrative identity: How they relate this to their own life story in relation to the conflicting past. Keywords: *self/other, oneself in relation to others, victim, perpetrator, plot, orientations, past/present/future*.
- Tribunal/Documentation Center of Cambodia. How they understand the role and function of these institutions and how they relate them to their lives and the future of Cambodia. Keywords: *history, truth, justice, documentation, story-telling, participation*.
- Cambodia's past, present and future. How they think of the relationship between the conflicting past, the time until the establishment of the tribunal, the present situation in Cambodia, and the future of Cambodia. Keywords: *past/present/future, historical consciousness, empowerment/disempowerment, hope/despair, belief/disbelief*.

I interviewed 25 Cambodian Khmer Rouge victims: I use the term victims to refer to Cambodians who either experienced the genocide regime between January 1975 and April 1979, or those who experienced the difficult years in the aftermath of the Khmer Rouge regime.

I used a tape recorder in all the interviews. I had instructed my interpreter to provide a standard introduction to each interview where he first told them briefly about my research project and how the interviews were going to be used as part of this. Then he informed them that they were free to end the interview at any time, and that they could contact the documentation center of Cambodia (DC-Cam) if they had questions and concerns after the interview. In addition he informed them that only him, me, and my supervisors were allowed to read the interviews, and that they would be stored in a safe place. Finally he informed them that their names and personal data would not be listed. Before the interviews started, he asked them if they agreed to the use of a tape recorder.

I interviewed the informants in seven different contexts. (1) the office of DC-Cam, (2) the hotel where the groups of victims visiting the tribunal stayed, (3) on the street in the poorest area of Phnom Penh, (4) in universities and high schools, (5) in my interpreter's office, (6) in Buddhist temples, (7) in cafés.

In addition I talked to many other people without using a tape recorder. Especially when traveling around Cambodia I was able to talk to many different people. Due to the fact that I could not advise them to contact DC-Cam for follow-up questions I did not use a tape recorder or note book when talking to people outside Phnom Penh. Another reason for this is that I would not put them in a potentially dangerous position by taking notes and taping our conversations. In the countryside, this is more sensitive than in Phnom Penh.

Generally there are many different strategies that could be applied when analyzing the case study evidence. These include coding systems or pattern matching, comparing an empirically based pattern with a predicted pattern (Yin 1994:119). In my case, basing the case study on abduction and retroduction as modes of inference, the theoretical propositions guide the analysis. Since theories studied within the framework of critical realism are not “first and foremost regarded as ordering frameworks, but as conceptualisations” (Danermark et al. 2002:120), applying a coding system to the gathering and interpretation of data would have hindered a more creative interpretation of the phenomenon. I found it easier to abstract and isolate fundamental qualities of the phenomenon by not relating my interpretation to a coding system.

One consequence of applying abduction and retroduction as modes of inference to my empirical investigation is that general theory from Ricoeur’s philosophy is used throughout the project as an interpretative framework and a tool in retroduction. I do not reduce Ricoeur’s theories into testable hypotheses to be tested in relation to empirical studies. Because the theories I apply and construct are not inductively grounded in data, I follow different methodological procedures for gathering and interpreting the data than would have been the case in positivist or empiricist meta-theoretical methodology.

Based on my theoretical pre-understanding about the phenomenon, I did, as mentioned earlier, operate with keywords that influenced how I conducted the interviews, but I did not use these in a systematic way. Theory guided what I was looking for initially, and how I interpreted the findings in relation to new theoretical accounts of the phenomenon.

The limited number of interviews simplified data management. As already mentioned I initially considered developing a suitable coding system to organize the interview data. Eventually I found I would be better to interpret the data in relation to the overreaching goal of theory development by not applying a coding system.

By basing the interviews in the context of theoretical assumptions of the processes and mechanisms of the phenomenon I studied, I had to some extent already prepared a form of pre-coding that guided how I approached the empirical analysis. After I had conducted the first interviews I based the next interviews on field notes from the preceding interviews. Between interviews, I spent time talking to people working at the DC-Cam on how I could interpret particular themes and responses that came up during the interview.

When relating theory and empirical research I have to be conscious of critical perspectives and potential biases in generating theories about the phenomenon. I will now explain some of the methodological and ethical challenges I faced when conducting research in a foreign culture like Cambodia.

2.4 Critical perspectives and potential biases

2.4.1 Cross cultural challenges

I experienced many challenges when conducting research in Cambodia. First, I was faced with the challenge of not being able to understand the spoken language or to understand fully the symbolic language of the people I interviewed. As already mentioned, I had to operate with an interpreter when I conducted and transcribed the interviews. This represents a limitation on my interpretation of the interviews. Even though I had many conversations with my interpreter, discussing how I should interpret the different sentences and how I could interpret their body language during the interview, I soon realized that I lacked the cultural understanding to make legitimate claims about the underlying meaning of what my informants told me.

There are many cultural codes of how to approach sensitive issues in a conversation in Cambodia. I learnt some of these, but I also learnt to be humble and modest about my own limitations while interpreting the interviews.

There are many challenges in operating with an interpreter in a foreign culture. I spent a great deal of time with my interpreter before we conducted the interviews, explaining to him the purpose of the project and discussing what could be the best ways of asking the questions to get the information I needed. The conceptual framework of the interviews was very different from the conceptual framework of the theories I wanted to adapt to the interviews, so the interpreter had to ask the questions differently when translating into Khmer. This does not only have to do with the fact that I was conducting the interviews in a foreign culture. When adopting a more or less

abstract set of theories to illuminate and critically engage social phenomena, it is always a challenge to relate the theoretical pre-understanding to questions in an interview situation. This posed a great methodological challenge to my research project.

In some cases the initial questions I had prepared provided answers to questions different than those I asked. Sometimes this changed the direction of the interview in a negative direction. In other cases this turned out to be an advantage because the interpreter was able to pick up on themes that I had not thought of beforehand because of my lack of understanding of the Khmer culture and language.

One weakness to my case study research was that I had not prepared a cross-cultural analysis of key-terms used in the interview. This would have been a complex and time-consuming task, nevertheless, at a later stage of the research I realized that this would have been helpful. This is especially the case with one concept I have identified to be particularly challenging, the concept of forgiveness. Basically what was missing in my original interviews with victims was to have them elaborate on what forgiveness means in a Khmer and Buddhist context. I asked them about if they could forgive the Khmer Rouge, but what I failed to do was to drill deeper into what forgiveness means in a Khmer and Buddhist context. This represents a challenge when interpreting the data.

I went back to Cambodia in late 2011 on a different mission. I was not able to conduct formal interviews this time, but when the deputy director and head of research of DC-Cam, Kok-Thay Eng, visited me in Norway some months later, I was able to interview him about some key concepts that my original interviews did not fully cover.

In the final chapter, when discussing if there is a typical Cambodian or Buddhist way of talking about forgiveness and justice, I elaborate on the challenges of doing cross-cultural research, where the meaning of concepts are not always easily translatable. For example, I asked Kok-Thay Eng about how my interpreter would translate the concept of forgiveness as part of the interviews:

Then I think his Khmer would change, sometimes phrasing it like that and sometimes phrase it differently. (...) because we do not have this strong concept of forgiveness equal to the English [language] concept of forgiveness. Not in Khmer language. It is very fragile because we do not use it often. In Khmer we use different concepts depending on what cases we are talking about. So it means that forgiveness does not have a strong meaning like the English concept has. It is case specific.

This is just one example of the challenge of working with an interpreter. The fact that the way he conceptualized forgiveness would differ depending on the context, means that there are many different variables that I cannot fully understand or grasp when interpreting the data. This does not mean that the interview data are without any value, the point I want to make here is that this rather has consequences for how I approach the interview material. I cannot compare them and draw conclusions about Cambodian victims' ideas of forgiveness in general. However, I can apply them to both strengthen and critically engage the theoretical concept of narrative justice. For example, I use the interview data to show how victims reflect on the transitional justice processes by relating the time dimension of past, present and future. In this way I use the empirical data to strengthen my theoretical claim that it is important to study transitional justice from narrative perspectives. However when using the empirical findings to understand the phenomena, I need to be aware of some critical questions.

Generally, there are many critical aspects to consider when moving from a study of the empirical events of transitional justice to interpret more underlying mechanism of the phenomena. As we have seen, abduction and retroduction are about making creative moves from the particular to the general, from a study of events to a study of mechanisms or dynamics. A first broad critical question is: How can I be sure that a creative theoretical re-contextualization or re-interpretation of the phenomenon does not lead to fiction? How can I be sure that the mechanisms I claim to have explained are not a mere product of linguistic constructions, not rooted in social reality?

There is no clear answer to such questions. But using a critical-realist approach to the modes of inference, my task as a researcher is to convince the reader that the theories I produce are actually related to the empirical phenomenon studied.

My task of interpretation is to find meaning behind the empirical elements I observe from my case study. I need to interpret the interview material and observations from theoretical hypotheses and perspectives to find meaning behind what is said and written, that can help us understand the more underlying mechanisms of the phenomena. As I mentioned in the introduction, I start with my own pre-understanding of the phenomena I am studying. This is the conceptual framework for my creative inference of the phenomenon. To answer the critical questions raised above, we can imagine that I never went to Cambodia to experience how the transitional justice processes and policies are practiced, and that I never interviewed and observed the Khmer Rouge survivors when they were taking part in the processes. How would my theoretical claims have been different?

The theories of transitional justice I read would obviously be the same. But how I critically engage them and how I read and adapt theories to understand the phenomena would not have been the same. During my four-month field work in Cambodia, my pre-understanding of which theoretical traces to follow changed.

The fact that my pre-understanding changed is an important realization that makes it imperative that I, in the research project, reveal how I relate theory and practical research. By formulating the theoretical framework for interpretation and by making explicit my assumptions of how this is related to the phenomenon I study, it becomes subject to critical analysis and internal scientific debate.

An important realization of which I have to be conscious is that all interpretation of social reality needs to go on hermeneutical detours of already mediated conceptualizations of reality. This is an essential part of Ricoeur's hermeneutic phenomenology I adopt in making theoretical claims about the phenomena I study. To understand certain events or phenomena we always have to grasp them within a larger conceptual or narrative context. This goes for both social science and for interaction and interpretations in social reality. When I meet another person, I interpret what he or she says within a complex set of conceptual frameworks of already mediated and constructed meanings. With familiar people and situations I do this almost automatically, without even thinking consciously about how I make the interpretations, but when I am faced with strangers and new situations I have to consciously consider alternative frames of inference. As described earlier, social research derived from a critical-realist scientific philosophical ground is about mapping out various conceptual frameworks of understanding – grounded in theory – and applying this when interpreting texts or utterances from real life situations. Just as I might relate a person's action and utterances to her or his biography, I cannot interpret the utterances of the people I interviewed in Cambodia without relating them to the historical context of the stories they told me, and the social, cultural and political situation of the society they live in.

I am seeking knowledge about a socially produced reality. Following critical realism, I accept the idea that all knowledge is socially produced and that our knowledge of it is historically determined. This is closely related to the fact that all knowledge is conceptually mediated and concept-dependent. An important element of this is to realize that the relationship between terms and the meaning they signify is determined by linguistic and cultural agreement that are changeable (Danermark et al. 2002:121). However, a real world does exist beyond our conceptualizations. As addressed earlier, critical realism states that there is a real world that we can gain

knowledge about, but we cannot measure the dynamics and structures directly. We rather have to go on a detour of formulating hypotheses from more abstract and creative theories to understand what makes things happen in the real world. This represents a methodological challenge.

I have therefore provided thorough theoretical accounts of how I identified elements of the empirical phenomenon as structural conditions. Concepts like reliability, replication and different types of validity are often discussed in relation to research designs. There is a discussion whether such concepts are relevant when talking about qualitative research designs (Bryman 2004:30, 51). When I conduct the abductive and retroductive moves making a theoretical re-description of the case and theory development based on the case study, I must consider the validity of how the theories are integrated when I study the phenomenon of transitional justice. Danermark et al. (2002:148) write: “When general theories are applied as frameworks of interpretation they are evaluated with respect to whether they are usable and generate new insight into the phenomena of interpretation.”

The validity of the research is evaluated from how I use general theory as a conceptual framework to say something new about the phenomenon studied. I ask questions about whether the theories promote a deeper understanding of transitional justice. I explain what it can explain, while at the same time point to what it cannot explain. I ask critical questions about the limits of the theories I suggest. To meet this challenge, I present the ontological and epistemological scientific philosophical grounds for the theoretical re-constructions, to make them explicit and open for criticism. This is one of the reasons why I have presented critical realism and the related modes of inference in detail at the start of the research project.

There are many different theoretical perspectives that can be applied to interpret the empirical findings, but my task is to show how Ricoeur’s theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice may help us understand transitional justice in new ways that were not visible before my creative theoretical and empirical re-description.

2.4.2 Some ethical and normative implications

I also experienced ethical challenges conducting research in Cambodia. One issue was how I should approach the sensitive topics I was investigating. I was conscious of the fact that I used the informants to get information that I could use to generate theory. There is a dividing line between the intellectual operation of how I related general

abstract theories to investigate and interpret the phenomenon, and the inter-personal operation of asking the informants to narrate their experiences and thoughts about the violent past. Since my project is theory-driven, I had to balance the desire to follow interesting theoretical and conceptual traces with the emotional desire of the informants to tell their story. This was an ethical dilemma I felt in all the interviews. For example, if one of the informants started to tell a story with great enthusiasm and emotions, and if I felt that this was important for him/her, I would show interest in their story even though it was not relevant for my goal of generating theory. In other cases I may have had to curb my own enthusiasm to learn more because the interviewee was reluctant or not ready.

I tried to deal with the ethical challenges of asking questions about sensitive topics by following established research ethical standards. It is not easy to talk about the Khmer Rouge in Cambodia. I had to be conscious of the sensitivity and the risk that some of the participants may have felt that they were taking by allowing me to interview them. I did explain to them that the results of the interview would be anonymous. This was important in order to prevent some of them from feeling afraid after the interview.

I would say that despite the outward unease, the risk of talking about the conflicting past in Cambodia today is actually very low. Nevertheless, it is a fact that the government in some cases still makes an active effort to control and censor people's opinions about the conflicting past. I experienced this myself, and some of the interviews ended suddenly because the participants suspected that there were government spies observing them.

The topic of the interviews was also very sensitive for the participants asked to talk about their own brutal memory, their suffering and personal losses. All of the persons I interacted with had lost some of their family members during the Khmer Rouge regime. Some had witnessed the killing of their whole family. I had to be sensitive to this when I prepared and conducted the interviews. I discussed this with the experienced staff at the DC-Cam who advised me on how to approach the topics. I had also confirmed with the staff there that they would be available for follow-up questions and to address concerns that the participants may have after the interview. I informed interviewees that they could contact the DC-Cam if they had any questions and concerns.

Before the interviews I told the participants that they were free to end the interview at any time if they felt unsafe or uncomfortable about the topics raised. I used a tape recorder in all of the interviews, after asking for permission to use it and

informing the participants about the strict ethical rules of anonymity and rules of storing and applying the tape recordings. I started the interview by introducing the purpose of the conversation. I operated with an interpreter in all of the interviews. After each interview, the interpreter translated and transcribed it into English for me so I could use the tentative findings, the interesting traces and themes in the previous interview, as I prepared for the next interview.

I have remained conscious of normative aspects. For example, when I suggest how the transitional justice narratives may be better related to the individual searching for truth and justice, I have to be aware of how I at the same time produce interpretations of significance and meaning that could potentially influence how people relate to transitional justice.

As Patomäki (2006) argues, critical-realist ontology explains why there are multiple possible futures and how the world consists of non-actualized possibilities of the already existing structures and mechanism. This brings out the important fact that social sciences are involved in “envisaging better possible futures in terms of concrete utopias” (Patomäki 2006:9) when trying to conceptualize generative dynamics in human worlds better.

In this regard, the research is constructive in, to use Patomäki’s (2006) words, “envisaging a better possible future.” This constructive element is to some extent balanced by the limitations realised by critical-realist philosophy. Even though we can form new creative conceptualizations of the phenomenon under study that may provide new insights into the dynamics and tendencies that make things happen in the phenomenon, we cannot predict concrete events (Danermark et al. 2002). I seek to establish conceptual tools and perspectives that may enrich and develop the field of transitional justice, not exact predictions of particular cause-and-effect relationships of one particular possible future. Rather than predicting concrete events in the future, I try to explain how there are “multiple possible futures” (Patomäki 2006:9). Nevertheless, there are important normative critical aspects to this. In the next chapter I address this more explicitly, by studying some critical perspectives of transitional justice.

3. Transitional justice

In this chapter I take up three main tasks: I give an introduction to the emerging field of transitional justice as a policy and method for dealing with the conflicting past in former conflict societies in their transition towards a democratic and peaceful future. I present some of the best known cases of transitional justice efforts that have contributed to shaping transitional justice theories. It is important to appreciate how the existing theoretical framework has developed in relation to the practical challenges of dealing with the conflicting past. This presentation of the establishment of the field is also essential to appreciate how the cases I present from Cambodia in the next chapter could be studied as being part of transitional justice policies and processes.

I introduce the reader to some of the complexity of transitional justice by examining how the field is complicated when different scholars study transitional justice from an interdisciplinary and polyphonic theoretical perspective. Through this exercise, I expose some knowledge gaps in the existing transitional justice literature. Thus broadening the theoretical and practical fields of transitional justice sets the stage for Chapters Five and Six, which highlight how Ricoeur's theories of narrative contribute to the development of the field.

I present some overall critical perspectives on the field of transitional justice. I also ask whether transitional justice is even a coherent field of study. It is important to keep such critical perspectives in mind when studying transitional justice from alternative theoretical perspectives.

3.1 Introduction

Societies that have experienced dark histories of violence under communism, apartheid, military dictatorships or violent revolutions face different challenges in moving on from the brutal past towards a peaceful future of freedom and democracy. In each transitional movement there is one common question: How should so-called post-conflict societies best deal with the brutal past?

If the suppressive military dictatorship is overthrown and stability is re-established, one strategy could be to forget the past and move on. If we introduce concepts like justice, reconciliation, social reparation, impunity, historical learning and historical consciousness, we are reminded of why this may not be the best strategy. Even though forgetting may be an important part of personal reconciliation and forgiveness in some cases, it is a common view that post-conflict societies need to

look back and deal with the conflicting past in order to reach forward towards peace and democracy.

Transitional justice has become a major field of study that aims to understand how societies that have experienced periods of violence or mass violation of human rights should best deal with the past in order to move on towards a peaceful and democratic society.

Zalaguet (2004:6) lists three goals of transitional justice approaches:

1. To achieve a measure of national unity and reconciliation.
2. To build or reconstruct institutions conducive to a stable and fair political system.
3. To procure economic resources needed to achieve these ends.

The general idea is that only by confronting the brutal legacy of widespread violence and human rights abuses can former conflict societies achieve reconciliation and renewed civic trust. This calls for several sets of theoretical approaches.

The means to achieve the various transitional justice goals have broadened as the field has become more interdisciplinary. At the same time, the transitional justice models established so far as practical responses to local challenges call for new theories explaining how they may contribute to reaching different transitional justice goals. I suggest such creative theoretical approaches in later chapters.

It is important to keep in mind that the goals of transitional justice and the approaches to achieve them never are quick-fix standard solutions, but rather complex and fragile responses to complicated problems. One such theoretical and practical challenge that I critically address in Chapter Five is how efforts to remember and narrate past human rights abuse and violence collectively may be related to the individual searching for truth and justice. I study this in relation to efforts made to reconcile with the past as the society moves on towards peace, democracy, the rule of law, and respect for individual and collective rights.

In the latest development of the field of transitional justice such efforts have been broadened from their initial focus on legal procedures and processes to a focus on the importance of relating internal proceedings at the tribunals or truth commissions to the individual searching for truth and justice. The case of transitional justice in Cambodia that I present in the next chapter is a good illustration of this.

On their home page the International Center for Transitional Justice lists five basic approaches to transitional justice:

- Criminal prosecutions based on juridical investigations of the most senior figures accused of massive crimes against humanity or genocide.

- Truth commissions with the primary purpose of revealing the truth and setting the stage for reconciliation by allowing the perpetrators to admit their crimes publicly. By making recommendations to remedy the abuses of the past, the goal of the truth commission is to prevent the abuses from happening again.
- Reparation programs aiming to repair the material and moral damage of past abuse. The reparations could be material and/or financial, and may be symbolic, like making official apologies or rebuilding symbolic places that were destroyed during the conflicting past.
- Security system reform, transforming the military, police, judiciary and related state institutions from instruments of repression into instruments of public service and integrity. This is about trust building. The fight against corruption in such institutions is also part of the transitional justice process.
- Memorialization efforts to preserve the public memory of the victims. Establishing museums and memorials builds historical and moral consciousness about past abuse to allow the victims to re-interpret their painful past and orient themselves towards a brighter future. An essential part of memorialization is to recognize the victims' memories and to remind others, the next generations, about what happened, so we can learn from this and it will not happen again. (www.ictj.com).

Recent studies suggest that accountability by various institutions for past atrocities as listed above is instrumental to processes of establishing the foundation for peace and stability in former conflict societies (Henkin 2002). However, transitional justice is a new field that is still in the process of being conceptualized into a coherent field of study. There are knowledge gaps in the existing literature that need to be filled. This provides great opportunities for scholars to contribute to the development of this field of study.

The homepage of the International Center for Transitional Justice (www.ictj.org) says:

After two decades of practice, experience suggests that to be effective, transitional justice should include several measures that complement one another. For, no single process is as effective on its own as when combined with the others.

The need for complementary approaches in transitional justice is stated in many reports and articles, for example, Miller and Kumar (eds.) (2007), Bell (2009) and Sajjad (2009). Experiences from various transitional justice processes in the past and on-going processes like the one in Cambodia suggest that a set of multiple methods and projects must work together to achieve transitional justice.

The role and power of the tribunal and investigative commissions to make judgements on the truth value of the stories and documentation of the past, and the

power of the tribunal to define the perpetrators and to punish them, are essential and necessary parts of achieving transitional justice.

On the other hand, the literature on transitional justice that overvalues the role of law and legislation fails to address the role of culture and education as part of understanding how post-conflict societies could best deal with the legacy of the violent past. To understand the relationship between how we relate to and deal with the past today and the prosperity needed for a future of lasting peace requires another set of theories.

We need to use a creative combination of theories to understand how different elements work together in transitional justice processes. To understand how the processes of making judgements on a country's violent conflicting past also enables the creation of a historical consciousness of how the past relates to the present and the future, we need to create theories that address how the narratives of these processes may have a liberating function, opening up new orientations towards a brighter future. In Chapter Six I suggest narrative justice as a theoretical contribution, filling part of this knowledge gap in the existing transitional justice literature.

Before I fill these gaps, I introduce the reader to the field of transitional justice and the practical and theoretical challenges it faces. First I take a closer look at the short history of the field by addressing some of the cases under whose influence it has developed. This will serve as important historical background for understanding the importance of the later theoretical discussions.

3.2 The development of the field of transitional justice

The question of how to react in the aftermath of genocide and massive state violence and suppression is not new. As a response to the crimes and mass murders committed by the German Nazi regime, the United Nations was established in 1945. The London Charter was issued in the same year, formulating the legal basis for trying perpetrators from the German Nazi regime.

Already during the war in January 14, 1942, representatives from the nine occupied countries met in London to draft the Inter-Allied Resolution on German War Crimes. At the meetings that followed the three major wartime powers, the United States, the Soviet Union and the United Kingdom, agreed on the format of punishment for those responsible for war crimes during World War II. This exercise would later be known as the Nuremberg trials.

These trials prosecuted prominent members of the political, military, and economic leadership of Nazi Germany after its defeat in World War II. Some 200 defendants were tried at Nuremberg, and 1,600 others were tried under the traditional channels of military justice. The international military tribunal held at Nuremberg attempted to meet the challenges of dealing with the unprecedented crimes of the German Nazi regime on a legal basis. As a result, new concepts were established, and the trials sparked a global discourse on how to describe and condemn such crimes.

One such concept that has come to be used when describing other mass murders since the Holocaust is “genocide”. The term of “genocide” was first conceptualised in 1943 by a lawyer of Jewish decent named Raphael Lemkin. The term is made up of the Greek word *genos* meaning race, and the Latin-derived suffix *-cidere* meaning killing. Before World War II, Lemkin had called for an international law to prevent mass murder of people based on religious or ethnic differences. After the war, he continued his campaign and in 1948 he succeeded when the UN General Assembly enacted his convention on the prevention and punishment of the crimes of genocide. The law contains an internationally recognized definition of genocide which was incorporated into the national criminal legislation of many countries. The genocide laws represented a new epoch in the fight against impunity, and crimes against humanity. The internationally recognized definitions of genocide were also adopted by the Rome Statute of the International Criminal Court, the treaty that established the International Criminal Court (ICC) on July 1, 2002.

Even though early attempts at internationally condemning and punishing genocide were meant to ensure that the Holocaust would never be repeated, the world has sadly witnessed many genocides since then.

The thoughts and arguments behind the establishment of these laws and institutions, and the debates they initiated, created a need for a more coherent field of study addressing the challenges they addressed. The goal of “never again” that was the motivation behind the establishment of the laws and institutions was not fulfilled. Punishing the perpetrators responsible for war crimes, genocide and crimes against humanity is often a necessary response to such crimes; nevertheless, it has proven not to be sufficient. This is why I argue that we need to look at the term justice from a narrative perspective to understand better how it may be related to the individual and to the collective memory.

Punishing the perpetrators has both a potential restorative effect on the victims and an expected preventive effect, warning other states that such crimes would not go unpunished, but this depends on how the processes of punishing the perpetrators are

narrated and related to the individual expected to go through the transformation. As the world is witnessing even more war crimes and crimes against humanity, and also genocide, there is a need to conceptualize a deeper understanding of the mechanisms and methods of dealing with the criminal past.

According to Bell (2009), it was first in reference to the transitions from authoritarian rule in Eastern Europe and Central America in the late 1980s and early 1990s that the need for a more coherent conceptualization of the mechanisms and methods of dealing with the conflicting past that we today term “transitional justice” emerged.

It is not possible to trace just one starting point from where transitional justice grew as a field of study, but the first academic publications (Orentlicher 1991; Roth-Arriaza 1990) that argued clearly the need for accountability after state violence and suppression emerged in the context of the fight against impunity in Central and South America in the 1990s (Bell 2009:7).

These theoretical contributions at this early stage of the development of the field, and later theories, focused particularly on studying legal procedures and human rights concerns. It is only very recently that researchers have started to analyze the relationship between justice, reconciliation and peace-building under the banner of transitional justice (Lambourne 2009:28).

To understand better how transitional justice developed into a more coherent field of study, I present some of the best known cases that fostered new knowledge and raised new questions about the mechanisms and processes for dealing with the past in former conflict societies. This will serve as a historical context for later theoretical discussions about transitional justice.

The Nuremberg trials are the best known post-war military tribunal. As we have seen, part of the motivation to establish the tribunal was to prevent genocide and massive crimes against humanity from happening again. The new concepts established in relation to the tribunal, of how to describe and condemn such crimes, were later used to establish international criminal tribunals in other post-war societies such as the former Yugoslavia and Rwanda.

3.2.1 International Criminal Tribunals

In 1993, the UN ad-hoc International Criminal Tribunal for the former Yugoslavia (ICTY) was established to deal with war crimes that took place during the conflicts in the Balkans in the 1990s. While most cases heard at the tribunal dealt with alleged

crimes committed by Serbs and Bosnian Serbs, the tribunal investigated and brought charges against persons from every ethnic background. Convictions were secured against Croats, as well as both Bosnian Muslims and Kosovo Albanians, for crimes committed against Serbs and others (Lambourne 2009). By investigating war crimes on both sides of the conflict line, the tribunal made it clear that those suspected of bearing responsibility for atrocities can be called to account regardless of political, religious and ethnic affiliations. It also established that guilt should be individualized.

The international tribunal for the former Yugoslavia was the UN's first special tribunal for the prosecution of those responsible for violations of international humanitarian law. It has been highly praised for setting a new standard to deal with the conflicting past in post-conflict societies. Nonetheless, critics argue that the tribunal was a political tool rather than an impartial judicial institution. Still, its successful convictions of central political and military leaders of the conflicting regimes helped bring justice to victims and perhaps also prevented others from committing such crimes in the future.

About one year later, in 1994, the UN established a second special international criminal tribunal in Rwanda. The International Criminal Tribunal for Rwanda (ICTR) was established to prosecute those most responsible for the 1994 genocide, when over the course of approximately 100 days, from the assassination of Juvénal Habyarimana on April 6 through to mid-July, at least 500,000 people were killed. Most estimates indicate a death toll between 800,000 and 1,000,000.

The tribunal was established to assist the process of national reconciliation in Rwanda and the maintenance of peace in the region, in the aftermath of the conflict. This was a strong signal to other regimes that war crimes, crimes against humanity and genocide would generally not be tolerated by the international community. This illustrates the “instrumental purpose” of a tribunal.

After genocide and war, societies are in a state of shock. There is reason to question whether fast responses initiated by the international community through the UN, such as the tribunals in former Yugoslavia and Rwanda, are the best way to deal with the recent past in former conflict societies. Some commentators have pointed out that the Rwanda tribunal was formed using the same model as the Yugoslavian tribunal established in 1993. The two tribunals shared certain facilities and officers; in particular, they had the same Chief Prosecutor and Appeals Chamber.

Various research projects investigating transitional justice policies and processes have shown that there is never a quick-fix standard model of how to deal with the past in former conflict societies (Sajjad 2009). If the models and procedures

used by the international community become too standardized and powerful, there is a risk that the methods and models become almost self-fulfilling regardless of the context in which they are implemented.

The main difference between the tribunal at Nuremberg established in 1945, and the recent ones in former Yugoslavia and Rwanda, is that after World War II it was the victors who set the rules for punishing the perpetrators. Today, as with the Khmer Rouge tribunal in Cambodia, it is often the international community as a whole which is seeking to bring perpetrators of genocide and other crimes against humanity to justice. This calls for a sensitive and careful approach, aligning the international demands for prosecution and democratization with local demands and needs of the victims. This is one of the reasons why I argue that narrative theoretical perspectives on transitional justice can illuminate important elements of how transitional justice processes could be better related to the individual searching for truth and justice.

Tribunals are not the only means to search for truth and justice in former conflict societies. As I show later, there are different forms of justice at play when societies confront their violent pasts, acknowledging the painful memories of the victims and condemning the people and structures that caused the suffering.

Truth commissions represent an alternative, and in some cases a supplement, to tribunals' search for truth and justice. Truth commissions are an important reminder that there are many more forms of justice at play when talking about transitional justice than just the legal or retributive justice associated with a criminal tribunal. Truth commissions illuminate some important parts of what I later describe as narrative elements of justice.

3.2.2 Truth commissions

From 1974 to date, sixteen truth commissions have been established around the world: Argentina, Canada, Chile, El Salvador, Fiji, Ghana, Guatemala, Liberia, Morocco, Panama, Peru, Sierra Leone, Solomon Islands, South Africa and East Timor. Many of these have been a success, but some have been stymied by political constraints and limitations.

Truth commissions go under various names, but generally they could be described as commissions set up to investigate a past history of violations of human rights in societies that are struggling to come to terms with the conflicting past. This is done in the hope of resolving conflicts left over from the past, fostering reconciliation and forgiveness and allowing the society to move forward towards a future of peace.

Hayner (2004:225-6) defines a truth commission as being characterized by four primary elements:

1. It focuses on the past.
2. It tries to paint an overall picture of the crimes of the past over a period of time rather than focusing on a specific event.
3. It usually exists temporarily and for a predefined period of time.
4. It is always vested with some sort of authority.

In most cases, truth commissions need to be studied as an alternative to legal prosecution as an approach to deal with the crimes of the past. This has to do with the philosophy behind a truth commission leaning on alternative approaches to the concept of justice, and belief in the liberating and healing power of establishing the truth. In most of the sixteen cases listed above, the truth commissions' reports have not been followed up by legal prosecution. The choice to establish a truth commission is often a product of the political circumstances of the transition.

While the first nine truth commissions established since 1974 were all sponsored by the president or parliament of the country, many of the later truth commissions were either sponsored by the UN, by an opposition party, or by a coalition of NGOs (Hayner 2004:227).

Truth commissions and tribunals share a common function in establishing the truth about the past in order to orient people's consciousness towards a peaceful future. As transitional justice theories develop more coherent details of how these relations work and how processes of acknowledging and narrating truth claims about the conflicting past are instrumental in reaching various goals of transitional justice, it is expected that more hybrid models combining the strengths of both tribunals and truth commissions will be established.

For example, a tribunal could be formed to deal with the most senior officials of the past violent regime, while a truth commission allows lower ranking officials to tell the truth about the past without risking legal prosecution.

The work of DC-Cam that I present in detail in the next chapter could be regarded as in a sense an informal truth commission that supplements the work of the Khmer Rouge tribunal. The documentation center has conducted thousands of interviews with former Khmer Rouge cadres and officials who tell their side of the story. Some admit guilt, while others just explain what happened without showing any signs of remorse.

In the next chapter I study the work of the DC-Cam in relation to the tribunal. I will later use this to illuminate theoretically the narrative elements of transitional

justice processes, summed up under the concept of narrative justice. To set the stage, and lend a historical context to later discussions of how truth-telling is an important narrative element of transitional justice, I now present two of the most known truth commissions: the truth commissions in Argentina and South Africa, that are generally believed to have made significant contributions to the development of later truth commissions.

3.2.2.1 Argentina: “Never Again”

Investigations conducted by Argentina’s National Commission on the Disappearance of Persons (CONADEP) during the brutal military dictatorship in Argentina from 1976 to 1983 resulted in a report titled *Nunca Más* (Never Again). The report has had a significant influence on the later development of transitional justice policies and models. The success of the report made truth commissions the main vehicle in other post-conflict societies around the world (Crenzel 2008:173-191). CONADEP gathered evidence for the prosecution of the perpetrators. It had elements of both processes: establishing the truth about the past, and achieving justice.

After a *coup d’état* on March 24, 1976, the military dictatorship of Argentina used politically motivated murder to exterminate its opponents. Torture and murder became part of the play for power and political influence in the country. The state used various techniques to hide the murders and thousands of people who “disappeared”. The opposition disappeared without a trace.

Despite great pressure from international NGOs reporting the human rights violations in the country, the dictatorship managed to neutralize all allegations until Argentina’s defeat in the Falklands War in June 1982 (Crenzel 2008:175). After this defeat, the public demanded that the perpetrators should be brought to justice. As the public awoke to the brutality and scale of the crimes committed by the former regime, their first demand was that they should be punished.

In December 1983, Raúl Ricardo Alfonsín became the first democratically elected president of Argentina. He instituted CONADEP immediately after his inauguration, and tasked it with investigating the disappearance of the opposition and other human rights violations. The commission handed over its report to the president on September 20, 1984. The report recorded that about 9,000 persons had disappeared during the military dictatorship from 1976 to 1983, although the number of disappeared people is estimated by human rights organizations to be more than twice that number.

CONADEP decided that the best way to learn what happened was to identify who was responsible for the disappearances, so that these individuals could explain the events in court (Crenzel 2008:181). To accomplish this goal, the explanations provided by the perpetrators needed to be backed by other evidence and testimonies. Testimony thus took on a decisive importance in the process (Crenzel 2008:181). To record the testimony of local witnesses, CONADEP established local delegations in various provinces. These testimonies provided new information and revealed the magnitude of the disappearances, information the commission would not have obtained by just interviewing people in the city areas. This also changed existing notions, as new details emerged. Crenzel writes about this in his article, “Argentina’s National Commission on the Disappearance of Persons: Contributions to Transitional Justice” (2008).

Some of the survivors had been missing for days or weeks, others had spent years in captivity in the same place, and still others had been in several different clandestine detention centres. Some of the survivors had collaborated with the state, and because their imprisonment conditions had been relatively better, they had a clearer visual memory of their experience. Others remembered very little and could draw only on their body’s memories, which were formed through heightened senses caused by the sensory-motor deprivation to which they had been subjected. The evocation of smells and sounds, the sense of touch and furtive glimpses that managed to get by the blindfolds or hoods, were all used to reconstruct the topography of horror and the identity of the tormentors and of fellow captives.

Crenzel argues that the heterogeneity of these testimonies enriched and confirmed the existing evidence. This heterogeneous body of testimony generated new ones, whereby hundreds of military and police centers throughout the country were added to the already known cases. The various testimonies from various districts also helped the investigators to map out how centers where the persons were held captive were part of a system (Crenzel 2008).

These testimonies were the basis for legal cases against alleged perpetrators, which argued that the dictatorship had co-ordinated repressive actions. Another important effect of the report was that responsibility was finally attributed to the military junta. This would later become the foundation for the legal prosecution of the perpetrators (Teitel 2000:78).

After the commission gathered a large amount of evidence from interviewing the survivors and mapping out the activities of the former regime, it found itself divided on the question of what the juridical consequences of the evidence should be. Those who belonged to human rights organizations argued that the evidence should be

submitted to civilian courts, and those who represented the government argued that it should be submitted to the military courts (Crenzel 2008:186). After some discussion, the president of the commission decided that the evidence should be submitted to the civilian courts.

Crenzel (2008:187) writes that the challenge for the commission was to “adopt a narrative style and an interpretative model” that would achieve the two objectives of condemning the system of disappearance and building a legacy for future generations which would help prevent these events from being repeated.

The narratives presented in the report were thoroughly constructed in reference to how the report could best reach the objectives of the commission’s work. By constructing a new public truth about the disappearances, and in the process gathering legal evidence for prosecuting the perpetrators, the commission helped to fulfill the victims’ and the public’s demand for justice and truth. The process that led up to the final report was perhaps just as important in this regard. For the first time since the collapse of military rule, the terrible crimes of the former regime were aired openly to the public over an extended period (Teitel 2000:73). In this way, the CONADEP experience offered many good lessons for future policy-making in the field of transitional justice (Crenzel 2008:190).

The success of the investigation commission in Argentina is believed to be one of the main reasons why truth commissions became legitimate instruments for constructing a truth about what happened in other post-conflict societies around the world. We see how narrative and memory is an important part of this ground-breaking effort to deal with the past. Crenzel (2000:77) writes: “The testimonies represented an exercise in public remembrance, a task of memory that enabled the expansion of the knowledge of what had happened.”

Repressive periods can be seen as a “gap” in a state’s historical time (Teitel 2000:77). They often represent a break in the collective memory of the society leaving a historical gap between the past, the present and the future. In Chapters Five and Six I critically engage Ricoeur’s theories of narrative to illuminate this.

By analyzing the case study and the interviews from a narrative perspective I show how memory and testimonies of the conflicting past in Cambodia may become the remedy for filling the historic gap. I illuminate how the testimony of the victims and other time-witnesses becomes instrumental to the transition.

Through the 1990s, various cases of state-sponsored efforts to account for the conflicting past fostered new knowledge about the processes. The case that would become the very model of later truth commissions was the South African Truth and

Reconciliation Commission. This case highlights important narrative elements of truth-telling as part of transitional justice processes, and also presents critical perspectives on the limitation and fragility of truth-telling in post-conflict transition.

3.2.2.2 The South African Truth and Reconciliation Commission

The South African Truth and Reconciliation Commission (TRC) is the best known and commonly praised truth commission in the world (Skaar 2009:150-2). Even though TRC was not the first truth commission, it has influenced the design of more recent truth commissions as a form of transitional justice. The commission has served as a model for other post-conflict societies' search for reconciliation by acknowledging the suffering of the victims and revealing the truth about the suppressive past.

The human rights violations and crimes against humanity perpetrated in South Africa were different than from those committed during the dictatorship in Argentina. The violations in Argentina occurred during a period of internal political conflict. The atrocities and suppression in South Africa occurred over a much longer period, under the apartheid political system of racial segregation established in 1948 (Humphrey and Valverde 2008:83-5)

After more than four decades of institutionalized racial segregation and a longer violent history, South Africa's liberation movement reached an agreement with state representatives to end apartheid and hold democratic elections in 1994 (Leebaw 2009:266-7). The end of apartheid laid the ground for the establishment of the TRC.

In 1994, the South African parliament enacted the Promotion of National Unity and Reconciliation Act 34 of 1995. This gave effect to a policy of conditional amnesty in exchange for telling the truth about the crimes of the past (McAdams 2001:277). The idea behind the policy was that inviting people from both conflicting sides of the past to tell the truth and confess that they did something wrong would prepare the ground for national reconciliation. To establish "the truth" about what happened and the motivation behind the crimes of the past, the Act also laid the path for the establishment of the TRC.

The TRC was mandated to establish the truth about the crimes and human rights violations committed between 1960 and 1993 by means of hearings and investigations. The mandate of the TRC was to "facilitate the granting of amnesty, to recommend reparation to the victims of human rights abuses, and to prepare a report containing recommendations of measures to prevent the future violations of human rights" (McAdams 2001:277).

A commission presided over by Archbishop Desmond Tutu was established in 1996. The establishment of the TRC led to a broader focus on how to deal with the past, focusing on alternative legal mechanisms and providing the ground for critical thinking about the concept of truth and reconciliation in relation to the need for justice and empowerment.

3.2.3 Truth commissions versus tribunals

Truth commissions are an important alternative to tribunals as a response to the violent and suppressive past. On a theoretical level, the commissions in Argentina and South Africa raised important questions that helped nuance the dichotomy between punishment and impunity.

Many scholars have argued that truth commissions address the needs of victims in a manner that prosecution cannot do (Leebaw 2009:268). Truth commissions are more flexible than tribunals, as they focus on the broader context of crimes of the past. Because of this, truth commissions may invite a wider group of victims and their stories to be part of the processes.

By allowing the perpetrators to admit guilt in a forum that places a moral judgement on their actions, the victims may feel that a moral agreement is made condemning the crimes of the past. At a tribunal, the perpetrators are judged according to the legal principles of fair trials regardless of whether they admit guilt or show regret for what they did. The truth about the past is settled even though the perpetrators refuse to acknowledge this as the truth. When truth is settled through the testimonies of the perpetrators at the truth commission, it is connected to an acknowledgement of guilt. This makes it a different form of truth than the truth established at the tribunal.

That said, there are also cases before tribunals where the perpetrator admits that he or she did something wrong, and asks for forgiveness. As I show in the next chapter, this is the case of the former mass murderer Duch who stood trial at the Khmer Rouge tribunal. However, this case also illustrates the fragility of the tribunal model, which is totally dependent on the willingness of the perpetrator to tell the truth about past crimes.

Truth commissions, on the other hand, allow a unique opportunity for perpetrators to admit guilt without the fear of legal retribution. An important goal of transitional justice is to make victims feel that their stories of pain and suffering are heard and acknowledged as part of official truth about the past, which in turn is condemned by legitimate official authorities. When the transitional narratives are also

related to stories of how the perpetrators admit that they did something wrong, it is expected to have a constructive effect on the reconciliation processes. Many victims I talked to in Cambodia stated that for them to forgive the perpetrators and reconcile with the past, they needed the perpetrators to actually admit that they did something wrong.

Another potential positive effect of truth commissions is that by involving a larger part of the population, they serve as a good model of democratic problem-solving. Allowing both perpetrators and victims to be heard communicates that each voice is important in a democracy. It demonstrates how freedom of expression is now part of the new political order.

Even though the South African TRC has been widely praised both by scholars and practitioners, it has not been spared from criticism. I end this section on truth commissions by presenting some of the critical perspectives on the TRC.

3.2.4 Criticism of truth commissions

One criticism has to do with the fact that the desire of the TRC to establish a common interest in healing prohibited a clear judgement on the past regime. The desire to transform competing political positions into a shared rejection of human rights violations committed by all parties led to a strategy to depoliticize its condemnation of the past violence (Leebaw 2009:269). This made it harder to communicate an official break with the past political order. However, the TRC report did condemn apartheid as a system, and identified various agents and institutions accused of oppression and gross violations of human rights. Nevertheless, it is relevant to ask whether the TRC prevented political judgement by focusing on more timeless and transcendent norms of healing and reconciliation.

Another criticism of the TRC raised by many victims is that the commission let the perpetrators off too easily. When the victims are not convinced the testimonies of the perpetrators are sincere, or if they feel they were designed to avoid legal prosecution rather than based on genuine remorse, there is always a danger that the victims feel disempowered. And when both perpetrators and victims are asked to admit their guilt for committing human rights violations in the past, this could be misinterpreted by the victims. This becomes even more problematic if there is a lack of clear official condemnation of the past political order.

3.2.5 Concluding remarks

Even though it had its limitations, the TRC in South Africa would later become a model case for how to promote reconciliation by providing a stage where the truth about the past could be established and where the suffering could be acknowledged. The TRC processes raise many important theoretical and practical questions. What is the relationship between political judgement and moral judgement? What is the relationship between judging the system and the individual? What kind of justice is fulfilled by allowing the perpetrators to admit guilt in exchange for amnesties? What is the interplay of political judgement and remembrance?

Truth commissions are founded on a belief that the truth may have a liberating effect on healing and reconciliation processes. Truth established through a truth commission is ordinarily different from the truth revealed at a tribunal, because of the different ways in which the truth is established. At a tribunal, the authority of the legal procedures legitimizes the stories of the victims as the truth regardless of whether the perpetrators acknowledge the witness statements as true or not. At a truth commission, in addition to the witness statements of the victims, the perpetrators' testimonies legitimize the histories of past suffering as the truth about the past.

The idea behind truth commissions is that establishing the truth about the past based on perpetrators' testimonies admitting guilt and showing remorse will have a healing effect on both parties allowing the nation to reconcile with its conflicting past. Even though the intentions and normative aims of the truth commission are easy to support because of the language of forgiveness, reconciliation, peace and healing, it also is important to look at the commission from a critical perspective. There is always a danger that it could become a circular self-fulfilling process where the effects are defined as positive simply by being part of the truth and reconciliation processes.

One important critical question is whether it is possible to achieve reconciliation without punishing the perpetrators. This is a very complicated question related to the relationships between justice and reconciliation and truth and justice. If we look into the many forms of justice at play in both tribunals and truth commissions, it becomes clear that there is no easy answer. We may ask if the truth established at truth commissions is an alternative to justice achieved at the tribunal, whether it is a different form or justice.

Transitional justice processes as defined by scholars might be about restorative justice, criminal justice, retributive justice, and historical justice. By looking into the various forms of justice at play in transitional justice processes, it is possible to

illuminate how the various processes may actually be related to the individual searching for truth and justice. By looking at the relationship between truth and justice from a narrative perspective I illuminate how they need to be studied as complementary to each other. Truth is both the starting point and the end point of justice.

Scholars and practitioners' theoretical accounts help us to understand the broader implications of tribunals and commissions. These accounts have laid the foundation for the field of transitional justice. In 2000, Ruti Teitel, Professor of Comparative Law at New York Law School, published a book titled *Transitional Justice*. This publication has shaped many of the formulations of later theories of transitional justice. To illuminate and critically engage some of the underlying themes of transitional justice, I will present some of the ideas and dilemmas identified by Teitel. This highlights the complexity of transitional justice from a narrative perspective, which comes up later in Chapters Five and Six when adapting Ricoeur's theories of narrative to a study of transitional justice. A creative reading of Teitel's conceptualization of the complexity of transitional justice opens the way for understanding how Ricoeur's theoretical perspectives on narrative may contribute to our understanding of how this complexity may be part of common themes and dynamics in transitional justice processes.

Teitel's study of the term "justice" from historical and comparative perspectives has formed part of my pre-understanding of how the concept narrative justice may contribute to new knowledge in the field of transitional justice. In the following sections I critically engage and re-conceptualize theoretical perspectives from Teitel's book. This is a selective and creative reading of the themes I follow in later abductive and retroductive inferences.

3.3 A creative reading of *Transitional Justice*

Ruti Teitel's book *Transitional Justice* (2000) was published at a time when the term transitional justice was being broadened to cover elements that went beyond legal responses to the violent past as part of the transition to democracy. As Bell (2009) argues that it was only at this time that the field of practice and study officially known as transitional justice was established.

Teitel's book is an important contribution to the development of the theory of transitional justice. She uses transitional justice as a broader label to describe "the conception of justice in periods of political transition" (Bell 2009:8). I study Teitel's

exploration of forms of justice in a historical and narrative context. This study is as an important foundation for how I later present the concept of narrative justice studied in relation to the cases of transitional justice in Cambodia.

It is important to be aware of the complexity of theorizing transitional justice. To address part of this complexity, I now take a closer look at some of the core concepts of Teitel's historical and comparative presentations of constitutional, legislative and administrative responses to the conflicting past in former conflict societies.

3.3.1 Transformative dimensions of condemnation of past crimes

Teitel (2000:4) argues that an idealist perspective on how to deal with the crimes of the past in times of transition often falls back on universal conceptions of justice as fully retributive or corrective responses to the crimes. She begins the book by rejecting the proposition that transition towards a democratic society and peaceful future implies a universal norm. Instead, she presents an alternative way of thinking about the relationship between law and political transformation.

By focusing on the nature and role of legal phenomena in relation to a broader inquiry into practices of liberal democracy, Teitel suggests a phenomenology of liberalizing transition that “points to a close tie in the normative shifts in understandings of justice and law’s role in the construction of the transition” (Teitel 2000:6).

Teitel identifies what she describes as a “threshold dilemma” where law is caught between the past and the future and between the individual and the collective. She argues that the approach to understanding justice in transitional justice policies needs to be related to this context of retrospective and prospective perspectives, and personal and collective meanings and effects of the processes of justice-seeking. I address this complexity in Chapter Six.

By exploring various forms of the role of law in periods of political change, such as punishment, historical inquiry, reparation, purges, and constitution-making, Teitel illuminates many important aspects of transitional justice as a field and as a coherent theoretical approach to studying the transition from a violent conflicting past towards a future of functioning democracy and lasting peace.

3.3.2 Justice in times of post-conflict transition

At first glance, justice in transformative periods may look simple: justice is served by identifying and judging by law the perpetrators responsible for the crimes in the past. Reflecting on justice in times of post-conflict transition, we can ask questions like: Who or how many need to be punished before the victims feel that justice has been served? How should they be punished? Should there be a military or civilian court? By what standards should they be judged, international standards or by local standards? Should this be mixed? How are the victims divided on the question of justice?

Such questions make it clear that the term “justice” needs to be studied from a number of theoretical and practical perspectives for an understanding of transitional justice.

An internationally supported tribunal could provide justice for some and not for others. Should there be an extraordinary court fully separated from the national court or should the tribunal be more adapted to the local or national courts to help shape the legitimacy of and trust in the national or local legal system? Should the processes of judging the perpetrators be adjusted to the communicative needs in relation to transitional justice goals, or should they focus strictly on the juridical procedures?

Tribunals happen within a political context, and are set to serve political purposes as part of the transformation towards a functional democracy. The question then is how this should be balanced with the autonomous standards of the legal system.

According to Teitel (2000), contemporary theorizing on this important phase of the conceptualization of transitional justice largely justifies punishment in transition for its potential role in constructing a newly democratic order. Punishment is then expected to lay the ground for a new liberal order. To illustrate how punishment is largely defended on the grounds that it “advances the society’s political identity in the transition as a democratic rule of law abiding state”, Teitel (2000:29) refers to historical examples of successor trials going back to Nuremberg, and more contemporary trials such as Argentina’s trials of its military commanders.

As illustrated earlier, successor trials serve a political and historical function of drawing a line between the former regime of the conflicting past and the new regime in transitional periods. While they help legitimize the political order of the new regime, they de-legitimize the old regime (Teitel 2000:30). In this way, the trials advance other purposes of political change by attempting to reinforce normative change as part of the transitional responses to the conflicting past.

Awareness of how “condemnation of past wrongs has transformative dimensions” (Teitel 2000:50) is an important part of theorizing transitional justice. The criminal sanctions are limited; only a few of the perpetrators are often punished. Full or lasting punishment is not possible, so to understand the effect of the tribunal we must look at the dynamic role of criminal justice in advancing normative change (Teitel 2000:49). According to Teitel (2000: 33) “the core transitional dilemma is how to conceptualise justice in the context of a massive normative shift.” In Chapter Six I show how Ricoeur’s theories of narrative illuminate important aspects of this transition.

Teitel (2000:66) argues that reconciling the need for normative change with criminal prosecution at the tribunal requires transitional practices that limit the punishment to partial symbolic processes. This means the role of criminal justice in transitional times transcends that of conventional punishment. For example, criminal justice may potentially contribute to reaching other goals of transitional justice, such as building trust about the reconstruction of a functional legal system. At the same time, it should address various personal needs of the victims, such as the desire to know the truth about what happened and the desire to see that the perpetrators are punished.

When trying to reconcile the desire for normative change with the need for criminal justice being served, we have to conceptualize justice in a way that honours the communicative and normative implications of the legal response to the conflicting past. According to Teitel (2000:67), criminal justice could be seen as a liberating ritual through which norms are publicly instantiated:

Through known, fixed processes, a line is drawn, liberating a past that allows the society to move forward. Though punishment is conventionally considered largely retributive, in transition, its purposes are corrective, going beyond the individual perpetrator to the broader society.

To understand this, we need to conceptualize justice in times of transition as something more than just criminal justice, as a liberating instrument of social change. By introducing the concept of narrative justice I hope to contribute to a new conceptualization of the historical and liberating function of justice. Teitel’s description of the concept of historical justice illuminates important elements of how I will later conceptualize the concept of narrative justice.

3.3.3 Historical Justice

Teitel (2000:69-118) explores the historical response to the conflicting past and the role historical accountability plays in liberal transition. She begins by noting that transitions appear to imply periods of historical discontinuity. The transition implies a break with the conflicting past. Transitional justice projects and processes try to address this discontinuity by orienting the historical consciousness towards a brighter future.

Teitel (2000) introduces the term historical justice, as an additional normative claim to the criminal justice of the tribunal, a normative claim of an official historical account that enables a shift towards a peaceful and democratic future. The term historical justice is still very much in flux. There is no consensus on theories that conceptualize historical justice in relation to the transition towards a peaceful and democratic future. As Berg and Schaefer (2009:8) point out, because it is not possible to quantify and rate past injustice on an agreed schedule, it is difficult to develop fixed models of how to develop a culture of historical justice. Historical justice may be theorized as focusing on the individual, collective and structural levels and it operates with many different aims and goals of how societies should face the painful legacy of their violent history (Berg and Schaefer 2009:3).

I now focus on how elements of Teitel's (2000) conceptualization of the term historical justice illuminate some limitations and possibilities of historical accounts in the language of justice.

Because the transition involves a break with the past, leaving a gap in the cultural, social and historical narratives that in ordinary times shape collective memory, the tribunal and its frameworks and processes have the potential to shape the formation of collective memory and identity.

In cases like Cambodia, the tribunal is established a long time after the past criminal regime collapsed. Thirty years after the Khmer Rouge collapsed in 1979, a handful of the perpetrators are facing the ECCC tribunal in Cambodia. As I argue in the next chapter, the situation in Cambodia illustrates how the alternative to a legal accounting or a truth commission often is disempowerment and confusion. I argue that this could be the result of the lack of a clear historical narrative about what happened and a clear condemnation of the crimes of the past.

International society, in the years that followed the collapse of the Khmer Rouge, refused to make clear judgements on the regime. In addition, the new government has attempted to keep the history of the Khmer Rouge from being known

by the public, and many confusing stories have been constructed and told to the public as part of political power play. This illustrates how the lack of a clear narrative of justice representing a break with the past may prevent the victims from forming a collective memory that empowers them to move towards a better future. In other words, the lack of historical justice often results in confusion and disempowerment of the victims. One implication of this is that history and justice need to go hand in hand in times of post-conflict transitions.

Just as criminal justice needs history to provide justice to the victims, history needs truth claims to become a legitimate source for the search for justice. Even though history and truth cannot be seen as the same thing, this often is a general belief behind contemporary transitional justice efforts.

This calls for a critical approach when studying transitional justice. Since the field has developed so fast in reference to processes that almost by definition are seen as good and constructive, and as a negation and reaction to the evil past, it is important to question its theoretical basis.

3.3.4 Some preliminary critical remarks

When considering the role of punishment in pursuing historical justice, Teitel (2000:72) argues that “trials are long-standing ceremonial forms of collective history-making.” This view may be criticized from different perspectives.

Trials have two main purposes: to establish truths about the crimes of the past, and to judge the responsible actors and punish them. Without the memories that enable story-telling about the evil past, there would be no grounds to define the crimes and to punish the responsible actors. Nevertheless, due to the nature of the adversarial system, featuring a defense team and a prosecuting team, the historical account of the tribunal is often complex and polyphonic. The task of the defense is to present historical evidence that may contradict the evidence against the defendant. For example, during the first detention hearing of Nuon Chea, “Brother Number Two” of the Khmer Rouge regime, the French defense lawyer stated that all the stories and histories of the crimes committed by his client should not be considered as historical truth unless someone could present evidence as proof that they actually happened. Even if the histories were proven beyond reasonable doubt to be the truth about the past, he demanded additional stories with a similar truth value that could link his client to the crimes.

The prosecuting team, for its part, needed to present documents and witness statements that prove that the subject of the accusation actually happened and that Nuon Chea actually was responsible for the crimes he is accused of. This process is like a form of collective history-making in a context that is believed to provide legitimate judgements on the truth value of the histories. It is in this context that “the accounting for the past affects and constructs a distinct view of historical justice” (Teitel 2000:72).

However, the collective history-making in relation to the transitional narratives at the tribunal is limited to the historical period the tribunal is mandated to investigate. In Cambodia, this is the period from April 1975 to January 1979. This represents a challenge when talking about historical justice. Viewing the narration of truth about the past as the same as collective history-making has risks. One danger is the tendency to see it as a dialectical process that may overshadow the complexity of the transitional processes.

In Chapter Six I introduce elements from the interpretative turn in history that challenge the view of an objective and autonomous history. By introducing the intrinsic connection between historical theories and historical memory embedded in the culture and the everyday lives of people (Straub 2006), interpretative theories of history challenge the assumption of a linear progress of history which is the ideological foundation for many transitional justice processes.

From this it is possible to argue that historical accountability in transitional justice is idealized on a belief in the liberating potential of history based on a linear perspective that does not fit with the contemporary theorizing of history. By studying transitional justice in light of Ricoeur’s theories of narrative, I am able to conceptualizing history and transitional narrative in relation to the individual’s search for truth and justice. Hence I hope to present an alternative perspective on the liberalizing potential and transformative role of history and story-telling.

When introducing the concept of narrative justice, I argue that it is by looking past the assumption of an autonomous objective history that we are able to illuminate how the transitional justice processes may fulfill the liberalizing potential of history. Rather than looking at the liberalizing potential of history from a linear Enlightenment view, we need to recognize the significance of the political, normative and social context from where the search for the truth about the past is motivated and from where the historical narratives are constructed. We need to understand how the narratives of the tribunal are being related to the individual searching for truth and justice.

3.3.5 History, truth and justice

Considering the role of historical narratives produced in post-conflict transformative periods, Teitel (2000:88) asks to what extent the transformative truth-telling is a form of justice. Or is it a prelude or an alternative to justice? By addressing this relationship it is possible to illuminate important narrative elements of transitional justice.

As stated earlier, truth and justice are not the same thing. One way of looking at this relationship is to see justice as something that is made possible by making legitimate truth claims about the crimes of the past. To some extent you could then say that truth is prior to justice, meaning that truth claims come before justice, presenting a narrative starting point from where to search for justice.

By looking at the relationship between truth and justice from a narrative perspective I demonstrate how they need to be studied as complementary to each other. Truth is both the starting point and the end point of justice.

In Chapter Five I will introduce Ricoeur's mimetic model of emplotment. This model, which deals with the mediating role of emplotment between the activity of narrating a story and the temporal character of human experience (Ricoeur 1983 [1990:52]), enables me to illuminate how the end point of the narrative of truth and justice, the final judgements made at the tribunal, could also be seen as a starting point from where the memories of the past are remembered or re-interpreted.

When the tribunal punishes the perpetrators based on what is proven beyond reasonable doubt to be the truth about the crimes of the past, the truth claims are emploted in relation to a narrative of how justice has been served by punishing the perpetrators.

By punishing the perpetrators, the historical narratives are provided with what may be described as a liberating potential enabling a re-interpretation of the memories of the past sufferings. By identifying and punishing the perpetrators, the tribunal also clarifies truths about the larger political and social context of the crimes they committed. In this fashion, the tribunal is legitimizing the victim's dark and suppressive memories as being related to a bigger historical context. And when a human face is put on the perpetrator, and when he or she is judged and punished, the result may potentially be that the victims are empowered to re-interpret their own life stories and memories, and to become oriented towards a brighter future. I follow the pre-understanding of such effects of the transitional justice processes in Chapters Five and Six. Here, I only point to how my reading of Teitel's (2000) conceptualization of

transitional justice has shaped my pre-understanding of the theoretical connections I investigate in later chapters.

The tribunal is not the only source that provides the liberating potential of the historical narratives. However, there needs to be a transition based on the establishment of official truths about the conflicting past. There also needs to be a legitimate authority making judgements over the past, identifying the perpetrators and the victims.

For example, a truth commission represents an alternative approach to dealing with the conflicting past, as opposed to a clear dichotomy of punishment versus impunity. The processes should ideally be based on a need and desire among the people to know the truth and reconcile with the conflicting past.

According to Teitel (2000), there are two sorts of narrators from where the truth emanates; the people and the representative elite. At tribunals and truth commissions, the victims and perpetrators serve a key role as witnesses. The judges and commissioners are the authority that legitimizes the stories as the truth. The institutional frameworks on which the stories are staged and communicated are a central element of the epistemology of the transitional truth. And when the stories are communicated by the tribunal and commission, they become what Teitel (2000:82) describes as “a shareable truth, a national story, and the basis of transitional consensus.” Understanding how historical consensus is constructed in times of post-conflict transformations is important. These processes are often related to processes of forming political consensus. I will now describe some of these challenges.

3.3.6 Political instrumental values of forming historical consensus

In times of transition the new political regime needs to construct or defend historical accounts linking the conflicting past to the present and future in such a way that the regime is seen as the start of something fundamentally different from the suppressive violent past. This is complicated in societies like Cambodia, where some of the officials of the former regime are now part of the new government. This has led to a situation where the Prime Minister of Cambodia, Hun Sen, is protecting some of the former Khmer Rouge officials from being prosecuted, while he supports the prosecution of other Khmer Rouge officials.

Cambodia is a good case to illustrate this complex relationship between building historical and political consensus in transitional periods. The political power play often is intrinsically linked to the production of historical accounts of the past.

Making historical claims in the language of justice enables the new regime to be associated with the liberating political order. Ideally, the government should stand behind the goals of the tribunal and communicate this to the population.

The consensus on what should count as the official truth about the conflicting past is not constructed in isolation. It is linked with the transitional justice narratives of the tribunal or truth commission. There are many different processes leading up to the acceptance of official truths.

A major shift in the public consciousness of how to reflect on the narratives of the past has a political context. The construction of historical narratives reflects how the new regime stands in opposition to, or how it is different from, the previous violent regime. How the narratives of the past are communicated is intrinsically linked to the political situation of the transition. There is often a political need to narrate the past in such a way that it legitimizes the new government. By narrating the conflicting past and its actors as standing in opposition to the new regime, the transitional regime positions itself as the start of a new bright future.

The often dramatic changes of social, cultural and historical frameworks of reference in times of transition provide a situation where a new consensus may be formed and where collective identity may be strengthened. The transitional narratives can be emplotted in different ways, and historical consensus is often tightly linked to building political consensus. As I illustrate in the next chapter, the construction of official truths about the past often becomes an important instrument in the political power play in post-conflict situations.

The tribunal represents the main source from where the official truth derives its power. Ideally, the official truth established by the tribunal should be shared by the political community. If the history produced by the tribunal and the history produced by the government are not the same, it becomes more difficult to establish official truths about the past as the foundation for achieving transitional justice.

Justice is made possible by making legitimate truth claims about the crimes of the past. To make such claims, there must be an authority that is seen as a legitimate provider of the truth. If there are several different authorities that disagree over what is the truth on the past, it becomes difficult to achieve transitional justice. As Teitel (2000:85) says, the truth regime that supports the political aim of the successor is not always historically just, and it is often short lived; “it is a truth for a particular politics.”

As mentioned earlier, the historical accountings of the tribunal are limited by the timeframe it is mandated to investigate. The historical accounts are also limited by

the fact that only a handful of the perpetrators are punished. This could both be seen as a limitation and as a benefit when looking at the liberating potential of establishing official truth about the past. If the historical accounts of the past were to follow the scientific demand for detail and nuances as academic historical articles, they would be too complicated and multi-voiced to be communicated and established as official truth.

There are always numerous elements to a conflicting past that could complicate or nuance a clear dichotomy between victims and perpetrators. Often, there are long historical lines that could be drawn, changing the plot of the narratives of the official truth and complicating the relationship between history, truth and justice.

Transitional narratives are emploted according to the political and historical context of the transition, but the narratives and the histories they produce are never neutral, true accounts of the past. As with all claims about the past, the truth value needs to be studied in relation to the historical evidence produced and narrated, especially in transitional periods where the processes of building political consensus often are closely related to processes of building historical consensus.

3.3.7 Historical narrative and social transformation

The transitional historical inquiry often springs out of a particular need to deal with the conflicting past. This could be the desire by the victims to know the truth about the past, or pressure from the international community, or a political desire to mark a defining moment communicating a clear break with the past regime. Often, it is a combination of different motivations and desires.

For example, in post-World War II Germany, historical inquiry began with the desire to deal with the past in such a way that it could balance the need to acknowledge a national collective responsibility, while recognizing the need for constructive orientation towards the future based on lessons learnt from the past.

As a result of this, the teaching of history in Germany could not just narrate the past as something that was over and done with. In the 1970s and 1980s, the concept of historical consciousness became part of the discussion, and didactic history developed as a field of study in Germany. By studying all kinds of historical learning, not just those produced by historians, and how these learning processes are related to collective memory, cultural narratives and moral identity, researchers like Karl Ernst Jeismann and Jörn Rüsen showed how history is related to social life.

This raises different implications for understanding the transformative constructive potential of transitional justice processes, and how historical consciousness needs to be part of the study of transitional justice.

To understand the relevance of historical narratives to social and personal change in times of transition, we need to look at history as something more than just historical facts and knowledge. We need to look at the narrative structure of the histories that are documented, constructed and then narrated to serve particular transitional purposes. We need to understand how the very “narrative line” (Teitel 2000) of transitional justice narratives determines how the narrative is interpreted and related to the individual searching for truth and justice. Understanding this is essential to the understanding of relations between historical processes and liberalizing political transformation.

Teitel (2000:109) writes about the narrative line of transition:

Transitional narratives are of a distinct form or genre, what might be regarded a mixed tragic-comedy, or tragic-romance. While the narrative of transitions commence in tragedy, they end in a comic and romantic mode. In the classical understanding, tragedy comprises the elements of catastrophic suffering involving the fate of entire groups, cities, and countries, followed by some discovery or change from ignorance to knowledge, a moment of clarification. Just as ancient tragedy focused on the plight of individuals, whose fate, due to their status, implicated entire collectives, contemporary stories of suffering similarly concern affliction on a grand scale.

The transformative role of transitional narratives could partly be studied as a change in interpretation of the memories of the violent past. This change could be studied from the perspective of a narrative turning point, opening up a possibility for change and transition.

To understand the relevance of using historical story-telling to achieve personal and social change related to the goals of transitional justice, we need to illuminate how the narrative line of transitional justice determines how the narrative is interpreted and related to the individual searching for truth and justice.

Only at the most dramatic moments in life does our consciousness of identity, our life story and of being part of a larger historical and social context, become clear. Only at defining moments in time does the direction of the narrative plot of our lives change dramatically, and new opportunities for change and transition occur. This is why it is so essential that the transitional justice processes at the tribunal are narrated and communicated to the public as a defining transitional moment in history.

If a former conflict society refuses to look back and deal with the conflicting past, no clear turning point is narrated. And with no defining moment that marks a separation from the past and the start of something new, it is harder to create a historical consciousness among the victims that may help them orient towards a brighter future.

A tribunal or truth commission may mark a historical turning point that allows the victims to form a historical consciousness of how their narrative identity is related to their cultural, social and historical surroundings: a historical consciousness about the relationship between the past, present and future that crystallizes how they may re-interpret their own identity as witnesses and survivors in a way that empowers them to move on towards a better future.

To understand these connections and mechanisms we need to adopt a wide range of theoretical perspectives.

3.3.8 Concluding remarks

In just a few years, transitional justice has developed into a complicated field of study. Studying transitional justice from an interdisciplinary and multi-theoretical perspective calls for critical reflections about its fragility and limitations.

I presented some of the complexity of transitional justice methods and theories. Since this concept is still in the process of being conceptualized into a coherent field of study, there are many potential pitfalls of over-emphasizing or simplifying some of the mechanisms and relationships suggested by the theories. This calls for a cautious approach.

In the following sections I reflect on critical perspectives and potential biases and pitfalls related to the field of transitional justice. The first question I ask, which has been asked by scholars such as Bell (2009) and Mendez (2009:1-4), is whether transitional justice can be identified as a field at all. The reason why I ask this question is to illuminate the knowledge gap in literature on transitional justice which fails to address and explain fully what could be common basic elements relating the different practical approaches. We have seen how fast transitional justice has emerged as an analytical concept and as a practical approach defining policies and methods of dealing with the conflicting past in former conflict societies. I make the claim that the theoretical explanations of these processes and mechanisms have not moved at the same pace as the practical approaches.

Questioning whether transitional justice can be studied as a coherent field all together is therefore important to remind transitional justice agents and writers that the interconnections assumed between the various approaches cannot be taken for granted. Following a critical realist inference it is also important to be aware that these expected interconnections and mechanism can only be explained by making new and also creative theoretical assumptions about them.

3.4 Is transitional justice a field?

Bell (2009:6) uses the term field to connote “a sphere of knowledge, interest and activity held together by distinctive claims for legitimacy.”

In less than ten years, transitional justice scholarship has developed across a diverse range of disciplines. Institutions and NGOs have been established as a practical response to the new knowledge and models of transitional justice.

In 2001, the International Center for Transitional Justice (ICTJ) opened in New York. The ICTJ helps societies heal by accounting for and addressing past crimes after a period of repressive rule or armed conflict. It now has offices around the world, and facilitates and communicates information and new knowledge on transitional justice.

Institutions like the ICTJ have contributed to establishing transitional justice as a field. The examples introduced earlier of practices and policies adapted in various cases around the world can be studied as practices within the field of transitional justice. However, Bell (2009) argues that because the processes vary so much from case to case, transitional justice should not be studied as a field. Rather, transitional justice should be studied as what she describes as “a cloak that covers a range of particularised bargains on the past.” Bell (2009:15) writes:

This cloak has been woven into a superficially coherent whole through processes of international diffusion, similarity in institutional provision and the common language of transitional justice field hood itself, but most notably because each particular bargain has needed to articulate a relationship to the accountability standards of international law ...

I do not fully agree with Bell’s rationale that transitional justice should not be studied as a field. The phenomenon of transitional justice, and the need to deal with the past as part of the process of preparing for a better future after war and suppression, is not superficially a coherent whole, but a common phenomenon that unites the various cases. By conceptualizing the processes that bring together interdisciplinary

perspectives and the practical implementation of theories, transitional justice can be presented as a coherent field.

Nevertheless, I agree with Bell (2009) that we need to be cautious in our acceptance of the concepts and narratives about the value of transitional justice articulated in relation to the standards of international law. The danger is that too strong narratives about the value of international law and the related concepts and cultural elements would make the result contextually less sensitive and culturally less appropriate.

In their book *Transitional Justice in the Twenty-First Century*, Roth-Arriaza and Mariezurrena (2006) address different experiences of transitional justice processes from East Timor, Rwanda, Iraq and Afghanistan. One conclusion is that, to be effective, transitional justice processes must be both culturally and contextually appropriate (Roth-Arriaza and Mariezurrena 2006:333). Comparative case studies like these are helpful in highlighting how transitional justice cannot be studied as a standard solution independent of the context in which it is being implemented. It also shows the many challenges faced by transitional justice processes.

The question whether transitional justice could be regarded as a field raises important dilemmas and possibilities. As Mendez (2009:1-4) points out: “When we consider the definition of transitional justice as a field we need to consider both scholarly disciplines with practical operational implications.” Mendez argues that on the scholarly level and in the area of social and political endeavor, transitional justice stands out as a distinct field. However, on the operational level, defining transitional justice becomes more complicated. This is because there are so many transitional justice actors operating around the world.

Transitional justice efforts are performed on different levels in society and vary according to state involvement, size, national or local initiatives, etc. When certain activities are labeled transitional justice they are then read as part of a bigger process defined within the scholarly disciplines of transitional justice.

As we learn more about transitional justice and how the various operational initiatives work, it is expected that the practical field would be guided more directly according to the scholarly models and conceptualizations of the field. How the various scholarly contributions conceptualize transitional justice would have operational consequences.

As transitional justice develops into a field, it becomes important that the conceptualizations and models it suggests are related to the operational level in a constructive manner. Since transitional justice processes as defined today emanate

from local desires to search for truth and justice about the crimes of the past, there is a risk that transitional justice models and conceptions growing out of the scholarly field of transitional justice may interrupt or overshadow local initiatives that would otherwise make important contributions to the transition.

The processes do have their own history that will be part of the methods of achieving transitional justice. If all initiatives are arranged and initiated by a foreign western country and alien organizations, the stories of the processes may lose their potential to be narrated as part of the public's search for truth and justice.

By questioning if transitional justice could be studied as a coherent field, we are reminded that transitional justice is not unproblematic or neutral. Transitional justice initiatives therefore need to be sensitive to the particular contexts and circumstances in each particular transitional society.

I now look into examples of how transitional justice needs to be sensitive to the particular context in which it is being implemented. These examples illuminate important practical elements as a background for understanding the later theoretical discussions of how narrative perspective on justice could help us understand how transitional justice processes could be related to the individual and the community searching for truth and justice.

3.5 Marginalized perspectives

Transitional justice initiatives need to be balanced with particular historical, political and social needs related to the transition. In addition, the mandate of the tribunal only to prosecute crimes committed within a particular historical period limits the perspective of transitional justice initiatives. All these circumstances demand that particular choices have to be made regarding what the transitional justice initiatives should focus on. This may in some cases represent a potential bias and limitation of transitional justice policies.

For example, Ismael Muvingi (2009) argues that to date, transitional justice initiatives have focused on the legacies of violence, establishing order and correcting civil and political injustices. Muvingi studies the fact that social and economic factors have been given second or no place at all in transitional justice policies and methods, yet, as he writes, “social and economic grievances can be powder kegs that, if left unaddressed, threaten to blow up peace initiatives” (Muvingi 2009:163). By presenting empirical evidence from experiences of transitional justice efforts in Zimbabwe,

Muvingi (2009:163-182) illuminates the dangers of marginalizing social and economic imperatives in the transition from repression.

In Zimbabwe, the historically constructed socio-economic injustice could be traced back to the civil and political oppression and abuses of the colonial days and the liberation war ,leading up to the recent history of President Robert Mugabe's failed land redistribution policy that was marred by violence, corruption and unfair forced redistributions. Muvingi (2009) argues that without addressing how the post-conflict socio-economic inequality is related to the conflicting past, future transitional justice efforts in Zimbabwe will fail.

Muvingi's (2009) study reveals a potential bias: transitional justice processes often address only an area within a limited focus of the historically constructed injustice in former conflict societies. He argues that because socio-economic issues have been absent from the transitional justice discourse, the conceptualization of the field itself needs some discussion.

In Cambodia, the historically constructed socio-economic inequalities are part of many victims' expressions of their desire for truth and justice. Many of the victims I spoke with expressed how they felt disempowered by the fact that many of the former Khmer Rouge leaders that were given amnesty in exchange for joining the new government now live in luxury while the victims themselves still live in extreme poverty.

If historically constructed socio-economic injustice is not addressed or narrated as part of transitional justice initiatives, there is a risk that the victims will not feel that justice has been served. Some of the victims I interviewed in Cambodia responded that, for them, justice would be served if they were provided some sort of material compensation for their losses. This could take various economic forms: money or a new road to their village.

One danger of marginalizing the focus of transitional justice to historical and retributive justice served at the tribunal is that one may overlook the importance of other forms of justice, such as compensatory justice or reparatory justice. The latter can only be achieved if the socio-economic injustices related to the histories of the conflicting past are part of the justice process. In this regard, Muvingi (2009) talks about distributive justice, conceptualizing justice in terms of socio-economic equality in addition to liberty.

Poverty and starvation can be an important political weapon to control the opposition. When you have to fight hard every day to make sure you provide enough food for your family to survive, the search for truth and justice would naturally

become a low priority. The liberalizing effect of the transitional justice narratives may be lost because of the effect of socio-economic injustice.

Scholars like Carranza address the potential bias of marginalized perspectives in transitional justice by arguing that traditional transitional justice mechanisms would be strengthened by a mutual engagement with both economic crimes and human rights violations. Since both economic crimes and human rights violations are mutually reinforcing forms of abuse, Carranza (2008) argues that both sources of impunity need to be confronted.

I do not engage in this debate here. I only point to the fact that because transitional justice perspectives need to be limited to particular historical timeframes and balanced against various political and social needs, there is always a risk that the perspectives become too marginal. As Carranza (2008:311) writes: “The legacies of large-scale corruption and other economic crimes committed by politically exposed persons or by leaders and members of non-state armed groups have been, with a few exceptions, ignored in transitional justice initiatives.”

Cases where economic crimes and corruption have been part of transitional justice initiatives, such as the initiatives carried out in Chad, the Philippines, Sierra Leone, East Timor, Peru and, most recently, Liberia, demonstrate that “transitional justice can be strengthened and can confront impunity more effectively if it engages with accountability for corruption and economic crimes” (Carranza 2008:311).

Broadening the perspective of transitional justice to focus on economic crimes and corruption presents some challenges to the very nature of transitional justice.

Since the historical lines of the economic crimes and corruption may differ from the historical narrative of war crimes or crimes against humanity the tribunal is mandated to investigate, it becomes hard to mark clear historical or narrative turning points essential to defining transitional justice. In a post-conflict society, corruption and economic crimes that were part of the conflicting past may continue after the war has ended and under a new regime.

The question of whether avoiding economic crimes as part of a transitional justice initiative represents a bias or not needs to be decided in reference to each particular case. In Cambodia, the socio-economic difference and the extra suffering caused to the victims as the result of the corrupt post-war regime represents an additional form of disempowerment of the victims. It represents an additional denial of the victims’ right to justice, adding to the existing impunity in Cambodia.

3.6 Ideological biases

It is dangerous to take for granted that transitional justice by definition is a good thing with positive effects. It is very easy to do this because of association with “positive” concepts like justice, truth, peace, democracy, empowerment, and development. Because transitional justice, to some degree, stands as a negation of the forces of the conflicting past, it is in danger of becoming blind to its potential negative effects and side effects.

There is an ideological element to this. The dialectics of the transitional justice narrative as being the start of a brighter future represent an ideological agreement that the processes and mechanism are necessary elements of a liberating ritual. If the transitional justice narrative is not related to and adapted by the victims’ search for truth and justice, the processes might not have a constructive effect. Therefore, it is important that transitional justice initiatives stay sensitive to the particular cultural and historical context. This is why I argue that transitional justice needs to be studied in relation to the personal and collective narratives of the victims’ identities and memories. In the concluding chapter I conceptualize this as narrative justice, but this calls for a critical approach.

By studying the transitional justice narrative as a positive force to identity formation, I advocate the ideological motives of the transitional justice processes. This becomes even more evident when you illuminate the processes from a narrative perspective, as I have explained more explicitly in Chapters Five and Six. By arguing that narrative constructions and story-telling may serve orientative functions in the construction of collective and personal identity, I consider how this also may have a negative potential as manipulation of memory.

Another danger of taking for granted the constructive effect of transitional justice is that we may overlook how in some cases story-telling of truth and justice may disrupt processes where forgetting has been part of a constructive process of dealing with the past.

By enforcing a re-narration of memory you are also constructing new realities. I show how theories dealing with historical meaning-construction need to be sensitive to this fact.

3.7 Need for more knowledge

Transitional justice should ideally be a response to particular problems and challenges faced by former conflict societies trying to move on from a conflicting and brutal past. This could be the need to identify what really happened in the conflicting past, answering questions such as who was responsible for the crimes and how the crimes could happen. This is complemented by a desire to see justice being done.

Truth and justice are therefore two central concepts in understanding transitional justice policies and processes. A central question is, whose truth is established and whose justice is being fulfilled? If transitional justice theories over-emphasize the institutional and legal aspects of the processes, this issue becomes a concern.

Ideally, transitional justice theories should explain and illuminate how these aspects work together as a response to concrete challenges and problems in a particular post-conflict situation. There are many practical elements that complicate these relations, one example being the nature of the political transition and the complexity of the history of past violence. The complexity of post-conflict transitions calls for creative and interdisciplinary theoretical accounts of the processes. If, for example, the truth about the past is established at documentation centers and by historians working in isolated institutions, and if these facts and figures about the crimes of the past are stored in a closed archive without being communicated to the public, it is not possible to talk about transitional justice. And similarly, if a closed court is secretly punishing a handful of the perpetrators without communicating this to the public, we cannot speak of transitional justice. The role of law and documentation in transitional justice processes is of no use unless combined with how these processes are narrated, communicated and interpreted.

Transitional justice needs to be studied from the perspective of how the processes at the tribunal and the truth commission are narrated, communicated and interpreted by the individuals searching for truth and justice. Even though the narrative element is implicit in many transitional justice processes and policies, the emplotment processes of the transition are seldom addressed explicitly in the transitional justice literature. To understand transitional justice as a response to post-conflict societies' need to deal with the conflicting past in order to move on towards a better future, we need to understand this within the context of how the past may be related to the present to form or transform orientations towards a better future of peace and democracy.

From the earlier theoretical accounts that were to a large extent limited to a narrow focus on legal responses to crimes of the past, transitional justice theories were broadened to include many different elements of the transition such as trust-building, social reparation, education and cultural production. They were implemented in various methods and practical interventions such as victims' group involvement, educational programs, and plays and so on.

Much of the existing literature addresses this vast variety of approaches from an interdisciplinary perspective. I argue that there is a knowledge gap in the existing literature that fails to conceptualize how these various processes may work together under the banner of transitional justice – in other words, how the processes at the tribunal or truth commission may be studied in relation to other transitional justice initiatives, such as the DC-Cam outreach projects presented in the next chapter.

It is possible to gain a deeper understanding of how the transitional justice processes of searching for truth and justice at the tribunal may be better communicated and related to the individual searching for truth and justice. Scholars are now calling out for more comprehensive and holistic conceptual frameworks that relate the various processes and interdisciplinary theoretical accounts of transitional justice. Lambourne (2009:47) writes:

What is needed is a revolution in thinking that challenges the dominance of western legal discourse and creatively and inclusively develops new ways of conceiving of accountability mechanisms that provide a more comprehensive and holistic experience of justice. As Lederach advocates, we need to nurture our moral imagination in order to overcome dualism and embrace paradox. Rather than seeing issues in dualistic terms – peace versus human rights, reconciliation versus justice, retribution versus restorative justice – we need to be able to hold multiple and apparently contradictory perspectives and to transcend the dominant, western worldview of justice, which often serves more to divide and separate than to unite and reconcile.

As Lambourne (2009) points out, to understand transitional justice we need to introduce more conceptualizations of justice than what can be drawn from the literature of law and legal accounts. Transitional justice needs to be studied in relation to psychosocial processes, socio-economic conditions and political context (Lambourne 2009). There is a need for more theories investigating how the processes at the tribunal and truth commission may be better related to the individual and groups of victims searching for justice, and how this may contribute to processes of securing peace, democracy and reconciliation.

3.8 Conclusion

My general argument from this outline and critical study of various elements and concepts of transitional justice is that transitional justice as a field of study and as policy and process serves as a powerful tool for post-conflict transformations. Nevertheless, by illuminating the complexity of the polyphonic field of transitional justice I have highlighted how the field needs to be studied from a narrative perspective on how the various initiatives and processes may work together to empower the victims to orient themselves towards a brighter future.

The abductive and retroductive move in Chapters Five and Six will make creative theoretical interpretations and re-conceptualizations of Ricoeur's theories of narrative to introduce the concept of narrative justice, with the goal of filling part of the knowledge gap in existing transitional justice literature. First, however, I present the cases and the historical context behind these theoretical moves.

4. Cambodia's search for truth and justice

“Cambodia is like broken glass, and we need to glue it together piece by piece.”
Youk Chhang.

This chapter is an attempt to illuminate the Cambodian context basic to the abductive and retroductive move in the next two chapters, going from one initial pre-understanding of the phenomenon of transitional justice to end up with new conceptualizations, assumptions and theory of the phenomenon.

It is important to be aware of this historical context to understand the narrative effects of the proceedings at the tribunal and the related activities of the documentation center. I present the DC-Cam as the main case for my investigation. The DC-Cam is involved in the transitional justice process in Cambodia on many levels. It is often credited as the main reason why the tribunal was finally established, it is also the main provider of evidence for the ongoing trials.

The DC-Cam is responsible for organizing victims' participation in projects in relation to the tribunal. The center has developed several teaching projects to educate the public about the transitional justice processes. DC-Cam has recently developed the first teaching program in Cambodian schools about the Khmer Rouge. The center is also responsible for the exhibition at the Tuol Sleng Genocide Museum. I present these activities as part of my case study of the DC-Cam. I spent about four months at the center in 2008 studying its activities. The presentation of the cases is based on my experiences observing the activities, and reading texts written about the different activities.

As a framework to understanding the cases I first present the historical context leading up to the establishment of the Khmer Rouge tribunal. I also illuminate parts of the social and political situation in Cambodia today. This will serve as the context to interpret the interviews in the next chapter.

4.1 Snapshot of the current situation in Cambodia

As a result of the Khmer Rouge's failed attempt to forge a communist utopia in Cambodia, up to two million people lost their lives from overwork, starvation and execution between April 1975 and January 1979, when the Khmer Rouge held power in Cambodia (Vickery 1984. Almost all of Cambodia's educated people were executed

or died of starvation and overwork (Chandler 1991). People were forced to separate from their families and forget their past. When the regime was toppled in 1979 by Vietnamese forces, Cambodia was left paralyzed and broken. As Youk Chhang, the director of DC-Cam, often says: “Cambodia is like broken glass, and we need to glue it together piece by piece.”

In order to even attempt to understand transitional justice in the context of post-conflict Cambodia, it is essential that we first understand the current tone of the country. “Broken glass” is a good metaphor.

It would not be right to blame the Khmer Rouge for everything that is wrong in Cambodia today, but there is no doubt that the brutal regime left Cambodia in a state of shock and confusion that has disempowered the population.

Cambodia is a poor and under-developed country (Gottesman 2004). About 35 percent of the population lives below the national poverty line. Large parts of the capital, Phnom Penh, are slum quarters where people have made shelters with whatever material they could find. Wherever you go, you see homeless people with bare feet begging for money or food. Sitting at the restaurants you are often approached by small children with no shoes, wearing dirty shorts and T-shirts, with their hands outstretched begging for food.

Cambodia has also become a haven for paedophiles and others looking for easy access to young girls and boys. Many of the prostitutes and sex-slave children are sold by their parents in desperation, or they are kidnapped and forced to work at the many brothels around Cambodia. The police and other law enforcement agencies are generally very corrupt, and usually do not interfere with people with bad intentions as they conduct their crimes. In many cases, doctors and health workers are also corrupt, so only those who can afford to pay receive any medical treatment.

As a brute contrast to the impoverished multitudes, a minority of super-rich Cambodians live in great mansions, behind high walls, driving their luxury cars while ignoring traffic rules. Outside the few luxury clothes stores in Phnom Penh, there are Rolls Royces and Bentleys parked in the middle of the road. Many of these cars belong to the sons and daughters of the former Khmer Rouge officials who were awarded money and land in exchange for joining the new regime. People I talked to in Cambodia struggled to accept that some of the perpetrators and their families should live in luxury while they had to live on the streets fighting hard to survive. There is much social injustice in Cambodia, and in many cases there is a clearer line drawn between rich and poor than between perpetrators and victims.

This snapshot of the current Cambodia illustrates some of the many challenges faced by the processes of achieving true justice and reconciliation in this broken country. Youk Chhang, the director of DC-Cam, told me: “As with broken glass, you need to put it together peace by peace, and to fix it, you need to consider how all the pieces fit together.”

There is no quick fix to all the problems in Cambodia, but an important step in the right direction is being taken today by the Khmer Rouge tribunal and the related documentation and education programs.

Before I present these cases we need to look at the historical context of the violent past and the long path to justice leading up to the establishment of the tribunal.

4.2 Historical context

On April 17, 1975, the Khmer Rouge declared victory after a five-year civil war in Cambodia. The Khmer Rouge’s official name was the Communist Party of Kampuchea (CPK). The CPK created the state of Democratic Kampuchea in 1976 (hereafter referred to as DK) (Vickery 1984).

As part of the CPK’s plan for a Maoist and Marxist-Leninist revolution, the cities were emptied of people. All that represented modern society was erased: money, law, private property and markets. As part of the transformation program, religious practices were banned and almost everyone was relocated by force to the countryside to work in the rice fields. Persons with education were defined as enemies of the revolution and most of them were murdered (Vickery 1984). In DK only the people defined as pure were seen as worthy of fulfilling the communist utopia. This resulted in the execution of hundreds of thousands of intellectuals, former city dwellers, and minorities such as the Cham Muslim community, Vietnamese and Chinese (Dy 2007).

These decisions were made by the hidden and all powerful CPK, under the leadership of a former school teacher known by the pseudonym Pol Pot (Short 2007). Until January 1979, the Khmer Rouge regime committed some of the most brutal crimes against humanity in modern history. It is estimated that up to two million Cambodians lost their lives during that time. On January 7, 1979, Vietnamese troops backed by soldiers from the United Front for the National Salvation of Kampuchea captured Phnom Penh. Even though this is said to mark the end of the civil war, it was not the end of the Khmer Rouge (Gottesman 2004).

When Vietnam fought its way into Cambodia in December 1978, the Khmer Rouge fled to the west and re-established their forces in Thai territory, aided by China

and Thailand (Dy 2007). In 1982, the Khmer Rouge formed a coalition with Prince Norodom Sihanouk and the non-communist leader Son Sann to create a three-party coalition government (Dy 2007). Adding to their legitimacy, the UN acknowledged the Khmer Rouge as the legitimate government of Cambodia by allowing them a seat in the UN General Assembly until 1990. The Khmer Rouge continued to exist until 1999.

4.2.1 How did the Khmer Rouge gain power?

The CPK shared a Marxist-Leninist ideology with Vietnam and other communist countries, making it part of a larger political and ideological movement. Nevertheless, Cambodia's revolution differed sharply from other communist revolutions in its brutality and violence. It also differed in the absence of discussions of policies inside the party (Chandler 1991).

It is possible to draw many historical lines suggesting how various events may have foreshadowed the Cambodian revolution. For example, the fight against French colonial power in Cambodia in the 1950s led to the formation of the Khmer People's Revolutionary Party (KPRP) that strengthened Cambodian communist movements. This involved people like Nuon Chea, who would later become Brother Number Two of the Khmer Rouge, and Salot Sar, who would later take the revolutionary name Pol Pot and become leader of the Khmer Rouge. However, these first communist movements were brutally suppressed by the government of Prince Norodom Sihanouk and his People's Socialist Community Party. Under the leadership of the Army chief of staff, Lon Nol, as many as 90 percent of KPRP members were arrested and killed (Dy 2007). However, Pol Pot continued to run the party's activities supported by some of the survivors.

In 1966, Pol Pot changed KPRP's name to the Communist Party of Kampuchea (CPK), which, in turn, later became known as the Khmer Rouge. The party started gaining more and more members. As head of state, Prince Sihanouk, still had the support of a large group of Cambodians. Lon Nol and his pro-American associates in March 1970 staged a successful coup, deposing Prince Sihanouk as head of state. Many people joined the Khmer Rouge to fight a common enemy, and at the same time to help restore the prince to power (Dy 2007).

As more and more people ran into the forest to fight the US-friendly army of Lon Nol's Khmer Republic government, the war in Vietnam spread to neutral Cambodia. In the early 1970s, the US dropped about 500,000 tons of bombs over

Cambodia. This was done to disrupt communist supply lines and bases. It is estimated that as many as 300,000 people were killed. The anger and frustration caused by the US bombing led many more Cambodians to join the Khmer Rouge to fight the US-friendly government of Lon Nol.

Aided by the Vietnamese, the Khmer Rouge began to defeat Lon Nol's forces and by the end of 1972 Vietnam withdrew from Cambodia (Chandler 1993). By 1973 almost all of Cambodian territory was in the hands of the Khmer Rouge, but because of US assistance Lon Nol's army was able to continue its fight until April 17, 1975, when the Khmer Rouge won control of the capital Phnom Penh (Dy 2007).

4.2.2 Explaining the unexplainable

The brutality of the murders and number of casualties in DK is impossible to fully understand. Nevertheless, this has not stopped historians and other scholars from asking the important questions of how this could happen, and how Khmer could kill Khmer on such a scale and with such brutality.

There are many factors at play here. Some focus on the fact that the Khmer Rouge gained their legitimacy and status as the force that was part of liberating Cambodia from the French colonial power. Some focus on the fact that America dropped about 500,000 tons of explosives on Cambodia during the war in Vietnam. This sparked the support for the Khmer Rouge amongst the people living in rural areas. The Khmer Rouge was at this time fighting the army of Lon Nol, who was seen as a pro-American anti-communist. Another explanation could be that there were big socio-economic divisions between the people living in Phnom Penh and those living in rural areas.

Reading books about the Khmer Rouge era in Cambodia, it becomes evident that it is not easy to find one simple and clear explanation for what happened. It depends on how the authors narrate their histories. Biographies of the perpetrators, like Philip Short's biography of Pol Pot, provide one perspective: the Khmer Rouge was established in the context of its own violent past. If you include historical perspectives on the conflicts in the neighboring countries, and how these, for example, fit into the Cold War, it is possible to narrate other explanations.

Another way of understanding how this could happen is to study the histories from a psychological or sociological perspective. We could, for example, explain it as pure evil, that this was the work of an evil force that was somehow present at that time. This would not be a fruitful starting point. The Khmer Rouge was made possible

by historical and political circumstances, and the people it recruited were often forced to become killers or they were manipulated into believing that they needed to be true to the revolution. Many were recruited at a very young age and forced to kill for the regime. The historical realities are much too complicated to just search for explanations within the dichotomy of good versus evil.

To approach the question of how this could happen we could try to imagine what it might have been like to live in Cambodia during the Khmer Rouge, and try to imagine how we would have reacted. For example, if we look at the routines at Tuol Sleng, also known as the S-21 prison, children were made to torture prisoners (Chandler 2000). They were told “Your mother is the enemy” and they were forced to kill their own mothers. Such incidents are well documented, and from this it is possible to give a face to the answers to the difficult questions. I spent a great deal of time walking around in the Tuol Sleng compound, trying to imagine how the young prison guards might have felt while patrolling the hallways and committing the most brutal torture imaginable.

I visited some of the former Killing Fields and torture cells established by the Khmer Rouge to murder people they saw as being a threat to the revolution. Walking around in such places, I pictured the prison cells filled with half-naked men, women and children chained to the ground. If prisoners needed to change their position on the floor they had to ask permission from one of the prison guards. I tried to imagine being 12 years old, and being asked permission by an adult person if he or she could move one inch. I imagined how I would try to tell myself that my mother really was the enemy and that I had to kill her since she had betrayed me and the whole country, and how I would tell myself things like this to legitimize my murder.

Even though experiments like this evoked deep emotions and empathy, they did not necessarily make me understand more deeply why this could happen. What I experienced was my emotions as a visitor, using my imagination to try to understand what it must have been like to be part of the tragic history, but I can never know what it was like and from my emotions I can never know why they did this. At best, this could help me to sort out other information about the historical facts about what happened, but we can never go back in time and re-experience the past. I bring my own life stories, my own rucksack of expectations, prejudice, images and knowledge to the situation, and all this influences my imagination about the past.

Yet another way of trying to understand is by listening to the stories of the people who experienced the atrocities, either as victims or as perpetrators. One Khmer Rouge survivor told me about a common strategy used by the regime to recruit cadres

to commit the murders. The typical scenario was that a higher ranking Khmer Rouge came over to your house smiling and saying in a friendly tone: “Can you kill two people?” The man or woman was then told that if they refused, the Khmer Rouge would kill his or her whole family. These threats were not empty, so they then went and committed the murders. And after they completed their task, they were asked to kill perhaps ten more people. To do this, they then had to recruit others to assist them, using the same threat under which they were forced to commit the murders in the first place. This is one example of a vicious circle that could perhaps explain some of the reasons why Khmer could kill Khmer at that time. But again, it is not sufficient. By looking at rational explanations like this we risk taking away the guilt from the murderers’ actions by freeing them from responsibility. Nevertheless, explanations like this may balance the temptation to talk about victims and perpetrators within the dichotomy of good versus evil.

If we consider how human beings depend on cultural, social and historical contexts in constructing their lives, and how moral identity is dependent on relations with others that share and legitimize the stories you tell, we could identify part of the problem as being related to the fact that Khmer Rouge sought to erase all forms of traditional and foreign cultural influences. In effect, this meant the country was being turned back to “year zero”. Anything that had roots in the pre-revolutionary society was often seen as a threat. Families were separated and the children were taught that the regime was their new family. People who fell in love without the permission of the regime were often tortured and killed. Religion was forbidden and ethnic minority groups were eliminated. The Cham Muslim minority suffered tremendously under the regime. Buddhist monks were seen as suspects, and many were killed.

From a sociological perspective we could ask: where do you find support for your ideas about human worth and human dignity when the roots of your moral identity are erased, when the narratives that you relate to when legitimizing your moral behavior are condemned and forbidden?

There are numerous ways of approaching the question of what made the genocide in Cambodia possible. It is not possible to trace one clear explanation; rather we have to look at this from different perspectives related to different theoretical and historical contexts.

This thesis does not seek to answer why and how the genocide in Cambodia could happen. Nevertheless, it is unavoidable to ask the question when you look into the history of the Khmer Rouge.

I now look into the history of impunity and the disempowerment of the Cambodian people. Understanding how this is related to the lack of legitimate historical accounts of the past and/or any form of public condemnation of the past is an important part of understanding the narrative theoretical discussions in the next chapter.

4.2.3 Long path to justice

Until the tribunal delivers its final verdicts, no officials of the Khmer Rouge regime are held legally responsible for the brutal crimes committed by the regime between 1975 and 1979. Pol Pot died in 1998 in the dusty province of Palin, close to the Thai border (Chandler 1999). Defense Minister Son Sen, Education Minister Yun Yat and Ta Mok, known as “the butcher”, all passed away in recent years. When Ta Mok died in July 2006, hundreds of people gathered for a last farewell.

They will never have to face the consequences of the suffering and atrocities they caused to millions of Cambodians. Today six senior leaders of the Khmer Rouge regime are under arrest, waiting for their cases to be tried at the Khmer Rouge Tribunal. They are the former head of the notorious prison and torture center Tuol Sleng, Kaing Gueak Eav, better known as Duch, Brother Number Two Nuon Chea, former foreign minister Ieng Sary and his wife Ieng Tirth, and former head of state Khieu Samphan. Many of them are in poor health, and there is great concern that some will not live to face the tribunal. The tribunal has been delayed many times.

In June 2003, the UN and the Cambodian Government signed an agreement to establish the ECCC . Until this time, efforts of foreign institutions to establish a tribunal had failed due to political and strategic considerations. Local initiatives failed to meet the necessary standards of a fair and legally justifiable tribunal (Cioreiari 2006). The first hearing of the ECCC was held in January 2008. Until this date, a variety of challenges, minor and major, constantly delayed progress. Some of these were part of the strategy of the defense teams to delay the court hearings as long as possible. There have also been several allegations of corruption and disagreement over salaries and funding.

The tribunal is made up of Cambodian and international judges, prosecutors, investigators and court administrators. It is housed in a former military building on the western outskirts of Phnom Penh. In this same compound the former Khmer Rouge officials are now imprisoned while they wait to stand trial for the crimes of which they are accused.

During the Cold War, it was difficult to prosecute Khmer Rouge officials. This was due to the ties between the new regime in Cambodia and Vietnam, framed as aligned with the so-called “wrong” side – Russia. Many foreign governments viewed the new PRK regime as an element of the Soviet-supported communist state of Vietnam. This is also part of the explanation why the UN did not recognize the new regime as the formal representative of Cambodia.

After the Cold War ended, the strategic reason for not prosecuting the Khmer Rouge disappeared, and after Vietnam withdrew from Cambodia in 1989, there were new grounds for prosecuting the Khmer Rouge. In 1994, the US government passed the Cambodian Genocide Justice Act which provided funds to start the search for factual evidence of Khmer Rouge crimes (Cioreiari 2006). This led to the establishment of DC-Cam.

The hybrid structure of the tribunal is a result of a balance between demands set by the UN and the political desires of the Cambodian government (Venciano and Hinton 2007). The court will prosecute crimes committed between April 17, 1975 and January 6, 1979, which is the period the Khmer Rouge was in power. After some disagreement, the mixed tribunal decided to limit the prosecutions to include only the most senior leaders and those most responsible for the crimes.

Another delay in the prosecution of the Khmer Rouge was caused by the fact that the international community viewed them as an essential part of the negotiation over peace in the conflicted atmosphere in Cambodia at that time. A Khmer Rouge delegation represented Cambodia alongside three other parties in the initiative by the international community in 1991 to end the conflict between the parties. Justice was put aside to end the conflict.

To prosecute the Khmer Rouge, which still was a strong force in Cambodia at that time, was seen as a threat to the peace process. On October 23, 1991, the four Cambodian parties signed the Paris Peace Accord, producing a power-sharing deal between the parties. During the transition period – the UN Transitional Authority in Cambodia (UNTAC) – the Khmer Rouge were treated as equal participants (Linton 2004).

The power-sharing formula set by UNTAC resulted in a dysfunctional system of governance with two Prime Ministers; the restored Prince Norodom Sihanouk and Hun Sen (Chandler 2000). This power-sharing led to great suspicion between the two parties and a struggle for power. A result of this was that the government resumed the same strategy used by the Vietnamese-supported PRK in luring Khmer Rouge cadres and higher officials over to their side by offering amnesty from prosecution, and in

many cases the defecting officer was offered a high position in the Cambodian military. In addition, defecting Khmer Rouge officials were offered land and protection.

By the end of 1994, the government had secured some 6,600 defections under the amnesty programme (Linton 2004:46). In June 1997, Khmer Rouge forces detained Pol Pot and prosecuted the former leader in what has been described as a sham trial. Along with three other senior leaders, Pol Pot was brought before a so-called People's Tribunal in Anlong Veng in the north-western Cambodian jungles (Cioreiari 2006). The court decided to hand Pol Pot over to an international tribunal for crimes committed when the Khmer Rouge was in power. He served his sentence under house-arrest until his death in April 1998.

Before the election in 1998, the defections became a part of the political power play. Both camps supported as many defections as possible expecting political loyalty from the defecting cadres and officers. This was part of the reason for the July 1997 violent conflict between the two Prime Ministers' security forces. Several people were killed during fighting in the streets of Phnom Penh. Hun Sen gained full power in Cambodia through what has been described by the international observers as a violent coup against Prince Norodom Sihanouk.

Even as the violent competition over defecting Khmer Rouge members delayed justice, the process resulted in further disempowerment of the victims who could not understand why the former enemies were awarded wealth and power. The same thing could be said about the fact that the international community recognized the Khmer Rouge. This disempowerment of the victims is important to keep in mind when interpreting the responses of the Cambodian people I interviewed.

I end this section by describing some of the efforts made by the government to prevent the history of the conflicting past from becoming part of collective memory. This historical context of impunity and disempowerment in Cambodia is relevant to the next chapter, where I make theoretical claims about the constructive effects of the transitional justice narratives.

When the two leading Khmer Rouge figures, Khieu Samphan and Nuon Chea, defected in 1998, Prime Minister Hun Sen said, "Let's dig a hole and bury the past and look to the future" (Cioreiari 2006:39). After the most senior leaders had defected, it seemed that Hun Sen wanted to forget about the past. Observers have claimed that Hun Sen only used the threat of prosecution as a means to defeat the remaining Khmer Rouge leaders, and the strategy was in fact efficient in ending the violent resistance. However, long-lasting peace may have been compromised in the bargain.

Ta Mok, “the butcher”, was arrested in March 1999. After his arrest, Hun Sen called for an end to any discussion about an international tribunal, insisting that the trials of Ta Mok would be conducted in a Cambodian court (Cioreiari 2006:40). After extensive international pressure, Hun Sen reached a compromise with the international community that ultimately led to the UN agreement with the government in October 2004 that established the ECCC. Until then, the prime minister had warned the international community that a tribunal would cause so much instability and tension that there could be a new war in Cambodia. Even after the tribunal was established, he repeatedly opposed expanding the list of defendants beyond those currently subject to prosecution.

I will give one example. On September 8, 2009, a prosecutor at the tribunal formally recommended that five more suspects be investigated for crimes against humanity. Shortly afterwards, the Prime Minister stated that such action could lead to civil war. He was quoted by the media saying: “I would like to tell you that if you prosecute (more leaders) without thinking beforehand about national reconciliation and peace, and if war breaks out again and kills 20,000 or 30,000 people, who will be responsible?”.

DC-Cam director Youk Chhang received a letter from Hun Sen warning him against interfering in these additional cases. Hun Sen’s reaction came after Youk Chhang was quoted by a local newspaper saying that: “They should show the motives to Prime Minister Hun Sen if they want to charge other KR leaders”. Hun Sen ordered Chhang to clarify his meaning.

Many observers viewed this as an attempt by the Prime Minister to protect some of his political supporters who are former Khmer Rouge cadres, rather than as a genuine concern about the nation’s stability. This illustrates the complicated and fragile grounds on which the transitional justice processes in Cambodia is established. This example also points to a more general dilemma in the field of transitional justice, about how criminal justice should be balanced with the need to secure peace and stability in an unstable post-conflict society.

The complicated relationship between the successor regime and the conflicting past in Cambodia affects the very possibilities of justice. Absence of punishment, presence of impunity, and the fact that only a handful of perpetrators, limited to a certain timeframe, are punished, limits the possibility of justice being served thirty years after the atrocities happened.

Before I present DC-Cam as the main case for my study, I present the first case that was completed at the tribunal. This is a good illustration and background for

understanding the narrative theoretical perspective on the search for truth and justice in Cambodia.

4.3 S-21 and the case against Comrade Duch

I am solely and individually responsible for the loss of at least 12,380 lives. These people, before their deaths, endured great and prolonged suffering and countless indignities. I forever wish most respectful and humble apologies to the dead souls. As for the families, I am asking you to kindly leave your door open for me to make my apologies. May I meet with you to allow me to share your intense and enduring sorrow any time in order to express my most excruciating remorse? (*The Guardian*, London, November 25, 2009).

These are the words of Kaing Guek Eav, also known as Duch, at one of the hearings at the Khmer Rouge tribunal in August 2009. Duch, then aged 67, is the only one of the defendants who has admitted guilt and asked for forgiveness. Duch was the leader of the notorious torture and detention center S-21, also known as Tuol Sleng (Chandler 2000).

This former school complex was transformed into a house of horror where people accused of opposing the revolution were tortured for days, weeks and even months at a time. The guards at the center were told that if they did not make the accused confess their crimes, their own families would be the next in line to be tortured and killed. All were presumed guilty at the moment they were arrested (Chandler 2000). During the trials of Duch many new details of the brutality of the torture committed to force false confessions were revealed. Of the 12,380 prisoners registered as entering the S-21 compound, only a handful survived, all the rest were sent to nearby mass graves to be killed and buried.

Shortly after the S-21 compound was discovered by the invading forces in 1979, it was turned into a museum. Communists were invited from different countries to come and view the horror of the former regime. It is said by commentators like Dunlop (2004) and others that this was done to prove to the world that the Vietnamese invasion was legitimate. The objective was to paint a picture of the former regime as organized by a handful of demons with millions of innocent victims. The museum then became instrumental in narrating the violent past in a way that fitted their political aim of holding power in Cambodia. Since the communist Vietnamese had helped build up the Khmer Rouge in the fight against the anti-communist and pro-US government of Lon Nol, they needed to communicate how the communist movement in Cambodia was a constructive force even while legitimizing their toppling of the Khmer Rouge

just a few years after they had supported them. After the Cold War ended and Vietnam withdrew from Cambodia, the museum lost its support from the government. Today this is one of the most popular tourist attractions of Cambodia, but the facilities are falling apart due to the lack of proper maintenance.

This instrumental use of history to support the political power play was just the start of a long period of confusion and disempowerment in Cambodia. The trial against Duch may be the first time for many that they heard the truth about what really happened in the violent past. While I argue in support of the constructive potential of the transitional justice narratives, it is important to understand the destructive and disempowering effect of how the history of the Khmer Rouge has been manipulated and used as a political instrument. As I suggest in Chapter Six, when the narrative of Tuol Sleng is related to the transitional justice narratives, it may serve a different purpose for the victims in their search for truth and justice.

The handful of persons who survived their imprisonment at S-21 are serving as key witnesses in the case against Duch. Some of these survivors were artists, who were used by Duch to document the torture and other routines at S-21 in the form of illustrative paintings. These paintings are displayed at Tuol Sleng Genocide Museum. Duch was very particular about documenting the daily routines at the S-21 facility. When the Vietnamese forces liberated Phnom Pen on January 9, 1979, the staff left behind a huge archive of information that was later preserved by DC-Cam. Today this is presented as part of the evidence in the case against Duch.

Cambodian law does not impose the death penalty, the most severe punishment the accused can receive is life in prison. Thus the end of the court hearings against Duch in December 2009 disturbed many observers.

Duch's expressions of regret and admission of guilt had sparked optimism among some of the Cambodian victims. This was the first time that a former Khmer Rouge senior official had shown any sign of remorse. Duch had even asked for forgiveness. When visiting the former S-21 compound as part of the trial proceedings he collapsed in tears asking the victims for forgiveness. I talked to one of the Cambodian tribunal officials who had accompanied Duch on his visit to the former prison he headed during the DK regime. He told me that Duch's remorse was just a play. "Duch is an expert in manipulation," he said, "and his expression of remorse is just a play to gain sympathy from the victims so it would be easier for him to ask for a lower penalty later." I remember I was a bit uncertain whether my informant really had interpreted Duch's remorse correctly when he said it was just a play. Since Duch was arrested in 1999 he has portrayed himself as a born-again Christian who now wants to

ask for forgiveness and to repent of his sins. I talked to many Cambodians who were skeptical of the fact that Duch had become a Christian. I talked to Buddhists in the monastery who viewed this as an attempt by Duch to escape the punishment that according to Buddhist beliefs he will receive in the next life.

Even though there was much skepticism about Duch's intentions in admitting guilt and asking for forgiveness, many observers believed this could be an important step towards securing transitional justice in Cambodia. But at the final hearing in the case against Duch the skeptics would sadly learn that they were right. As it turned out, Duch's remorse had most probably been part of a clever defense strategy in which his lawyer made the closing arguments that Duch should be set free.

Since Duch already had been imprisoned for about ten years the defense team argued that Duch should not be sentenced to life in prison. The fact that Duch admitted guilt and also contributed to shedding light on many areas of the secretive Khmer Rouge regime should reduce his punishment, they argued. As part of their defense, Duch's lawyers referred to the case of Adolf Hitler's chief architect Albert Speer. Speer escaped the death penalty at the Nuremberg tribunal by admitting responsibility for taking part in the genocide of the Jews during World War II. Speer was also the only one from Hitler's closest circle who co-operated with the tribunal. The Duch defense referred to Speer's memoirs, *The Two Worlds of Albert Speer*, to show the similarity between Duch and Speer in contributing to the revelation of the truth about the brutal regimes.

The trial against Duch was broadcast live on national television in Cambodia. The tribunal could be viewed as a transitional ritual which could mark a break with the past by narrating a common condemnation of the past crime and recognition of the victims' suffering. The punishment is not necessarily the most important outcome, and if Duch's remorse had been accepted by most victims a reduced sentence could perhaps have been part of a reconciliation process which would have empowered the victims. However, since Duch's remorse is viewed with skepticism by many of the victims, much of the story-telling effect of the transitional justice narrative may now have been lost. If Duch does not receive the most severe punishment, and perhaps one day walks the streets in Cambodia as a free man, this will complicate the story-telling that is so important to achieve transitional justice.

This complexity of the court proceedings is important to keep in mind when making theoretical claims about the narrative effects of the tribunal. The case against Duch also provides important background to understand communicative challenges faced by the outreach projects of the tribunal and the the documentation center.

I now come to DC-Cam, the main case I use to shed light on the theoretical discussions.

4.4 Archived memory and living documents: The Documentation Center of Cambodia

The Documentation Center of Cambodia was founded after the US Congress passed the Cambodian Genocide Justice Act in April 1994. That legislation established the Office of Cambodian Genocide Investigations in the US State Department's Bureau of East Asian and Pacific Affairs in July 1994, which was charged with investigating the atrocities of the Khmer Rouge period (1975–1979). Since then the DC-Cam has been at the forefront of documenting the crimes and atrocities of the Khmer Rouge era, and communicating this to the victims to secure transitional justice in Cambodia.

As stated in Chapter Two, the aim of presenting the empirical cases of transitional justice in Cambodia is to illustrate and shed light on the theoretical claims leading up to a conceptualization of narrative justice. I will therefore present DC-Cam in a way that is useful in making the theoretical moves in the next chapters. The following presentation stems from different conversations with the center's director Youk Chhang and readings of texts produced by the center to present its function and activities. The quotes are transcribed from taped conversations.

To understand the value and function of the documentation center it is interesting to look at how it was established. The center's roots go back to the first field trip of a young law student from Yale University who went to Cambodia in 1980, one year after the Khmer Rouge collapsed. Every week he found he was invited to go and see a new mass grave site – there are more than 20,000 mass graves in Cambodia. After his visit, the young student went back to law school and tried to campaign to raise awareness about the mass murders of the Khmer Rouge, but he received no support. In 1983, a human rights activist from Columbia University made several field trips to Cambodia, taking pictures and documenting traces of the Khmer Rouge brutality. As with the previous field trips, this also failed to gain any reaction from American society.

In 1987, Youk Chhang became engaged in the same mission and later he became director of the DC-Cam. Chhang is said to be the most important reason why there is a tribunal in Cambodia today. An article about Chhang in the *New York Times* magazine says:

For more than a decade, Youk Chhang has been Cambodia's conscience. If today there is a real possibility of bringing at least some of the former Khmer Rouge leaders before the international tribunal that will begin hearings next year, he, more than anyone, is responsible. (*The New York Times Magazine*, Volume 168, November 13, 2006).

In a conversation I had with Youk and some students he explained how DC-Cam developed:

I was young and naive, and got sick and tired of people asking me about the Killing Fields in Cambodia. As you know there are two things that we are known for in Cambodia, the Killing Fields and the Angkor Wat. One from hell and one from heaven, and we did not want to talk about Killing Fields because we were so ashamed. It is Khmer killing Khmer. Nothing to be proud of about the Killing Fields, we lost two million lives, the whole country was destroyed and everybody lost a family member. So many of us did not want to be identified as Khmer when living abroad. We wanted to be confused with being Thai or from the Philippines. People did not want to be confronted by the history and the suffering. Yet it is part of us, so in 1987 I went to the States as a refugee and lived in Texas. Everywhere I met people that asked me, "Did you experience the Killing Fields? Is it true that your sister was murdered in front of your eyes?" And finally I said: why should I lie about this? It is bad enough to have lost almost your whole family, so I wanted to come back to Cambodia to work – to do something positive.

Youk then got a job at the UN working as a consultant to assist the democratic process before the upcoming election. His task was to go to the villages to teach people about the democratic process and assist them in voting in the election. During this time, he was shot at several times by Khmer Rouge, who also burned his office and injured several of his staff: "So I said this is enough."

Chhang tells the story about how his sister and brother were killed. His brother was caught stealing some rice and he was beaten to death. Later the same night his sister got a stomach ache and they took her to the hospital and cut her stomach open to see if she had eaten rice, and left her to bleed to death on the table.

He tells this story to illustrate the point that he wants justice, and then he can forgive. In 1979, the village chief responsible for killing his sister and brother came to his mother's house in Phnom Penh with a basket of fruit asking for forgiveness, so she forgave him. Chhang says:

She forgave him, and I said, "I want prosecution." So in my own family we are divided about how justice is being done (...) I want a tribunal, I want people to be judged – and then I can forgive. For me, without legal prosecution, I can never reach full forgiveness – so I decided to take this job for revenge.

The following account of the history of the DC-Cam is from the center's own website,¹ In January 1995, Yale University's Cambodian Genocide Programme (CGP);

started to conduct research, training and documentation on the Khmer Rouge regime. The CGP was to assemble evidence concerning DK and to determine whether the DK regime violated international criminal laws against genocide, war crimes, and crimes against humanity. The CGP ... had three main objectives: 1) to prepare a documentation survey and index, 2) to undertake historiographical research, and 3) to provide legal training. The grant expired on December 31, 1996.

In pursuit of these objectives, the CGP founded DC-Cam as a field office in Phnom Penh in January 1995 under the leadership of its Program Officer, Mr. Youk Chhang, a survivor of the Khmer Rouge's "killing fields." DC-Cam became an independent Cambodian research institute on January 1, 1997. Since that time, it has continued its extensive research and documentation activities. DC-Cam is not a for-profit, governmental or political organization, and we are not a judicial body. We receive our funding from a wide range of international sources, both private and government... DC-Cam is acknowledged as an independent and nonpartisan institute in Cambodia, and we disseminate information on the Khmer Rouge regime based on our impartial inquiry into facts and history.

Chhang joined the Yale University Genocide project in 1995. One of the first things he did was to go back to the village chief who tortured him to interview him. In a conversation I had with Youk he told this story:

Not a single word he told us was a lie – he told us everything about what happened in that village including the killing of this couple that had fallen in love without permission (...). There was a big crowd gathering and I went along with them, 13 or 14 years old at the time, and then they brought the couple, both were blindfolded and then they told the crowd the story that they had fallen in love without permission and they asked what shall we do? The whole crowd shouted: "Kill them! Kill them! Kill them!" Including me who said that – and then a young guy pulled out a stick and hit the man. I began to learn the lesson of humanity from that day, how humans resist death and how humans are so capable of destroying others. The man was beaten until the blood started to come out of his eyes, his ears and nose and then they unblindfolded the woman

¹ "History and Description of DC-Cam' – Our History": <http://www.dccam.org/Abouts/History/Histories.htm> (accessed 30 April 2012).

and her face looked like a white piece of paper, there was no blood left in her face – she must have been so scared and she did not say a word, and then they hit her before they pushed both of them into the graves they had dug up – and I can swear to God they were both not dead yet, but they buried them there.

So I came back to get revenge, to tell people these stories. Twenty-five years later I wrote the story of the couple and lots of people called me after this, including the prison guard from the village, and they told me that people did not believe them when they told their stories, but now with your story they do. Sometimes people are united through terrible stories. (...) I started this work because of a personal thing with the idea in the back of my head that one day there will be a prosecution. I then went to the US and Europe and said there must be a tribunal and it must be here. Even if you cannot get the most pure international tribunal, you want a process where we can see each other as human beings. This is the first genocide tribunal of the twenty-first century and we must learn a lesson from this. It took Khmer Rouge three years to kill two million people and destroy a whole country, but it has taken 25 years now to find justice.

Chhang believes it should be the obligation of the twenty-first century to prevent genocide through different means:

For me it's through documentation. It's not because I like to collect documents – I do this for two reasons; legal prosecution and memory. We collect interviews with perpetrators and victims – we do not analyze the data, but we make it available for public use. We let the history speak for itself through our documentation.

The major primary sources the DC-Cam collects are: (1) paper documents, (2) physical evidence, (3) interviews, (4) photographs and (5) documentary films. The DC-Cam has archived more than one million documents, many of them official Khmer Rouge documents. Chhang says in our conversation:

They did not document crimes against humanity – they documented their glory. Each time they killed a person, it was a measure of their success. If you kill a person there is always something left behind; clothes, relatives, bones and memory. The Khmer Rouge failed to understand that and we documented all this so we could have the tribunal we have today. Eighty percent of the archive is used as evidence today at the Khmer Rouge tribunal. The narrative of DC-Cam does not end there. Being part of the evidence for the court is only one way the documentation is being used. The center has several other projects based on the documentation process.

For example, in 2008 DC-Cam published the first textbook ever to be used in Cambodian schools to teach the children about the Khmer Rouge. Such textbooks were not allowed previously. In 2010, the center established the Genocide Education

Project which aims to educate thousands of Cambodian teachers in how to use the textbook and the related teaching material as part of curricular activities at schools.

Each month DC-Cam publishes the magazine *Searching for the Truth*, which disseminates the center's work to the public, facilitates discourse on issues related to the Khmer Rouge, and otherwise promotes justice and reconciliation in Cambodia. About 7,000 copies of each issue are printed per month. Over 80 percent of the magazines are distributed free of charge, mostly in Cambodia, by DC-Cam and related NGOs. The magazine creates a space for the victims to be heard and to speak their own voice. Chhang says:

It is a positive twist; they should be proud of being a survivor who has survived and are now telling their story – they should be aware that they are heard and that we make use of it. The idea is that they are the heroes.

I will present the Genocide Education Project and the magazine *Searching for the Truth* in more detail later.

The DC-Cam is operated entirely by Cambodians. It plays a key role in the transitional justice processes in Cambodia today. It is the world's largest archive of printed documents and other original documentary materials relating to the DK regime. The materials are of the utmost historical interest.

The center's views on its role and function as part of the search for truth, justice and reconciliation in Cambodia are presented on its website²:

DC-Cam has two main objectives. The first is to record and preserve the history of the Khmer Rouge regime for future generations. The second is to compile and organize information that can serve as potential evidence in a legal accounting for the crimes of the Khmer Rouge. These objectives represent our promotion of memory and justice, both of which are critical foundations for the rule of law and genuine national reconciliation in Cambodia.

To accomplish these objectives, DC-Cam carries out ongoing research to compile and analyze primary documentary materials collected through various means (including fact-finding missions abroad), attempting to understand how they fit into the overall historical context of the Khmer Rouge period. A society cannot know itself if it does not have an accurate memory of its own history. Toward this end, DC-Cam is working to reconstruct Cambodia's modern history, much of which has been obscured by the flames of war and genocide.

² “History and Description of DC-Cam – Our Mission”: <http://www.dccam.org/Abouts/History/Histories.htm> (accessed 30 April 2012).

We have catalogued approximately 155,000 pages of primary Khmer Rouge documents and more than 6,000 photographs. The bulk of DC-Cam's archives have not yet been catalogued, including more than 400,000 additional pages of documents and a wide array of other types of materials. By collecting, preserving and analyzing these individual pieces of historical memory, DC-Cam endeavors to help Cambodians understand the country's difficult journey through the twentieth century. As a permanent institute for the study of Cambodia's history, DC-Cam stands poised to assist the nation in guiding the way toward a more peaceful and prosperous tomorrow.

In addition, DC-Cam is constantly cataloguing the materials gathered through various means and entering them into computer databases to produce annotated indexes to the archive's contents. Through this process, in cooperation with its international partners, DC-Cam has assembled extensive bibliographic, biographic, photographic and geographic databases (for instance, we have located and mapped 189 prisons, 19,403 mass graves, and 80 genocide memorials throughout Cambodia) of information related to Khmer Rouge abuses. This provides legal scholars, investigators, researchers and historians with valuable tools to understand precisely who did what to whom, when, where and how, and sometimes, even why. This also allows Cambodians to know their own history and to come to terms with it.

Based principally on their examination of DC-Cam holdings, in February 1999 the UN Group of Experts found a *prima facie* case against certain former Khmer Rouge leaders for war crimes, genocide and other crimes against humanity. DC-Cam also expects to be called upon as the principal source of evidentiary materials for the Khmer Rouge tribunal. A memorandum from the United Nations, A/59/432 of 12 October 2004, stated: "It is expected that the Chambers will rely heavily on documentary evidence. Some 200,000 pages of documentary evidence are expected to be examined. The bulk of that documentation is held by the Documentation Center of Cambodia, an NGO dedicated to research and preservation of documentation on crimes perpetrated during the period of Democratic Kampuchea."

Successfully achieving our two primary objectives of memory and justice will help build a foundation for the rule of law and genuine national reconciliation in Cambodia. We will continue to pursue these objectives in several ways. First, we will sustain and then accelerate our rate of cataloguing the primary materials relating to the Khmer Rouge regime. Second, we will expand the scope of the analysis of these primary materials (this will be done by individual scholars from outside DC-Cam), focusing on topic areas relevant to accountability and finding the truth. Third, we have initiated a number of new projects (e.g., the development of a textbook on Democratic Kampuchea and a project to bring villagers nationwide to attend trials of former Khmer Rouge leaders) to keep alive the memory of Cambodia's genocide".

DC-Cam's quest for memory and justice has more to do with the future than with the past. It is about the struggle for truth in the face of an overwhelming power that virtually destroyed our society, a power that continues in more

subtle ways to threaten our aspirations for a peaceful future. The violence of that power shattered Cambodian society and scattered the Cambodian people across the planet in a terrible diaspora. But no matter how far or near to the homeland, and whether they are survivors or the new generation born after the overthrow of Pol Pot, all Cambodians still suffer from a profound sense of dislocation. This dislocation is rooted in a loss deeper than material deprivation or personal bereavement. It is a loss that can never be recovered, and thus full healing of the wounds of genocide will require that something new be built to take the place of that which has been lost. By reconstructing a historical narrative of what happened to Cambodia, and by striving for justice where that is an appropriate remedy, we aim to lay a foundation upon which all Cambodians can find firm footing in moving toward a better future. Reconciliation in Cambodia will happen one heart at a time. Cambodians cannot forgive one another until they know who to forgive, and for what. DC-Cam's focus on memory and justice seeks to assist Cambodians in discovering the truths upon which a genuine national reconciliation depends.

In the following chapters I will interpret such statements made by the DC-Cam about its role and function in relation to my conceptualizations of the relationship between Ricoeur's theories of narrative and transitional justice processes and their underlying dynamics. As stated in Chapter Two, the starting point for my theoretical interpretations of the cases is my own pre-understanding or prejudices. Based on my field notes, I will now describe my first impression of the DC-Cam.

4.4.1 My first impressions of DC-Cam

I arrived in Cambodia on an invitation from the director of the DC-Cam, Youk Chhang, to stay at the center for about four months to study its activities. After spending the first week traveling to various corners of this, for me, strange and exotic country, and spending the second week sick in bed, the time had come to officially start my research.

I arrive at the address on a tuk-tuk, which is a motorbike with a carriage that is very common in Cambodia. The driver has never heard of the Documentation Center of Cambodia, at least not in English, so he lets me off on what he claims is the address I have written down on a piece of paper. When the tuk-tuk drives away, I still cannot find the building. Beside me is the busy main road of Phnom Penh, Shianouk Boulevard, and opposite is a park that is crowded with people at night, playing all kinds of ball-games. The address, Shianouk Blvd. 66, is the right address, but I see no sign or logo of the DC-Cam.

In my mind I am expecting a big building that would symbolize the importance of this center. On the road I find myself in, there are just three-story apartment buildings facing the park and some small restaurants and newsstands. I enter what seems to be a copy shop and ask where I can find the documentation center. Nobody knows where it was. On my way out I see a brown heavy wooden gate with a small sign next to an intercom. Shianouk blvd. 66, says the sign. And in small letters I read: Documentation Center of Cambodia.

I have read a lot about this center and my expectations are very high when I press the button. Nobody answers the intercom. But after a while a skinny boy with a modest smile opens the heavy gate and I tell him I have an appointment to see the director, Mr Youk Chhang. Inside the gate there is a small yard where the employees park their motorbikes. The building is about 15 meters wide and from where I stand it looks no more than two stories high. The lobby is air-conditioned and there are tiles on the floor. There is a big mahogany table in the middle of the lobby with various books and magazines where visitors can sit down and read about the Khmer Rouge and the tribunal. Behind the counter there is a big bookshelf with glass doors displaying the various books and films published by the center. I see one of the books I read in Norway by Suzannah Linton, called *Reconciliation in Cambodia*. I buy this, and sit down to read while I wait to be called in to see Mr Chhang. It is very quiet and I get the same feeling sitting here on the hard wooden bench that I get when I am visiting a church.

My head is full of expectations and as I sit there waiting, I start to feel a bit anxious about meeting this man who was voted Number 60 of the 100 most influential people in modern history in *Time* magazine's prestigious listing. CNN has produced a special program on him and the stories I read about him have given me a sense that this is a man of mystery.

When I start to think of this I stop reading and just pretend that I am reading the book. Then the boy at the reception goes upstairs, and when he comes down he tells me that Mr Chhang is ready to see me. He then escorts me up the same stairs. When we come to the second floor I learn that there is yet another floor to this building and at the top of these steps there is a big office with glass walls with wooden blinds. Up against the glass walls there are huge stacks of documents and books. On the roof balcony outside the office is a small garden with a table, a hammock and a white bird in a cage.

The boy opens the door to the office and shows me the way in. Mr Chhang is on the phone and I stand by the door waiting, trying to look confident. His desk looks like

an old antique desk from colonial times. It is filled with neatly organized piles of documents and an old Nikon camera with a huge lens. On the walls there are lots of framed black-and-white photographs. Mr Chhang leaves his desk and greets me with a firm handshake and a big smile. He speaks in a typical American tone, with a slight Cambodian accent. We sit down on two wooden chairs facing each other in front of his desk. I had prepared for a long conversation about my first impressions of Cambodia and why I was here. Chhang goes right to the point. “So, what do you need from us?” he says. I tell him that I am very grateful to be here and I tell him very briefly about what I want to achieve while I am here. Then he calls on one of his employees, Mr Ly S. Kheang, to show me my office and inform me about the center’s activities, and then he tells us to come back to his office afterwards to make the final arrangements. The conversation is over in about two minutes.

Kheang shows me to my desk in an open office space below Chhang’s office. There are four other desks in the room. Mr Kheang’s desk is by the big glass window facing the park. My desk is in the corner. In the middle of the room there is a big mahogany table and in the other corner of the room is the desk of DC-Cam’s deputy director and his secretary. I will later learn that the two other desks belong to an American lawyer working as a legal adviser to the tribunal and an art student from London who is responsible for arranging an exhibition at Tuol Sleng Genocide Museum.

On the walls there are some big photographs of scenes from the Khmer Rouge times, and one of monks being beaten by Hun Sen’s security forces during the coup in 1989 when he took sole power in Cambodia. The room is cold, a sharp contrast to the burning heat outside. Kheang seems to blend in with the quiet atmosphere of the room. People speak in low voices and they don’t seem to pay me much attention. The first impression I get of this office is the same kind of intellectual atmosphere you find in old libraries. There are no books here, but the way people move and talk has the same effect as in a library, so I also start to speak with a low tone and move slowly.

This first impression of the center lasted throughout the four months I stayed there. The people I met here seemed different from most other Cambodians I met outside the center. They were more confident and cheerful. Everyone spoke fluent English, and many had higher degrees from abroad. Almost all the staff were under 30 years old.

From the outside the building does not look big. But when you enter one room, you see that there is a hall leading to another room and then there is yet another hall or some stairs leading to yet another office space. To this day, I have not figured out how

many of the buildings you can see from the outside are really part of the DC-Cam. I think this is part of a well thought through security plan. Keeping a low profile seems to be the strategy of the director as well. One of the big topics of conversation at the center was where Mr Chhang lived. The rumor was that he has an apartment hidden inside the complex building structure. Not before we became friends and Youk came to see me in Norway did I dare to ask him this question.

When Kheang gave me the tour, he told me how the place used to be much more heavily guarded before 1998 when the Khmer Rouge still held power in parts of Cambodia. Now it is not so dangerous, he tells me, but still the archives are well protected.

Before I came to Cambodia I had read about DC-Cam's outreach projects. One of the main projects is titled the Living Documents Project. The project aims to make the processes at the tribunal available for the Cambodian people to relate to their own personal and collective search for truth and justice. Another outreach project is the already mentioned Genocide Education Project, that is designed to teach Cambodians about genocide and the tribunal. For the first time since the collapse of the Khmer Rouge it is now, due to the work of DC-Cam, permitted to teach part of the history of the Khmer Rouge in Cambodian schools. I will now present these outreach projects which I use as empirical examples and context in making the abductive and retroductive moves in the next two chapters.

4.4.2 Living Documents Project

The Living Documents Project was established to ensure the involvement of the regime's victims in the transitional justice processes. To achieve this goal, DC-Cam brings residents of communes from throughout Cambodia to attend the trials at the tribunal and visit the documentation center and memorial sites. Each representative then returns to his or her village and engages other members of the public in discussions on the proceedings. DC-Cam staff and other experts attend some meetings to field technical questions and film the proceedings. The team also publicizes the forums in the neighboring villages that did not have a representative at the trials.

DC-Cam describes the value and goals of the project on its website³:

Although newspapers, television, radio, Internet, and other media are easy to access in Phnom Penh and some of Cambodia's other cities, few members of the country's approximately 1,621 communes (particularly those in rural areas) have the means to obtain information on the forthcoming Khmer Rouge tribunal. This is especially true of many of Democratic Kampuchea's survivors, who are often poor and whose educations were interrupted by the regime.

Seeing justice done is perhaps the most critical element of the healing process for the survivors. The nearly two million lives lost during the regime can never be brought back, nor can the chance to enjoy the fruits of a society that might have prospered had the Khmer Rouge not come to power – but the tribunals will give survivors an opportunity to know that the world acknowledges their sufferings and that the regime's leaders must account for their actions.

The project will also help build the momentum for democracy in Cambodia by allowing participants to serve as surrogate witnesses and “judges” at the tribunals; holding open, participatory discussions; making people aware of their “right to know”; and beginning a popular movement to demand more freedom of information. It will give the commune representatives a turn in the public eye (speaking, leading discussions, fielding questions), thus helping to build leaders for future commune and village elections. We intend to strengthen this benefit by giving community innovation and leadership training to emerging commune leaders.

The tribunal's rules on victim participation are ground-breaking. On March 20, 2008, the ECCC pre-trial chambers made the decision to allow civil party participation in the provisional detention appeals. The tribunal provides for the participation of victims in three ways; by volunteering to be witnesses, by filing complaints, and by applying to join the proceedings as civil parties.

Hundreds of people have applied to the Khmer Rouge tribunal to be recognized officially as victims of the Khmer Rouge/DK and to bring parallel civil cases against the perpetrators. This is the first time that victims have been allowed to take part as active parties. In this context, “active” means they have the ability of being represented by a lawyer, to call witnesses, and to question the accused at trial. The tribunal's victims unit describes this initiative as a tool of empowerment that allows

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“Living Documents 2004–Present”: http://www.dccam.org/Projects/Living_Doc/Living_Documents.htm (accessed 30 April 2012)

the victims to tell their story. Victim participation is part of the latest transitional justice developments aimed at improving international and hybrid tribunals.

In 2008, DC-Cam assisted about 10,000 victims in filling out victims-participation requests with the Khmer Rouge tribunal. In sub-sections 4.4.3 and 4.4.4 I present details of two DC-Cam community outreach events.

4.4.3 Community outreach trip to Phnom Penh, February 2008

In the first public hearing of the appeal against the pre-trial detention of Nuon Chea alias Brother Number Two on February 4, 2008, Nuon Chea was expected to ask to be released on bail. On this occasion, victims participated for the first time as civil parties in the proceedings of the tribunal. This was possible as part of the Living Documents Project.

I was with this first group throughout the process of filling out the complaint forms and visiting the tribunal to be part in the hearings. This was a historic day in international criminal law, as it was the first time that any tribunal mandated to investigate war crimes, crimes against humanity or genocide had involved victims as civil parties with full procedural rights. This allows victims to play an active role in the trial, and to be legally represented by their own lawyer. They have the same rights as the accused.

Based on my case study experiences of these projects, in Chapter Six I present the findings from my observation of and interviews with this first group of victims participating at the tribunal hearing. Here I present more general observations of this case.

I first met the group when they came to the documentation center the day before they were to witness the first public hearing at the tribunal. DC-Cam had invited about 50 commune chiefs from different villages in Cambodia to come to Phnom Penh to fill out complaint forms to be handed over to the tribunal, as part of the victims' civil cases against the former Khmer Rouge leaders. They were gathered in the lobby of the documentation center, where they were welcomed by the director Youk Chhang before Kheang introduced them to the day's activities. He also informed them that I was going to take part in the tour to the tribunal and that I was going to interview some of them about their participation in the proceedings and their general ideas of the Khmer Rouge history and the tribunal.

After they filled out the complaint forms I interviewed some of the participants before they went to the hotel. The next morning I arranged with some of the

participants to meet me in the lobby of the hotel to be interviewed before they went to join the public hearing at the tribunal.

DC-Cam had arranged for a tour bus to take us to the tribunal. I felt alien as the only non-Asian person on the bus. All of them had in some way or another experienced great losses and suffering during the Khmer Rouge, and the atmosphere in the bus was quietly excited. I felt that they tried to hide some of their emotions by smiling and making light jokes. My interpreter confirmed this later. Even though I had my interpreter with me, I did not want to ask any questions at this time as I did not want to intrude in this personal moment for the victims.

For many of the participants, the court hearings were a disappointment. After spending more than an hour getting through the many security checks, we finally entered the public viewing room of the court where we sat down in comfortable soft chairs with headsets that were connected to the microphones in the courtroom. A court interpreter translated proceedings into English and French for the few foreign visitors. When Nuon Chea finally arrived he appeared alert and focused, reading a prepared statement in Khmer. He started by saying, “If this proceeding goes ahead, I believe it is not fair for me.” He made his statement in a clear voice claiming that he had not done anything wrong, that he was not a “cruel” man. He called himself “a patriot and not a coward who would run away”. He also argued that the judges did not have sufficient grounds to detain him and therefore he should be released. But mostly it was the lawyers who spoke, arguing successfully for a postponement of the pre-trial hearing due to the fact that one of the foreign defense counsel, Victor Koppe from the Netherlands, was not able to join the proceedings.

The absence of the foreign defense counsel was later commented on as being part of a legal strategy to delay the trials. The result was that many of the Cambodians in the public viewing room expressed their anger and disappointment by shouting and laughing. They were asked to quiet down or leave the courtroom. Many of the participants had traveled for miles to witness the prosecution of the man who they believe is responsible for their suffering and murders of their loved ones.

On the bus back to the hotel many of them were quiet. But this time there was no excitement, but only some brave attempts to smile. My interpreter told me later that all of them showed signs of great anger and disappointment. I spoke to some of them on the way back to the hotel. One of the elderly men expressed what I expect many of them were feeling: “What shall I tell the people in my home village now? They expect me to tell them that the perpetrators are going to be punished. That I have seen this with my own eyes. Now they will not believe that what they have heard is true.”

Another of the elderly men followed up by saying, “In Cambodia we have a saying that if you hear a hundred times it is not as good as to see ten times, and to see ten times is not as good as to touch one time.” My interpreter told me that what he meant by this was that he was expected to be an important witness to his people in the village, and that they relied on his story because he was supposed to have seen with his own eyes that justice was finally going to happen. But now, he had no story to tell. This illustrates some of the challenges and complexities of narrating the transitional justice processes. Many of the victims are illiterate, many do not understand how the legal system works. DC-Cam and the tribunal are working hard to narrate the events in court as being part of a new legal order based on fair trials, democracy and humanity.

On the bus back to the hotel one of DC-Cam staff members spoke to the participants using a microphone. He told them that this delay did not mean that Nuon Chea would not get the punishment he deserves, and that this was how a fair trial system worked. I got the impression that many of them understood this, but that they were concerned about how they should communicate this to the people in their home village. This illustrates how transitional justice has much to do with narrative and story-telling.

The center has arranged many similar outreach trips. Based on reports provided by DC-Cam I now present another outreach trip that took place in February 2010.

4.4.4 Community outreach trip to Phnom Penh, February 2010

On February 10 to 12, 2010, the Living Document Project of DC-Cam brought 93 invited visitors from selected rural provinces to visit the documentation center, the memorial sites and the tribunal to gain a better understanding of the history of DK and the ongoing processes at the tribunal. The program started on the morning of February 10 at the National Senate building in Phnom Penh.

The opening session had a special meaning for Youk Chhang, the director of DC-Cam, because some of the participants were residents of Trapeang Veng village, where he had been sent to live with his mother during the period of DK. Some of the villagers asked Youk to bring his mother to the session. This was the first time since the regime ended that she had seen her former neighbors. She had lost three of her brothers, one sister, one daughter, one son, and many grandchildren during the regime. At age 82 she could still recognize all of her former neighbors. Some of them were responsible for her suffering and that of her family, and some had helped her during

that time. According to the DC-Cam report from the session, this was a warm and respectful meeting.

After the group had settled down, the morning session started. The first presentation was by ECCC deputy international co-prosecutor William Smith who gave a talk on the challenges of the tribunal prosecutions. He addressed two issues that are recurrent themes in debates concerning the ECCC. On the first controversy, about whether it is worthwhile to prosecute former senior DK leaders when they are all getting old, he pointed out that millions of Cambodians still suffer daily due to the crimes committed in the past, and that is why the perpetrators should be punished even though they are getting old. On the second question, about the primary purpose of the tribunal, Smith stated that the ECCC is designed to provide some measure of justice to the millions of victims that suffered and/or died during DK. In addition, the court is designed to create an accurate history of the controversial DK period. He pointed out that the designers of the ECCC hope to improve human rights and encourage the rule of law in Cambodia by creating a model court as an example for the Cambodian judiciary. He ended by stressing that by addressing past atrocities, the ECCC will hopefully help contribute to reconciliation and memory in Cambodia.

The presentation was followed by a short question and answer session. Some of the questions were: Why did the UN give the Khmer Rouge Cambodia's seat after 1979? Why was the tribunal established so late? Why did the Khmer Rouge kill and starve people? Are there other countries that have experienced such mass killing?

The session was followed by the DC-Cam deputy director's presentation on the forthcoming cases at the tribunal. After he had finished, one of the participants asked: "Is it true that Ieng Sary and the other charged persons are in jail?" The deputy director assured him that all charged persons were in pre-trial detention, and that all visitors would see this at the ECCC the following day.

After a break, the group watched a video of Tuol Sleng filmed shortly after the Vietnamese entered Cambodia in January 1979, and the documentary film produced by Youk Chhang titled *Behind the Walls of S-21*. The morning session ended with a presentation by a former guard at S-21 named Him Huy. He gave a short summary of his experience of being drafted into the Khmer Rouge guerrilla army, and his experiences of functioning as a prison guard at Tuol Sleng. He talked about how he was constantly afraid of being killed, and claimed that he only killed one of the prisoners to prove that he was a loyal servant of the regime.

After lunch the group visited the Cheung Ek killing field memorial and the Tuol Sleng Genocide Museum to see with their own eyes the places discussed in the

morning session. One of the participants recognized his cousin in one of the photographs of prisoners displayed at the exhibition. Before seeing this picture, he had no knowledge of what had happened to him. All he knew was that he used to work for the DK Ministry of Information before disappearing prior to 1979.

The next day, the visitors traveled to the ECCC to witness one of the court sessions of the case against Ieng Sary. This was an oral argument concerning his appeal against the extension of his provisional detention order. Before they could enter the courtroom they had a little dispute with the ECCC security personnel, who refused entrance due to the dress code of the tribunal. Many of the participants wore T-shirts given to them by DC-Cam with the words “Breaking the Silence.” It was only after DC-Cam staff convinced the officers that this was not meant as propaganda or any sort of message, but that it was merely a gift to the villagers from DC-Cam, that they were allowed to enter the courtroom.

The group was eager to see Ieng Sary in person after hearing so much about the regime he was a central part of organizing. However, some of the optimism died out when the day in court ended early because of Ieng Sary’s poor health. This sparked concern amongst the audience that Ieng Sary could die of natural causes before facing justice.

The third and final day was spent at ECCC, where the visitors watched the oral hearing on Khieu Samphan’s appeal against the extension of his provisional detention order. At the end of the hearing Khieu Samphan rose and spoke on his own behalf for several minutes. At this time, the audience perked up and paid extra attention. During his speech Samphan claimed that all he did during the DK regime had been to help Cambodia. He tried to convince the court that he did not have anyone under his command during the regime, and that he was different from the other detainees.

During a break in the court one of the visitors told DC-Cam staff that he was generally pleased with what he saw, and that he felt the court is important to Cambodia in general, as well as to victims and their families. Before the ECCC he did not believe that any Khmer Rouge leaders would ever be held accountable. He now hopes the court can finally uncover the truth.

After a visit to the Royal Palace the visitors watched a performance of the play *Breaking the Silence* at the National Institute of Education. After the play one of the visitors told DC-Cam staff that the play provided an accurate representation of what occurred during DK, and that he felt that this play was important for the younger generation of Cambodia as a way to learn about the DK period and for survivors to tell

their stories. He felt that the play would help survivors both remember and discuss their experiences during DK.

About 200 university students were also invited to view the play. Afterwards one of them asked the director of the play, Son Bunrith, about the significance of the title *Breaking the Silence*. He said the main purpose of the play is to promote the sharing of stories and experiences of DK survivors, both amongst themselves and among the younger generation. He believes this process can encourage survivors to tell the truth about their experiences during DK. The secondary purpose of the play is to promote the study of the DK period in Cambodia, especially amongst the younger generation. The play is not designed to ask for forgiveness or to grant forgiveness, it is merely designed to promote dialogue.

DC-Cam director Youk Chhang closed the evening with a few personal remarks. He told the group that for him, it was of great personal meaning that a group of visitors from his former home village could attend the tour. He had suffered a lot and some of the persons that were part of the group had caused him much pain and anger. He told them that for many years he was angry with the people living in this village and he did not want to have anything to do with them. But over time Youk found that, as depicted in the play *Breaking the Silence*, sharing his experiences was a method of healing for him. He told this to stress the point that the play can change the attitudes of victims and help them find forgiveness, tolerance and reconciliation.

After Youk had ended the tour and thanked the visitors for attending, one man approached him and quietly took him to the side. He then told the story about his son who died shortly after the DK was ousted from power in 1979. His son was the guard who arrested Youk once and tortured him by beating him severely with an axe. The man told Youk that he forced himself not to cry and feel sorrow at the death of his son, because he knew he had done a lot of bad things during the regime.

This man's short narrative about his son is a typical way of showing regret and asking for forgiveness in the Cambodian culture. There is no tradition of publicly stating your remorse. Instead you communicate this by taking a humble position, speaking in a low voice, and forcing yourself to smile. Both Youk and the man knew much of the details of what had happened during that time, but instead of talking about it the man only told this short narrative about how he did not allow himself to feel sad over the death of his son. To understand the expression of remorse in Cambodia, you have to pay attention to the unspoken sub-text that occurs during emotionally charged interactions like this.

The overall sentiments among the visitors were strongly positive, and many of the participants felt that they had learnt a lot.

The community outreach trips involve witnesses who experienced the Khmer Rouge regime. The goal is that they should acquire the necessary knowledge, understanding and motivation to communicate the transitional justice message to the people in their home villages. To reach the younger generation more directly, DC-Cam has established another project called the Genocide Education Project.

4.4.5 Genocide Education Project

Until now in classrooms the history of forced labor, torture and murders committed by the Khmer Rouge was simply narrated by the teachers. Some teachers might have told the class about their own memory, and younger teachers might have related some of the stories that their parents had told them about the sufferings of the past. Nevertheless, there were no clear narratives about the genocide to be taught in schools.

DC-Cam's success in convincing the government to allow the Khmer Rouge history to be part of the curriculum at Cambodian schools means that students, for the first time, have begun to learn about their country's brutal past. DC-Cam has published the first Cambodian textbook explaining the genocide, titled *A History of Democratic Kampuchea (1975–1979)*. A long and complicated process of negotiating with the government finally led to this publication, written by Cambodian researcher Kamboly Dy.

So far about 300,000 copies have been distributed to students around Cambodia. Parallel to this, DC-Cam is working to educate teachers about how to incorporate genocide education into their teaching. DC-Cam has developed a teacher's guidebook. This has been the object of some controversies, however. The government is skeptical as to how the material should be taught. The guidebook encourages teachers to interact with their students, use role-playing and draw parallels to genocides in other countries as part of the education. This style of teaching differs from the traditional way of teaching in Cambodian schools, where ordinarily there is not much room for interaction with the students. This represents a huge challenge to the success of the project.

Another reason why genocide has not been part of the school curriculum, besides the fact that the government opposed it, is the lack of knowledge among teachers about what really happened during the Khmer Rouge regime. For example,

the *Phnom Penh Post* newspaper, reporting on a teachers' training session in Takeo province, reported the following about a 39-year-old teacher from Kampot:

In previous years, he had often told students of being separated from his parents and of being ordered, at the age of 5, to retrieve clothes from the dead bodies of cadres at the co-operative to which he was sent. But he said he had been unable to relate those experiences to broader crimes committed by the regime because he himself had known little about the scale of its destruction. (Robbie Corey Boulet, *Phnom Penh Post*, January 8, 2010).

The teacher was further in this article as saying: "I was alive during the Pol Pot time, so some of this is not news to me, but this week I have been very shocked to learn about all of the people that Pol Pot killed."

DC-Cam hopes that including genocide in the curriculum of Cambodian schools can help the country embark on the road to national reconciliation by not only raising students' historical knowledge and understanding, but also their empathy with people who experienced the historical events.

This project was established only recently, so I have not been able to follow its activities myself. However, reports from DC-Cam staff confirm the challenges inherent in teaching about the Cambodian genocide. In sub-sections 4.4.7 and 4.4.8, I present details of outreach related to the Genocide Education Project, based on reports provided by DC-Cam.

4.4.6 DC-Cam education outreach session at Panha Cheat University

On March 10, 2010, DC-Cam arranged an information session at Panha Cheat University in Phnom Penh. According to a report written by Randle C. DeFalco, the purpose of the session was to bring students up to date on the proceedings at the tribunal and to share knowledge about the court's outreach mechanisms.

The day-long session opened with a presentation of the tribunal's official website (www.cambodiatribunal.org) which offers much information about the proceedings at the tribunal and its joint ventures with DC-Cam. The DC-Cam staff member who gave the presentation used a computer to show the students how the website could be used as a resource by the public to gain information about the tribunal. The website contains videos of the proceedings, a blog for sharing information and reports and articles related to the tribunal.

This was followed by a lecture on the tribunal processes by ECCC prosecution representative Tarik Abudulhak. He first asked the students to raise their hands if they had watched any of the ECCC proceedings on television. About one-third of the

students did so. He then informed the students about the major events at the tribunal and the events to come. As part of the presentation of the different cases and the accused perpetrators, he explained the importance of the perpetrators getting a fair trial and their right to defend themselves. He also talked about the importance of the legal evidence and the role of witnesses to the processes. The lecture was followed by a question and answer session, where the students asked questions about the court proceedings and why it had taken so long before the tribunal was established.

The group then traveled by bus to the ECCC, where they were welcomed by public affairs officers. The students then received a short tour of the courtroom building and the surrounding area. Following the tour the group entered the courtroom viewing gallery to attend a presentation by the Defense Support Section (DSS) on the role of defense counsel and the struggles the defense has had to face to maintain fair standards at previous international trials. The DSS representative talked about the Nuremberg Tribunal where there were about 8,000 prosecutors and only one defense lawyer. After providing a historical overview of the evolution of defense counsel rights at previous trials, he stressed the importance of securing a fair and just defense following international legal standards. The presentation ended with a question and answer session.

In addition to the outreach projects introduced above, DC-Cam also publishes books and articles about the history of the Khmer Rouge and the transitional justice processes. One of the best known publications is the monthly magazine *Searching for the Truth*. For many Cambodians, this magazine is the main source of information about the transitional justice processes.

4.4.7 Magazine Searching for the Truth

In addition to communicating DC-Cam's work to the public, the magazine disseminates knowledge on issues related to the Khmer Rouge. The title *Searching for the Truth* conveys the sense of an ongoing process, not a presentation of an already known truth.

Part of the magazine is devoted to family tracing. People who want to know what happened to their families write to the magazine, and in each issue selected stories of how people lost their families or their questions about what happened to them are published. Here is an example from the first quarterly issue from 2008 of the English version of the magazine:

Missing brother: My name is Gek Ly, age 47, and now I am living in Australia. My father is Bun Duk. In 1975 he had a shoe shop called Nam Yoeung in Kampong Som. I would like to search for my brother Bun Trach aka Crouk (he would now be 50 years old) , who left home to serve in the revolution in 1970 and other five cousins: Ing Sina (female), Ing Sipa (female), Ing Ya (male) and two younger cousins whose names I do not remember. In Sangkum Reastr Niyum, this family lived near Vimean Tip Cinema, selling shoes. If anyone has knowledge or heard anything about him, please contact me via phone:xx/address:xxx or e-mail:xxx.

The magazine was first published in 2000. DC-Cam has distributed more than half a million copies of the Khmer issue nationwide. About 7,000 copies are printed every month, and over 80 percent of the magazines are distributed free of charge. An English version of the magazine is published quarterly and sold at newsstands and various other locations in Phnom Penh and Siem Reap.

Apart from an occasional headline in one of the main newspapers, this was the only public reminder of the Khmer Rouge history and the tribunal I could see on my daily walks in the streets of Phnom Penh. The front cover of the magazine in February had a big picture of Nuon Chea. The picture was taken at his first detention hearing in the court. He stares straight into the camera with a clear look in his eyes: the same look I had witnessed earlier during the court proceedings.

4.5 Different groups related to the tribunal

DC-Cam's outreach projects described above are the main cases I relate to when making the abductive and retroductive moves in the next two chapters.

Before I study theoretically how these cases, studied as part of transitional justice narratives, may be related, interpreted or read by the individuals expected to be part of the transitional processes, I first explain how the group of people that is targeted by the outreach projects mentioned above must be studied as a diverse group with different backgrounds and motivations. This is important in the context of the abstract theoretical perspectives in the next chapter that seek to understand the importance of studying the transitional justice processes from a narrative perspective, both from the perspective of the narrative elements of the studies of outreach projects such as texts and story-telling and from the perspective of the individuals and groups that are interpreting and relating to the projects.

According to Chhang (2007:157-172) the tribunal is important and prosecution is needed before Cambodia can reach the point of true forgiveness. This is about more than just convincing the public that the perpetrators are actually punished. Justice was

already obtained to some degree at the local level in the 1980s when people took the law into their own hands and killed many of the Khmer Rouge perpetrators. For this reason, Chhang feels that the trials will not so much bring justice to the victims as they will give people a perception that justice is possible for the future (Chhang 2007:157-172).

In a conversation I had with Chhang when he visited me in Norway in 2010 he told me about how Cambodians are divided over the trials. In the following I quote part of the taped conversation. “The larger Cambodian family, both at home and abroad, is also divided over the trials. This is because genocide has always been a political act, and always will be.” Chhang claims that people have now, after thirty years, largely moved beyond the need for revenge: “they are concerned about how the tribunal will affect their future and the future of their country, but they view justice from many different political perspectives”. In light of this, it becomes even more essential to include the public in the processes related to the tribunal. The narratives related to the tribunal and the education efforts expand the initial purpose of the tribunal of providing justice for the victims.

The tribunal is justice for some and not justice for others. Chhang identifies several categories of interest groups in this regard, broadly divided into the survivors in Cambodia and the expatriates abroad. The survivors in Cambodia represent two factions:

The first is survivors who support the tribunal. Most of them have never been out of the country and have decided that at least some of their future lies within the ruling Cambodian People’s Party (CPP), who they see as liberating Cambodia from the Khmer Rouge and in the 1990s fighting to bring the guerrillas to heel when the international community was ignoring Cambodia. As evidence of their party’s intent to broker honest trials, they point to the ranking CPP government officials who are former Khmer Rouge and have publicly stated their willingness to appear before the tribunal.

This group, according to Chhang, distrusts the international community and blames it for the country’s culture of impunity. The second faction contains many people who returned from the Thai border refugee camps in the 1990s: “They are generally opposed to the government, and believe that national problems like poverty and corruption are linked directly to the CPP. They feel the trials will only serve to polish the ruling party’s image.” These are calling for international control of the proceedings and would like to see certain CPP officials brought to trial.

The other category of Cambodians who are also divided on the tribunal are the so-called expatriates who moved to foreign countries during or after the Khmer Rouge.

According to Chhang, they are highly politicized. One faction of expatriates supports the present government and also strongly supports the tribunal. Some representatives from this faction are actively involved in the tribunal's work on various levels. Among the expatriates there are three other factions that oppose the trials, according to Chhang:

The first comprise the supporters of former King Sihanouk, who worry that he might be brought before the chambers. Like the king, they argue that the money dedicated to the trials would be better spent on alleviating poverty in Cambodia. The second is made up of people opposed to the CPP for political reasons, by adopting a strong anti-communist stance, which they retain to this day. And the last is a small group of immigrants who were Khmer Rouge, they are simply afraid their former lives might be revealed.

The final group highlighted by Chhang is the younger people, the next generation in Cambodia. This group is somewhat more cohesive as well as more nationalistic. Most of them find it difficult to believe that Cambodians could have killed each other:

Thus, they feel that foreigners must have caused the genocide in their country. Some of them are curious to learn what happened, but don't have what could be termed as a "political agenda". Others are much more interested in finding justice for the victims, and look at the genocide in black and white terms: the Khmer Rouge were always, and will always be, bad. Both groups, however, seem far better able to hold dialogues with each other than the adult survivors.

4.6 A transition to the explicit abductive and retroductive move

From this presentation of cases of transitional justice in Cambodia and the historical context I am now making a transition to the explicit abductive and retroductive moves turning the focus to Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice.

As we have seen in Chapters Three and Four, transitional justice is about relating a conflicting past to the present in an attempt to form a constructive orientation towards the future. This dialectical element of the transitional justice processes and policies needs to be challenged and nuanced. By adopting and adapting Ricoeur's theories, I show how these perspectives may help us to understand the complexity and also constructive potential of studying transitional justice from a narrative perspective that relates the processes to the individual searching for truth and justice.

Understanding how destructive historical memory may be turned into constructive historical consciousness is an essential part of understanding the narrative

effects of the transitional justice processes. In Chapter Six, Seven and Eight I adapt Ricoeur's theories as listed above, arguing how these help us understand the phenomena of transitional justice. I start in Chapter Five with a short introduction to Ricoeur's writing.

5. Paul Ricoeur

Paul Ricoeur (1913–2005) was known as one of the most influential philosophers of our times. His philosophical work covers a broad range of issues such as the philosophy of free will and freedom, ethics, time and narrative, history, metaphor and language, history and narrative, memory and forgetting, politics and justice, and philosophical theories of the self, others and personal and collective identity, to mention some.

The broad and complex theoretical landscape of Ricoeur is hard to summarize as part of an introduction. This impression is supported by others; for example, in his book *Kommunikation på Bristningsgränsen* Bengt Kristensson Ugglå (1994) studies Ricoeur's authorship from an overall perspective by focusing on how *communication* could be studied as a common element in much of Ricoeur's philosophy. By doing this Ugglå (1994) attempts to locate an internal connection within Ricoeur's project. This was the first Scandinavian attempt to finding a red thread through Ricoeur's philosophy. Ugglå's evaluation of this task was that it is difficult to locate an internal connection between Ricoeur's writings (Ugglå 1994:33). "Both Ricoeur himself and the secondary literature can sometimes give a divided and unconnected impression that makes you wonder if it is at all possible to speak of one project." (Ugglå (1994:34), my translation). Ricoeur's authorship is vast and complex, referring to a great number of philosophical traditions and scientific disciplines which makes it hard to get an overview of his philosophy (Ugglå 1994:37).

My impression from reading Ricoeur's own texts is that they are very nuanced, his conclusions are made with many precautions. They are always open for new and different interpretations and evaluations depending on what elements one decides to emphasize. This is perhaps due to the fact that Ricoeur combines references to philosophical classics such as Plato, Aristotle, and Kant with contemporary thinkers without making them into a new unity. Kaplan (2003:1) describes this characteristic of Ricoeur's writing as his "passion for mediation". This represents an advantage of Ricoeur's philosophy in that it is open to being adapted to solve many different theoretical and practical problems. But at the same time, this is also related to my main criticism of Ricoeur: The fact that Ricoeur engages in so many detours in his theories

makes his theories hard to operationalize. The consequence of this is that I have to sidestep some of his detours when adapting his theories to my study.

Another element that makes it hard to introduce the philosophy of Ricoeur is the fact that much of the literature using Ricoeur to explain relevant phenomena to my research project only uses a few quotes from Ricoeur. For example, Brudholm (2008) in his study of forgiveness and resentment, uses elements of Ricoeur to talk about the problem of the past in the present when interpreting the words of one Holocaust survivor. Here Brudholm (2008:112) quotes Ricoeur, but then only limited to few sentence studied together with quotes from other authors like Hanna Arendt. There are many such examples of books where Ricoeur is cited, but where there is no attempt to draw consequences from the more underlying elements of Ricoeur's philosophy.

The point I want to make here is that since much of the literature applying Ricoeur only uses a few key sentences together with similar theoretical accounts from other philosophers, and because no attempts are made to explain what philosophical ground they share or do not share, it is difficult to sum up how Ricoeur is applied by other authors. This is one reason why I have decided to focus mainly on Ricoeur's own texts when adapting his theories to understand the phenomena of transitional justice.

However this does not mean that I devalue the vast secondary literature presenting and interpreting Ricoeur's philosophy. There are many good books written on Ricoeur that attempt to synthesize and interpret Ricoeur's theories. I refer to some of these. Nevertheless, as mentioned, I have found it more fruitful to use Ricoeur's own texts, making my own creative abduction of elements that can help us to understand the phenomena of transitional justice. My goal have not been to provide new insights on Ricoeur's writings, but rather to use Ricoeur to gain new knowledge about the phenomenon of transitional justice.

In reference to the fact pointed out already, of the difficulty of summarizing interconnections between Ricoeur's theories, I will not make any attempt to do this in this introduction. Such a summary would not do justice to the complexity and value of Ricoeur's philosophy.

Nevertheless I will indicate some more general key themes in Ricoeur's philosophy here before presenting the main theoretical perspectives of Ricoeur I adapt to this study in the following chapters. One such key theme to Ricoeur's philosophy is his theoretical reflections on the possibility of understanding the self.

One of Ricoeur's earliest descriptions of a central theme in his anthropology is the separation between the voluntary and involuntary dimensions of human existence. This first anthropological account for freedom was put forth in Ricoeur's doctoral

thesis, later published as *Freedom and Narrative* (1950). This early work established Ricoeur's name as an expert on phenomenology. Ricoeur especially focused on Husserl's phenomenology, translating some of his writing into French.

As Ricoeur continued to develop his anthropology of the self, he made a major methodological shift during the 1960s when he concluded that to study human reality one had to combine phenomenological descriptions with hermeneutic interpretations. For hermeneutics, the world is made accessible to us in and through language. Ricoeur argues that to understand the world and ourselves, we have to go on detours of already mediated meanings of the world in meaningful language. All deployments of language in understanding the world and our own self require interpretation. This is why there is no self-understanding that is not mediated by signs, symbols, and texts (Dauenhauer 2008). Ricoeur's hermeneutic phenomenological turn required him to revisit his earlier investigations to recast and clarify their implications, possibilities and limitations.

However, he did not abandon his earlier understanding of human reality derived from a tradition of existential phenomenology. Rather, his shift made it possible for him to see more clearly how his philosophical anthropology of the capable person could be expanded to include a linguistic or hermeneutic element of mediations of meaning by signs, symbols and texts.

In his works, *Fallible Man* (1960) and *The Symbolism of Evil* (1967), Ricoeur investigated the big and difficult question of how humans are fallible, how we can go wrong in life. He tries to understand how evil may happen and how individuals exercising their freedom may have unintended and intended effects that make them go wrong in life. He realized that a structural and phenomenological perspective are not enough. His suspicion led to what became one of the key themes of his hermeneutic anthropology: that language, signs and symbols need to be studied in reference to their context. This context is made up of mediated meanings. For Ricoeur it became evident that there is no unmediated self-understanding.

Understanding how "I belong to history before I belong to myself," Ricoeur (1973 [1990:63] is an essential part of understanding the potential transformative constructive effect of the transitional justice narratives. This is Ricoeur's primary hermeneutic focus. The task of hermeneutics is thus to understand the frameworks of pre-understanding within which our various interpretations arise, and understand how this predisposes us to certain readings of the signs (Kearney 2004:25).

Without diving into the big debate about the phenomenon of the text, it is important to understand what Ricoeur's phenomenological-hermeneutics adds to this debate when he emphasizes that we need to understand all writing within the context

of a human-world relationship. In his three-volume work *Time and Narrative* (1983, 1984, 1985) Ricoeur addresses the contrast between the limits of semiotics and life-world semantics. Ricoeur talks about an inter-relation between the human and the world across temporality and through reference (Wood 2002:127).

In *Time and Narrative* Ricoeur outlines this connection by drawing together two independent studies of the experience of time and emplotment:

The moment has come to join together the two preceding independent studies and test my basic hypothesis that between the activities of narrating a story and the temporal character of human experience there exists a correlation that is not merely accidental but that presents a trans-cultural form of necessity. To put it another way, time becomes human to the extent that it is articulated through a narrative mode, and narrative attains its full meaning when it becomes a condition of temporal existence. (Ricoeur 1983 (1990):52)

For Ricoeur, narrative is both actional and structural in that the narratives provide a plot that is related to the time dimensions of past, present and future when the textual worlds are constituted in relation to human life-worlds. This brings us on the track of the first theory of Ricoeur I will adapt to my study; this is his theory of historical consciousness and his attempt to solve the problem of time and narrative.

In post-conflict societies like Cambodia where there has been a lack of a clear narrative relating the conflicting past, the present and the future, transitional justice is about establishing the truth about the past, acknowledging how it is related to the present, and in the process constructing a positive orientation towards the future. In the following chapters I hope to show how this needs to be studied from a narrative perspective, not as a linear process, but as a complex mediation of meaning in time and narrative.

6. Historical consciousness

“A society cannot know itself if it does not have an accurate memory of its own history.” Youk Chhang.

6.1 Introduction

To understand how the individual may relate to the transitional justice processes through narratives in such a way that they may form constructive orientations towards the future, I need to make clear how this process involves a reconfiguration of the brutal memories of the past in relation to transitional justice narratives relating past, present and future. How may the past serve an orientative function for the future? How do the individuals expected to take part in the transition relate their own memories, life stories, expectations, fears and desires to the interpretation or reading of the transitional justice narrative? How are the time dimensions of past, present and future related as part of transitional justice processes?

Following a critical realist model of explanatory science I use selected elements from Ricoeur’s philosophy to show how different theoretical perspectives can help us understand essential mechanisms of how the individual relates to and interprets the transitional justice processes through narrative.

The concept of historical consciousness sums up many elements of how I use Ricoeur to explore the phenomena of transitional justice. Basically, the essential interplay between the theoretical interpretation of the phenomena of transitional justice and the empirical findings are made in reference to an understanding of historical consciousness: How past, present and future are related when the victims are engaged in transitional justice processes.

In this chapter I study some more basic elements of historical consciousness. The particular theories I investigate in the next chapters, before turning to Ricoeur’s theories of justice, could all be studied as related to this conception of historical consciousness. Theories of emplacement, narrative identity and memory all explain elements of how past, present and future are related in the formation of historical consciousness.

To interpret how history may hold a constructive potential in transitional justice, I use Ricoeur to examine the generative mechanisms of what happens when historical narratives are communicated as part of transitional justice narratives relating the past, present and future, and what happens when these narratives are interpreted by

the individuals searching for truth and justice. The abductive inference of this chapter is to adopt elements from Ricoeur's theory of historical consciousness that help us understand what could be described as underlying mechanisms of what happens when the individual relates to the transitional justice processes through narratives. This enables me to make retroductive inferences of what could be described as basic conditions for transitional justice to happen.

I study the different elements of Ricoeur's theories that can explain how past, present and future are related under the conceptual banner of historical consciousness. I start with addressing two horizons in understanding how past, present and future may potentially be related when the individual interpret and relates to the transitional justice narrative

6.2 Space of experience and horizon of expectation

In *Time and Narrative* (1985 [1990]) Ricoeur addresses the hermeneutics of historical consciousness as the mediation of the network of inter-weaving perspectives of the "expectation of the future, the reception of the past, and the experience of the present" (Ricoeur 1985 [1990:207]). To understand how transitional justice narratives may shape the reception of the past, the experiences of present and the expectations of the future, we need to understand theoretically the mechanisms of the formation of historical consciousness.

Historical consciousness has to do with how the past, present and future are related in social life. To this end, Ricoeur (1985 [1990]) adopts a polarity, first conceptualized by Reinhart Koselleck (1985), between space of experience and horizon of expectation. The German historian Reinhart Koselleck was one of the most influential intellectual European historians of the twentieth century. His work focussed on the epistemology of history and topics like the history of law and government. Koselleck (1985) addressed the fundamental historical concepts of being in the world. He held that historical processes are marked by a kind of temporality that is different from that found in nature. For Koselleck, historical reality is social reality and the temporality of historical processes functions is a causal force in the determination of social reality (Ricoeur 1985 [1990]). Thus, Koselleck makes a distinction between what he terms space of experience and horizon of expectation.

Ricoeur (1985 [1990]) refers to "space of experience" as natural or cultural events in the past that a person remembers. The process of remembering past events takes place in the present, so space of experience could be said to be the past made

present. But since the past cannot be made present by going back in time and “re-experiencing” the past, we have to rely on memory and imagination.

By “horizon of expectation” Ricoeur (1985 [1990]) refers to every kind of private or public manifestation that could influence the future, such as fears and desires, hopes and beliefs, rational calculations, and so on. I adopt Ricoeur’s theory of how the expectation of the future is inscribed in the present (1985 [1990:208]) based on interpretations of experiences of the past. This is part of the abductive and retroductive inferences, generating new knowledge about the underlying mechanisms of the transitional justice processes: How the function of transitional justice narratives offers victims an opportunity to re-interpret or re-narrate the past in relation to the present, to form constructive expectations of the future.

Ricoeur (1985 [1990:209]) argues that “the previously existing space of experience is not sufficient for the determination of the horizon of expectation.” He argues that the horizon of expectation and the space of experience mutually condition each other. In other words, we have to relate the past to the present, and to the future. Horizon of expectation is the imagination and realization of the array of actions that one can undertake; it is the future made present (Ricoeur 1985 [1990]). In this way, the space of experience and the horizon of expectation mutually condition each other. Ricoeur’s point that the horizon of expectation cannot be derived from the previously existing space of experience establishes the hermeneutic-phenomenological ground for thinking about narrative in relation to the transitional justice processes: how victims in a post-conflict transitional period have to go on a detour of already mediated meanings, stories and narratives to deal with the memories of the conflicting past as they orient themselves towards a brighter future.

The mediation of meaning in relation to the transitional justice narratives could be studied as a hermeneutical detour. Through retroactive expectation, the experience of the past is given new meaning. Understanding this hermeneutical detour is essential for my thesis.

To make this theoretical move from a narrative perspective I adapt Ricoeur’s narrative theories on emplotment, narrative identity and memory to show how knowledge of how they work together can help us understand what happens when the individual relates to the transitional justice narrative. All these elements could be studied as part of the formation of historical consciousness.

Historical consciousness presents an understanding of how victims in Cambodia are bound to prior significances or mediations of meaning when they interpret the transitional justice narrative.

6.3 Victims' pre-understanding

The task of hermeneutics is to understand the frameworks of pre-understanding within which our various interpretations arise, and understand how this predisposes us to certain readings of the signs (Kearney 2004:25).

Ricoeur's theories of historical consciousness, emplotment, narrative identity and memory help us to understand how various pre-understandings of the individuals that are expected to be part of the transition may relate to the transitional justice narratives. Thus, I argue that transitional justice cannot be studied as a linear process. The transition from the violent past to a peaceful future needs to be studied in relation to the complexity and variety of how individuals and societies form historical consciousness. This enables me to explore the mechanisms of what happens when the narratives of transitional justice processes are interpreted or read by the victims.

Understanding the meaning and function of how the various pre-understandings of the victims are related to the interpretations of the conflicting past is essential to the understanding of how they relate to the transitional justice narratives.

According to Ricoeur (2006), it is when we open up the past to be changed that the expectation of the future may change. This is an essential part of historical consciousness and also an important element of understanding transitional justice: how, through a tribunal and/or truth commission, the past is opened up to be re-narrated by legitimate institutions that are believed to deliver true and just accounts of the violent past. Transitional justice happens when the survivors or victims relate their pre-understanding to the transitional justice narrative, and in the process form constructive expectations of the future.

To understand how this can happen we need to interpret the complexity of the dialectic of the past and the future, and their exchanges in the present. I now look into this.

6.4 Narrative and reality

Ricoeur (1985 [1990:206]) talks about an imperfect mediation within the network of interweaving perspectives of the expectations of the future, the reception of the past and the experiences of the present. This basic element of historical consciousness has much to do with narrative and story-making.

Story and story-making are increasingly accepted by scholars from different research fields as legitimate explanatory frameworks for understanding human beings.

Philosophers, historians, psychologists and sociologists all approach the topic from different perspectives and with different purposes in mind. There is a great diversity of theories of narrative. For example, White and Epston (1990:13) explain how humans give meaning to their lives and social relations by constructing stories from their experiences. Other writers, like Mink (1970) and MacIntyre (1981), write about the meaning-making function of narrative for social life.

Authors like Roland Barthes, Louis Mink and Hayden White remind us that there is a difference between narrative and real life when they claim that the structure of a narrative – providing its meaning through a plot, with a beginning, a high or low point and an ending – is not reflective of the real world, but rather the essence of our explanatory fictions. The same argument is made by Koselleck when he draws a distinction between time in the natural world and the temporality of historical processes. Real events in life do not have the same temporality or character as those we find in stories (Carr 1991:160). On the other hand, debates about narrative versus reality or language versus reality are not easily solved by just concluding that reality is made up of things happening after one another in sequence. I will touch on this debate without any ambition of solving these complex questions.

6.5 The vanishing reality of the past

Historical consciousness is about understanding how the time dimensions of past, present and future are related as part of human consciousness of reality. When reflecting on the past we have to rely on representations of the past as history. What is in the past vanishes by time and we can never go back and re-experience the past as it really was (Ricoeur 2006). This is why we always have to put together fragments and different pieces of events in the past and present them as history, as something that represents a history of what happened in the past, but never as the “whole representation” of the past. This is quite obvious of course, but the task of historians is to come as close to this as possible. It is necessary to remind ourselves that history is also about interpretations, not a copy of the past as it really was. To be able to look back in time you have to use various lenses and listen to various voices that make their own interpretations of how it really was.

Ricoeur argues that history is a fruitful way to address the vanishing reality of the past. He views history as “what has to be made, in order to rediscover in it the dialectic of the past and the future and their exchanges in the present” (Ricoeur 1985 [1990:207]). This hermeneutic approach is useful to highlight the complex interplay

within this dialectic when trying to understand the role and function of the transitional justice narratives. Studying the historical accounts from the dialectic of past, present and future as narratives allows us to avoid making abstractions about the past as past. From a more practical perspective this is essential to achieve the goals of transitional justice: to re-narrate the past within a transitional justice narrative, establishing the truths about the past in relation to narratives of justice. Opening up the past to be narrated once again could be understood as mediation between truth and justice within the time dimensions of past, present and future.

The historical present is made up of what Ricoeur (1985 [1990]) describes as “an interplay of interweaving perspectives” and, according to Ricoeur (1985 [1990:208]), “it is within the dimension of acting (...) that thought about history will bring together its perspectives, within the horizon of the idea of an imperfect mediation.” Ricoeur (1985 [1990:209]) quotes Droysen’s formula, “in history as narrative, history as event comes to know itself.” How can we understand this process of constructing a collective singular of the events in history as narrative?

6.6 Historical narratives

For Ricoeur, historical narrative is a form of allegory of temporality, but it is a true allegory. The historical narratives describe a pre-figured time, the time of real action, in the form of a re-figured time of the historical narrative. The historical narrative of the Khmer Rouge/DK regime – set within a plot starting on April 17, 1975, when the Khmer Rouge forces occupied the capital Phnom Penh, and ending on January 9, 1979, when the Khmer Rouge were beaten by the Vietnam-supported forces – is an example.

This is the historical narrative of the war. A historical narrative trying to explain and understand the Khmer Rouge would have to start the plot much earlier, perhaps with the group of Cambodian students who left to study in Paris, and how the French communist student movement inspired them to return home and start the revolution. This narrative could end either in 1998 when the last Khmer Rouge/DK forces laid down their arms, or it could end with the result of the tribunal taking place today.

The point is that historical narrative should strive to form true allegories of the time of real action, the event that actually happened at a certain time. This only becomes history when it is told as part of a narrative within a certain timeframe of the plot. For Ricoeur the plot is what provides the stories with meaning. Without a plot all kinds of events and interpretations of events may be reduced to historical facts. The

plot mediates between the various elements, deciding what should be included in the historical narrative. This is also a form of mediation between events and certain universal “experiences of temporality” (Wood 1991). According to Hayden White (1991:144), historical discourse is a “privileged instantiation of the human capacity to endow the experiences of time with meaning, because the immediate referent of this discourse is real, rather than imaginary, events.”

The events the historical narrative sets out to describe are, according to Ricoeur, constructed in the same way that the historical narrative is constructed (Wood 1991). The historical narrative cannot include all kinds of events, time relations and interpretations, and the human experiences of the events that the historical narrative sets out to describe are also based on a configuration of events and time in a more or less coherent story or stories. This is important to keep in mind when trying to understand how the individuals who are expected to reflect and act on the transitional justice narratives bring their own pre-understanding to the process.

One historical event may become a historical narrative in many different ways, depending on what the historian is looking for. One historian may focus mainly on the actions of a certain historical figure as part of a larger historical narrative, while another may focus primarily on the history of the historical figure to explain the same historical event. This is evident in various historical books written about the Khmer Rouge regime. Some focus on the history many years before and after the Khmer Rouge/CPK ruled Cambodia, while others focus strictly on the time period between 1975 and 1979. What is more interesting in this regard is how some focus on describing details of characters like Pol Pot (Brother Number One) and Nuon Chea (Brother Number Two) to narrate the brutal history of the Khmer Rouge. The main plot of the story may be the same, with the starting point of the Khmer Rouge, the time it went wrong and the mass murders started, and the end point when the Khmer Rouge were ousted from power. Where the story starts and ends varies according to what the authors believe is important to narrate within the historical event.

Philip Short’s (2007) historical biography of Pol Pot tries to understand who this man was and how he became the leader of the murderous Khmer Rouge regime. In the process he identifies certain turning points that may contribute to the plot of the story. I use the same tool of emplotment and narrative discourses to understand who I am, and to be able to see myself as a human individual. In this process I adopt narratives to mediate what should be included and what I deem irrelevant to describe and understand who I am. This is set within a plot with a beginning, mid-points and an

end. I use various stories or narratives to explain myself, and to see myself as an individual with a will, motivation, and imagination and as a goal-oriented person.

Without plots describing certain turning points and starting points, I will just see myself as the sum of the continuation in time of events happening. In the same way, historical narratives need to place the events in relation to each other within plots giving value and direction to the events. This is a type of symbolic representation that joins together sequences of events that would otherwise be unutterable in language, namely, the ineluctably “aporetic” nature of the human experience of time (White 1991:144).

This has relevance for understanding the constructive effect of the transitional justice narrative in post-conflict societies like Cambodia, where there has not been a publicly legitimate narrative relating the conflicting past to the present and future. This is how I argue that the plot of the transitional justice narrative may empower the victims to orient themselves towards a brighter future. And as I will show in Chapter Seven, this has to do with what I describe, with Ricoeur, as the “followability” of the transitional justice narrative. Without a clear and convincing plot, the transitional justice processes may be more confusing than empowering for the victims. The goal of arguing for a focus on the narrative elements of transitional justice processes relating past, present and future is to avoid what was expressed by one female I interviewed in Cambodia: “The more we try to understand, the more we do not understand. It is like a heartache sometimes.”

Historical narratives are characterized by their possession of plots. A plot is what makes certain chronicles of events into a story. This is a process of mediation of events, and certain universally human experiences of temporality (White 1991:144). The emplotment is what gives the story its meaning by linking together (configuring) sequences of events into a temporal whole.

This goes both for fiction and for historical stories or historical discourses. What separates them is that historical stories refer to historical events that have actually happened at a certain time and at a certain place. The events that are part of historical narrative have their own history of characters and plots that is related to the historical narrative as a whole. The events that are discovered or expected to be part of the history are related to each other in time and narrative. What is included and what is excluded from the historical stories is mediated by the emplotment process, and the historian’s way of searching for the truth or facts of what really happened in the past. While the novelist can invent the events of his or her stories, the historian must find or discover the events (White 1991:144).

The DC-Cam serves this function by searching for the truth or facts about the conflicting past. Documentation is an important starting point of the transitional justice narrative, but documentation alone is not enough. The historical evidence and documents need to be narrated in relation to processes of making moral and legal judgements on the events in the past.

White (1991:145) writes:

By discerning the plots “prefigured” in historical actions by the agents that produced them and “configuring” them as sequences of events having the coherency of stories with a beginning, middle and end, historians make explicit the meaning implicit in historical events themselves.

It is not only historians that provide meaning to historical events by emplotment. Documentation centers, tribunals and truth commissions also construct and configure meaning and value into historical narratives. In this regard, understanding the function of emplotment in transitional justice processes is an essential part of how I present the concept of narrative justice in relation to the cases of transitional justice in Cambodia (Chapter Seven).

As we saw in the previous chapter, in Cambodia the past has been narrated and emploted in various ways according to when it was useful and when it was threatening to the governing elite. Consequently there has been a lack of a clear historical narrative of the violent past. I identified this as part of the disempowerment of the Cambodian people and as a constructive potential for the transitional justice narratives, but this mediation also represents a fragility and a potential for negative manipulation of memories of the past.

If we consider, as Ricoeur argues in *Time and Narrative* (1985 [1990:213]), that “we are affected by history, and that we affect ourselves by the history we make,” we are reminded how important historical narratives are in how we think about our existence in history. It is from understanding the tension between the two meta-historical categories of space of experience and horizon of expectation that we understand the role of history and historical narratives in transitional justice. Without this tension there is no history at all, says Ricoeur (1985 [1990:215]).

6.7 Historiographical operations

Documentation processes like those happening at the DC-Cam can be studied in relation to Ricoeur’s (2006) identification of three segments of the historical or

historiographical operation: (1) the documentary phase, (2) the explanation/understanding phase, and (3) the representative phase.

The documentary phase “runs from the declaration of eyewitnesses to the constitution of archives, which takes as its epistemological programme the establishing of documentary proof” (Ricoeur 2006:136). Testimony and documentation can be studied as the very condition for the historiographical operations, leading up to the documentary proof and the instrumental use of this as part of the transitional justice processes. The explanation/understanding phase “has to do with the multiple use of the connective *because* responding to the question *why?*” (Ricoeur 2006:136). The double term explanation/understanding is not seen by Ricoeur as opposite, rather as part of the full complexity of the “treatment of the historical *because*” (Ricoeur 2006:136).

The processes at the tribunal where the defense and the prosecution try to answer the question “why did the crime happen?” could be studied as part of historiographical operations. As I argue throughout this thesis, transitional justice is dependent on narrative and storytelling relating the documentation of the past to explanations/understandings establishing both narratives of historical truths and justice. This is how I will argue that what Ricoeur describes as the final phase of the historiographical operation – the representation phase, the “putting into literature or written form of discourse offered to the reader of history” (Ricoeur 2006:136) – is an essential element of transitional justice:

It is also at this third phase that the major aporias of memory return in force to the foreground, the aporia of the representation of an absent thing that occurred previously and that of a practice devoted to the active reading of the past which history elevates to the level of a reconstruction. (Ricoeur 2006:136)

Ricoeur makes it clear that the three segments of the historiographical operation are not a question of distinct chronological stages, but of methodological moments, interwoven with each other:

If the major epistemological crux occurs in the explanation/understanding phase, it does not exhaust itself there inasmuch as it is the phase of writing that plainly states the historians’ intention, which is to represent the past just as it happened – whatever meaning may be assigned to this *just as*. (2006:136)

The DC-Cam’s Living Documents Project presented in Chapter Four can be studied along the lines of the three phases of the historiographical operation. Nevertheless, as Ricoeur reminds us, it is only in the discourse related to the “unfolding of the historiographical operation” that these phases become stages (Ricoeur 2006).

The transformation of identity and re-narration of memories of the conflicting past is related to how the memories of witnesses are recognized and legitimized as testimonies as part of the transitional justice processes, and how the testimonies are narrated as legitimate truth claims about the conflicting past as collective memory. The understanding of this relation is linked with the theoretical considerations made so far that lead up to the concept of narrative justice.

It is important to make a distinction between memory as a perception of the past making claims about the past as real, and imagination as being on the side of fiction. But the distinction is very hard to sustain, since the two aspects often intersect. For Ricoeur, testimony is the ultimate link between imagination and memory. According to Ricoeur, imagination has two functions: “One is to bring us outside of the real world – into unreal or possible worlds – but it has a second function which is to put memories before our eyes” (Kearney 2004:155).

As discussed earlier, memories are of an image of the past, and at the same time there exists a difference between the real and the unreal. Ricoeur (2006) describes this as the debt we owe to the past. This is why we need to keep the distance between the past as the past and the reproductions in the present that narrate the reproduction of the images of the past. How do we make the past visible, as if it were present, while acknowledging our debt to the past as it actually happened (Kearney 2004:155)? This is Ricoeur’s main ethical question about memory and it is also an essential part of narrative justice.

Testimony and witnesses are two core elements of the transitional justice processes. As stated earlier, without any testimonies or witness statements to support the case that the event actually happened in the past, there would be no ground for the transitional justice processes to happen.

For Ricoeur, testimony is one way of bringing memory and imagination together. Testimony is the very condition for the historiographical operation: “With testimony opens an epistemological process that departs from declared memory, passes through the archive and documents, and finds its fulfilment in documentary proof” (Ricoeur 2006:161).

Ricoeur approaches this as an epistemological process of narrative representation of the past as part of the historiographical operation. He addresses the role of testimony from its everyday use and function to its historical and juridical use and function. In all these uses of testimony, we need to be aware of the extent to which the testimony is trustworthy.

There are many elements to this. Ricoeur draws a nuanced distinction between discourse and narrative. On the one hand, the testimony has to be seen as valuable as part of a certain narrative, and on the other it needs to be part of a discourse deeming it important and trustworthy.

This is how this applies to the DC-Cam. First, the testimonies are evaluated as important or unimportant in relation to the narrative or plots of the historical events the documentation center wants to document. Testimonies are accounts of certain events in time. Secondly, testimonies are deemed important and trustworthy within the context of the legitimacy of the DC-Cam. If the center were not seen as a legitimate institution to deliver the truths about the past, the testimonies would be evaluated as not trustworthy and they would be excluded from being part of the transitional justice discourses. A central element of this, which I will address in Chapter Nine, is the boundary between memory and imagination presented as the fragility of memory. As discussed earlier, this fragility of memory does not mean that all memory is fiction. Ricoeur's phenomenological account of memory views this from a constructive perspective, identifying how memory can be reinterpreted as part of historiographical operations transforming personal memory and witness statements into legitimate historical narratives.

6.8 Concluding remarks

Ricoeur (2006) holds that only when we open up the past to be changed can the expectation of the future change. If the past is closed and silenced under a motivation to forget, the orientations and expectations towards the future may be set in a locked pattern of thought. This is why I see the space of experience of victims in a post-conflict society as being potentially both disempowering and empowering depending on how their memories are narrated and interpreted as part of their historical consciousness. This applies both on a personal and collective level.

The events happening in a certain time, the experiences, are the historical reality that has the potential of being narrated as historical "facts" or historical "truth." Depending on how the narratives are told and related to narratives of historical change or narratives of a new time of justice, humanity and freedom, they have the potential of being part of a new horizon of expectation that may empower people to identify themselves with the narratives.

To be able to do this we have to "re-open the past, to revivify its unaccomplished, cut-off – even slaughtered – possibilities." (Ricoeur 1985

[1990:216]). According to Ricoeur; “our critical mediation on the future calls for the complement of a similar mediation of the past.” This is illustrated by statements from one of my informants talking about how he relates to the bad memories of the Khmer Rouge:

(...) we use those bad memories to develop the future. We try to do the right thing and when something is bad, we try to think of these things (the bad memories). If we did this once again, the bad memories would happen again. Find the bad things and change the new ones. That is why we want to know why this has happened. This is how we can escape from those things. And we can change our future and not having bad things happening to us. (...) We cannot change the past, but we can change the future. If we just keep things like this, we have to go through things again.

Another of my informants made the following statement when asked if she wanted the future generation to know about what happened in Cambodia during the Khmer Rouge:

It's important to let them know about the history of our country and they will learn from that history and if they learn from the history they can learn and compare the history of the past with what happens today and in the future.

This illustrates how past, present and future are related as part of victims' reflections on the conflicting past. This is important to recognize when studying how the future may be opened up as a landscape of hope and liberty from the experiences of a hopeless and suppressive past. By studying this in relation to theories of historical consciousness it is possible to see how this is part of general mechanisms common to all human beings in regards to how we relates to the past. A person living in a free society with a history of democracy and justice is also affected by the past. My horizon of expectation is related to my space of experience.

I argue this is part of how we can understand the importance of historical teaching and memorial museums in recent post-conflict societies like Cambodia, and also in modern democratic societies like Norway with a more distant conflicting past. When the youngest generations in Norway grow up, their space of experience would be of a reality where they do not necessarily have to think of the freedom and rights they exercise every day as free democratic citizens. They may take these for granted without facing any immediate consequences. They have not experienced times when democratic freedoms and rights were threatened, and their parents and grandparents have no memories of this themselves.

This is why story-telling, like that which takes place in the basement of the old Gestapo prison and torture center at Stiftelsen Arkivet in Norway may be important.

By opening up the space of experience to be related to a narrative of a time of totally different experiences, the expected effect is that the school children may relate their horizon of expectations of the future to the re-constructed representation of a past space of experience in such a way that it engenders knowledge that democratic rights and liberties cannot be taken for granted.

In Cambodia, however, the democratic freedoms and rights are linked with a different horizon of expectation of a brighter future that is related to people's own personal space of experience. The expectations of the future can be positive or negative depending on how they form a historical consciousness relating the past, present and future. This is where the transitional justice narratives may serve a constructive function in empowering the victims to orient their disempowering horizon of experience towards a positive expectation of the future.

The role of history teaching and memorialization is different in Norway and Cambodia, but for the future generations in Cambodia, the history education and memorial museums will perhaps serve the same function as Stifelsen Arkivet in Norway.

To understand the dialectic relation between the efficacies of the past we undergo and the reception of the past that we bring about, Ricoeur turns to two notions within phenomenology, that of a situation and that of a horizon. Ricoeur (1985 [1990:220]) writes:

Between the absolute knowledge that would abolish every horizon and the idea of a multitude of incommensurable horizons we have to put the idea of a "fusion of horizons", which occurs every time we test our pre-judgements in setting out to conquer some historical horizon, imposing upon ourselves the task of overcoming our tendency to assimilate the past too quickly to our own expected meanings.

The hermeneutics of historical consciousness is about the tension between the horizon of the past and the horizon of the present (Ricoeur 1985 [1990:220]), and the expectation of the future. This is how I adapt Ricoeur to address the time dimensions of past, present and future in understanding the phenomena of transitional justice from a narrative perspective.

7. Time and narrative: Ricoeur's mimetic model of emplotment

7.1 Introduction

Ricoeur's writing on phenomenological hermeneutics uses a three-part circle of narrative mimesis to show how the past is brought together with an imagined future in order to establish the configured present. Expectation and anticipation of a world that is reconfigured in the light of history, tradition and past events drive the process of mimesis into the present.

Understanding how the past is brought together with an imagined future, and how this establishes what Ricoeur describes as the configured present, is essential to explain how individuals may interpret or read the transitional justice narratives.

An understanding of how time is interpreted in social phenomena is an essential part of understanding transitional justice. Time heals all wounds is a common saying. However, the violent past and present in the Middle East, for example, or how old historical narratives were used to foster violence and conflict in the Balkans, prove that time does not heal all wounds. We rather see how distance in time enables old historical conflicts to survive as part of narratives, history and myths.

In his three-volume work *Time and Narrative* (1983, 1984, 1985) Ricoeur shows how time becomes human to the extent that it is articulated through a narrative mode and how narrative becomes so when it shares a temporal line. By joining together the two independent studies of Augustine's *Confessions* and Aristotle's *Poetics*, Ricoeur shows how this circle can be something more than a dead tautology.

Ricoeur's hypothesis is that "between the activity of narrating a story and the temporal character of human experience there exists a correlation that is not merely accidental, but that presents a trans-cultural form of necessity" (Ricoeur 1983 [1990:52]). By highlighting this intermediary link between time and narrative, Ricoeur explains the dynamic of emplotment within a threefold structure of mimesis.

In exploring this, Ricoeur adopts from Aristotle's *Poetics* the three moments of mimesis that he names Mimesis1, Mimesis2 and Mimesis3. While Aristotle ignored the temporal aspects of emplotment, Ricoeur (1983 [1990:54]) shows the "mediating role of the time of emplotment between the temporal aspects pre-figured in the practical field and the re-figuration of our temporal experience by this constructed time."

Ricoeur's mimetic model sheds light on how narrative and historical consciousness are an essential part of the processes of transitional justice. On a general level Ricoeur's mimetic model of emplotment is useful to illuminating how the transitional justice narratives may empower and assist the survivors to orient towards a better future.

Ricoeur's mimetic model shows how an understanding of emplotment and mediation between the time dimensions of past, present and future is essential to understanding transitional justice. I will not delve deep into Ricoeur's philosophical discussions of the configuration of time and narrative, but rather use the model to explain how transitional justice needs to be studied from a narrative perspective in relation to a mediation between the time dimensions of past, present and future.

7.2 Three phases of mimesis

Mimesis¹ is part of our pre-understanding of the world where we order events imaginatively in terms of plots. By plot is meant that events and experiences are related to each other within a time dimension of a past, with a beginning, and a mid-point that represents a turning point in the story determining the end point. We do not experience the world as just a series of arbitrary events following each other in time. We relate the events in accordance with plots.

The temporal significance is here enacted by the actor as he or she orders events related to consequences, norms and standards. Symbolic dimensions of culture and character are part of how, at this level of emplotment, we understand events in time. This stage of emplotment, according to Ricoeur (1983 [1990:54]), does not require their listing to be a closed one. There is no demand for an evaluation of the composition of the plot, except for it to be grounded in a pre-understanding of the world of actions, norms, agents and so on. Making use of our familiarity with the conceptual network of action is part of this moment of emplotment.

To interpret events by asking questions like where, what and why is a complementary process basic to human understanding. But as Ricoeur reminds us, narrative is not limited to making use of our familiarity with the conceptual network of action.

Ricoeur refers to discursive features of historical narratives or fictional narratives. In other words, human action is always symbolically mediated. For Ricoeur symbolism is not in the mind, but it is to be understood as meaning incorporated into action and social relations (Ricoeur 1983 [1990:57]).

This element of Mimesis¹ illustrates how the transitional justice narratives are not read or interpreted from just one particular context or framework. They are interpreted and mediated in relation to previous sets of symbolic mediations that make the interpretation or emplotment possible. These symbolic mediations are part of different social relations in sub-groups in the society, ethnic or religious groups or more biographically defined groups. For example, a Khmer Rouge victim from the Cham Muslim minority would perhaps read and interpret the transitional justice narrative differently than a Buddhist Khmer Rouge victim. By attaching ethical pre-supposition to the level of Mimesis¹, Ricoeur's model of emplotment makes it possible to explain how different biographically defined groups of victims may relate differently to the transitional justice processes. Ricoeur (1983 [1990:58]) describes this as an "initial readability of action":

As a function of the norms immanent in a culture, actions can be estimated or evaluated, that is, judged according to a scale of moral preferences. They thereby receive a relative value, which says that this action is more valuable than that one. These degrees of value, first attributed to action, can be extended to the agents themselves, who are held to be good or bad, better or worse.

Another part of the pre-understanding of action at this mimetic level is how understanding of action requires recognition of how action is made up of temporal structures that call for narrative (Ricoeur 1983 [1990]). The phenomenology of action needs to reflect how everyday praxis "orders the present of the future, the present of the past, and the present of the present in terms of one another" (Ricoeur 1983 [1990:60]).

Mimesis² serves a mediating function between the pre-understanding of Mimesis² and the, to use Ricoeur's words, "post understanding" of Mimesis³. According to Ricoeur (1983 [1990:65]), the mediating function of Mimesis² has to do with its mediating role between what precedes fiction and what follows it. Mimesis² is an emplotment operation:

In fact all the concepts relative to this level designate operations. The dynamism lies in the fact that a plot already exercises, within its own textual field, and integrating and, in this sense, a mediating function, which allows it to bring about, beyond this field, a mediation of larger amplitude between the preunderstanding and, if I may dare to put it this way, the postunderstanding of the order of action and its temporal features.

Ricoeur (1983 [1990:64-66]) lists three ways that plot is mediating:

1. It is mediation between the individual events or incidents and a story as a whole. “Emplotment is the operation that draws a configuration out of a simple succession”.
2. “Emplotment brings together facts as heterogeneous as agent, goals, means, interactions, circumstances, unexpected results.” This is the work of the configuring activity of emplotment making up the passage from mimesis¹ to mimesis².
3. “Plot is mediating in terms of its temporal characteristics as a synthesis of the heterogeneous.”

All these mediating functions of the plot are what make it possible to follow the story as meaningful whole. To understand the story is then to understand how and why the episodes led to the conclusion of the plot (Ricoeur 1983 [1990:67]).

Mimesis³ marks the valued end point of the narrative. Mimesis³ could be described as the reading of the text/narrative in a reconfigured future. In this process of emplotment you read the ending of the narrative in relation to the beginning and its valued turning points (Ricoeur 1983 [1990]). At this third stage of the circle of mimesis the temporarily end point leads back to the pre-understanding across the emplotment process at the midpoint. And this should be understood as a circle where the emplotment process passes the same starting point in the mediated meanings of the pre-understanding. Ricoeur (1984 [1990:76]) writes: “Thus the hermeneutic circle of narrative and time never stops being reborn from the circle that the stages of mimesis form.”.

According to Ricoeur it is reading that joins Mimesis² and Mimesis³, understanding reading as a configuration of meaning. And to be followable the story needs to proceed from discourses that already have a narrative form.

It is this relation of narrative forms, changing situational contexts, and stories that I will now study further illuminating how Ricoeur’s theory of emplotment makes it possible to explain how the individual victims may relate to the transitional justice narrative. I will study Ricoeur’s (1983 [1990]) concept of the “followability of the narrative” to draw out theoretical perspectives that I will adapt in the final chapter making the concluding abductive and retroductive moves.

7.3 The followability of the narrative

Transitional justice processes could be studied as an emplotment process where events in the past that are part of the pre-understanding gain a new meaning from their contribution to the development of the plot of the transitional justice narrative. Emplotment is “the operation that draws a configuration out of a simple succession”

(Ricoeur 1983 [1990:65]). Understanding the mediating character of emplotment, which brings together heterogeneous factors such as “agents, goals, norms, interactions, circumstances and unexpected results” (Ricoeur 1983 [1990:65]) allows one to understand important narrative elements of justice in times of post-conflict transition.

I study the transitional justice processes as a configurational transition. The configurational dimension of the plot of the transitional justice narratives transfers the events of the past into narratives by making claims about historical truths and documentary proofs, and by recognizing witness statements at the tribunal as legitimate accounts of the past. From this basis I make the argument that narrative justice has to do with the “followability” (Ricoeur 1983 [1990]) of the transitional justice narratives, where the plot of the transitional justice narratives transfers the events into a story. A central element of this is to understand how the perceived legitimacy of the transitional justice institutions that construct and communicate the narratives of truth and justice influences the followability of the narrative.

Through the processes of judging the characters of the stories of past wrongdoings, the numerous stories of the conflicting past and the present characters accused of inflicting the crimes of the past are related as part of a narrative that the audience is asked to follow in order to move on and become oriented towards a better future.

An essential part of the transitional justice processes is about convincing the reader to follow the narrative. A valued end point projecting a brighter future is expected to convince the reader to follow the narrative.

Secondly, the configuration of the plot imposes the “sense of an ending.” According to Ricoeur (1983 [1990:67]), it is in the act of retelling rather than in that of telling that “this structured function of closure can be discovered.”

Understanding how emplotment mediates between the two poles of event and story is essential to understanding transitional justice processes. What Ricoeur calls the “followability” of a story has to do with convincing the reader/listener how and why the successive episodes led to this conclusion (Ricoeur 1983 [1990:67])

Thus, transitional justice processes could be studied as configurational arrangements that assemble the events of the conflicting past and the present together as part of a followable story. The transitional justice processes are then interpreted as one “thought” with a common point or theme. They acquire value from the expected end point, which is to provide truth and justice in a post-conflict situation. This is the

common thought or theme that makes the transitional justice narrative followable. I use this narrative element of justice to establish the theory of narrative justice.

Before the tribunal delivers its legal judgments, or the truth commission presents its final report, there is greater room for uncertainty about the believability of the narrative. In Cambodia today, before the final verdicts at the tribunal are provided, there is still much uncertainty about who was responsible for the crimes of the past. This is illustrated by the statement of one female student I interviewed at a University in Cambodia.

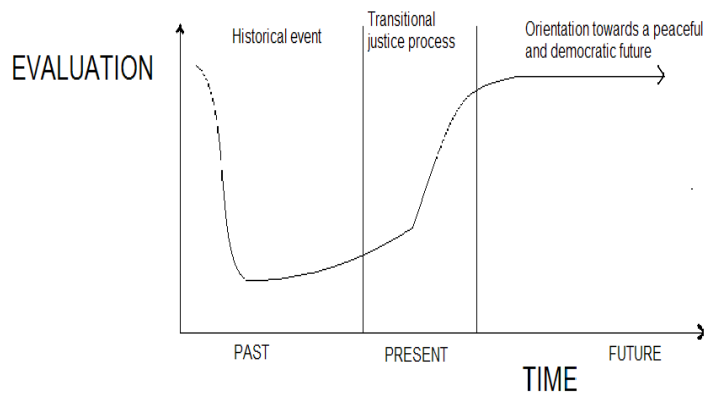
....you know about KR regime we don't have any clear evidence. (...). Because in that regime if you were a teacher, you would get killed. (If y)ou worked as a politician you got killed and we don't have any clear evidence.

I ask her if she think it is hard to know the truth:

Yes, but we still think it's true because my mother lived in that regime too and she said that she doesn't want to live in that regime again. It was very bad for all the people because they had no rights. If they said something wrong they would get killed. It's not only if they did a big mistake.

Before she is presented with a documented and legitimate narrative of what happened in the past and who were responsible, this young woman is using her imagination to interpret her mother's stories of what happened. This reminds me of Ricoeur's (1983 [1990]) statement that what keeps the story together before its final end point is imagination and anticipation. The followability of the story depends on the imaginative capacity of the reader/listener. And, as pointed out earlier, it also depends on the legitimacy of the institutions providing the transitional justice narrative.

In Cambodia there is a growing concern that the tribunal will not deliver justice after all. Because it has been flawed by corruption scandals, national pressure to limit its cases, constant delays and so on, some are publicly expressing concern that justice delayed will be justice denied. If the tribunal does not succeed in convincing the Cambodian population about the followability of the transitional justice narrative, the transitional justice effect would be severely limited. We see how this problem relates to the theoretical dimensions of Ricoeur's three-part circle of mimesis depicted in the following illustration:



The horizontal axis represents real time and the vertical axis represents how actors evaluate their experiences in time going from a lower to a higher degree of positive evaluation.

If we relate the Cambodian case to Ricoeur's mimetic model of emplotment we see how Mimesis1 could be understood as part of the experiences of events at the time when the Khmer Rouge held power in Cambodia. This is the pre-understanding or pre-narrative situation, or the prefigured plot of historical events. Mimesis1 placed in the time dimension of the past also refers to the cultural elements guiding individuals' moral and social evaluations of their experiences. This is the horizon of experience (Ricoeur 1985 [1990]) as discussed earlier.

The plot of the transitional justice narrative has as a dramatic starting point the coming to power of the Khmer Rouge/DK. I do not see this as a linear historical development, but rather as the plot of the transitional justice narrative that aims to contribute to such a development. The documentation work of DC-Cam could be studied as one important part of narrating this.

Mimesis2 could be understood as the transitional justice processes projecting explanations and evaluation/judgements onto the real historical events. This makes the establishment of the tribunal the second valued turning point in the transitional justice narrative.

Because of the Khmer Rouge's attempt to erase Cambodian history and culture and because of the secrecy and manipulations of the regime, the emplotment of the events during that time was to a large extent based on myths and false beliefs. By

relating the historical past to a present search for truth and justice, the past is opened up for being narrated once again. The emplotment process is dependent on the followability of the story. The individual will only re-narrate their memories and stories of the conflicting past in relation to the plot of the transitional justice narrative if they value the narrative as legitimate truth claims about the past and as legitimate and believable orientations towards the future. The followability of transitional justice is dependent on the believability of its valued end point, its truth claims about the past, and the legitimacy of the turning point in the present.

If the reader/listener finds the narrative followable, the transitional justice narratives presenting legitimate truth claims and judgements about the historical events in the past may serve a constructive function in the emplotment process. This turning point in the narrative could be described as the expectations of the future.

Mimesis3 marks the valued end point of the transitional justice narrative. Mimesis3, described as the reading of the text/narrative in a reconfigured future, could then be seen as part of the orientation towards peace and democracy where the experiences, myths, beliefs and evaluations of Mimesis1 are re-narrated in relation to the transitional justice narrative as a whole. The final verdict of the tribunal narrated as an end point of the transitional justice narrative would mark this culmination. In this process of emplotment one reads the ending of the narrative in relation to the beginning and its valued turning points (Ricoeur 1983 [1990]).

7.4 Concluding remarks

The effects of the tribunal and the related transitional justice projects have much to do with the followability of the story/narrative. The victims need to feel related to the transitional justice narrative and that their life story and memories are being narrated in a legitimate and just manner as part of a broader historical narrative. This is how I interpret the term justice from a narrative perspective and make theoretical claims about how the transitional justice processes are related to the individual. To understand this we need to address the relationship between historical consciousness and narrative identity.

The emplotment process related to transitional justice has much to do with how transitional justice narratives may enable the individual to form a historical consciousness oriented towards a brighter future when reflecting about the history, stories and memories of his or her conflicting past in relation to the transitional justice narratives.

I will now show how the temporal dimension between past, present and future presented above becomes essential to understanding both stability and change of identity. This theoretical perspective is part of understanding how the transitional justice narratives may become part of identity formation.

8. Narrative and identity

A principal criterion of identity is related to time and narrative. I do not view myself as the product of just one arbitrary thing happening after another. I view myself as a continuous self through time. I order my experiences by constantly relating and evaluating them within the timeframe of past, present and future. It is within this timeframe that the stories and narratives become an important part of identity formation, and it is from understanding this relationship between past, present and future in identity formation that it is possible to identify essential elements of how the transitional justice narratives may be related to the individual searching for truth and justice. This is how I use Ricoeur's theories of narrative identity to explain how an understanding of configuration and re-configuration of identity would engender an understanding of the narrative perspective on transitional justice as it relates to the individual expected to take part in the transition.

Ricoeur (1992:113) identifies a lacuna between the temporal dimensions of the self in definitions of the person: that people have a history and that they are their own history. To fill this lacuna Ricoeur reconstructs a theory of narrative from its contribution to the constitution of the self (Ricoeur 1992:114). From the arguments made in Chapter Three, that transitional justice could not be studied as a linear process from a meta perspective on the historical turning point of the transition, but that transitional justice needs to be studied from a narrative perspective that relates the processes to the individual searching for truth and justice, I will show how a narrative understanding of personal and collective identity may illuminate important elements of transitional justice.

A person's identity is constructed and configured by relating the past, present and future, and this has to be turned into meaningful narratives to be able to be communicated and grasped as part of an identity. The transitional justice narrative may then play a role in configuring the victim's identity. To understand this I present Ricoeur's theory of narrative identity in more detail. I start by presenting Ricoeur's theoretical perspective on a two-fold meaning of identity identified as the dialectic of sameness (Latin: *idem*) and selfhood (Latin: *ipse*).

By studying these two meanings of identity in relation to each other and by merging them with theories on time and narrative, Ricoeur presents a dialectic between the two poles, enabling us to use this as a context to understand better both stability and change of identity in times of transition.

Ricoeur argues that only narrative identity demonstrates the two poles of identity conceptualized as the dialectic of sameness and selfhood. He identifies a confrontation between them that may tell us something about the dynamics of the processes where the victims relate to the transitional justice narratives. To understand and critically engage this dialectic we have to understand the temporal implications of permanence in time, and we need to consider the narrative dimension (Ricoeur 1992:116). When we view identity from a narrative perspective we can understand the dialectic between the two meanings of identity as personal identity and narrative identity.

8.1 Sameness and selfhood

How can I say that a person is the same over time? Ricoeur suggests that we look at the continuity between the first and last stages of what we consider to be the same individual (Ricoeur 1992). This makes us identify the person as the same person over time even though the person changes gradually. This has to do with the idea of structure, of the genetic code of a biological individual (Ricoeur 1992:117). This is for example how we can identify the former Khmer Rouge torture chief Duch at the Khmer Rouge tribunal as the same physical person sitting in the courtroom at the tribunal today as the person responsible for the torture and death of more than 12,000 people at the notorious Tuol Sleng prison during the Khmer Rouge regime.

Regardless of how he has changed physically by aging or personally or morally, he is at one level – on the level of sameness – identified as the same over time. This is the principle of permanence in time. It applies regardless of how he tries to convince the victims at the court hearing that he has changed as a person, or that he has now become a born-again Christian asking for forgiveness. This makes it possible to conceive of change as happening to something which does not change (Ricoeur 1992:118).

According to Ricoeur (1992), the self implies a relation between the same and the other to such an extent that selfhood cannot be separated from otherness. Selfhood refers to the identity of an individual. Ricoeur's (1992) term *oneself as another* that points to the dialectics of selfhood between the same and the other also implies that the self may refer to itself as other than itself.

Identifying the sameness of the perpetrators, narrated as part of the transitional justice narrative, may empower the victims to transcend themselves and see their suffering as part of other victims' suffering – and other victims' suffering part of their

own suffering. In the final chapter, when studying Ricoeur's theories of justice I explain how the dynamics of the dialectic between oneself and another explain how individual victims may feel empowered to see themselves as another, to use Ricoeur's words, as witnesses.

Another element to which I return when studying Ricoeur's theory of justice has to do with the identifying of a "character" or subject capable of rights and responsibilities. Basic to understand this is how narrative and character gives personal identity permanence in time. Having conceptualized what he describes as a relational invariant of personal identity, giving it permanence in time, Ricoeur (1992:118) asks: Is there a form of permanence in time which can be connected to the question "who?" inasmuch as it is irreducible to any questions of "what?". Is there a form of permanence in time that is a reply to the question "who am I?".

Ricoeur identifies two models of permanence in time which he sums up in two expressions: "character" and "keeping one's word." His hypothesis is that the polarity of these two models of permanence

results from the fact that the permanence of character expresses the almost complete mutual overlapping of the problematic of *idem* and *ipse*, while faithfulness to oneself in keeping one's word marks the extreme gap between the permanence of the self and that of the same and so attests fully to the irreducibility of the two problematics one to the other. (Ricoeur 1992:118)

The polarity Ricoeur identifies suggests an interval of narrative identity in the conceptual constitution of personal identity where narrative identity serves as a mediator between the pole of character, where sameness and selfhood tend to coincide, and the pole of self-maintenance, where selfhood frees itself from sameness (Ricoeur 1992:119).

Ricoeur understands character as the set of distinctive marks which permit the re-identification of the human individual as being the same (Ricoeur 1992:119). Character makes up the set of lasting dispositions by which a person is recognized.

The first notion related to the set of lasting dispositions designated by character is habit (Ricoeur 1992:121). Habit may be a distinctive sign by which a person is recognized as the same. This gives character the sort of permanence in time discussed earlier. Ricoeur interprets this as the overlapping of sameness and selfhood, but this does not mean that they are not different. Ricoeur writes: "My character is me, myself, *ipse*; but this *ipse* announces itself as *idem*" (Ricoeur 1992:121).

The second notion related to the set of lasting dispositions designated by character is acquired identification (Ricoeur 1992:121). Here the other enters into the

composition of the same. This is, according to Ricoeur, the identifications with values, norms, ideals, models and heroes that to a large extent make up the identity of the person or the community. This is the identification in which the person or the community recognize themselves.

When I identify myself with a heroic figure or a role model, I assume this otherness as my own. This point made by Ricoeur introduces an evaluative dimension when I identify with values or ideals, as when the evaluations are internalized as part of a character that is predicted to act in certain ways that is in accordance with the acquired dispositions. Here the question of “who am I?” overlaps the question of “what am I?” .

Again Ricoeur reminds us that this overlapping of sameness and selfhood does not mean that we cannot distinguish between them (Ricoeur 1992:122). We must keep in mind that character has a history of its own construction – this sets character in relation to understanding the narrativization of a historical community.

Through a reflection on narrative identity Ricoeur is able to balance on one side what he describes as immutable traits which this identity owes to the anchoring of the history of a life in a character and, on the other, the traits which tend to separate the identity of the self from the sameness of character (Ricoeur 1992:123).

Ricoeur outlines two models of permanence in time: the perseverance of character and the constancy of the self in promising. Within this interval he situates his theory of narrative identity. According to Ricoeur (1992:125), narrative identity may operate within two limits: “A lower limit where permanence in time expresses the confusion of sameness and selfhood (*idem* and *ipse*) and an upper limit where the sameness poses the question of its identity without the aid and support of the selfhood.” This has to do with what Ricoeur describes as the fragility of identity, and this fragility tells us something about how transitional justice processes may be related to a process of a reconfiguration of identity.

Ricoeur (2006:81) addresses the fragility of identity from three causes. These are relevant to understanding how the individual relates to the transitional justice processes.

8.2 Identity and its difficult relation to time

The first cause is identity and its difficult relation to time. Ricoeur (2006:81) writes: “This is a primary difficulty that, precisely, justifies the recourse to memory as the

temporal component of identity, in conjunction with the evaluation of the present and the future.”

A central part of identity is to be able to perceive oneself as something stable over time. I perceive that my past is somehow related to my present and that this relation holds a promise that I may, to some extent, predict what I would do in the future; and that the future follows as part of what has been in the past and what I am in the present. This does not mean that identity is the same as stability over time. Locked patterns of predictable action that are not part of a flexible relationship to others are more likely to be described as a psycho-pathological state than as identity. Identity is the product of constant evaluations and choices in relation to others. At the same time, identity is the mediating factor that governs what you choose, in which direction you go, and how you legitimize your choices.

When I am faced with a dilemma where I have to choose between two opposing options of action, I confront my own life story. I ask myself, “Am I a person who would do this?” This is relational in the sense that my life story is intertwined with others, my family background, persons I admire and whose behavior I try to copy and so on. Our memories of past events and stories of others we want to identify with may all be brought into the present as part of how we describe who we are, and why we act as we do in a certain situation.

The heart of the problem of memory and identity is the mobilization of memory in the search for and telling of identity. This is why I argue that a narrative perspective on identity illuminates important aspects of the transitional justice processes. In studying transitional justice in post-conflict situations we need to consider how the memories, stories, narrative and myths about the conflicting past are part of the victims’ identities. To illustrate this I will give one example from an interview with a woman aged around 25 years.

(...) our parents and grandparents always scared us with the Pol Pot stories when we did something wrong, like if we fought with each other in the house, they would scare us about Pol Pot. They would tell us about Pol Pot and when we heard about it, we stopped.

I wanted to learn how she uses those stories today, so I asked her if she still thinks about those stories:

Because I have heard so many stories about that; the first story they tell is about their memory of the Pol Pot regime. And I remember all the words that they said. I can write a story about that. When I hear those stories I can imagine all the pictures in my head. It is like a movie playing in my head. And then I can write it down.

I then asked her; when she was growing up and in her life today, did she think about the stories when deciding what to do? She replied, “Yes sometimes I use these memories to guide what I do.” I then asked her if the stories were part of her identity. She answered:

Of course, now it is like how we struggle in life. I was born in 1983 and my family was very poor. My mother had to beg for money from the Pol Pot regime. I struggled also in my mother’s womb because of bad food. This is why my mother said that there has to be a struggle in life. (She says) you are very lucky to have been born after the Pol Pot regime. This is why we use these ideas in our life – and when we feel depressed, we will remember these words of our mother that before it was much more difficult than that – so (we) work hard to do our best. These idea makes us struggle in life, because we are luckier than them.

This interview illustrates how memories and stories could become part of identity and how the memories can guide the way individuals deal with their present challenges. In a similar way, I believe transitional justice narratives may serve a similar function, if constructed and communicated in a way evaluated as legitimate by the victims.

Transitional justice narratives require the victims to think differently about the stories and narratives of the past that they have used to configure their identity. Doing this one must be conscious of the fact that to question these stories and the truth value of their memories is to question a fundamental part of their identity.

At the same time, as is illustrated in the cases presented in Chapter Four, there is much confusion in Cambodia due to the lack of knowledge and the lack of clear narratives and judgements about the conflicting past. Hence, I would argue that the fragility of identity also holds a constructive potential for the victims, making it possible to relate their narrative identity to commonly shared narratives and memories that are collectively legitimized as truths about the past.

If we relate this to a narrative perspective on identity, we could say that the narratives that have been constructed among the victims in Cambodia so far, before the transitional justice processes started, could be part of a disempowering narrative identity based on confusion, disbeliefs and politically manipulated memories of the conflicting past. It is from this that I argue that the transitional justice narratives have a constructive function in reconfiguring the victims’ narrative identities as witnesses and providers of the truth about the past. Transitional justice narratives relating past, present and future are related to the individual, and these narratives may become part of reconfiguring their narrative identity towards forming constructive orientations towards the future.

The second cause of fragility of identity, according to Ricoeur (2006), lies in the confrontation with others that an individual sees as being a threat or a danger to collective identity, and to his or her identity personally. For example when I am asked to describe what I am or who I am, I often answer by saying what I am not or who I am not. This goes for my personal identity and for collective memory and identity, and these are related. Even more powerful is the confrontation if the other is seen as a force that threatens my way of being or threatens our values, and our existence as a group. I am what I am in relation to what I am not. If I want to appear as just I need to relate to stories where I have proven my capability of being a just person. The story is significantly strengthened if I am able to present a narrative with different temptations and characters I had to fight in order to gain justice at the end.

This fragility of identity points to one important transformation expected to take place as a result of involving the victims in the transitional justice processes. An expected result of the victims' participation in projects described in Chapter Four is that they will reconfigure their identities as victims to identify themselves as witnesses. It is expected that this will have an empowering effect that will enable them to move on towards a brighter future. This is part of how I explain the theory of narrative justice in relation to the empirical findings and interviews from Cambodia (Chapter Nine).

8.3 The heritage of founding violence

Ricoeur's third cause of fragility is related to the second. This is the heritage of founding violence (Ricoeur 2006:82). Every post-conflict society has wounds of violence, suppression and genocide stored in the collective memory. According to Ricoeur, here the third cause of fragility merges with the second. I will present a practical example. The annual "Day of Hate" held on May 20 in Cambodia is a day where the Cambodian people are invited to commemorate and express their grief and anger towards the Khmer Rouge. "Day of Hate" marks the date in 1973 when the Khmer Rouge started their fight for a revolution. The historian Stephen Heder argues that the point of "Day of Hate" was not that it was culturally acceptable to the Cambodian people, but that it was politically acceptable for the government. The celebration has not been formally supported by the government since the Paris Peace Accord was signed on October 23, 1991 (Linton 2004:64).

Meanwhile, there is a debate between the Cambodian People's Party (CPP) and the opposing Sam Rainsy Party (SRP) whether January 7 should be celebrated as the

day Cambodia was liberated from the Khmer Rouge or the day Cambodia was occupied by Vietnam (Linton 2004). CPP is the party of Prime Minister Hun Sen, who came to power with support from Vietnam. Hun Sen has publicly warned opposition parties of using history as a political tool in their campaign for political power.

This example illustrates Ricoeur's point about how it is in the heritage of founding violence that the third cause of the fragility of identity merges with the second, and it is in this way that real and symbolic wounds are "stored in the archives of collective memory" (Ricoeur 2006:82).

I will follow this example by addressing how different forms of use and misuse of memory in Cambodia can be "grafted" onto the demand for identity. Ricoeur describes this as an ideological process taking place between the demand for identity and the public expression of memory.

According to Ricoeur (2006:82), the ideological process is opaque. It remains hidden, "it masks itself by inverting itself." Ricoeur claims that according to the one who uses ideology, it is the other, the enemy, who uses ideology to foul the people. Ideology plays a role in the formation/mediation of identity as a factor of integration through symbolic responses to the causes affecting the fragility of identity (Ricoeur 2006:82). This is where the transitional justice narratives may serve a constructive purpose. It is in this mediation that manipulation of memory may be used as an instrument for gaining power, or legitimizing political power, as may be the case in Cambodia after the Khmer Rouge.

It is between our beliefs related to our identity and the power of the system controlling the major structures within which we operate as individuals that ideology becomes a powerful mechanism, with both constructive and destructive potentials. Ideology provides our belief with something more, it adds value and momentum and thereby a sense of common will and communality to our belief. In this way ideology makes us feel part of something in relation to a bigger society. This does not have to be based on the abuse of memory or manipulation of the heritage of founding violence. It may just as well be based on a constructive purpose of transitional justice.

8.4 Concluding remarks

The relationship between ideology and the legitimizing processes related to systems of authority is an important part of understanding the theory of narrative justice. This has to do with the followability of the transitional justice narratives. To understand how

the victims may relate the transitional justice narratives to their own memories and stories of the conflicting past we need to address this also from theoretical perspectives on narrative and identity.

According to Ricoeur (2006:84) it is through the narrative function that memory is incorporated into the formation of identity. This takes place on the level of symbolic mediation of action. The selective function of the narrative provides the possibility of manipulation. Forgetting is also part of this selective process (Ricoeur 2006:85). The selective function of the narratives about the conflicting past holds both a constructive and a destructive potential in influencing how individuals form historical consciousness and narrative identity.

The history and stories of the Khmer Rouge have been told and staged in different ways from 1979 to the present. Ricoeur's (2006:85) writings on narrative are useful: "the selective function of the narrative that opens to manipulation the opportunity and the means of a clever strategy, consisting from the outset in a strategy of forgetting as much as in a strategy of remembering."

This holds both a destructive and a constructive potential. At a reconciliation conference held in Kristiansand, Norway, on September 17, 2009, the Turkish Jew and author Moris Farhi spoke about "the courage to forget." This is also the title of an essay written by Farhi published in *Index on Censorship* (2005). In the essay and at the conference paper Farhi expresses the importance of exploring the effects of memory in reconciliation processes, but his conclusion is rather the opposite of my constructive account of memory in post-conflict transitions. After visiting many different memorials and Holocaust centers Farhi had concluded that none of these visits empowered him to deal with what happened to his Jewish family members during the war. Instead he was disempowered by feelings of grief and a desire to take revenge by arranging a Holocaust for the perpetrators. From these experiences he was convinced that an active process of forgetting is what is needed to reconcile with the violent past.

It is important to keep in mind how forgetting in some cases may be constructive to promote peace and reconciliation. Nevertheless, when studying transitional justice and historical learning, memory becomes an essential constructive element. It is also important to keep in mind that in many cases forgetting is used as part of processes to prevent truth and justice.

Cambodia holds many examples of what could be described as destructive instrumental uses of forgetting and the manipulation of memory. "Let's dig a big hole and bury the past" are the notorious words of Cambodia's Prime Minister Hun Sen. To

manipulate and wilfully forget the past could, to some extent, be described as the opposite of how narrative justice.

To publicly communicate and sponsor a narrative would be an instrumental use of ideology, to add value to certain readings of the history of the conflicting past. One example of this is how the new government in Cambodia that toppled the Khmer Rouge offered a narrative portraying the government as liberators against a few evil demons of the past. This added to the Cambodian people's belief that they were moving towards a better future. But this was based on forgetting and the manipulation of memory, and false historical accounts to hide the fact that the new government actually was made up of many former Khmer Rouge officials.

This becomes problematic when we relate it to the formation of narrative identity. To use Ricoeur's (2006:85) words: "the circumscription of the narrative is thus placed in the service of the circumscription of the identity defining the community." An important point here that is well illustrated by the Cambodian case is that when this is based on false accounts of the historical past, and when it is based on collective forgetting and manipulation of memory, the result will be the formation of a disempowering narrative identity.

It is tempting to speculate that it has been perhaps more useful for the governing elite in Cambodia to construct stories that allow victims to identify themselves as victims of an almost abstract force, a few demons that in an unexplainable way were responsible for murdering their family and friends. And it is important for the governing elite in Cambodia today to isolate the Khmer Rouge history to the time period 1975–1979. They have to tell stories that legitimize how they gained their power through a Vietnamese invasion and why they had to bring down the very same political movement and regime they were part of building up.

The fact that many of the senior figures in the government in Cambodia are former Khmer Rouge complicates the followability of the transitional justice narrative for many victims. Questions like why they hold high positions and live wealthy and respected lives while the majority of the Cambodian people live in poverty with no support from the government may be hard for ordinary Cambodians to answer.

Many of the people I talked to and interviewed in Cambodia expressed uncertainty about what really happened, who was responsible and how this could happen. I interpret this as partly being caused by the lack of what I explain more explicitly as narrative justice (Chapter Nine).

We all use stories and narratives to orient ourselves to others in social life. We evaluate our actions in accordance with our life story and in accordance with other

characters' life stories. In a post-conflict society like Cambodia, where a lack of a clear narrative about the conflicting past has been legitimized as a true representation of the past, while offering no public acknowledgement of the victims' memories, it may be argued that the fragility of identity has resulted in the formation of disempowering narrative identities among the Khmer Rouge survivors. From this empirical and theoretical perspective it is possible to adopt the previous creative reading of Ricoeur's theories of narrative to explain how the transitional justice narratives may serve a constructive potential in empowering the victims to orient themselves towards a brighter future. For, as Ricoeur (2006:86) reminds us: "The very notion of use of history, implicit in that of abuse, is unavoidably related to the question of the end and how the exemplary value of referring to the past is directed towards the future."

9. Narrative, memory and transitional justice

“To memory is tied an ambition, a claim – that to be faithful to the past.” (Ricoeur 2006:21).

9.1 Introduction

The abductive move in this chapter is to study the relationship between narrative, memory and transitional justice by adapting selected elements from Ricoeur’s philosophy. By more explicitly relating the theoretical interpretations to the phenomenon of transitional justice, I make use of empirical findings from my fieldwork in Cambodia. From this I make retroductive inferences explaining the more underlying mechanisms explaining the interconnection between the victims’ search for truth and justice and the processes that construct and legitimize historical truths at the DC-Cam and at the ECCC tribunal. These could be understood as underlying mechanisms that are conditional for transitional justice to work in the context of narrative justice. In other words at this stage of the theory development I show how narrative justice says something about how the victims may render the transitional justice narrative as followable through a process of reconfiguration of memories of the conflicting past.

In the previous chapters I argued that the followability of the transitional justice narrative has a lot to do with how past, present and future are narrated in relation to each other, and how this relates to the individual’s processes of searching for truth and justice. I will now argue more explicitly how narrative and memory need to be studied as related when explaining the phenomena of transitional justice.

I relate the discussions to the empirical case studies from Cambodia presented in Chapter Four and the interview material from the interviews I conducted during my field work in Cambodia. This will establish how the objects I study can be seen as individual phenomena as well as manifestations of general mechanisms (Danermark et al. 2002:88).

Memory could be said to be the very starting point of transitional justice. Without memories of the conflicting past there would be no grounds to search for truth and justice. Without memories narrated in the form of testimonies, history books, and memorial museums like the Tuol Sleng Museum and archives like the one at DC-Cam, there would be no grounds to relate the conflicting past to the present and future. There would be no grounds to establish justice for the crimes of the past. As stated in DC-

Cam's mission statement: "DC-Cam's focus on memory and justice seeks to assist Cambodians in discovering the truths upon which a genuine national reconciliation depends."

9.2 The phenomenology of memory

Ricoeur (2006:21) begins his phenomenological sketch of memory by reminding the reader that "we have no other resource, concerning our reflection to the past, except memory itself." To memory is tied an ambition – to be faithful to the past. When searching for truth and justice, we have to rely on memories about the past crimes.

Narrative justice is about being faithful to the memories of the past. Part of this is to identify what happened in the conflicting past and in the process making legitimate claims about who were responsible. This process is based on memories. Ricoeur's hermeneutic-phenomenology explains how memories in post-conflict transitions need to go on a detour of emplotment and mediated meanings of the various elements of the event of the conflicting past.

How transitional justice narratives serve as a detour of emplotment of memories of the conflicting past to empower the victims to orient themselves towards a better future is an element of narrative justice.

Ricoeur addresses memory from a positive standpoint, not just by focusing on the uncertainty and unreliability of memory, and forgetting, manipulation and imagination. Because we have nothing better than memory to signify that something has taken place, we need to rely on memory when trying to find out what happened in the past and how we can understand the circumstances and context of the remembered event.

Ricoeur realizes that a phenomenology of memory will be somewhat splintered. Memory is object-oriented to the extent that we do remember something about "what" and "how" things were in the past. In this sense, Ricoeur (2006:22) draws a distinction in language between "memory (*la mémoire*) as intention and memory (*les souvenirs*) as the thing intended." In the same phenomenological sketch, Ricoeur (2006:22) draws a distinction between memory (*la mémoire*) and memories (*les souvenirs*): "Memory in the singular is a capacity, an effectuation: memories are in the plural; we have memories."

On the phenomenological level we have memories of events; we remember certain things happening in particular instances in the past. For Ricoeur (2006:23) the memory-event is in a way paradigmatic to the extent that it is the "phenomenal

equivalent of a physical event.” But there is great variety in memory between the two poles of singular events and generalities, which Ricoeur terms states of affairs.

If something extraordinary happens that breaks with the general patterns of everyday life, I remember this as a singular event that stands out. For the Khmer Rouge survivors this could be certain happenings that marked the beginning of the DK years, or it could be certain events during the regime that signify the suffering, such as the day their family was killed or the day they were tortured. This is illustrated by the statement made to me by an elderly Khmer Rouge survivor:

17 April 1975, it was the day when we celebrated the victory over Imperialist America. I saw the genocide regime of Pol Pot, who came to Phnom Penh City. They forced people out of the city, regardless of occupation, to go out of the city with only a small bag. They said we only (had to) go out for short time. Even a bag of rice, we are not allowed to bring with us.

Some small children were leading their blind father. Husbands carried their wives, who had newly given birth, on their backs. When I come to this point I get emotional. It was so tragic. From Phnom Penh to the zone 33, it took half a month to get there, (15 days). It is only 50 km. We starved, died on the road. Money couldn't be spent. There were different nationalities: Khmer, Islam, Chinese, Canadian... I saw with my own eyes. If someone died, we were not allowed to bury them. If we stopped to bury them, we would be killed. One little boy become the guard with AK-rifle. In Khmer it is called “chorb” (meaning guard).

When we got to the designated zone, we slept on hay stacks, under trees, without mats or pillows. We become sick, diarrhoea, dysentery, cough ... It was particularly difficult for the 17-April people. We were not allowed to talk to each other, otherwise, we would be killed.

This could be read as the Khmer Rouge survivor's “memory event” (Ricoeur 2006). On the opposite poles are the things we remember because they are part of a general pattern that does not have to be evoked by a particular event to be remembered. This could be how you remember your friends, the faces of the people you know, and so on. When these characteristics break with the pattern you remember, a new kind of memory may occur as a singular event that changes the pattern of how you remember a person or a situation.

Given this diversity of past things, Ricoeur (2006:24) asks: “By what features are these ‘things’ – these *praeterita* – recognised as being of the past?”. Ricoeur adopts a conceptualization from Bergson between the two poles of memory and habit: “In both cases it remains true that memories are of the past but then according to two distinct modes of marked and unmarked references to the place in time of the initial experience” (Ricoeur 2006:25).

Habit could be the ways of acting and ways of reacting in social relations as part of the social rituals and norms of a group and society. As part of my daily routine, I just do things without thinking about why I do them or remembering when I learnt how to do things this way. Habit is less marked by reflexivity, or to use Ricoeur's words: "one exercises knowledge without being mindful of it" (Ricoeur 2006:38).

When I study memory from a narrative perspective in relation to transitional justice processes, I am mostly concerned with memory that is more marked with reflexivity. We could say that transitional justice is about empowering and motivating the victims to reflect on their memory in relation to the followability of the transitional justice narrative. On the pole of memory and habit, the function of transitional justice narratives is to assist the victims to reflect on their memories in a new way that would empower them to move on towards a better future. When the victims' memories of the past have been silenced or denied by the public and when they have learnt that it is better not to remember, disempowering habits of acting and reacting may be the result. To some extent this is the opposite of what I mean by narrative justice.

9.3 "We can only remember what we can still read on paper"

To explain why theories of memory studied in relation to the theoretical perspectives is fruitful to better understanding the mechanism and processes of transitional justice, I now relate the discussions to some of the statements made by the informants I interviewed in Cambodia.

I interviewed four male participants aged between 40 and 50 from the first group of Khmer Rouge survivors I met. This was on the tour arranged as part of DC-Cam's community outreach programme presented in 4.4.3. I interviewed them in two different groups, conducting the interviews in one of the meeting rooms at the documentation center.

I started the interview by asking them what they felt about filing the complaints. One of the men answered:

I think ... it is something that makes me believe that this trial is real. They really try the Democratic Kampuchea regime leader. I can also have a chance to express what I have been attempting to speak out about, what I suffered for more than three years. This is my expectation.

He is expressing the uncertainty that many Cambodians share, "if it is really true that the Khmer Rouge/DK leaders are finally going to be punished for what they did." The other thing he expresses is the need to tell his story, the story of what he has suffered.

As we have seen in Chapter Four, the disempowerment of the victims in Cambodia has a lot to do with the fact that the history of the Khmer Rouge has been manipulated and wilfully prevented from becoming part of collective memory. As a result, the victims' personal memories are not acknowledged as legitimate representations of the conflicting past. There is much confusion among victims about how to interpret their memories of the brutal past. In addition to this, many of the perpetrators and victims are getting old, and as a consequence their memory may also be fading. There is a lack of a collective publicly legitimized historical narrative. Therefore, the documentation work and outreach projects of DC-Cam are critical in teaching Cambodians about Khmer Rouge history to establish transitional justice.

This was illustrated in the narrative referred to in the introduction of the elderly Khmer Rouge survivor: "We cannot remember (it) all. We are getting old. We are forgetful. We can only remember what we can still read on paper." This statement points to the relationship between the memories of the past and the transitional justice narratives.

Suppose some of the Khmer Rouge officials were punished by law in a closed foreign trial in the aftermath of the regime, but this had not been communicated to the public. Imagine that the situation in Cambodia was the same as it has been until today, where people have not felt free or able to speak about what they experienced during the regime. Could we then talk about transitional justice or any justice at all? I argue that justice in times of post-conflict transition needs to be studied in relation to whether the individuals feel that the transitional justice narratives are followable and whether they feel that the processes empower them to relate differently to their own memories and the collective memories and narratives, forming constructive orientations towards the future. As the Khmer Rouge victim quoted above said, he now has a chance to express what he has been attempting to speak out about – his suffering during the regime.

Narrative justice, therefore, insists that justice is studied in relation to how the narratives of transitional justice are related to the individual retrospectively in terms of constructive re-interpretation of memory, and how they are future-oriented in terms of how the transitional justice narratives assist and empower the victims to orient themselves towards a brighter future.

The DC-Cam mission statement in this context explains how the activities of the documentation center could be studied as contributing to establishing narrative justice. Part of the mission statement says: "By reconstructing a historical narrative of what happened to Cambodia, and by striving for justice where that is an appropriate

remedy, we aim to lay a foundation upon which all Cambodians can find firm footing in moving towards a better future.”

The victims have memories of what happened during the Khmer Rouge regime. They remember the events, their suffering and their pain. The transitional justice narratives could potentially serve the function of clarifying the memories of the brutal past. If, however, the transitional justice processes happening in relation to the tribunal are never communicated to the public, there would not be a consciousness of a collective narrative turning point that marks a distinction between the memories of the past as being of the past, and the continuing suffering and hardships. Without a publicly shared transitional justice narrative, there is little ground to establish the reflexivity of how the individual victim’s memories are related to collective narratives of a historical past.

DC-Cam’s mission statement says: “DC-Cam’s quest for memory and justice has more to do with the future than with the past.” In this way, the documentation center is a good illustration of the theoretical reconstructions I make while presenting the concept of narrative justice. This brings us to another set of opposites of the phenomenology of memory presented by Ricoeur (2006:26): evocation and search.

9.4 Evocation of and search for memory

Ricoeur understands evocation as the unexpected appearance of a memory. Evocation is an affection that stands in contrast to the search. The affection brings back an event of the past, or a thing that you learnt in the past. Ricoeur follows the attempts made by Plato and Aristotle to solve the enigma of how things of the past may be made present through memory.

The statement by one of the victims participating at the Nuon Chea court hearing is an example as presented in section 4.4.3. On the bus that was taking the group back to the hotel after the hearing, I asked him if he thought a lot about the Khmer Rouge/DK. He said that “when the weather is nice” he does not think about it much, but when it rains at night all his memories comes back. Also, when he sees younger people dressed in black trousers and shirts – the Khmer Rouge uniform – he feels angry and scared. “They do not know what this signifies to us, but for me this brings back many bad memories,” he said. Another Khmer Rouge survivor I interviewed told me something similar:

I remember about the regime when I go to rice field especially during the rainy season, but in the dry season it does not remind me as much. During the rainy

season, it was very difficult to live because water is everywhere. Roofs were leaking and we could not sleep. We had to work hard even if we didn't have enough rest.

This is an example of what Ricoeur describes as evocation of memories. To understand how the transitional justice narratives are read and interpreted by the victims we need to consider how the images used in text, films and photographs create bring back memories of events from the past.

According to Ricoeur (2006:29), the voluntary evocation of a memory consists of two planes of consciousness. The first is "pure memory that is not yet transmitted into distinct images." The second plane is where "the same memory is actualised in nascent sensations and incipient movements" (Ricoeur 2006:29). Ricoeur suggests a model for distinguishing between "the role of automatic, mechanical recall, from that of reflection, of intelligent reconstruction, intimately mingled in ordinary experience" (Ricoeur 2006:29).

The evocation of memories stands in contrast to the search for memories (Ricoeur 2006). When we talk of unhappy memories or violent memories in former conflict societies, the search for memory becomes an important part of fulfilling the "duty to remember."

This is how a study of memory relates to a narrative study of justice in times of post-conflict transition. As stated earlier, narrative justice is about being faithful to the memories of the past. Narrative justice has a lot to do with convincing the victims that punishing the perpetrators also establishes legitimate truth claims about the past, and judgements about the historical past would prevent the past crimes from happening in the future in new forms. The duty to remember and being faithful to the memories of the past is an essential part of narrative justice.

The Tuol Sleng Genocide Museum presented in section 4.2.2 and 4.3 could be studied as an example of memorialization that fulfills part of this duty to remember. However, how the museum was initially used as part of the communists' political agenda and play for power is also a good illustration of the manipulation of memory.

The museum has not changed much since then, but with the ECCC tribunal established, the future historical context may potentially change how people approach the museum as part of their critical and reflective search for memory. In the lack of a transitional justice narrative or a legitimate historical narrative the exhibition at the museum may evoke memories, but only when it is related to a historical and critical context of transitional justice can it constructively guide a search for memory to form

historical consciousness and empower victims to orient themselves towards a brighter future.

Uncertainty and lack of a legitimate historical context could also serve as a basis or motivation to search for memory. This is illustrated by my interview with a 28 year old female school teacher from Siem Reap.

The first time I went there (Tuol Sleng) my grandmother did not tell me that my grandfather's picture was on the wall. He looked at me – and I looked at him; *It's my grandfather*. That was a shock. He was a doctor and he was one of the highly educated people that was arrested and was brought to that place, but we did not know that he was arrested and kept in there. But after the war everyone wanted to find their family. So one day my grandmother's friend went to Tuol Sleng wondering if he had died or if he had escaped. And then she said to my grandmother, "I saw your husband's picture", and then my grandmother went there.

The search for memory motivated by confusion and lack of a broader historical context of the events differs from the search for memory that is related to the plot of a transitional justice narrative. To use Ricoeur's (2006) words, only the latter basis of searching for memory can turn into expectations of a brighter future.

To search for a memory, you need to be conscious that you have forgotten something (Ricoeur 2006). Forgetting is a necessary part of the search for memory, to the extent that to start to recollect an event of the past, you need to be aware that there is something of the past that could be recollected. This is where the transitional justice narratives may play a constructive role as a guide for a reflective voluntary "guide" for searching for memories.

Ricoeur's (1983 [1990]) three-part mimetic model of emplotment shows how the plot of the transitional justice narrative, if rendered followable, may guide victims' critical search for memories of the past orienting them to a constructive future end point. Ricoeur describes this as the configurational dimension of the plot. Narrative justice is about understanding how the transitional justice narratives may transfer the memories of events in the past into narratives by making claims of historical truths and documentary proofs, and by recognizing witnesses' statements at the tribunal as legitimate accounts of the past.

The statement quoted above – "We cannot remember (it) all. We are getting old. We are forgetful. We can only remember what we can still read on paper." – illustrates the narrative configurational effect of the documentary proofs of the archives of DC-Cam that enable victims to transfer the memories of the events in the past into narratives.

This leads to the conclusion that narrative justice has to do with the followability (Ricoeur 1983 [1990:67]) of the transitional justice narratives. Transitional justice processes studied from the perspective of narrative justice could be understood as configurational arrangements that combine the events of the conflicting past and the present into a followable story.

DC-Cam's Living Documents Project provides an example. The community outreach trip to Phnom Penh and the ECCC arranged in February 2010 (see section 4.4.4 above) could be studied as a story-telling of the transitional justice narrative. By presenting the Khmer Rouge history in relation to the processes of the tribunal, and by ending the tour with a talk about the importance of breaking the silence of the brutal past and how this can promote reconciliation and forgiveness, the tour became a form of story-telling relating the past, present and future. In this manner, the transitional justice processes are interpreted as one "thought" with a common point or theme.

These processes gain value from the expected end point, which is to provide truth and justice in a post-conflict situation. Narrative justice enables or empowers the victims to reconcile with the bad memories of the past, being convinced that the end point of the transitional justice narrative is the start of a new narrative that will be part of collective memory and historical consciousness that could prevent this from happening in new forms in the future.

It is essential to understand how the victims may relate their own memories to the transitional justice narrative. The relationships between primary and secondary memory and personal and collective memory are important elements.

9.5 Primary and secondary memory

In the work *Phenomenology of the Consciousness of Internal Time Between Retention or Primary Memory and Reproduction or Secondary Memory* (1905), Husserl tries to understand how something that we perceive at a certain moment in time remains present to us over time (Ricoeur 2006:31).

This may happen because the experience undergoes a modification when turned into recollected memory or secondary memory. The modification happens when the experience is related to or linked up with the everyday experience we have of various categories of things. The secondary memory is a part of the process of interpreting an experience, or of the perception process. In other words, the event is contextualized in time and space, and what I remember over time is the event within a certain context or category of meaning. Transitional justice narratives could be understood as context or

category of meaning that relates the memory of the past to the processes of searching for truth and justice.

This could be described as an instrumental use of memories and stories from the conflicting past to achieve the goals of transitional justice. It is possible to identify many other ways the memories and stories of the Khmer Rouge have been used instrumentally within other contexts.

For example on a local level parents or grandparents may use their memories and stories of the suffering during the Khmer Rouge period as part of the upbringing of children. For example, as stated by one of the younger people I interviewed: “If I did something bad, like wasting food or money, my parents would say that if you were living in Pol Pot’s regime you are the one who would die first. They always compare those sad memories.”.

Another informant expressed something similar:

The older people use Pol Pot to scare sometimes; to scare the young children. The young children do not learn a lot from that, so they don’t know how hard it was for their ancestors who lived during the Pol Pot regime.

Due to the lack of a clear historic narrative of the conflicting past in Cambodia and in the absence of public acknowledgments of the truths about what happened in the past, the recollected or secondary memory of the victims may have been reproduced as a disempowering and ongoing historical consciousness of suffering. This does not promote constructive historical learning and the formation of empowering historical consciousness.

In this regard narrative justice needs to be studied in relation to how it modifies the memory of the crimes of the past in such a way that it empowers the individual to move towards a brighter future. The modification in this regard is about reflecting on the past as past, not as the continuity of the initial experience. This is the situation in Cambodia, where people struggle to come to terms with the conflict-ridden past due to the lack of a political will to deal with the criminal responsibility of actors from that past. This chimes with Ricoeur’s (2006:35) suggestion about the polarity of “primary memory and secondary memory, of retention and reproduction.”

One of the most important effects of the transitional justice narratives is to enable the victims to modify their memories according to historical plots with valued turning points. The concept of historical consciousness illuminates how the transitional justice narratives may mark a break with the past, assisting or motivating the victims to orient towards a better future.

In post-conflict situations like Cambodia, the lack of a legitimate historical narrative formulating a clear break with the past has prevented the victims from orienting themselves towards a brighter future. Ricoeur's account of primary and secondary memory is therefore essential to understanding transitional justice from a narrative perspective.

Many of the victims I interviewed in Cambodia told stories of how they remembered the violent past. Many talked about how they starved or how they saw their family members being killed. During an interview with two Khmer Rouge survivors one of the men made the following comment: "My father's hands were tied behind his back. He screamed, *I have a terrible headache, I don't want to live!* He was starved for one month before he died."

I had asked them to reflect on how they felt the history of the Khmer Rouge that was now told in relation to the tribunal would help them in their own lives. For these men, it was just recently that they had started to learn the truth about the Khmer Rouge regime. The statement made about how his father was killed could be studied as an expression of a primary memory. The perception of the memory may still be part of his consciousness. The function of the transitional justice narratives, documentation and story-telling processes could then be to narrate secondary memories that allow such victims to make a break with the past.

Earlier in the interview he told me that his wife was killed, but he did not see how she was killed. In other words, he does not have a primary memory of the perception of the moment of when his wife was killed.

I did not see how my wife was killed but there are other people who saw her. DC-Cam's documents have helped us know some information. Sometimes I do not know anything but the documents list down the names such as some names that are listed in the S-21 prison.

Because he did not witness the murder of his wife, he needs to rely on other people's memories of what happened. This is an example of how transitional justice narratives and story-telling may help the victims. When I asked him if he thought the tribunal is important for the future of Cambodia and how he felt about participating in the trials as a victim his answer was: "It is painful for me because I lost my wife, my brother and my child. I want the perpetrators to be tried so it will be clear in my mind and heart what happened."

One way of interpreting this is to say that the transitional justice narratives of the DC-Cam and the ECCC tribunal enable him to reflect on how his own primary memories of suffering and pain are related to a broader history, and how it is related to

others who suffered during the same historic time period. There are many different elements that constitute the relationship between his primary memories of how he suffered during the Khmer Rouge/DK and the secondary representation of collective memories in the transitional justice narratives.

For Ricoeur, secondary memory is not presentation, it is re-presentation. While retention or primary memory hangs on to the perception of the moment, secondary memory removes itself from the initial perception. It is of the past.

Historical consciousness is about the competence to orient between the time dimensions of past, present and future. As discussed in Chapter Five, historical consciousness is about realizing that the past is of the past, while being aware of how the past is related to the present. If there is a lack of a clear historical narrative and a public condemnation or legal process that makes judgements of the crimes, it becomes hard to make a break with the primary memory of the perception of the events from the conflicting past.

Modification of memory is an essential part of interpreting the concept of narrative justice and understanding how transitional justice narratives could enable and empower the victims to reflect on the past as past, not as a disempowering continuity of the initial bad experiences. If we relate this to the theoretical perspective on narrative identity, it becomes apparent that the lack of public or legitimate narratives that make a separation between the violent past and the present lead to a disempowering narrative identity of the victims.

9.6 Personal memory, collective memory and the tribunal

Memorial sites and museums could be studied as representations of collective memory. How the historical events are narrated at these sites gives an indication of the collective memory of the events. Nevertheless, it is only an indication of collective memory. Since memorials are constructed within a particular political and historical context, as we saw in the case of Tuol Sleng in Cambodia presented in Chapter Four, the value of the collective memory is dependent on how it is legitimized by the population, and particularly the victims, as being a true representation of the past.

Scholars have come up with various theories and definitions of the phenomenon of collective memory. Assmann (1992) talks about communicative memory studied as a variety of collective memory based on everyday communication. In order to differentiate different kinds of collective memory, Assmann (1992) makes a distinction between cultural and communicative memory. For Assmann,

communicative memory is what is shared within a social group. He focuses on the communicative and interactive elements of memory where social emotions are shared by the social group from one generation to the next.

While communicative memory is open for everybody to take part in and to form in relation to the interpretation of their own life history, Assmann (1992) describes cultural memory as more controlled and differentiated related to long-standing traditions. Other writers like James E. Young (1993) talk about collected memory as opposed to collective memory. Others like Connerton (1989) write about social memory. Writers like Rüsen (1983) enter the debate discussing the concept of historical consciousness. All these approaches show that the phenomenon is very complicated, and the accounts are polyphonic.

I focus primarily on Ricoeur's theoretical perspective on collective memory. According to Ricoeur (1965 [2007]), memory alone is fallible, and collective memory is not the same as history. Collective memory must be studied as part of a mutual reconstruction based on interpretations of events in the past. Collective memory therefore needs to be studied in relation to how individuals and societies try to represent the past in the present through memory, history and archives (Ricoeur 1965 [2007]).

Ricoeur's sketch of a phenomenology of memory illuminates some interconnections between collective and personal memory juxtaposed with memory and identity. This is therefore a fruitful theoretical distinction to understand how the personal memories of the victims in post-conflict societies may be reinterpreted in relation to the consciousness of a collective memory of legitimate truth claims about the past and collective judgements on the crimes of the past, marking a historical turning point. The Khmer Rouge victims I interviewed reflected on justice in terms of perspectives on a future-oriented collective memory of the conflicting past, that could prevent the history from repeating itself in new forms. To understand the relation between personal and collective memory is therefore an essential part of understanding the concept of narrative justice.

One way of addressing the relationship and also the two-fold dimension of personal and collective memory is to ask to whom memory should be attributed. Ricoeur argues that by opening up the space of attribution to all of the appropriate frameworks, we can escape an either/or answer to the question of whether the memory is that of the individual experiencing an event or that of the collective taken as a whole (Ricoeur 2006:93).

My argument is that in the relationship between personal and collective memory lies some of the potential for a constructive transformation for the victims, as they learn that their bad memories are shared by a collective group of victims. By reflecting on their memories in relation to the transitional justice narratives, they learn that the brutal events in the past are part of a collective memory that is now being legitimized as historical truths about the past.

I now return to the group of victims that came to DC-Cam to file the complaints to be handed over to the ECCC tribunal as part of their participation as victims and witnesses (section 4.4.2). When I asked them if they felt that it was important for Cambodia's future that they participated in the process by filing their complaints, one of them answered: "I think it is very important for Cambodia, especially for victims." He talked about victims as a group, not just his own sufferings. This is obviously a result of how the question was asked. Nevertheless, it is interesting to see how another informant's statement, as presented earlier, answers the same question differently: "It is painful for me because I lost my wife, my brother and my child. I want the perpetrators to be tried so it will be clear in my mind and heart about what happened."

Both in their own way relate personal memories to expectations of the establishing of collective memories. The first does this by saying the tribunal is important for victims, the second expresses one of the main goals of the transitional justice efforts, that prosecuting the perpetrators also establishes narratives that legitimize their memories as part of the truth about what happened. Narrative justice points to the importance of narrating the processes at the tribunal and other transitional justice measures in such a way that the individual feels related to the narrative. This is illuminated by Ricoeur's mimetic model of emplotment, which explains how justice in times of post-conflict transition needs to be valued in relation to the followability of the narrative of transitional justice.

The tribunal has the function of proving legally that something actually happened in the past, that what happened actually was a crime, and that somebody is identified as responsible for the crime. As the lawyers stated clearly at the first detention hearing of Nuon Chea, the defendant is assumed innocent until proven guilty in the court of law. The documents and the witnesses' testimonies will decide if there is enough evidence to convict him. Not all memories are read as the truth of the past, but victims' stories are placed in relation to a greater narrative that legitimizes their suffering as part of a collective suffering.

For both the informants it is personal, but by coming to the documentation center with the group they feel they are not alone, that this is something they share with millions of other Cambodians.

When reflecting on the second informant's statement – "I want the perpetrators to be tried so it will be clear in my mind and heart about what happened" – I am reminded of Droysen's formula (Ricoeur 1983 [1990]: "It is in history as narrative, that history as event comes to know itself."

If we study the processes of transitional justice as the foundation of a more singular narrative of what happened in the past, the expectation is that the unity of the narrative could, using Ricoeur's (1985 [1990:209]) words: "bring to language an assembling of the events themselves, (...) an interconnection between them, which confer their own epic upon them."

How can we understand the informant's answer in relation to this process of constructing a collective singular of the events in history as narrative? The statement brings out one important side-effect of the tribunal, that by punishing the perpetrators at the tribunal we also construct narratives. These narratives clarify what should count as the truth about what happened. At the same time, the narratives are loaded with values judging the events of the past as crimes. There is much uncertainty in Cambodia about what actually happened and how the past should be judged.

The informant just quoted is relating the processes to his own personal clarification of his memories of the past, not just factual, but also emotional, by saying that it will be clear "in my mind and heart" about what happened. This man experienced great losses during the Khmer Rouge/DK years. He comes from a remote province and only recently, when he heard about the tribunal, did he start to learn what actually happened. His memories of how he lost his wife, brother and child may be re-lived or re-interpreted in relation to this new expectation of taking part in the process of ensuring the perpetrators are punished.

I asked participants at the first public hearing at the tribunal about their reflections on the history of the Khmer Rouge regime and the tribunal before they came to the documentation center, and if their perspectives and expectations may have changed by coming here. One of the informants answered by referring to DC-Cam's outreach projects:

I think about it all the time. I follow all news published about the crime. I always ask myself when they will try these people. Now my expectation has come. Now I can join the hearing. Documents distributed by DC-Cam are distributed every month. If we follow it, we can expect that this day will come.

When he talks about the documents distributed by DC-Cam every month, he refers to the monthly magazine *Searching for the Truth* presented above (Section 4.4.7).

This shows how the magazine may play a part in the transitional processes by providing knowledge and stories that lead up to the bigger narrative of the tribunal. To learn more about how these stories may have influenced how the victims relate to the tribunal, I asked the same informant: “Since you have read these documents, have they changed your view or ideas?”. He replied:

There are some changes; firstly, it helps me emotionally [Interpreter’s clarification: It means helps him to feel better]. It helps me to be peaceful in my mind through this truth unfolding in public. There is no mystery about the Democratic Kampuchea regime. Many people recognize this. So, this helps me to be peaceful in my heart rather than seeing that the history is being hidden from people.

Again he refers to his own emotions and his personal life. I read this as partly being a feeling of peace because he now believes that the truth will finally be made public. The narrative of the magazine provides the framework on which this can happen. Since the history of the Khmer Rouge/DK has been used, hidden and then staged in various ways as part of the political power play, it is interesting to see how the respondent now feels that the truth will unfold.

It seems important for him that his personal memories are acknowledged and related to a collective acknowledgment of what should count as the truth about the past. “So is unfolding the truth important?” I asked him. He answered:

Yes. Because I have lost many of my relatives; I was not sure if my relatives were killed. We were just informed that they went to be trained [this is a term used by the regime which indicates that those people will be taken to be killed]. Now I have seen the name list of people from the DC-Cam, I am sure that they [my relatives] were killed. I don’t expect them to come back.

I asked him if he was happy to receive the documents provided by the DC-Cam:

Yes. There was something that satisfied my heart. I learn a lot from them. The documents also caused me to be angry [against the perpetrators] especially over the cruel activities.

The second respondent agreed with this.

I think the same way as he does. I didn’t see how my wife was killed but there are other people who saw her. DC-Cam’s documents have helped us know some information. Sometimes we don’t know anything but the documents list down the names such as some names [of those who were] in S-21 Prison.

Because he did not see with his own eyes what happened to his wife, he has probably made up many images of what happened without being able to relate them to a particular memory of an event in the past. When his personal memories of losing his wife are related to other people's memories of what happened to her, he can make up an image of what actually happened to his wife. Ricoeur says that memories are of images of the past.

Imagination is part of the process of making memory understandable through narrating and re-imagining the images of the past as being part of collective memories. Narrative justice is about understanding how the transitional justice narratives may empower the victims to orient themselves towards a better future by allowing the personal disempowering memories of the victims to be related to future-oriented collective memories. Narrative justice is about understanding how the fragility of memory holds a constructive potential to the transitional justice processes. When we study the complexity of the relationship between collective and personal memory, it becomes possible to illuminate how the transitional justice narratives may be related to the individual expected take part in the transition.

9.7 The fragility of memory

In his book titled *Remembering*, Edward Casey (1987 [2000]) presents what he describes as three “mnemonic modes”: (1) reminding, (2) reminiscing and (3) recognizing (Ricoeur 2006). The third mode, recognizing, is one of transition. This is about recognizing that the present impression of a phenomenon is the same as the first impression of the phenomenon. Recognizing the phenomenon as being the same bridges the past and the present in the moment of recognizing. This memory is representation in Ricoeur's two-fold sense of “re”, turning back, and anew (Ricoeur 2006:39).

When studying the effect of transitional justice narratives it is important to be conscious of how this representation, where the otherness of the past almost vanishes when the phenomenon is recognized as being the same, threatens to disable reflection. This is a concern for Ricoeur (2006).

The vanishing of what Ricoeur calls the otherness of the past also points to another critical element we need to keep in mind when studying the effect of the transitional justice narratives. This is the fact that they are narrative constructions. The historical accounts of the transitional justice narratives are constructed in relation to the plot of the transitional justice narrative and the limits of the historical time period

for which the tribunal is mandated to search for truth and justice. In this, there is a danger that the transitional justice narratives may be read as the full representation of the historical past, and not as a narrative construction of interpretation of events in the past in the search for truth and justice.

On the other end of the spectrum, Ricoeur (2006) points to another challenge in studying transitional justice from a narrative perspective. This is the fact that the recognized past “tends to pass itself off as a perceived past” (Ricoeur 2006:44). In relation to Ricoeur’s framework of the phenomenology of memory, we see how this could be problematic.

The critical point of Ricoeur’s phenomenology of memory is to be found in the question: Is a memory a sort of image, and if so, what sort? Ricoeur (2006:44) asks: “Do we not speak of what we remember, even of memory as an image we have of the past?”

When I ask a Khmer Rouge survivor to narrate the past, I expect him or her to have an image of the event. For example, an elderly Khmer Rouge survivor I interviewed told the following story:

Sometimes, we see footsteps like human, but feces like pig. We eat all kinds of trees such as banana, papaya. We eat anything eatable. One time I ate morning glory. I ate so much that I became bloated and almost died.

Her story reminds me of Ricoeur’s thoughts on the phenomenology of memory: “The process in which the representation of the past seems to consist, is that of an image” (Ricoeur 2006:5). When she told the story, I could see how she was going through the emotions of the experience. Perhaps she was picturing the footprints and perhaps she could feel how her stomach felt full for the first time in many months and the pain afterwards.

How can I understand this representation? Ricoeur is not content with an answer with two separate intentions – the first of imagination directed towards fiction and the unreal or the imagination of possibilities or the utopian, and the second of memory directed toward prior reality (Ricoeur 2006:6).

Ricoeur’s (2006:7) claim that “The return of a memory can only take place in the mode of becoming-an-image,” reminds us of a critical element of how we can interpret the effect the transitional justice narratives have on the individual. If we cannot rely on a twofold specification of the imaginary on the one hand and memory on the other, we are left with a constant danger that the witness is confusing remembering and imagining.

The problem of memory and image is also an important discussion on an epistemological level, concerning the representation of the past by historians and documentation centers. Ricoeur starts the investigation of the “eidetic difference” between image and memory by referring to Husserl’s writings on the objective side of memory. This is a complex comparison between image and memory. I will sidestep these discussions here and instead focus on the problem from a different perspective: the passage from what Bergson conceptualizes as pure memory to memory-image (Ricoeur 2006:50). How are we to explain that memories return in the form of an image and that the imagination mobilized in this way comes to take a form that escapes the function of the unreal?

Ricoeur starts by accepting that a pure memory that has not yet been put into image does not exist (Ricoeur 2006:51). By recollection, a pure memory is turned into an image. But to be an image of a memory, the image has to be of something in the past. But there is no guarantee that the image is actually of the past. Imagination could also move in the direction of fiction. Ricoeur’s *Time and Narrative* (1985 [1990]) distinguishes between fictional narratives and historical narratives. Ricoeur (1985 [1990]) also refers to Sartre’s writing in the *Psychology of Imagination* where he studies the phenomenology of the unreal, and tries to uncouple imagination from memory.

When we talk about memory and use memory as the basis for historiographical operations at documentation centers, and memorial rituals and memorial places as part of transitional justice efforts, we need to keep in mind this fragility of memory. Memory is of an image, and imagination is part of the process of making memory understandable through narrating it and re-imagining the past.

In this way, to use Ricoeur’s (2006:54) words: “Writing history shares the adventures of memories put into images under the aegis of the ostensive function of imagination.”

9.8 Summary

To explain how transitional justice narratives may have a desired effect on the people expected to be part of the transition, it is important to understand how the stories or narratives influence how the past is remembered when related to the individuals searching for meaning, truth and justice.

As shown in Chapters Three and Four, memory is an essential part of the transitional justice processes. The memories of the conflicting and brutal past are the

foundation for the processes of dealing with the past. Without the memories of the victims and witnesses, there would be no tribunal. DC-Cam has gathered more than half a million documents and pictures from the Khmer Rouge era, the largest and most legitimate source of information about the Khmer Rouge history. Without the archived memories of the documentation center and the victims' testimonies it would have been impossible to establish a tribunal. There would have been no motivation to establish one, because it would have been impossible to identify victims and perpetrators.

On a different note, memory is essential to understanding the relation between the conflicting past, the present and the perspectives on the future that form historical consciousness. If we frame the approach to studying memory within Ricoeur's hermeneutic-phenomenology, outlined in Chapter Five, we see how memory needs to be studied in relation to narrative and stories.

For me to reconstruct a memory to myself, I need to relate past events within the time dimensions of the past, present and future. This is not done arbitrarily, by simply placing one event following another in time. According to Ricoeur's mimetic model of emplotment, the relationship between past, present and future is represented in a narrative construction that gives meaning and direction to the events. To relate the events and experiences to a meaningful whole I need to go on a detour of already mediated meanings of the signs, language, symbols, metaphors, myths and other interpretations that are part of the narrative representation of the memories. Ricoeur (1985 [1990]) argues that the horizon of expectation cannot be derived directly from the previously existing space of experience. This highlights important hermeneutic-phenomenological elements for thinking about memory and narrative in relation to the transitional justice processes: how, through retroactive expectation, the memories of experiences of the past are given new meaning. In the next chapter I will explain how this should be studied as elements of justice, not only narrative, in post-conflict transition.

This perspective on memory explains how transitional justice narratives may have a constructive effect, enabling the victims to reinterpret their memories of the violent past. Ricoeur's understanding of memory is essential to illuminating important ontological elements of the transitional justice processes as re-interpretations or re-orientations of memories of the conflicting past.

Memory is a fundamental part of transitional justice. The role of testimony in the transitional processes is about narrating memories of the past, but again, this could not be studied as a neutral representation of the past event. It has to be studied in relation to the settings of the tribunal, and the narratives of how the testimonies are

related to the broader history of the conflicting past. This is illustrated by DC-Cam's programs for victim participation presented in Chapter Four.

For Ricoeur (2006), testimony constitutes the fundamental transitional structure between memory and history. When the victims come to the DC-Cam to file their complaints and to apply to be recognized officially as victims of the Khmer Rouge/DK, they are part of establishing the historical truths about the conflicting past. Filing their complaints also shows their awareness that they are part of a bigger process related to the narrative of the documentation center and the tribunal. They relate their memories to a process of searching for truth and justice that is recognized in relation to the mandate of the DC-Cam as a legitimate provider of historical evidence and documentary proof, and how this is related to the greater transitional justice narrative of establishing justice at the tribunal.

10. Narrative justice

10.1 Introduction

In this chapter I show how narrative justice may fill a knowledge gap in transitional justice literature between the establishment of procedural or retributive justice by the tribunal and the ultimate goals of transitional justice of establishing the foundation for democracy, reconciliation and lasting peace in former conflict societies. I argue that narrative justice conceptualize and explain what needs to happen between the tribunal and the ultimate goals of transitional justice.

I study Ricoeur's theories of justice in particular to establish narrative justice in what could be described as a middle position, or hermeneutical detour, between the retributive justice of the tribunal and the goals of the transitional justice process.

In short my argument is that narrative justice help us understand how there needs to be established a collective narrative in relation to the tribunal legitimizing the memories of the victims as historical truths about the conflicting past before transitional justice can be realized. And as explained in the previous chapters this needs to be understood as establishing a relation between personal and collective memory and identity as part of processes of establishing historical consciousness relating the conflicting past to the present processes of transitional justice, ultimately forming orientations towards a brighter future. By relating these theoretical studies to a study of Ricoeur's theories of justice, I explain how this should be described as elements of justice and not only narrative as part of transitional justice.

As part of studying the concept of justice in transitional justice I also address questions of forgiveness. Ricoeur (2000, 2006, 2007) is clear in his argument that forgiveness belongs to the private sphere. Nevertheless I believe it is important to study the concept of forgiveness and my informants' reflections on this to understand better how transitional justice is related to the individuals who are expected to be part of the process.

I study all these theoretical operations as part of this final chapter. This enables me to reflect more continuously and openly on the theoretical concept of narrative justice in relation to the cases of transitional justice in Cambodia. I do this in reference to already established theoretical studies in previous chapters that I relate to understand how narrative justice adds new perspectives and understanding of different aspects of the practical and theoretical field of transitional justice. I end the chapter by

indicating the practical implications this may have for transitional justice efforts in general, and in particular what implications it may have for the Cambodian cases.

By starting this concluding chapter with a study of Ricoeur's theories of justice, I aim to show how transitional justice needs to be studied from a complementary perspective to the theories of justice that aim to critically engage the concept of justice in a juridical context. In the previous chapters I have spent considerable time addressing the narrative element of historical consciousness, emplotment, narrative identity and memory as theoretical elements that are related to narrative justice. But critical questions could be asked: Is this not only a theory of narrative? Why study this as narrative justice and not just narrative? How does narrative add new perspectives on justice in times of post-conflict transition?

To make clear why it is fruitful to study the narrative elements of the transitional justice processes using the concept of justice and not only narrative I address Ricoeur's theories of justice. I have briefly addressed some elements of these earlier, but by addressing them more fully I am able to highlight some elements that support the establishment of the theory of narrative justice.

How does Ricoeur's theory of justice differ from my theory of narrative justice? When discussing Ricoeur's theories of justice in relation to my theory of narrative justice I will introduce more empirical data from the Cambodian cases of transitional justice. The aim of this concluding chapter is to separate narrative justice as a narrative theoretical account of justice additional to the already established theories of justice. Again it is important to stress that narrative justice is not presented as an alternative account of justice, but as an additional or complementary account. I will touch on alternative theories of justice, for example retributive and restorative justice, to illustrate this. The most important focus will be on Ricoeur's theories of justice. My argument is that narrative justice needs to happen as an element complementary to the retributive and juridical justice taking place at the tribunal and most importantly as a continuation of these processes as part of reaching the goals of transitional justice. This is where narrative and justice need to be paired in order to understand how this may happen.

10.2 Ricoeur's theory of justice

Throughout the 1990s Ricoeur published a number of lectures and articles on the relationship between justice and politics, based on his work on ethics. Ricoeur (2000) shows how the concept of justice has been neglected in philosophy while most

attention to the concept of justice has come from studies of law and legal systems. Justice has thus been mostly established in reference to retribution and vengeance. In *The Just* (2000) Ricoeur makes a distinction between justice and vengeance, showing how justice should be studied as a desire to live together in peaceful institutions. Ricoeur is concerned about the responsibilities of citizens living in a liberal democratic society, both their responsibilities to other citizens and responsibility to the state. Ricoeur sees this as a problem of the relationship of justice to politics (Simms 2003:115).

Ricoeur identifies two basic elements of a process of establishing justice: (1) A feeling of indignation and the desire for revenge when experiencing something unjust; (2) The introduction of a mediating third party to establish justice.

According to Ricoeur, indignation is a basic emotion that follows us from childhood (Ricoeur 2007). Another element of justice that we encounter from childhood is the introduction of a third-party mediating agent (ibid.). For a child this could be the mother acting as a neutral party to decide what should be a fair share, or who is to be blamed for an unjust situation. Or it could be the function of a tribunal establishing a distance between victims and perpetrators.

When studying processes of searching for justice after genocide, indignation would not be a sufficient term for the basic emotion leading to the desire for justice. When a person's life has been fundamentally altered and disrupted by massive and violent crimes, a feeling of indignation is only part of the emotions a mediating third party should try to solve. The introduction of a mediating third party could soften the feeling of indignation, but it is not always sufficient for the desire for vengeance then to disappear. Injustice and a feeling of indignation should be recognized as an initial motivation for justice, and as part of a process of giving pardon and remembering as part of achieving justice. The feeling of indignation is part of the memory of suffering that needs to be acknowledged and re-narrated as part of the transitional justice process, where the victim is asked to choose justice and discourse instead of vengeance.

For Ricoeur, justice is not the simple inverse of injustice. To "short-circuit" vengeance, to use Ricoeur's (2000:xi) words, there needs to be established a "just distance" between the conflicting parties. The obstacle to this, according to Ricoeur, is the desire for vengeance: "that is, the claim to obtain justice for oneself, even at the price of adding violence to violence, suffering to suffering. The great conquest, in this respect, consists in separating vengeance and justice." (Ricoeur 2000:xi).

One central part of the ethical element of justice is the point raised by Ricoeur that justice, pardon and love must be studied together as part of a process of reaching a state of accepting justice or true justice. According to Simms (2000:124): “As far as justice entails punishment, it is opposed to love: justice must be tempered by love in order to be ethical, and this is manifested in the judicial system by the exercise of pardon.” For Ricoeur (2007) justice stands in contrast to vengeance and this introduces an ethical element attached to the fact that justice requires that the retribution must be less severe than the crime. Justice for Ricoeur is a gift, a gift of pardon.

There are essential elements of Ricoeur’s theory of the relationship between justice and politics that are relevant for how I relate history, narrative and memory to processes of transitional justice when summing up the theoretical re-interpretations under the concept of narrative justice.

By expanding on a procedural and retributive model of justice, Ricoeur is opening the way for an introduction of other complementary forms of justice that come after or happen in parallel to the just distance established as part of the procedural processes at the tribunal. This is how I understand Ricoeur’s theory of justice as basically located in a retributive and procedural understanding of justice, at the same time as it opens up and points in the direction of additional models of justice. This is how I see narrative justice in relation to Ricoeur’s theory of justice: not as opposing or contradicting Ricoeur’s theory of justice, but rather as a theoretical account of narrative elements of justice that comes in addition to Ricoeur’s attempt at solving the problem of procedural and retributive justice. As stated elsewhere, I present narrative justice as a theoretical conception of elements of justice additional to theories of retributive/procedural justice in transitional justice. I argue that narrative justice should happen in parallel and follow the processes of establishing retributive and procedural justice at the tribunal.

Ricoeur attempts to understand models of retributive/procedural justice by broadening the theoretical understanding of this to include both retrospective and prospective perspectives on the act of judging. This makes the study of Ricoeur’s theory of justice fruitful for addressing elements of justice at the tribunal, and how one needs to expand on this with additional theoretical perspectives on justice to achieve transitional justice.

10.2.1 The plurality of justice and the political paradox

One basic element of justice discussed by John Rawls in his book *A Theory of Justice* (2005 [1971]) is the question of how justice should balance what should count as equal shares of goods in society. Rawls talked about a social contract regulating social goods. Ricoeur (2000, 2007) refers to Rawls when studying how equality has been a synonym for justice ever since Aristotle. Distribution and justice are related in the sense that justice so to speak mediates and values what are equal and unequal shares in society. I start this presentation of Ricoeur's theories of justice with a brief look at this basic, but as I will show, very complicated element of justice. This is not the most applicable part of Ricoeur's theories of justice that I adapt to my study. Nevertheless I believe this brief introduction will give an important initial insight into the complexity and plurality of justice, as described by Ricoeur (2000). The end result of this short look into the fragility of justice when linked to the political is to indicate how this represents a huge communicative or narrative task on the road to establishing transitional justice.

What makes the question of what could be described as basic distributive elements of justice complicated is the fact that social goods in a society are not homogenous, but rather heterogeneous and not easily categorized. According to Ricoeur (2000:79), the list of social goods is long and open ended, especially as soon as "one takes into account the amplitude of shared symbolism, the internal logic of the goods considered, and above all the delimitation that results from their spheres of validity". Ricoeur (2000) addresses this as the plurality of justice. This element of Ricoeur's theories of justice is useful to understand because it could be said to be the basic element of how he relates justice to politics.

When talking about the plurality of justice, Ricoeur (2000) introduces the theory of what he describes as the "political paradox." Ricoeur's notion of the political paradox could be said to be his main contribution to political philosophy (Kaplan 2003:125).

Political power is understood by Ricoeur as a distributed good that may be related to many other social spheres in society. Since political power may be related and embedded in many different spheres in society and social life, Ricoeur is concerned with the problem of the boundary of political power. He explains this as an element of the political paradox: "that politics seems both to constitute one sphere of justice among others and to envelop all the other spheres" (2000:81).

This has to do with the fact that many liberal democracies experience a multiplicity and diversity of sources of rights. Ricoeur is concerned about what these detours through various sources of rights mean for the possibility to talk about justice and justifications as singular terms.

The political paradox then is about how the state as the source of right

finds itself today placed in the uncomfortable situation of an entity called upon to behave at the same time as the whole and as the part, as the container and the contained, as an inclusive agency and an included region. (Ricoeur 2000:93).

This points to the complexity of studying justice. When introducing elements of fragility related to the nature of the political community when it comes how justice is carried out, as is the case in many post-conflict situations, the situation becomes even more complicated. Even in western countries, the fragility of the relationship between justice and politics is present. For example scholars like Farhang Erfani and John F. Whitmire (2008) use Ricoeur's theory of the political paradox to illuminate how political agency around the world has been placed in a fragile position due to different elements of globalization and what could be described as the de-regulation of the nation state as the core analytical entity. They use Ricoeur's work to argue that institutional mediation is constitutive of all politics, pointing at how one needs to re-think what political participation means outside the traditional context of the state. Using Ricoeur, they approach the question of fragmentation and participation in a globalized society from a narrative perspective as the need to re-plot the narratives of political engagement (Erfani and Whitmire 2008).

The political paradox, according to Ricoeur (2000), is made less visible when what he describes as post-national or supranational institutions of rights are intertwined with several different agencies of jurisdiction (2000:93). International criminal courts could perhaps be studied as an example of this.

For example, in Cambodia the United Nations as a supranational institution of rights is intertwined with governmental and non-governmental agencies of jurisdiction when setting up the ECCC (the Khmer Rouge tribunal). This represents a narrative and communicative challenge of educating people about how these agencies of jurisdiction are part of a common process of establishing truth and justice. In this way, Ricoeur's theory of the political paradox points at the complexity of justice in post-conflict settings. By pointing at this complexity it also shows the importance of communicating or narrating how the different elements of justice managed by different institutions are part of one common process of establishing transitional justice. This challenge could be understood from the perspective of the followability of the

transitional justice narrative as explained previously. I will not run ahead of myself now, but only point to the fact that in a society like Cambodia where the legal system is generally known to be corrupt and unfair, the task of convincing the population of the legitimacy of the intertwined efforts of governmental, international and non-governmental agencies in providing justice becomes even more important.

I now move on to one central element of Ricoeur's theory of justice that I adapt to explain the theory of narrative justice – the question of imputation.

10.2.2 Imputation and the question of “who, what and why”

The idea of imputation as put forth by Ricoeur (2000, 2007) is essential to understand how Khmer Rouge victims relate to the transitional justice processes. One of the key factors of transitional justice is to identify some characters as responsible for crimes of the past. Ricoeur describes this as having to do with the obligation to put things right after crimes have happened.

Ricoeur (2000, 2007) writes about imputation as a first element of judgement leading to retribution in the sense of an obligation to put things right and suffer the penalty. To impute is “to put on the account of someone a condemnable action, a fault, therefore an action initially marked by an obligation or a prohibition that this action infringes or breaks” (Ricoeur 2000:13). To impute therefore has important collective elements pointing at the importance of so to speak “lifting” the crimes to involve all, as a criminal act against common rules or social order. This element of imputation, understood by Ricoeur as an obligation, is important to explain transitional justice in comparison with local processes of dealing with the past that tend to be limited to relations between individual victims and perpetrators. I will elaborate on this later when introducing some more empirical findings from my interviews.

Imputation for Ricoeur is not limited to a collective obligation, but it also represents an obligation on the perpetrator to accept responsibility as an agent that caused the wrong doing. Ricoeur (2007:2) defines imputability as “our ability to recognize ourselves as accountable for our acts in the sense of being their actual author”. Imputation in this sense means that the agent of a criminal action is identified as an imputable individual, and that he or she is identified, by others and hopefully eventually by themselves, as obligated to compensate the victims and/or to suffer a penalty (Ricoeur 2007). For Ricoeur (2007:75) the heart of the idea of imputability is the capacity of “taking oneself for the actual author of one's acts”. Ricoeur (2000:14) warns that this movement that “orients the judgment of imputation toward that of

retribution must not lead us to overlook the inverse movement from retribution to the attribution of an action to its author". According to Ricoeur (2000:14), the core of imputation is to "attribute an action to someone as its actual author". He refers to Kant's *Metaphysics of Morals* presenting imputation as also containing a moral qualification or judgement of action.

The reference to an agent or agents is a core element in narrative justice attributing an action to an agent, and the moral and generally negative qualification of that action. The idea of imputation is thus part of understanding the function of the followability of the transitional justice narratives in narrative justice and how this may empower the victims to orient themselves towards a better future: In the first chapter of *The Just* (2000) Ricoeur asks the question: Who is the subject of rights? Reflecting on justice and the just Ricoeur distinguishes between the different questions: "who?", "what?" and "why?". These different questions call for different answers in a transitional period after war and conflict. According to Ricoeur (2000:1), the question "who?" calls for an identification. By isolating the "who" behind the subject or the rights Ricoeur shows what makes an agent a subject of rights and responsibilities. And it is from realizing these abilities or capacities of rights that the individual develops a desire for justice (2007).

In Cambodia many people are disempowered, incapable of recognizing themselves as a subject with rights. Due to an unjust legal system, lack of historical knowledge, and general disbelief in the political system, many do not recognize their actual or potential possibility for self-recognition based on collective memories and narratives. I will argue that with the tribunal and the establishment of what I have described as transitional justice narratives, the possibility opens up for victims to relate their disempowering memories to collective legitimized narratives of truth and justice. This could be studied as an important part of narrative justice empowering the victims to command esteem, respect and identity as witnesses and survivors. The question "who" suffered is then related to the question of "who" was responsible. Without the testimonies of the victims, there would be no grounds to establish "who" was responsible and what their punishment should be.

In Cambodia many Khmer Rouge victims still believe that Pol Pot was the only responsible character. For example, as stated by one of my informants: "We just know the history of Pol Pot, but we do not know the reason why this happened." Another informant expresses something similar: "They only blame Pol Pot and saying Pol Pot was behind all things. But Pol Pot is dead now.". Many wonder if it really was Khmer who killed Khmer.

The question “what?” calls for a description of what actually happened during the period of the conflicting past. And finally the question “why?” calls for an explanation of why this happened (Ricoeur 2000:1). In relation to the Khmer Rouge tribunal many of the persons I talked to expected an almost immediate answer to all these questions from the ECCC tribunal.

The clarifications of the difference between these questions and the different answers they call for made by Ricoeur are at first glance quite obvious. It is when he studies how these differences are presupposed in every discussion about identity and the capable subject, whether of personal or historical communities, that the differentiation between them becomes valuable to a study of the meaning and function of narrative and justice in transitional justice processes.

The question of the capable subject as raised by Ricoeur (1992, 2000, 2007) indicates how narrative and justice need to be studied together in understanding transitional justice. As addressed earlier, one essential narrative element of transitional justice is to empower the victims to orient themselves towards a better future. I have argued that this needs to be understood as a process of mediation of the meaning of transitional justice narratives. One essential element of narrative justice is to help us understand how the transitional justice narratives may empower the victims as being part of a historic process of justice and future historical learning that may prevent the crimes from happening again. It is on the level of narrative identity, of sameness and selfhood, that this element of Ricoeur’s theory of justice relates to the concept of narrative justice.

According to Ricoeur (2000), it is by examining the most fundamental forms of the question “who?” and the responses to it “that we are led to give its full meaning to the notion of a capable subject” (2000:1). From this Ricoeur turns to study the order of interpersonal and institutional mediations that “assure the transition from the capable subject to the subject of actual rights on the moral, juridical, and political planes” (2000:1). The question of capacity is central to Ricoeur’s presentation of the human being as a capable person and the subject of rights. And when introducing the question of narrative and narrative identity Ricoeur points at how it is through a notion of personal and collective identity that the notion of capacity constitutes the “ultimate referent of moral respect and the recognition of a human being as a subject of rights” (2000:2).

Ricoeur (2000:2) writes:

The most direct way to bring out this connection is to consider the different assertions concerning personal or collective identity as all being responses to a

series of questions implying the relative pronoun who. Who is it that is speaking? Who did this or that action? Whose story (or history) is this? Who is responsible for this injury or this wrong done to another person?

Taken together three of Ricoeur's studies in *Oneself as Another* (1992), (study seven; the self and the ethical aim, study eight; the self and the moral norm and study nine; the self and practical wisdom: Conviction,) add a new dimension to different elements of selfhood that are useful in understanding how the individual relates to or may relate to the transitional justice narratives. Ricoeur addresses linguistic, practical and narrative elements that together are both ethical and moral (Ricoeur 1992:169). These studies are composed of four subsets which correspond to four ways of answering the question "who?": Who is speaking? Who is acting? Who is telling his or her story? Who is the moral subject of imputation? (Ricoeur 1992:169).

These are ethical and moral questions as part of the detour of reflection on the just indicated by Ricoeur where we apply the evaluations of "good" and "obligatory" when interpreting action whence self-esteem draws its initial meaning. Self-esteem is part of this reflexive movement when the evaluation of good and obligatory are carried back to the author of these actions. However Ricoeur warns that this meaning remains abstract as long as it lacks the dialogic structure which is introduced by the reference to others (Ricoeur 1992:172). Ricoeur tries to solve this problem by defining ethical intention as "aiming at the good life with and for others, in just institutions" (1992:172).

The ultimate aim of transitional justice could be described with Ricoeur's definition of ethical intention as aiming to empower both victims and perpetrators to be "aiming at the good life with and for others in just institutions". Narrative justice is about understanding how the victim's evaluations of memories and narratives are connected to others as part of reflexive processes of transitional justice. Ricoeur's definition of ethical intention addresses elements of this connection between the self and other in reflection on the just.

10.2.3 Justice and ethical intention

Ricoeur makes the three different elements of the definition of ethical intention the object of separate analyses that illustrate various aspects of how the individual is connected to the collective in reflections on the just. By entering into the ethical problematic by way of the notion of the "good life" Ricoeur introduces a dialogical structure that is the basis of how I understand narrative justice making a detour that

does not refer directly to selfhood in the figure of self-esteem (Ricoeur 1992:172). Narrative justice depends on consciousness of otherness in the formation of personal and collective identity, and how, as Ricoeur (1992) points out, this dialogic structure remains incomplete outside of the reference to just institutions.

Here we see how the three components of the ethical aim give meaning to self-esteem in a dialogical or relational way that may help us to understand better how transitional justice narratives, through narrative justice, may empower the victims to orient themselves towards a better future, transforming their narrative identity. The ethical problematic attached to the intention identified by Ricoeur (1992, 2002) of “aiming at the good life with and for others in just institutions” is related to narrative and narrative identity by making a detour of meaning-making relations and stories in dialogue with others. In transitional justice processes these detours are often related to particular institutions, like the documentation center of Cambodia (DC-Cam), that document and narrate the conflicting past, and tribunals establishing truth and justice. And it is at the level of understanding this detour of meaning-making that I present narrative justice.

For Ricoeur the “good life” is basically the connections of ideals and dreams of achievements with regard to which a life is held to be more or less fulfilled or unfulfilled (Ricoeur 1992:179). To make such evaluations we need to tell stories about ourselves in relation to other smaller and bigger narratives shared by others. As pointed out previously these storytelling efforts are an essential part of narrative justice. The question then is how the transitional justice narratives may become part of interpretations made by the Khmer Rouge survivors in order to come to terms with the memories of the conflicting past, orienting towards a brighter future. Or to put it more closely to Ricoeur’s (2000) conception: How survivors apply the transitional justice narrative to action, and to themselves in the search for the good life.

This could be studied from a hermeneutical point of view between the Khmer Rouge survivor’s aim of a good life and their particular choices in achieving this. Ricoeur identifies a sort of hermeneutical circle of the back-and-forth motion between the idea of the “good life” and the most important decisions of our existence (Ricoeur 1992:178). He shows how this can be linked to a text in which the whole and the part are to be understood each in terms of the other: “For the agent, interpreting the text of an action is interpreting himself or herself” (1992:179). The relation between interpretation of the text of action and self-interpretation points at how one can understand the potential empowering effect of the transitional justice narratives on the self-interpretation of Khmer Rouge survivors.

Studied from an ethical perspective where the “good life” is the very object of the ethical aim, self-interpretation becomes self-esteem (Ricoeur 1992). In return, according to Ricoeur, self-esteem follows the fate of interpretation when “the certainty of being the author of one’s own discourse and of one’s own acts becomes the conviction of judging well and acting well in a momentary and provisional approximation of living well” (Ricoeur 1992:179).

Ricoeur talks about “narrative unity”, emphasizing the connection the narrative makes between estimations applied to actions and the evaluation of persons themselves:

The idea of the narrative unity of a life therefore serves to assure us that the subject of ethics is none other than the one to whom the narrative assigns a narrative identity. Moreover, while the notion of life plans places an accent on the voluntary, even wilful, side of what Sartre termed the existential project; the notion of narrative unity places its accent on the organization of intention, causes, and chance that we find in all stories (Ricoeur 1992:178).

Ricoeur asks how the second part of his definition of the ethical perspective: “aiming at the good life with and for others in just institutions” links up with the first part, how “with and for others” links up with “aiming at the good life”. For Ricoeur this implies recognition of the mediating role of others between capacity and realization. Part of this mediation is reflexive, characterized by self-esteem. At the same time Ricoeur warns that reflexivity carries with it the danger of moving in the opposite direction from openness, from the horizon of the “good life” (Ricoeur 1992:180). Despite this, Ricoeur makes the thesis that solicitude, from Latin *sollicitudo* (desire for good), is not something added on to self-esteem from outside but that it unfolds the dialogic dimension of self-esteem (Ricoeur 1992:180).

Ricoeur bases much of his study of the second part of his definition, “aiming at the good life with and for others in just institutions”, on Aristotle’s conception of friendship where friendship serves as a transition between the aim of the “good life” and justice: “the virtue of human plurality belonging to the political sphere” (Ricoeur 1992:182). According to Ricoeur friendship borders on justice through mutuality. At the same time he clearly states that friendship, however, is not justice: “to the extent that the latter governs institutions and the former interpersonal relationships (...). This is why justice encompasses many citizens, whereas friendship tolerates only a small number of partners.” (Ricoeur 1992:184).

Friendship could be understood as a midpoint where the self and the other share equally the same wish to live together (Ricoeur 1992:192). The initiative of sharing a wish to live together may come from the other, and it may come from what Ricoeur

describes as the loving self with sympathy for the suffering other. To self-esteem, solicitude adds essentially the dimension of lack as a reflexive moment of the wish for the “good life” (Ricoeur 1992:194). From the lack grows a need for friends and friendship as a reaction to the effect of solicitude on self-esteem. According to Ricoeur this is where the self perceives itself as another among others (Ricoeur 1992:192): “Becoming in this way fundamentally equivalent are the esteem of the other as oneself and the esteem of oneself as another (Ricoeur 1992:194).

Later I will address this from a critical perspective, pointing at how this situation – where the self sees itself as another through friendship– needs to come after a situation where narrative justice has been established. By going directly from a situation of establishing retributive and procedural justice at the tribunal to assumptions of a mutual recognition and friendship between victims and perpetrators would risk continuing the disempowerment and confusion among victims.

The situation where the self sees itself as another through friendship should rather be seen as the ultimate destination of transitional justice. I will rather argue that first the victim needs to see himself as another, to use Ricoeur’s word, through consciousness of common memories and narratives before both victims and perpetrators can reach the same situation.

To achieve narrative justice one needs to move on from a relationship of friendship to relationships with something common or public that exceeds the relations of friendship (Ricoeur 2007). Following Ricoeur (2007) I argue that only by exceeding the relation of friendship may aiming at the good under the heading of justice become a common good. The question then is how one moves on from the relation of friendship to a common good in transitional justice. In answering this question, I will study Ricoeur’s theoretical conception of establishing a just distance.

10.2.4 A just distance

What comes before any formalization of how to achieve justice is, according to Ricoeur, the quest to establish a just distance (Ricoeur 2007:61). It is by establishing a just distance that the good and just of the transitional justice processes may become common goods. This is essential to understand the narrative effects of the transitional justice processes. It is only by establishing a just distance between the victim and the offender that transitional justice can happen. Following Ricoeur (2007) it needs to move on from a relationship of friendship to relationships with something common or

public that exceeds the relations of friendship. Only in this way can the good, under the heading of justice, become a common good.

Ricoeur addresses the question of a just distance from different perspectives. He explains how the idea of a just distance between singular points of view is an essential element in understanding the juridical function at a trial or tribunal. One element of this is the just distance established by law and the juridical function between the judge and the different characters of a trial process. This just distance is essential for securing impartiality during the trial process. Ricoeur also points at how the just distance helps the judge to distinguish between facts and emotions.

A just distance between the victim and the offender is also set up by the pronouncement of the law (Ricoeur 2007:89). This pronouncement of the law, according to Ricoeur, establishes a just distance in that it includes the offender as part of the public space at the same time as it opens the way for excluding the offender from the same public space. The judgment involves a separation between the parties of a conflict in that it does not aim at an agreement between the victims and the offenders. The aim is rather to make a fair and impartial judgment in accordance with the law. Ricoeur is occupied with the act of judgement and the characters involved in the process. In this sense his theories are more connected to models of retributive justice than models of restorative justice, as I will describe later when looking at different forms of justice at play in transitional justice. Ricoeur's conception of a just distance in establishing justice is related to a model of retributive and procedural justice in that it focuses on the act of judgment instead of focusing on the mediation between conflicting parties in establishing truth and justice. Nevertheless, Ricoeur expands on the retributive and procedural model by identifying two aspects of the act of judging that institute a just distance (Ricoeur 2000:120):

It is the just distance between partners who confront one another, too closely in cases of conflict and too distantly in those of ignorance, hate, and scorn, that sums up rather well, I believe, the two aspects of the act of judging. On the one hand, to decide, to put an end to uncertainty, to separate the parties; on the other, to make each party recognize the share the other has in the same society, thanks to which the winner and the loser of any trial can be said to have their fair share in that model of cooperation that is society. (Ricoeur 2000:132)

For Ricoeur it is the just distance between victims and perpetrators that sums up these two aspects of the act of judging.

To recognize the share other people have in the same society is identified by Ricoeur as a competence related to the capable subject (Ricoeur 1992). Ricoeur (2007) addresses the establishment of a just distance as a competence that brings together the

individual and the political. Eventually he sees this as a problem of democracy. On the one hand this establishment of a just distance is a competence of the courts and on the other hand it is a competence of the citizen (Ricoeur 2007:89).

The establishment of a just distance at the tribunal is the first crucial element of achieving transitional justice in that it enables a separation between vengeance and justice. I follow Ricoeur claiming that it is in the structure of the trial process that we have to seek the first principle of the break between vengeance and justice:

Sometimes we say that to avenge ourselves is to obtain justice for oneself. But no, the word “justice” should not figure in any definition of vengeance, making allowance for the archaic and sacred sense of justice which is through and through vindictive and vengeful, (...). (Ricoeur 2000:134)

For Ricoeur it is by establishing a just distance between the crimes and all the emotional reactions and suffering caused and the punishment inflicted by the judicial institution that the trial process breaks with individual vengeance (Ricoeur 2000). Narrative justice is dependent on this break with vengeance, establishing a just distance that separates justice and vengeance. This is how I approach the narrative elements of the transitional justice processes as the construction of followable narratives that start from accepting this separation between vengeance and justice with the establishment of the tribunal.

10.2.5 “The victory of the word over violence”

Narrative and storytelling are essential factors in separating vengeance and justice in post-conflict transitions. This relates to what Ricoeur has called a “victory of the word over violence” (2000:xi). The processes creating a just distance between the victims and perpetrators could be understood as discourses of promises. This could, for example, be promises that justice for one should count as justice for all, and promises that punishing only a few of the most central perpetrators, and pardoning the rest, should count as justice for the individual victims, that choosing justice over vengeance will set an example for future generations in their responses to violent crimes. All these promises are related to what I have described as followable transitional justice narratives. The starting point for this is to be found in Ricoeur’s theory of how separating vengeance and justice requires a neutral mediating third party to put an end to uncertainty.

This is the retributive and procedural model of justice at the tribunal separating the parties and identifying the characters of the victims and the perpetrators. Narrative

justice could be said to be a middle position between the first and the second part of Ricoeur's model of the two aspects of the act of judging. I argue that narrative justice needs to be established before the second part of Ricoeur's model can be realized, which is where the "winner and the loser of any trial can be said to have their fair share in that model of cooperation that is society" (Ricoeur 2000:129). I argue that it is first when the victims render transitional justice narratives as followable that the victims and perpetrators can be said to have "their fair share in the model of cooperation that is society", to use Ricoeur's words.

Here I refer to the victims and perpetrators on a broader scale than the handful of selected perpetrators who are actually condemned and sentenced to prison by the tribunal. These persons are most often sentenced to life imprisonment, so for them Ricoeur's ultimate goal of rehabilitation and pardon does not count:

I hope you will allow me to say in this regard that the notion of a life sentence constitutes a flagrant negation of any idea of rehabilitation, and in this sense completely negates any project of reestablishment, even in the execution of the sentence, of a just distance between the detainee and the rest of the society. (Ricoeur 2000:142)

Narrative justice, on the other hand, expands the limits of the tribunal by valuing the historic and storytelling effect of the verdict as part of the construction of a followable transitional justice plot that could ultimately lead to rehabilitation of offenders, reestablishing an equal share in cooperation between former victims and offenders in forming a peaceful society.

But before this can happen there needs to be narrative justice. Here narrative justice is in line with Ricoeur's (2007) explanation of how the separation between vengeance and justice is made possible by the mediation of truth and guilt within the just distance between victims and offenders at the tribunal. And it shows how this operation requires that the victims relate to narratives of how handing over the right to seek justice and punishment to a neutral third party should count as justice for all the victims.

This requires various different narrative methods of transitional justice, as illustrated by the case studies from Cambodia. Narrative justice is an attempt to understand how these methods and projects could be studied as part of this middle position between the retributive model of the tribunal and the final stage that follows narrative justice, which is the ultimate goal of bringing together the individual and the political where both the former victims and perpetrators see themselves as part of a joint cooperation as democratic citizens. But as stated several times already, this has to

be based on followable transitional justice narratives relating past, present and future as a common obligation to remember the criminal past. This is related to the relationship between justice and memory.

10.2.6 Justice and memory

Ricoeur addresses the relationship between justice and memory as a project of relating past, present and future. According to Ricoeur (2006), it is justice that turns memory into a project. He sees this as part of the obligation to remember the past:

Extracting the exemplary value from traumatic memories, it is justice that turns memory into a project; and it is this same project of justice that gives the form of the future and of the imperative to the duty of memory. We can then suggest that the duty of memory considered as the imperative of justice is projected as a third term onto the point of intersection of the work of mourning and the work of memory. In return, the imperative receives from the work of memory and the work of mourning the impetus that integrates it into an economy of drives. This united force of the duty of justice can then extend beyond the memory and mourning pair to the pair formed by the truthful and the pragmatic dimensions of memory (...).Ricoeur (2006:88)

Peralta and Anico (2009:119) indicate how Ricoeur's idea of the duty of memory as the "imperative of justice" is connected to the idea that the obligation to remember is "generated by the relationship we have to others". It is the search for justice at the tribunal that turns memory into a project of transitional justice. But as I argue in this thesis it is not sufficient to study the concept of justice in post-conflict transition only within the limitations of the tribunal. The obligation to remember past suffering, as stated by Ricoeur (2006), also illuminates how judicial closure is incomplete. Scholars like W. James Booth (2001) point at this by claiming that remembrance as part of the duty to remember past crimes is a form of justice expanding the limits of the judicial processes. It is from this that I argue that transitional justice needs to expand on the judicial understanding of justice, and we need to study justice in a complementary way, from a narrative perspective, as narrative justice. This relates partly to Ricoeur's conception of justice and memory – how justice provides truthfulness to memory, and how this truthfulness gives force to the work of memory and memorialization.

Ricoeur (2000:89) writes:

The question then arises as to what gives the idea of justice its federating force with regard to the truthful and pragmatic aims of memory as well as to the work of memory and the work of mourning. It is thus the relation of the duty of memory to the idea of justice that must be interrogated.

Ricoeur explains how the virtue of justice is turned towards the other in the duty of memory where the capable subject is obligated to use his or her skills and capacity to reason and act to preserve the memories of others. It is thus at the work of memory that responsibility is opened to the past (Hall 2007:89). This is an essential element in understanding narrative justice; how the individual victims' memories are related to transitional justice narratives relating past present and future, and how the individual memories are related to collective memories in forming historical consciousness.

Ricoeur (Ricoeur 2006:89) writes: "The duty of memory is the duty to do justice, through memories, to another than the self". He sees this as an element of a debt to the people that have lived before us, of not only preserving their memories at archives or memorials, but to "maintain the feeling of being obligated with respect to these others".

In this regard he points at how the debt we owe to remembering the past belongs to the victims, and how this should be a moral priority. Narrative justice relating past, present and future has the potential to fulfill this obligation. By conceptualizing how the narrative dimensions of transitional justice processes need to be studied as justice, not only narrative, narrative justice helps us understand how the duty to do justice through memory needs to happen in parallel to the duty to do justice through legal processes through the tribunal in order to reach the goals of transitional justice.

10.2.7 Forgiveness and justice

Ricoeur (2006) is very clear in his argumentation that forgiveness in a sense breaks with the obligation to memory and justice emphasized by his hermeneutics of historical consciousness and the questions of representations of the past on the plane of memory presented in *History, Memory, Forgetting* (2006). Ricoeur does recognize the symbolic effect of forgiveness in narratives of forgiveness, while he does not address forgiveness from a collective or political level, but from a personal level. For Ricoeur (2006) forgiveness is a personal act between individuals that does not concern juridical institutions. Ricoeur (2006:458) writes:

The question then raised concerns the place of forgiveness at the margin of the institutions responsible for punishment. If it is true that justice must be done, under the threat of sanctioning the impunity of the guilty, forgiveness can find refuge only in gestures incapable of being transformed into institutions.

For Ricoeur it is important that justice must be done separately from questions or demands for forgiveness. Nevertheless he does recognize that there are many elements of forgiveness within the juridical proceedings at the court where both the perpetrators and victims are given equal rights to speak and argue. Isolated to the court room, this has some common elements with forgiveness where the aim is to reflect and talk about the past without prejudice and hate, but based on logical and reasonable argumentation. But Ricoeur makes it clear that forgiveness cannot be institutionalized, it belongs to the personal sphere. As with the distinction stated by Ricoeur (2000) between love and justice and between justice and friendship, there is perhaps a similar separation between forgiveness and justice?

Legal or retributive justice need to happen on its own terms, establishing a just distance between the victims and the perpetrators. It is the fact that the search for truth and justice at the tribunal, separated from the friendship and love of a personal relationship, lifted to a collective perspective of otherness, that makes it possible to establish justice.

Perhaps there is a parallel here to how forgiveness and justice need to be separated? If we look at Ricoeur's strong resentment of the tradition of amnesty, this may become clearer. Ricoeur (2006) argues that by providing amnesty to alleged perpetrators one is at the same time promoting forgetting. For Ricoeur amnesty is a forced form of forced forgiveness that ,due to its public and perhaps also political nature, cannot count as forgiveness. I believe this is one important reason for Ricoeur to strongly emphasize that forgiveness is a personal act of compassion, not a public controlled enterprise. This does also relate to the question of justice.

Simply by providing amnesty one often also excludes the possibility for justice. One element of this relates to Ricoeur's theory of the obligation to remember the past suffering, as addressed earlier. By not enabling a process of establishing justice for past crimes at a tribunal, one consequence of providing amnesty is that it becomes harder and perhaps in some cases impossible to communicate a public condemnation and judgement of the past crimes. This touches on the basic theme of this thesis; that the processes of establishing legal justice at the tribunal can potentially at the same time lead to the establishing of collective memories and a historical consciousness that answers to the obligations of remembering the past. Ricoeur (2006) states that certain crimes should belong solely to the domain of justice due to what he describes as the long-lasting effects of the crimes. Based on this Ricoeur makes an initial distinction between the private and the public sphere where justice belongs to the public world and forgiveness belongs to the private world.

10.2.8 Truth and justice

In *Reflection of the Just* (2007) Ricoeur addresses the distinction and also the mutual relation between the terms truth and justice in trying to find out what should serve as the highest category on the practical field. Ricoeur (2007:59) takes a starting point in Rawls' definition of truth and justice, in his *Theory of Justice* (1971): "justice is the first virtue of social institutions, as truth is of systems of thought". Ricoeur (2007:60) demonstrates the first part of Rawls' definition by introducing his definition of ethical intention as described earlier relating justice and the political in understanding the constitution of the self as "aiming at the good life with and for others in just institutions". On what Ricoeur (2007) describes as a vertical reading, justice is thus seen as a progression from the idea of living well, traversing

the deontological approach where the norm, obligation, prohibition, formalism, and procedure dominate, to find its end on the plane of practical wisdom which is that of *phronesis*, of prudence as the art of a fair decision in situations of uncertainty and conflict, hence in the tragic setting of action. (Ricoeur 2007:60).

According to Ricoeur, justice can thus be seen as the highest category of the practical field if there is a progression in the vertical reading of justice in the constitution of the self, starting at the wish for the good life, traversing a consciousness of relation to others, ending up in handing over the right to provide a fair distribution of power and making fair judgements by mediating third-party institutions. In other words justice serves the highest category on the practical field when there is a movement from the wish for justice or idea of justice culminating in that of fairness (Ricoeur 2007:60).

Here we see some of the basic elements between truth and justice that we possess from childhood identified by Ricoeur; that the wish for a good life has to pass through the other. Desire and lack are two basic elements identified by Ricoeur that point at an essential element of the relation between truth and justice. The wish to live well is interrupted by deficiencies. In post-conflict societies this could be the lack of knowledge or truths about the past. In filling this lack the individual has to pass through the other to carry out the wish for a good life (Ricoeur 2007). And as Ricoeur reminds us in his distinction between friendship and justice; this dialectic between the self and other in carrying out the wish for a good life needs to progress from the other of interpersonal relation (Ricoeur 2007:61). This is where the first element of Ricoeur's definition of ethical intention needs to progress from the first element to the second and third in filling the deficiencies that interrupt the desire for a good life. In post-conflict societies this is illustrated by the progression from vengeance and

personal friendship, through acceptance of a collective suffering and collective memories of the past, to handing over the right to punish and establish justice to neutral mediating third parties like the tribunal. Ricoeur (2007:61) writes:

This step from the nearby to the distant other, of the apprehension of the near as distant, if you will, is also the step from friendship to justice. The friendship of private relationships stands out against the background of the public relation of justice. Before any formalization, any universalization, any procedural treatment, the quest for justice is for a just distance among all human beings.

According to Ricoeur it is under the heading of justice that the good becomes a common good, and this is made possible by establishing a just distance.

In searching for truthful dimensions in justice Ricoeur argues that one needs to search for something else than a moral truth. Instead Ricoeur points at how the question of truth and justice is to be found in understanding the condition of the capable subject who is able to receive the injunction of the just. He addresses this by referring to Kant, establishing a difference in status between the “idea of imputability and that of autonomy” (Ricoeur 2007:64). According to Ricoeur (*ibid.*) it is the assertion of imputability in the sense of what makes individuals capable of initiating actions and being “the author of action” – making action open to praise or blame – that one can search for ties between truth and justice, not on the moral plane of action.

Ricoeur (2007) identifies three figures of imputability with three corresponding modes of truth that he relates to the wish to live well, the norm of relating this wish to the distant other and the judgement made by a neutral third party. This is connected to the “who” question: Who speaks? Who acts? Who holds him- or herself responsible for the course of his or her actions? (Ricoeur 2007:65). Connected to this is the idea of capability or capacity of action which is the first figure of imputability. And according to Ricoeur it is attached to the phenomenon of attestation that one can search for truthful dimensions. Ricoeur (2007:66) writes:

This is the first correlation between justice and truth. My wish to live in just institutions is correlative with the attestation that I am capable of this wish to live well, which distinguishes me from other natural beings.

This attestation of capacity for imputability is open for belief and suspicion, and confidence and skepticism mediated by neutral third-party institutions (Ricoeur 2007:69). In this truth and justice are related at the final stage of the practical field of making fair judgements.

10.2.9 The tie between institutions and justice

As explained earlier, according to Ricoeur (2007:61) the quest for justice is the quest for a just distance among all human beings. As argued by Ricoeur (2007) justice needs to expand on the near relations of friendships to the distant other. This is related to Ricoeur's study of the relation between truth and justice where he addresses Rawls' thesis that "justice is the first virtue of social institutions, as truth is of systems of thought" (Ricoeur 2007:59). It is in the pairing of justice and institution it is possible to see the intersection of truth and justice on the practical field of transitional justice. It is in relation to this search for a just distance we can find the first tie between justice and institutions (Ricoeur 2007:61).

Related to this is the intersection between the constitution of the self, understood as "the wish for a good life, with and for others in just institutions" and the obligation and procedures of justice in relation to others. It is on the level of the tribunal where these two terms are joined, where the tribunal as a neutral third party makes fair decisions over disputes of the past. It is this progression, from the ethical aim of the individual on the personal level and on the level of friendship to the final level of the handing over the right to punish the perpetrators to answer to the obligation of never again, that narrative justice tries to explain.

This progression relates to Ricoeur's (2007) understanding of the tie between institutions and justice as related to the movement from a wish for personal vengeance to justice. The first move from vengeance to justice is related to the political in that the victims have to accept that they cannot provide justice by themselves. They have to hand over the right to judge and punish to a mediating third party. For Ricoeur understanding the institution of justice in relation to a mediating third party means that we cannot speak of one institution of justice, but rather a whole chain of institutions of justice (Ricoeur 2007:225). And this chain of institutions presents a hierarchical structure. In establishing transitional justice, the two most essential institutions are the documentation center and the tribunal.

Different elements related to the tribunal like the institution of justice and the function of a neutral judge are part of establishing a just distance as described with Ricoeur earlier. This just distance makes a necessary separation between personal vengeance and justice. It also enables a more neutral and formal discussion of what happened, who is responsible and what the penalty for the crimes should be. The fact that these discussions take place within the institutional setting of the tribunal establishes a gap between practical discourse and juridical discourse (Ricoeur

2000:120). This gap is essential in understanding the function of the tribunal and also other institutions assigned to promote and establish justice in former conflict societies.

As already stated the tribunal and documentation centers are the two most essential institutions in the hierarchy of the chain of institutions of justice in transitional justice. I will argue that the most important tie between such institutions and justice in post-conflict transitions are related to what I will describe as the legitimizing force of these institutions. What I mean by this is that the institutions should ideally be seen as legitimate providers of truths about the conflicting past. This is perhaps the most essential precondition for transitional justice. If the institutions that are set up to establish the truth about the past, separating between myth and facts, are not seen as trustworthy they would just add more confusion and disempowerment to the victims.

Another important element of the relation between institutions and justice is that the institutional settings of the tribunal or truth commissions and documentation centers also represent a limitation in what questions and events are open to debate and what time and historical periods are to be included (Ricoeur 2000:120). This limitation is regulated by the institutions, and in this the institutions could be studied as providers of the narrative structure of the transitional justice processes. The starting point, high points and end point of the transitional justice narrative as described in the previous chapter, are regulated by the institutions. In Cambodia, for example, one of the reasons why the tribunal was so delayed was due to a discussion of what historical period should be included in the tribunal's jurisdiction. The position of the government of Cambodia was that only the period from 1975 to 1979, when the Khmer Rouge held power in Cambodia, should be considered by the tribunal.

In the previous chapter I presented Ricoeur's identification of three phases of historiographical operations in transitional justice; the documentary phase, the explanation/understanding phase, and the representative phase. This also indicates the essential elements of the link between justice and institutions.

Tribunals depend on documentation centers as institutions that can provide documentary proofs of the historical past. Documentation centers establish documentary proofs by collecting documents and eye-witness statements and qualify them through scientific methods of gathering and testing data. Secondly, what Ricoeur (2006:136) calls the explanation/understanding phase has to do with "the multiple use of the connective 'because', responding to the question why" at the tribunal. Here the institutional setting of the tribunal – with the prosecution, defense and judges – is

designed to explain why this happened as part of the process of providing a fair judgment and sentence for the alleged perpetrators.

10.2.10 Conclusion

I read Ricoeur's theories of justice as an attempt to critically engage with and solve some common challenges within a tradition of what could be described as retributive justice within the institution of the court. This is essential to one key factor in Ricoeur's theories of justice, which is the importance of establishing a just distance between the conflicting parties. Understanding the relation between institutions and justice is thus essential to Ricoeur. However when studying transitional justice one needs to consider additional forms of justice that are at play. As made clear several times already, my intention in this thesis is to say something about how the retributive justice at the tribunal may have important narrative effects in reaching the goals of transitional justice. However this does not mean that I should not or could not critically engage with alternative forms of justice in transitional justice processes.

There could be made many distinctions between different forms of justice that are at play in transitional justice processes. I will now study some of them in relation to elements from Ricoeur's theories of justice to say something of how these forms of justice relate to narrative justice. However, I do not see it as my task to solve the differences between contested forms of justice at play in transitional justice processes, or to fully explain these differences. The main purpose of this study of the concept of justice is to critically engage and establish narrative justice as an additional and supplementary concept of justice in transitional justice.

10.3 Different forms of justice in transitional justice

Three common conceptions of justice are examined in this section; restorative justice, compensatory justice and retributive justice. In transitional justice processes different forms of justice are often at play at the same time. The case of transitional justice in Cambodia illustrates this, as the procedural and retributive justice at the tribunal happens in parallel to restorative forms of justice where different NGOs arrange local truth and reconciliation arrangements aiming to reconcile the victims and perpetrators. In addition some efforts of compensatory justice are made by different forms of economic or material compensation provided to compensate victims for the crimes of the Khmer Rouge.

Before I study these forms of justice in more detail I need to repeat the point that since narrative justice is not presented as an alternative to retributive justice, but rather as complementary to achieving the effects of transitional justice based on processes of establishing retributive justice at the tribunal, alternative accounts of justice like restorative and compensatory justice are not the main focus of this thesis. It is most important then to critically engage a retributive model of justice.

10.3.1 Retributive justice

According to Pamela L. Griset (1991), the prominent sentencing model in the 1960s and 1970s was rooted in theories of retributive justice. Legal retribution is the most common governmental reaction to crimes. Basic to the idea of retributive justice is that an offence is defined as a disruption of a moral order, or as breaking some common rules and laws common to all citizens in a community. Retributive justice theories address the crimes committed by a perpetrator as destroying the fundamental moral and legal equality among human beings (Amstutz 2005). Public condemnation and punishment is then seen as the way this equality can be re-established.

This is in line with Ricoeur's theory relating politics and justice where justice is lifted from the private sphere of friendship to a public or collective sphere of otherness. This is gathered in Ricoeur's definition of an ethical aim of justice as the wish for a good life, with and for others, in just institutions. A movement between these three elements, along what he describes as a horizontal line, represents a move from the private, to the consciousness of otherness in society where the individual ends up handing over the right to establish justice and punishment to a third neutral institution. A crime is then not only seen as something inflicted on a single victim. In a model of retributive justice a crime is seen as challenging the order and common rules of society. This separates a model of retributive justice from other forms of justice that I will address later. Whereas, for example, in restorative justice crime is primarily seen as an act against another person and the community, retributive justice sees crime as an act against the state and a violation against a law controlled by the criminal justice system.

Punishment in retributive justice is also a moral condemnation (Kôneke 2009). Offence and punishment is a symbolic communication where the status of the offender is lowered to the benefit of empowering the victim's status (Kôneke 2009:3). Thus, retributive justice emphasizes individual rights and the prosecution and punishment of offenders (Amstutz 2005:67). At the same time Ricoeur (2007) reminds us that in a

court proceeding both victims and perpetrators are equally valued as capable subjects with equal rights and opportunities to argue their case.

Retributive justice is backward-looking in the sense that it determines the severity of the punishment only by evaluating the already-committed offence. Nevertheless, as pointed out by Kôneke (2009:4), it has some impact on the future as well by establishing trust and respect for laws and rules in the society, by preventing self-administered justice and by “warning” others of the consequences of breaking the rules or law in the future. This effect is central to my theory of narrative justice and one of the reasons why I argue that retributive justice needs to happen before and in parallel with narrative justice. Ricoeur (2006) addresses this by stating that some crimes like genocide and other massive crimes against humanity have long-lasting effects which make it imperative that they are dealt with through processes of retributive justice, and not alternative approaches that are not capable of providing legal judgements and punishment.

Other scholars are more critical of the rhetoric of justice by retribution. Retributive justice is criticized for establishing a climate of vengefulness and for overshadowing the possibility of alternative forms of justice that are not rooted in a retributive model. For example Griset (1991:3) questions whether sentencing can ever divorce itself from the pursuit of the crime control system. She is concerned that utilitarian purposes may be overlooked and hindered by retributive rhetoric focusing on pursuing punishment for its own sake as retribution. Griset (1991:2) asks:

What happens when a sentencing model ignores the crime-control purposes of the criminal sanction and fails to allocate sentencing authority among criminal-justice decision makers?

Griset is concerned that the effect of the sentencing will be limited to the juridical processes at the court room, and I share this concern. This is why, as made clear elsewhere, I study additional and supplementing narrative accounts of justice that enable transitional justice actors to engage more critically with the big and challenging question of how to relate the processes of establishing retributive justice at the tribunal to the individual victim.

Other scholars, like Saunders (2011) address a different concern, questioning the effect of critique of retributive justice, how “critique of retributive justice may denigrate justice or conflating it with vengeance” (Saunders 2011:120). Saunders is concerned with the consequences of equating retributive justice with revenge and bloodlust, which is the case in some of the critique of retributive justice:

In societies where the judicial system has previously colluded with an oppressive regime or been associated with injustice and impunity, public rhetoric that denigrates prosecutorial justice may leave both the new nation's court system and the very notion of justice in a highly precarious position. (Saunders 2011:130)

The concern raised by Saunders here goes to the essence of the critique of restorative justice that I will address below. There is a long standing debate between proponents of retributive justice at tribunals and restorative justice at truth and reconciliation commissions. It would be to large a digression to enter this complex debate here, since this is not the focus of my thesis. My concern in is not to argue for or against a tribunal in opposition to a truth commission, but rather to explain how the legal procedures at the tribunal need to be made part of narratives of transitional justice.

I recognize the critical perspectives raised by Grisct (1991) and Saunders (2011) as pointing at the complexity of transitional justice. On the one hand, the processes at the tribunal need to be autonomous from the contextual effects, demands and desires when making its verdicts. The autonomy of the court is dependent on its ability to make fair judgments based on legal principles and the law. On the other hand, the court proceedings and the final verdicts need to be communicated and narrated as part of a collective process of searching for truth and justice, but they should not be influenced by the desired effect of the processes.

Griest's (1991) concern that the effect of the sentencing will be limited to the juridical processes in the court room could be answered partly by narrative justice. The juridical processes need to be accompanied by parallel processes of communication and storytelling, establishing historical consciousness, collective memory and identity.

10.3.2 Restorative justice

Gavrielides (2011) referees to Ness and Strong (1997) when claiming that the term "restorative justice" was most likely used for the first time in the context of criminal justice by Albert Eglash in several articles published in 1958. Eglash suggested the following three types of criminal justice: (1) Retributive justice, based on punishment, (2) Distributive justice, based on therapeutic treatment of offenders, And (3) Restorative justice, based on restitution (Ness and Strong 2010:22). According to Eglash, the two first types of justice focus on the action of offenders and passive participation of the offender, at the same time as the victims are denied participation in the judicial process (Ness and Strong 2010:22). Others ascribe the first use of the term "restorative justice" to Barnett (1977) when he referred to certain principles arising out

of early experiments in America using mediation between victims and offenders (Home Office Research Development and Statistics Directorate 1999). Nevertheless, it was in the 1990s that restorative justice first became a widely accepted way of labeling different programs and activities that had as the core philosophy the participation of victims, offenders and the wider community (National Commission on Restorative Justice 2008:10).

One essential element of restorative justice is that it focuses on involving both perpetrators, with varying degrees of direct or indirect responsibility for the crimes of the past, and the victims in a common project of reconciliation and future oriented peace building.

Tony F. Marshall defines restorative justice as: “a problem-solving approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies” (Home Office Research Development and Statistics Directorate 1999). This definition captures the essence of restorative justice as a process. Other definitions are more expansive and describe restorative justice with a focus on outcomes “as every action that is primarily oriented towards doing justice by repairing the harm that has been caused by a crime” (Bazemore and Walgrave 1999:48).

There are different methods of restorative encounters. One example is victim-offender mediation where the victim meets with the offender to explain how he/she experienced the crime and the offender is encouraged to explain the crime and to ask for forgiveness and/or is given the opportunity to work out how to compensate for the crime. The Norwegian scholar Nils Christie advocates victim-offender mediation as the conflict should be owned by victims and offenders, arguing that the government has “stolen” the conflict.

In the context of transitional justice, restorative justice focuses on rebuilding or transforming relationships and restoring a community (Lambourne 2009:31). Truth commissions are the most common institutional setting for promoting restorative justice. In restorative justice a criminal act is often seen as an act against another individual or the community, rather than the state. This is somewhat diverging from Ricoeur’s theory of justice with its emphasis on moving beyond the interpersonal relation between the conflicting parties.

One positive element of the quest for restorative justice is that it includes the needs of crime victims, as information, truth telling, trauma restitution, empowerment and other forms of involvement in the processes may not be, or even should not be, the basic focus of retributive models of justice. Where the focus of the tribunal is limited

by its legal function to reaching a fair legal judgment against the alleged perpetrators, restorative justice projects expand on this to involve both victim and offender. Another positive element of restorative justice is that it is future oriented and focused on engaging all the persons involved in the history of the conflict.

In this sense restorative justice has some common elements with narrative justice in its attempt to involve the victims in processes of establishing justice.

Restorative justice is also often related to particular methods and institutional limitations that are opposed to the relationship between institution and justice of a retributive model of justice as put forth by Ricoeur and others.

Besides this, I will argue that there are other limitations to restorative justice. Perhaps the most important limitation is related to the fact that restorative justice depends on voluntary participation of both the offender and the victim. This means that restorative justice is not the universal response to crimes that is needed to establish a just distance between the conflicting parties, but rather dependent on circumstances related to who is involved (Home Office Research Development and Statistics Directorate 1999).

The effect of this is that equal cases are not assured of equal outcomes. Since restorative justice is based on mediation between the victims of a crime, the perpetrator and implications related to the community as a structure or context, the outcome of the process is not predictable. In retributive justice, the outcome is formally regulated by the law and the principle of precedent aims to secure that equal cases are treated equally.

Restorative justice is seen as a forward-looking, problem solving approach to crimes (Strang and Sherman 2007). From the perspective of narrative justice, one limitation could be that restorative justice may downplay the importance of looking back and solving the historical disputes of the conflicting past. At the same time, by allowing the victim(s) to meet face to face with the perpetrator(s) to explain their suffering and to establish a joint understanding of the crime, it may have the effect of a closure of the conflicting past. Nevertheless, I will argue that models of restorative justice focusing on mediation between the victim and the offender in establishing truth and justice may complicate or even hinder the establishment of a collective memory and historical truths about the past crimes. This is connected to the process of mediation. By mediating a joint understanding of the conflicting past, there is always a risk that the perpetrator will be the most powerful voice establishing truth claims about the conflicting past. And the result from this could be that there is even more uncertainty of what really happened and who was responsible.

Criticism like this has been aimed at the Truth and Reconciliation Commission in South Africa (TRC). For example, Dugard (2001:284) claims that “the emphasis on truth and reconciliation minimizes the memory of apartheid”. Dugard (2001) criticizes the TRC for establishing collective understandings about the past based on political compromises rather than shared wisdom about the past. Again I will stress that the complexity of critical studies of the role of the TRC as opposed to legal prosecution at a tribunal would require a different approach than what is the focus of this dissertation. I will not enter into this debate here, but only point at the fact that the TRC was overlapped by legal prosecutions at the Special Court where the people most responsible for the Apartheid crimes were held legally responsible. Proponents of the TRC raise this point, claiming that due to this partial overlap of TRC and the Special Court it was possible to establish a broader historical record facilitating a more complete historical account of the war (Sigall 2006:54).

Nevertheless, it is expected that the limitations inherent in restorative justice would differ from case to case, and particularly between national traumas after war and genocide and personal conflicts. There is also a difference between mediation settings on a personal level, where an individual offender meets the victim face to face, and crimes that directly or indirectly involve the whole society, where it is impossible to involve all individuals in direct mediation with the offenders. These questions are related to the big debate between retributive justice at tribunals and restorative justice at truth commissions.

10.3.3 Compensatory justice

Compensatory justice is related to Aristotle’s model of a compensatory form of justice put forth in his *Nicomachean Ethics* (Book V, chapter 4). Here Aristotle talks about “equality”; how compensation should rectify the injustice done. Another approach to compensatory justice is related to the goal of establishing what is described as the *status quo ante* (Hill 2002:394) – *ante* referring to what was before the crime – where the compensatory goal of compensatory justice is to return to how things were before the injury occurred.

There are many elements that critics use to challenge the effect and meaning of compensatory justice. One element is related to the question of how many people are affected by the crime. When we talk about genocide or other forms of massive crimes, compensatory justice may seem an impossible task. There is no compensation that can establish the *status quo ante*, or establish a state of equality rectifying the crimes. At

the same time, it would be wrong to dismiss compensation as a fruitful strategy to recognize the suffering and loss of the victims. In Cambodia, for instance, many of the poor, uneducated or illiterate people living in the rural areas ask for economic or other forms of material compensation. And according to the deputy director and head of research and development at the DC-Cam, Kok-Thay Eng, they see this as a form of justice.

Compensation could also have constructive outcomes as empowerment of victims by acknowledging their suffering and losses by compensation

Hill (2002:397) refers to a statement put forth by Boxhill that justice has not been reinstated until the wronged party has received an admission of wrongdoing or fault. Compensation would often be seen as an admission of guilt in itself. Nevertheless, as argued by Hill (2002) an admission of guilt or fault would need to be seen as genuine if it should have any constructive effect.

In many cases, compensatory justice would be a good way of establishing a sense of justice. However, I will argue that when searching for justice after genocide and massive state crimes, compensation should not be labeled as justice. It is not possible to compensate for the crimes of genocide. If one should label, for example, the reconstruction of a stretch of road in one village in Cambodia as justice for the crimes, there would most likely be many other people who would see this as unjust, since they will never take advantage of that compensation, and so on. There is also the risk that transitional governments could take advantage of this, and so to speak “buy” their way out of the responsibility to search for other forms of justice.

10.3.4 Conclusion

By addressing retributive, restorative and compensatory justice as different forms of justice as a response to crimes, I have provided a brief glimpse of the complexity of justice in transitional justice. However, the main focus in this dissertation is to show how Ricoeur’s theories may shed new light on the phenomena of transitional justice. This also influences how I have approached the study of Ricoeur’s theories of justice. The theoretical study of Ricoeur’s theories of justice has not been intended to solve the difference between various forms of justice as mentioned above. The aim has rather been to lay the grounds for establishing narrative justice as a theoretical explanation of how retributive justice at the tribunal needs to be followed by storytelling and narratives relating the victims to the formation of collective memory and history and personal and collective consciousness of truths about the past. I use Ricoeur to explain

how narrative and justice need to be studied together as narrative justice in transitional justice.

10.4 Concluding summary and discussion: Narrative justice and Ricoeur

One central element of Ricoeur's theories of justice is that they offer an extended consideration of justice that opens the way for studying justice within the relation of past, present and future. Even though Ricoeur could be said to try to solve the problem of justice embedded within a retributive or procedural model of justice, his method of studying justice from a teleological perspective, engaging the work of classical philosophers such as Plato and modern philosophers such as Rawls, makes his theories of justice applicable to studying the essential elements of how the individual relates to institutions of justice. His theories of justice do not only apply to the justice gained or meted out by individuals living within the law. They are, more importantly, applicable to how society as a whole is governed (Simms 2003:123).

Ricoeur emphasizes the duty and responsibilities of the citizens of a society. This raises the level, expanding from the individual to individuals and the nation. The duty and responsibility could for example be the duty never to forget the suffering and wrong done to other individuals in the past. This duty never to forget is on the part of collective memory, as described previously. For Ricoeur it is precisely by not forgetting that pardon and justice can be asked. I show how narrative justice expands on this element of Ricoeur's theory of justice by addressing the narrative elements of this obligation of remembering the violent past.

In understanding this it is important to remember the personal and social conditions identified by Ricoeur from where individuals desire justice. This is not the duty, obligation or responsibility, but the ethical intention of *living a good life with and for others in just institutions*. It is important to keep this in mind when studying justice in transitional justice. Ricoeur reminds us that justice is first a desire motivated from a lack of knowledge, memory, respect or identity. In this sense justice is first "an object of desire, of a lack, of a wish," before it becomes an imperative (Ricoeur 2000:xv).

I suggest narrative justice can help to understand how parts of the link between the individual and justice take place when the individual is related to the collective in transitional justice narratives.

As Simms (2003:122) points out; the connection between justice and society is to be found even at the level of the act of judging itself. We might think that the act of

judging is a private matter performed by a judge for the benefit of the victim and the accused. But, as pointed out by Simms (2003), for Ricoeur, it is important that the act of judging be seen to be part of the public sphere. What make this part of the public sphere is the storytelling efforts of transitional justice narratives. One central element connected to this is that in allowing a judge to make decisions and judgments, a society has chosen “discourse over violence” (Ricoeur 2000:130; Simms 2003:122). This has to do with what, using Ricoeur, I have described as the followability of the transitional justice narrative. It is precisely when the victims accept that they cannot achieve justice by themselves that they come to depend on a mediating third party to achieve true justice.

Ricoeur (2000:131-2) writes:

Returning to our analysis of the act of judging starting from the far-reaching operation that consisted in the State taking from individuals the direct exercise of justice, and in the first place of vengeance as the means of justice, it turns out that the horizon of the act of judging is finally something more than security—it is social peace.

Since narrative justice is about the historiographical operations and storytelling that happens in relation to a tribunal, this handing over the right of direct exercise of justice is also the premise for narrative justice as part of the discourse that constitutes the act of judging. The act of judging then is something more than allocating guilt and deciding what kind of punishment an accused shall receive. Where narrative justice focuses on legitimizing the victim’s memories, empowerment of victims and future oriented historical learning, Ricoeur is most concerned with how the discourse that constitutes the act of judging involves or engages the citizens to take part in gaining social peace through mutual recognition. Both accounts of justice requires that the citizens or victims are willing and capable of taking part in the processes of establishing justice. Ricoeur (2000: 131-2) writes;

The finality of social peace makes apparent something more profound that has to do with mutual recognition. Let us not say reconciliation; even less ought we to speak of love and pardon, which are not juridical categories. Let us speak instead of recognition. But in what sense? I think that the act of judging reaches its goal when someone who has, as we say, won his case still feels able to say: my adversary, the one who lost, remains like me a subject of right, his cause should have been heard, he made plausible arguments and these were heard. However, such recognition will not be complete unless the thing can also be said by the loser, the one who did wrong, who has been condemned. He should be able to declare that the sentence that condemns him was not an act of violence but rather one of recognition.

Where narrative justice is about empowering the victims by legitimizing their memories, by establishing historical truths and collective memories, Ricoeur is most concerned with how both victims and perpetrators may have their fair share in the model of cooperation of a society (Ricoeur 2000:132). According to Ricoeur (2000) it is because the act of judging establishes a “just distance” between the perpetrator and the victim that both can be said to have their fair share in the model of cooperation of a society:

It is the just distance between partners who confront one another, too closely in cases of conflict and too distantly in those of ignorance, hate, and scorn, that sums up rather well, I believe, the two aspects of the act of judging. On the one hand, to decide, to put an end to uncertainty, to separate the parties; on the other, to make each party recognize the share the other has in the same society, thanks to which the winner and the loser of any trial can be said to have their fair share in that model of cooperation that is society. (Ricoeur 2000:132)

Ricoeur claims that the primary goal of justice is peace, not vengeance or compensation. I do follow Ricoeur on this as an important ethical and political dimension of justice.

Since Ricoeur looks at this from the perspective of the relationship between the political and justice, it is hard to disagree that the goal of a tribunal should be to assure that both parties of a conflict should, to use Ricoeur’s own words; “have their fair share in that model of cooperation that is society” (Ricoeur 2000:132). I will argue that the goal of any transitional justice process should fundamentally be to realize such ethical outcomes from establishing justice for past crimes. In transitional justice, the final destination of the just should be peace, not vengeance or compensation. Nevertheless, I will argue that Ricoeur’s model of justice lacks one third mediating distance between the victims and the perpetrators that needs to be established before the goals of transitional justice can be reached. This is how I will place narrative justice in relation to Ricoeur’s theory of justice. Narrative justice is happening in relation to the juridical justice at the tribunal. In addition it moves on from this after the sentence at the tribunal has been made. And this is where I will argue that narrative justice needs to be established before one can realize the ethical and political elements of justice put forth by Ricoeur.

If one were to focus too early on the desire to “make each party recognize the share the other has in the same society” (Ricoeur 2000:132) one would risk bypassing or even destroying the possibilities of establishing narrative justice. To illustrate this I use Cambodia as an example. The situation I experienced during my field trip to

Cambodia in 2008/2009 and during a later visit in 2011 is that there is a broad confusion and lack of knowledge of who are the perpetrators and who are the victims.

From these experiences I see some problems with the model of justice put forth by Ricoeur as risking overlooking the fact that even though justice and politics have important philosophical links, such links may also involve a challenge to narrative justice. The Cambodian case illustrates this well by the way history has been and is still used as part of a political power play. The fact that many former Khmer Rouge are already part of the new government could, from Ricoeur's account of justice, be studied as a situation where "each party recognizes the share the other has in the same society, thanks to which the winner and the loser of any trial can be said to have their fair share in that model of cooperation that is society" (Ricoeur 2000:132). As already mentioned, I agree that the ultimate goal of a transitional justice process should be a situation where the former victims and perpetrators can collaborate in shaping a peaceful future. To be able to do this, they need to move on from the conflicting past and find common ground to work together in peace. Nevertheless, my argument is that this can only happen when a juridical justice is accompanied by a narrative justice establishing a relation between justice and memory, history and identity, as part of followable transitional justice narratives relating the individual to the transitional justice processes.

As in the Cambodian case, when the handful of perpetrators are judged at the Khmer Rouge tribunal, hopefully within the next two years, this will not be sufficient for former perpetrators and victims to start collaborating on an equal ground. Because the political elite have been manipulating and hiding the historical past to gain political power, there is a need for a third distance between the perpetrators and the victims mediated by legitimate historical narratives relating past, present and future. To achieve this, the juridical justice needs to be followed by a process of narrative justice. I argue that only when this is established will the victims be re-empowered and capable of reconciliation and forgiveness.

Ricoeur (2000) distinguishes between a short-term end where the decision of the tribunal ends uncertainties of the conflicting past, and a long-term end related to the contribution of a judgment to public peace. It is along the path from this short-term end to the long-term end that narrative justice may differ from Ricoeur's theory of justice, besides the fact that Ricoeur's theories of justice are mainly focused on retributive justice which narrative justice takes as its starting point. Ricoeur (2000:129) writes:

Within the strict limits of the trial process, the act of judging appears as the terminal phase of a drama with several actors: the parties or their representatives, the public attorney, the judge, the jury, and so on. What is more, this terminal act appears as the closure of an unpredictable process.

How the final act, the delivery of a judgment, puts an end to uncertainty is defined by Ricoeur as a short-term finality. As pointed out by Ricoeur (2000:130), “the trial process itself is only the codified form of a broader phenomenon, namely that of conflict”. An important question then is what comes after the trial process, after the act of judging? The drama of the trial process with its starting point, mid points, ups and downs, different characters, and finally its closing point with the final judgment, could be studied as a narrative. Therefore I will argue that it is easy to see this as a final closure of the conflict, disempowerment, impunity and uncertainty of the conflict that lies behind the trial process. My point in addressing this from a narrative perspective is to argue how this is only the starting point or high point in the process of securing transitional justice, not the end point.

Ricoeur is concerned with how to replace the precise procedures of the trial process with the functioning of the social phenomena and public discussions of civil society (Ricoeur 2000:130). In many ways this has to do with the various elements connected to the initial choice to seek justice instead of violence. This is where narrative justice helps us to understand what I will claim is a common element to many of these elements related to the choice of justice instead of personal revenge through violence. Since the situation in post-conflict situations is that there is no practically possible or desirable means to punish all the perpetrators, only a handful are punished. This requires that the choice of justice over violence made by the victims is related to a narrative communicating how this should count as justice for all. I have described this as part of the transitional justice narrative and showed how this is related to the formation of historical consciousness, narrative identity and collective memory.

One central element for Ricoeur (2000) of understanding justice as being part of the alternative that a society chooses instead of violence is related to the interconnection between justice and politics. For Ricoeur the choice of justice over violence is part of what defines a state of rights. Central to this are two elements of sharing: “that which separates my share or part from yours and that which, on the other hand means that each of us shares in, takes part in society” (Ricoeur 2000:132). Another element illuminated by Ricoeur (2000) that defines a state of rights is the choice of discourse over violence.

I have already addressed these challenges. I follow Ricoeur's attempt to broaden the perspective on justice from the juridical to the political. Nevertheless I argue that the political elements of justice and the relationship between justice and the social processes of establishing a cooperation between the former conflicting parties in civil society need to happen in parallel or after the establishment of narrative justice. Ricoeur's theory of a just distance needs to be paired with narrative justice establishing a just historical distance before transitional justice can happen. In a former conflict society the victims are often disempowered after a long period of violence and suppression. This means that there is often a situation where the victims are not immediately empowered and legitimized as capable subjects of political rights after a tribunal has taken place. Narrative justice helps us to understand central elements of how this transition may take place between the retributive justice at the tribunal and the final destination of the just which is peace.

10.5 Narrative justice and the reflections of Khmer Rouge victims

“Memory is the ultimate form of justice” (Enrrera 2004:44).

10.5.1 Introduction

In *The Just* (1996 [2000:106]) Ricoeur asks, “How apart from some underlying teleology can the regard directed to the past turn back in expectation towards the future?”. By referring to Kant's eight theses on the Idea for a Universal History Ricoeur (1996 [2000]) identifies hope as a bridge between the witnesses of the past and orientations towards the future.

To understand how transitional justice processes may motivate and empower victims of the Khmer Rouge to imagine a better future, we need to understand how narrative justice is related to memory, hope and imagination. If Cambodians look back, they may see no further than the overshadowing and confusing memory of the Khmer Rouge/DK. However, transitional justice narratives could play an important part in assisting the victims in narrating the memories of the conflicting past in relation to the collective processes of searching for truth and justice to form constructive orientations towards the future. This is an essential assumption of narrative justice.

Referring to the empirical findings from Cambodia I now investigate how looking back into a violent past in the search for truth and justice may motivate and empower the victims to be “the cause of their own advance” (Kant, *The Conflict of the*

Faculties, quoted in Ricoeur 1996 [2000]) towards a better future. I will show how justice in times of post-conflict transition needs to be studied and valued in relation to how it relates memories of the conflicting past to hopes for a better future.

To illustrate these theoretical claims I study how the projects of DC-Cam and the Khmer Rouge tribunal may serve this function for the Khmer Rouge victims as narratives for retrospective gazes into the conflicting past, and as prospective orientations towards a brighter future.

By studying memory in relation to the transitional justice processes, it becomes clear how narrative justice is about understanding how transitional justice narratives may enable the victims to identify with thousands of other victims knowing that they as witnesses are making it possible for justice to finally happen.

The term “justice” in transitional justice implies that some sort of justice ending the impunity is a necessary part of the transition. Several scholars, for example, DeGreiff (1996), Mendez (1997), Little (1999), Mani (2002), and Bloomfield, Narnes and Huyse (2003), investigate the relationship between justice and accountability in times of transition.

Since the aim of this thesis is to present new and complementary perspectives to the many juridical based theoretical discussions on transitional justice, I have made the argument that a focus on institutional strategies and legal understanding of justice has to be supplemented by a more philosophical account of how justice is used and perceived by the individual to orient him-or herself towards a better future. Again Ricoeur’s definition of the ethical intention of *aiming at the good life with and for others in just institutions* reminds us of how justice is rooted in life as a wish and a desire motivated by the desire for something that is lacking and by obligation.

Reflections on the just and justice in transitional justice have much to do with how the conflicting past is related to the present and the future as part of fulfilling the victim’s wish and desire to live well. If we apply Ricoeur’s theories of narrative to how people reflect on justice in times of post-conflict transition, we see important narrative elements of justice that are not visible when we study the concept of justice in transitional justice from a more strictly juridical perspective. By opening up the concept to include various strategies that are not narrowly focused on prosecution, the concept becomes more relevant to understanding what kind of transitional processes are needed to deal with legacies of human rights abuses that would empower the victims to move on towards a better future. The fact is that only a small percentage of the perpetrators of previous abuses are prosecuted in new democracies. This represents

a huge communicative challenge for the tribunal in narrating how this should count as justice for all the survivors.

The success of transitional justice depends to a large extent on how the narrative of justice is evaluated as followable by the survivors. This is why I argue that a narrative perspective on justice becomes important to explain processes and mechanisms needed to achieve the goals of transitional justice.

The success of transitional justice is not only measured by its capacity to deliver fair trials based on international standards of justice. Transitional justice is equally dependent on the success of communicating how this should count as justice for all. Various elements of historical consciousness relating the conflicting past and the present to form new orientations towards and hope for a better future therefore become instrumental in understanding these processes. I will again stress that I argue that a narrative perspective on justice is essential not as an alternative perspective in times of post-conflict transition, but as a complementary perspective that helps us understand important narrative elements to be considered as part of transitional justice processes. As presented in Chapter Three, the field of transitional justice is today broadened to include restorative measures, social reconstructions, and other approaches that take into account separate patterns of abuse, such as the oppression of women or religious minorities. The concept also includes other efforts of dealing with the conflicting past, such as memorialization in the form of museums, art exhibitions and plays. To further develop how this could be studied from a narrative perspective I relate the theoretical discussions to empirical data from my case study in Cambodia.

10.5.2 Knowing who was good and who was bad.

The interviews I conducted at the DC-Cam and at the ECCC tribunal allowed me to meet survivors who experienced great personal losses during the Khmer Rouge regime. Even though it was painful for them to come to the tribunal, they want the perpetrators to be tried legally, and to know for sure what really happened in the past.

I asked one of them if it is important to know the truth and if he thought the Khmer Rouge tribunal is important:

It is important to try the person who commits the crime and it is important that the trial is really going to happen (...). I think this is very important especially for the younger generation to know what has happened. They should know what was good and what was bad. If it is bad, the doers have to be brought to justice. Therefore, this trial is to fulfil the needs of victims throughout Cambodia. We expect to know how seriously the perpetrators will face their punishment. I'm

content with the Khmer Rouge Tribunal. Even though I don't know much about regulations and proceedings, but I know that this trial is really happening. This makes me feel better at least to a certain level. This will help us know who was good and who was bad. This will help future generations to believe in democracy.

Here he addresses one of the pre-conditions for narrative justice related to the tribunal – how narrative justice is dependent on retributive and procedural justice at the tribunal to establish historical truths about what happened and who was responsible. To know “who was good and who was bad” is an important part of the formation of historical consciousness in relation to the transitional justice narratives.

Without narrating a break with the past and without a moral judgement identifying people along the lines of good and bad, it is difficult to form a historical consciousness of the past that may empower the survivors to orient themselves towards a brighter future. The desire to “know who was good and who was bad” is also related to Ricoeur's theory of imputation, as described earlier. By identifying who was responsible, and by morally and legally judging the action of that character within the historical framework of the same crimes that the individual victims suffered, the identification of characters is an essential element of the narrative effects of the tribunal.

The lack of such clarity is why many survivors have formed a disempowering historical consciousness based on disbeliefs, myths and manipulated historical accounts of the violent past. Without a broader historical narrative that identifies perpetrators and victims as imputable, it will be hard to reach true reconciliation and forgiveness. If no persons are identified as the wrongdoers that caused the suffering, how can you reconcile with the past?

Nevertheless, a separation between good and bad persons cannot carry into the future. This would be counterproductive to reconciliation and transitional justice. The importance of identifying the good and the bad is limited to the narrative of the historical past. The transitional justice narrative is constructed by identifying certain characters and actors that are viewed as either good or bad along the lines of perpetrator/victim. This is what drives the plot of the narrative, where the turning point is the punishment of the perpetrators at the tribunal. By punishing them one constructs a narrative that could be followed by the survivors when they try to come to terms with their memories of a brutal past.

Selected senior officials of the Khmer Rouge are the main characters in the plot of the transitional justice narrative in Cambodia. As seen in the case against Duch (Kaing Gueak Eav), when the characters of the plot are narrated in relation to changes

in their biography or narrative identity that is not recognized by the victims – as when Duch is presented as a born-again Christian – the result may be confusion and disbelief that may hinder the followability of the plot of the transitional justice narrative.

10.5.3 Legal justice and historical truths

Many different narratives among the Cambodian survivors explain the violent past. Many survivors believe foreigners arranged the genocide and that Cambodians were innocent victims. One man I interviewed in a café in Phnom Penh put it like this:

We also want to find out who are behind the regime. To try them is not yet enough. If it was only Khmer, there won't be such a terrible thing. I am afraid that some other nationals pretend to be Cambodian people. They are either at lower or higher levels. This is still a mystery. Even siblings are not allowed to talk to each other.

His statement that it is not enough to try them legally, but that he wants to find out the truth about who was behind the regime, is relevant in my interpretation of the concept of narrative justice. It is not enough to punish some of the perpetrators if the survivors are not convinced that the historical narratives of the violent past are correct and truthful, and guilty characters are identified and punished. Justice needs to be studied in relation to the emplotment processes related to the tribunal and the followability of the transitional justice narrative:

As presented in Chapter Five, expectation and anticipation of a world that is reconfigured in the light of history, tradition and past events drives the process of mimesis into the present (Ricoeur 1983 [1990]). Ricoeur's mimetic model helps us understand the mediating function of the plot of the transitional justice narrative in empowering the victims to re-orient their confusing memories and histories of the conflicting past towards a brighter future of lasting peace. This has to do with the configurational dimensions of the plot of the transitional justice narrative.

Narrative justice explains what is achieved when the transitional justice narratives are related to the individual victims' search for truth and justice, assembling the events of the conflicting past and the present together as a followable narrative empowering the victims to orient themselves towards a brighter future. This is illustrated by the answers provided by a Khmer Rouge survivor on the importance of the tribunal:

I think it is very important because a lot of victims lost their families. They lost their schooling and a lot of people were killed. (...) It is important to know the truth because people want to know the truth. I will tell my friends about this. It

is important because our people are demanding the trial for those who did something wrong. The court now tries the perpetrators for the first time. This trial never existed before.

He felt it is important that he join the group going to visit the tribunal because it will enable him to share the experience with the people in his home village. I asked him what he thought about the tribunal when he first heard about it. He said:

I was thinking, what will the judges do to the perpetrators? I want to know if the perpetrators will be killed or imprisoned.

I asked him, “What do you think the court should do?”:

I think that all are Cambodian. This happened a long time ago. I think they should.... [He was interrupted by another informant, who said]

If the judges decide that they have to be killed, it is up to them. It is also up to the court if they want to sentence the perpetrators to life imprisonment.

To learn more about how he (the first interviewee) views the tribunal as a form of historical learning or transformation, I asked him what part of the Khmer Rouge history he would like to teach his children. He answered that the history he wants them to know is about the crimes they committed. He said: “This will let the younger generation know what happened from this time to another time or from that era to another era.”

I asked if he wanted to teach them only the history of the Khmer Rouge from 1975 to 1979, or if he would also teach them about the history leading up to the trial and after the trial:

We teach them everything from the beginning, about the genocide and then about the trial. This is combined to make a story.

It is interesting that he will combine stories of the conflicting past with stories of the trials happening in the present to construct a story that he will teach the younger generation. This is an illustration of how transitional justice needs to be studied from a narrative perspective relating the time dimensions of past, present and future. At the same time it also points at essential elements of how narrative justice relates past, present and future as a middle position or detour between the legal judgments of the historical past at the tribunal and the final goals of transitional justice of establishing a foundation for cooperation between victims and perpetrators in shaping a democratic and peaceful society. Narrative justice helps us understand how the act of judgments needs to be related to future-oriented perspectives on how the narratives of legal retribution should be related to future-oriented perspectives.

It is therefore interesting to learn more about how the Khmer Rouge survivors and other victims reflect on the importance of judging the perpetrators in relation to a future-oriented perspective. This is at the core of how I understand the concept of narrative justice: how justice in times of post-conflict transition needs to be studied as part of a narrative that is followable for the victims relating the crimes of the past to collective transitional justice processes in the present, empowering them to orient themselves towards a better future.

To illustrate these theoretical assumptions I was curious to know what kind of punishment the informants would evaluate as just and why it is important or not important to punish the perpetrators. I wanted to know if they only reflected on this in terms of their own personal memories and narrative identity, or if they reflected on this in terms of historical consciousness and collective memory.

10.5.4 “Never again”: Retributive justice, narrative justice and historical consciousness

In 1905 George Santayana wrote in his book *Life of Reason, Reason in Common Sense*: “Those who cannot remember the past are condemned to repeat it”. Many of my interviewees in Cambodia expressed the importance of punishing the perpetrators to prevent similar crimes from happening in the future. This can be viewed from a narrative perspective on justice, which establishes that justice for the Khmer Rouge victims is something more than just taking personal or collective revenge or retribution. It points at how justice could be studied from a narrative perspective on how the retributive and legal justice at the tribunal needs to be understood in relation to narrative justice in how the victims are related to the transitional justice processes.

When I asked a group of middle-aged Cambodian men sitting in a café about how they reflected on the tribunal, one of them said: “I think it gives us hope that such things will not happen again in the future. It will prevent this from happening again.”

Another followed up by saying: “I have the same feeling. I don’t want to see the communists kill its own race again.”

My impression from talking to representatives from various groups about the ECCC tribunal is that a common element in how they reflect on the tribunal is that it is important to punish the perpetrators to prevent this from happening again in the future. One man I interviewed in one of the poorest areas in Phnom Penh gave me a similar answer: “It prevents other leaders from doing so in the future.”

The expectation that by punishing the perpetrators you could potentially prevent similar things from happening again is related to how many of the victims reflected on what kind of punishment they felt that the perpetrators should receive before justice could be fulfilled. Almost all of the respondents reflected on what kind of punishment the perpetrators should receive by making statements of future-oriented consequences of punishing the perpetrators. However, there were some exceptions that point in the opposite direction of narrative justice. For example one female garment factory worker I interviewed told me that she wanted the perpetrators to be tortured, and then starved to death. This is more of an eye-for-an-eye kind of retribution that does not open the way for reflection of the narrative effect of the processes of seeking justice, not vengeance. Another of my informants, a female student at the public university, reflected in a similar manner by saying that she wanted to torture and kill the perpetrators because they have killed a lot of persons. When I asked her about the need for reconciliation, she said, “We should not kill, we have to love each other, but if I love somebody and they do not love me, and they do not know how I feel, just kill”. This is a strong statement that points in the opposite direction of narrative justice. It is important to recognize that not all Cambodians reflect on justice in terms of future-oriented consequences of the way the perpetrators are punished. Having said that, out of twenty-five people I interviewed, only two stated that they wanted eye-for-an-eye retribution. Perhaps this is also related to Buddhist religion? When I interviewed a Buddhist monk about his thoughts on the tribunal he told me that they should not allow the death penalty at the tribunal. For him this would not be a way to prevent this from happening again in the future.

We should find peaceful solutions. It is a good way because it ends the anger. We don't want to kill each other. Killing does not stop any problem. (...) As my experience, this is a way to prevent this from happening again. We don't want to see all of this happen again.

I asked him if he thought that we can avoid similar things from happening in the future by learning from the tribunal. He answered: “We can't guarantee, but future generations will feel that this was too cruel and they want to avoid it.”

To learn more about how he reflects on this in terms of the time dimensions of past, present and future, I asked him if he believed the processes that are happening today are important for the future:

I think the past is important for us to apply now because it is an experience. If it is bad, we avoid them, but if it is good, we accept. Past experience is good and we should avoid doing the same mistakes.

A school teacher from the province of Siem Reape expressed something similar:

I think it will change after the judgment because the new regime cannot do the same, they will know that if you do bad things like the Khmer Rouge you will be judged.

When I interviewed various Khmer Rouge victims about their thoughts on the tribunal and how they reflected on the concept of justice, I learnt that many of them reflected on the tribunal by drawing parallels between the time dimensions of past, present and future. Many of them felt the tribunal was important to ensure that history would not repeat itself in new forms in the future. Nonetheless, it is important to recognize that this represents a huge communicative challenge, and is not an automatic effect of the transitional justice processes. As illustrated in Chapters Five and Six, the fragility of identity and memory could lead to the construction of a disempowering historical consciousness. Another female student I interviewed at one of the public universities in Phnom Penh said:

We do talk about the tribunal, but it is difficult. We talk and compare about today and how we can learn from the past in order to develop our country today and into the future (...). We talk about the leaders in the past and how they could organize the country like they did, and we compare today like if it's the same as in the past or different today.

I wanted her to elaborate on this, so I asked her if they compare the past to the present situation today and if she thinks about the future from this. Students of her age do this, and that is why they think it is hard to develop the country, she said. To some extent this could be said to be the opposite effect to what I have described as an empowering historical consciousness of the conflicting past. I conducted the interview when the tribunal had just started and there was much confusion and disbelief about the conflicting past.

As already quoted above under paragraph 7.3, I asked her if she thought that the tribunal can help her learn from the past:

Yes it is important. That is why we study it in high school, but you know we don't have any clear evidence about the KR. We don't have. Even the documents we just learn by talking to the people that lived in that regime. Because in that regime; if you were a teacher you would get killed. If you worked as a politician you got killed and we don't have any clear evidence.

She is expressing doubt whether the testimonies that form the foundation for the documents about the Khmer Rouge/DK era really provide clear evidence for what happened. One expected effect of the tribunal and the related transitional justice processes is that she will be convinced about the truth value and legitimacy of the

transitional justice narratives relating the past, present and future, but at the moment she is not convinced.

Did she feel it is hard to know what the truth is?, I asked her. As already quoted under paragraph 7.3 she answered:

Yes, but we still think it's true because my mother lived in that regime too and she said that she don't want to live in that regime again. It was very bad for all the people because they had no rights. If they said something wrong they would get killed. It's not only if they did a big mistake. (...). My mother talks about it. She said that during the Khmer Rouge regime she used to live in Phnom Penh in the past and during 1975 all the people living in Phnom Penh were sent to the provinces to work on farms.

Narrative justice is about understanding how the establishment of the transitional justice narratives enables or empowers the victims to follow the transitional justice narrative relating past, present and future when trying to cope with the memories of the conflicting past and orienting themselves towards a better future. If we relate this to the statement made by the university student quoted above, we could say that in the absence of narrative justice she can only follow the narrative provided by her mother who lived during the regime. This helps her to believe part of what is said to have happened in the past, but it is not related to collective memories and legitimate public truth claims about the broader history and narrative of the conflicting past.

This has to do with the legitimacy and the followability of the narrative. The victims' desire to punish the perpetrators to prevent this from happening again in the future is proof that justice needs to be studied from a narrative perspective. Establishing transitional justice narratives making legitimate truth claims and judgements of the crimes of the past may convince the victims that this narrative of justice may also be part of other people's historical consciousness in the future that could prevent this from happening again.

Narrative justice happens when the victims render the transitional justice narrative as followable and, as a result, feel that the conflicting past has been narrated in relation to the processes of searching for justice in the present in a way that prevents such crimes from happening again. This depends partly on the extent to which the victims evaluate the tribunal or the documentation center as legitimate providers of justice and truth.

This is illustrated further by the statements made by another student I interviewed at a private university in Phnom Penh about her thoughts on what kind of punishment she believed the perpetrators should receive before she felt that justice was

served. She responded: “I think our country doesn’t have the capital punishment [so] we should put those people in jail for their life.”

I challenged her by asking if she would like them to have the death penalty if she could so choose.

I don’t want to do that. But I want the judge to put them in jail and have them learn about what happened in the past during that regime. Ask them to learn about their actions in the past and ask why they killed many people in that regime. And if they can learn that, they will have regrets about what they did in the past.

I asked her why she thought it is important not to kill them.

We don’t have to kill them because we want them to learn to know their mistakes in the past and if they learn and know their mistake in the past they may be able to say to other people that they have regrets and they feel sorry for that and they may say to other people that we should not have that kind of regime again.

I asked her if she believed they did not have to be hurt or killed to have justice. She replied:

No, because in the past people were killed and if they kill the people that made mistakes in the past today it’s still the same thing.

As already mentioned, only two respondents made statements that opposed this view. The majority of the respondents expressed that they did not want to kill the perpetrators because of the consequence this would have for the future humanity and democracy of Cambodia. To make this particular interviewee elaborate on this, I asked her if she thought it is a good example for the new generation that you do not kill the perpetrators, that you prove that you are a better society now, and that you believe in things other than murder. “Yes. Actually this was actually my idea when I said that we don’t have to kill these people.”

To make her elaborate further I asked her if she wants to forget about the past. “No, I want the future generation to know what happened in the past too.” Why is that important?

It’s important to let them know about the history of our country and if they learn from the history they can learn and compare the history of the past with what happenstoday and in the future.

A common element in the respondents’ answers to the question of how to punish the perpetrators is that they reflect on justice and the role of punishment in relation to the time dimensions of past, present and future, and how it is important to punish the perpetrators to prevent this from happening again in the future. This is how I

understand narrative justice. Justice in times of post-conflict transition needs to be studied in relation to how the transitional justice narrative is evaluated by the survivors and other victims as a collective memory that may enable present and future generations to learn from the past to fulfill the collective desire of “never again”. To learn more about this, I asked different Khmer Rouge victims about forgiveness and justice.

10.6 Forgiveness, justice and the desire of “never again”

Sometimes if we just think like a Buddhist we cannot stop the burning in our heart. It is too much. We need the tribunal. We will punish the Khmer Rouge, but if we do not get the chance to do this, we just say we forgive them. (Female teacher from Siem Reap).

As illustrated by this statement, one element in interpreting how the Khmer Rouge victims related to the transitional justice processes is to explain the significance of the religious context of Buddhism in how the Khmer Rouge victims relate to the transitional justice processes.

As mentioned in Chapter Two, one big challenge to my project is related to cross-cultural hermeneutics. Within the limitations of the main task of the project I was not able to give a full account of how complex concepts like forgiveness and justice translate to the Cambodian context. There are several barriers between my pre-understanding based in a Christian tradition and the Khmer Buddhist tradition when it comes to understanding the concept of forgiveness. How can I meet such challenges? With respect for the complexity and diversity of the Khmer language, culture and religion, I will not try to draw any simple conclusions based on the accuracy of my interpretation and the translations. The complexity of the empirical findings supports this. When I interviewed Cambodians about the concept of forgiveness I got many different answers. At a later stage of the research I learned how the concept of forgiveness lacks any clear common signification. Rather it can mean different things in different contexts.

There are also cultural or class differences in how the concepts are used and interpreted. In general it is to be expected that educated people living in the capital Phnom Penh reflect differently on the concept of forgiveness than the common ways of using the concept among un-educated people living in rural areas. My experiences and empirical findings from Cambodia support this assumption. Another uncertainty is whether the informants refer to or use Buddhist sayings when they talk about

forgiveness, or if they talk of what forgiveness signifies for them personally without relating to Buddhism. Perhaps it is not possible make such differentiations.

Even though there are many barriers making it hard to interpret the empirical findings of the respondents' statements of forgiveness, I still believe the empirical findings are useful in establishing the theoretical concept of narrative justice and in showing how this helps us understand the phenomena of transitional justice. The fact that the Khmer understanding and application of the concept of forgiveness is polyphonic and complex allows me to use the statements of the informants when asked about forgiveness to reflect critically on the concepts in relation to the transitional justice processes. The aim is not to provide a full understanding or representation of a Khmer conception of forgiveness, but rather to relate the reflections made by the informants to the theoretical interpretations of Ricoeur's theories, and vice versa. I do this without concealing the obvious challenge and bias of my lack of a more systematic analysis of the key concepts of the interview.

The most complicated concept with most uncertainties when it comes to cross-cultural hermeneutics is the concept of forgiveness. Therefore I start this study of the meaning of forgiveness with a glimpse into some of the complexity of the Khmer meaning of the concept.

10.6.1 Forgiveness and Buddhism

It is a complicated task to identify a Buddhist conception of forgiveness.

Someone interested in Buddhism encounters two problems in attempting to find a "Buddhist" definition of forgiveness. First, Buddhism is a global religion that has historically used a wider variety of languages and this linguistic diversity represents a conceptual diversity as well. There is no unified foundation against which a single "Buddhist" concept of forgiveness might be sought. The problem of translation that one inevitably faces when exploring the diverse resources of the Buddhist tradition is only magnified when one attempts to find analogs or equivalents for Western moral categories, such as forgiveness. (McCullough, Pargament and Thoresen (eds.) 2000:22)

In Cambodia the majority of the population practice Theravada Buddhism. This is the oldest direction within Buddhism practiced today, originating from Ceylon, where it had arrived from India in 250 BCE (Gombrich 1988:2). Theravada spread from Sri Lanka to Thailand, Burma and Cambodia. In very simplified terms, it is possible to sum up the teaching of Buddha in four noble truths; suffering does exist, suffering has a cause, the end of suffering, and the road that leads to the end of all suffering. These

noble truths are following eight points: right focus, right thought, right speech, right action, and right way of living, right effort, right attention, and finally right meditation.

If I should move beyond this very simplified description of Buddhism it suddenly becomes very complicated and I would quickly stray from what is the main focus of this thesis. For example, as pointed out by McCullough, Pargament and Thoresen (2000:32) the fact is that forgiveness is not, per se, a central quality in the Buddhist tradition. Instead they show how the two qualities of forbearance and compassion are more central in Buddhism. Despite such complexity of understanding what forgiveness means in a Buddhist understanding, I will in the following try to understand better how a Buddhist conception of forgiveness may influence how the victims relate to the transitional justice processes.

In particular I identify one element of Buddhism that is essential to understand how the Khmer Rouge victims, who share a Buddhist belief system, reflect on concepts such as forgiveness and justice in terms of relating the time dimension of past, present, and future. This is the concept of karma.

In Buddhist faith each individual will receive punishment in the next life for the wrongs they did in this life. This is a result of the process of rebirth as a continuation of the previous life. Put simply; if you die with a state of mind that is in peace and harmony, this will continue to the next life – you have a good karma or *kamma* (Holt, Kinnard and Walters 2003:9). Pol Pot is thus commonly believed to have died with a bad karma that will follow him to the next life.

The quality of your action in this life determines your karma. The Buddha spoke of action as intended. This means that the intention behind the action is what determines the karma. You have to suffer the consequences of your mindful actions (Clifford, Kinnard and Walters 2003). This is another way of thinking about the relations of past, present and future as part of a historical consciousness different from the one that we use in a western context. What I am today, the suffering or happiness I am experiencing today, is a result of my previous life, and what I do today, my intentional actions, serves as an orientation for my future life. This consciousness is important to understand as part of how Cambodian people reflect on the Khmer Rouge tribunal.

A central part of the Buddhist teaching is to prevent evil acts from happening again. Instead of viewing the wrongdoer as an enemy, the goal is to go past that stage of anger, grief or revenge. Forgiveness is seen as a practice to prevent thoughts that would lead to bad intention or harmful feelings that would leave a lasting effect on the person's karma.

A well known Buddhist saying from Dhammapada 1.3–4, goes like this:

‘He abused me, he struck me, he overcame me, he robbed me’
— in those who harbor such thoughts hatred will never cease.
‘He abused me, he struck me, he overcame me, he robbed me’
— In those who do not harbor such thoughts hatred will cease.

One major difference between the Christian notion of forgiveness and the Buddhist is how the Christian conception of forgiveness focuses on what comes after an offence, but Buddhism emphasizes more how forgiveness and attitudes of non-vindictiveness may change the behavioral pattern or attitudes of the perpetrator to lead him on a better path that could prevent wrongdoing.

Religion has been part of the discussions in court at the Khmer Rouge tribunal. For example, during the December 15, 2011, hearing in the case of Nuon Chea, the Khmer Rouge crimes against Buddhists and Buddhist religion was addressed. According to Ian Harris (2007), the Khmer Rouge committed several crimes against Buddhists, who were considered to be a threat to the revolution together with other pre-revolutionary practices and cultures.

Buddhist monks suffered in many ways. Based on documentary evidence and interviews it is clear that the Khmer Rouge disrobed and killed Buddhist monks, destroyed monasteries and forced the monks to marry women. In addition the Khmer Rouge caused suffering by strongly discouraging people from providing food and water to Buddhist monks who, as part of their religious practice, were dependent on such contributions to survive (Harris 2007). Even though there is strong evidence that the Buddhist monks suffered under the Khmer Rouge, Noun Chea, also known as “Brother Number Two”, denied all such accusations. Instead he strongly condemned those who claimed that his Democratic Kampuchea regime had devastated Buddhism in Cambodia.

In the December 2011 issue of the magazine *Searching for the Truth*, Chea’s defense speech at the tribunal was quoted, in which he asserted “these people did not clearly understand the meanings of Buddhism”. Chea then lists what he sees as the key meanings of Buddhism; “virtue, meditation, and intelligence which remains attached to the heart and daily life of the people”. From this Chea claimed that; “it is useless to go and pray in monasteries because the practices of Buddhism are in your mind. The Buddhist was born and enlightened in the forest.” Chea’s defense was seen as a great insult to Buddhism (Bunthorn Som and Sreinith Ten, in *Searching for The Truth*, DC-Cam, Phnom Penh, December 2011).

Since I have not studied Khmer Buddhism extensively, I am not able to provide full explanations of how, for example, Buddhist belief in karma, and the belief that the perpetrators of wrongs will receive punishment in the next life, influences how the respondents answer my questions of forgiveness and also how they reflect on punishment and justice. There are also big differences between Cambodians when it comes to how they personally relate to Buddhism. And finally, as pointed out by one of my informants, there are many different conceptions of forgiveness in Cambodia. This means that I cannot relate to one more or less singular Khmer or Buddhist conception of forgiveness when interpreting the empirical findings. Nevertheless, the empirical findings show that most of the informants, to varying degrees, equal forgiveness with the lack of punishment and justice. Most of the Khmer Rouge victims I interviewed said the senior former Khmer Rouge officials need to be punished and that they cannot forgive them.

It is therefore interesting to investigate how the Buddhist belief system, particularly the idea of karma, influences how Cambodian victims reflect on the concept of forgiveness and justice.

10.6.2 Khmer Rouge victims' conceptions of forgiveness

I asked one female Khmer Rouge survivor if her impression is that victims see it as important to punish the Khmer Rouge perpetrators, or if people rather rely on karma.

There is a thing about Buddhism, because earlier, the Khmer kingdom believed in Hinduism and this fact is a difficult idea for Buddhism, but after many, many wars the Khmer people felt disenchanted so we changed from Hinduism to Buddhism. Buddhism teaches something about not to fight back. They believe in the next life that the good get good and the bad get bad. They believe in that because people feel depressed and they don't want to fight anymore. They want to have a peaceful life. That is why this is part of the old people's mind. They believe that maybe because we did something wrong in the past we get a very bad life in this life. And if we hurt somebody again in this life, we will get hurt again in the next life. This is why our people, after the war, they practice Buddhism, and they just want to live a peaceful life.

Another informant made the following statement when asked about forgiveness and karma: "It makes them (the victims) feel more comfortable. This superstitious justice kind of gives a good sense of security, so it can be good.". One central question then is if there is tension between Buddhist ways of repairing social wounds and retributive justice at the tribunal.

To learn more about this I interviewed the deputy director of DC-Cam about his ideas on the concept of forgiveness in Khmer culture and Buddhism. Kok-Thay is also a researcher with a PhD in peace and reconciliation studies from Coventry University in the UK. He has interviewed hundreds of Khmer Rouge victims and perpetrators about forgiveness and justice. I will therefore rely quite extensively on his statements when trying to better understand what is specific to a Khmer and Buddhist notion of forgiveness. As stated in Chapter Two, I interviewed Kok-Thay at a later stage of the research project to answer questions on one particular area where the initial interviews failed to explore – the concept of forgiveness – to understand what is specific to a Khmer and Buddhist notion of forgiveness. Due to the fact that Kok-Thay is a public figure I use his full name when presenting his responses.

I asked Kok-Thay if he could say something about whether there is any particular Cambodian way of conceptualizing and relating to the concept of forgiveness, compared with the western understanding of forgiveness:

The concept of forgiveness is most often discussed in a Christian tradition. (...). In Cambodia we do not have that particular concept of forgiveness, but we have this saying in Buddhism that you should not be vindictive, that the circle of revenge can only be broken by not being vindictive. If you are hurt in the first place, you should not take revenge. If you do that, the society would not be better off. You should do something else. You should try to explain to that person what is wrong, and lead that person to the right way. If you hurt them as well, then you will become equally bad as them, and the society will get more conflict. If from this there is any conceptual difference regarding the concept of forgiveness, it is actually only a tiny difference, but in real practice the difference can be bigger. I think you heard from Youk already that in Khmer society you do not say that you are sorry very often. You do not use the word sorry easily. And in forgiveness, in the Khmer concept, you do not use that easily either.

According to Kok-Thay the concept of forgiveness has the same basic meaning in Khmer as when we say this in English. As a researcher Kok-Thay has studied the meaning of forgiveness both in Cambodia, and in western countries such as the UK. One common element Kok-Thay identified between a western and a Khmer conception of forgiveness is that trying to connect to the feelings of the person that you have hurt. Even though some of the core meaning of the concept seems to be the same, the concept of forgiveness is not so often used in Cambodian culture. Even though the concept is not part of the everyday practice, the younger generation and people speaking English use the concept in the same way that the westerners do. But, according to Kok-Thay, for Cambodians, the Khmer word is very difficult.

This points at the complexity of studying the concept of forgiveness in a Khmer context. As mentioned earlier I am not able to understand fully the differences between a western or Christian conception of forgiveness and a Khmer or Buddhist conception. I need to focus on some key elements of the Khmer understanding of the concept of forgiveness that may have consequences for how I interpret the empirical findings.

For example, some people I interviewed seemed to equate forgiveness with not punishing the former Khmer Rouge leaders. Kok-Thay helped me to understand better how this relates to a Khmer approach to forgiveness:

In Cambodia, when you talk about forgiveness, you should also consider the meaning of interpersonal relationships. One way of punishing is by not talking to each other when there is a conflict. For example, two co-workers have done something wrong to each other; they would rather just not talk to each other than hurt each other. They do not forgive and then they cannot reconcile.

Is this typical for Cambodia?

Yes. It is the same with how people relate to the perpetrators from the Khmer Rouge time. If they live together, they do not talk to each other. But the conflict or the bad feeling still exists there. That does not mean that they forgive each other.

One of the people I interviewed in the poorest area of Phnom Penh expressed it like this:

I don't really talk with them (former Khmer Rouge) very much. I mean, if we meet accidentally, we will talk. But it does not mean we want to talk with them. They are older than me. If they come and talk to me, I will also talk with them.

This illustrates what I interpret to be one core element in a Khmer approach to forgiveness. That it is up to the wrongdoer to approach the victim through different forms of actions and that it is then up to the victim to decide how much they should interact with the person as a response to his or her actions.

This has then much more to do with action than with the actual words of asking for forgiveness. Another element related to this is that a Khmer understanding of forgiveness is more relevant to understanding how persons that are directly related as perpetrator and victims meet. One of my informants elaborates on this: "If a friend of one person working in the same unit meets the other person's victims, then there should not be any forgiveness to consider.". Forgiveness in a Khmer understanding of the concept has more to do with meeting the person that did wrong to you, not forgiveness in general. One question then is if the Khmer concept of forgiveness can be used to talk about a more general forgiveness to the Khmer Rouge? Perhaps this is also related to religion?

A very simple and brief interpretation would then be that in a Christian tradition we relate to a more spiritual God whom we can, through praying, ask for forgiveness. This is for example related to Col. 3:13: “As the Lord has forgiven you, so you also must forgive”. How Christ by sacrificing his life for humans’ sins makes it possible for Christians to ask for forgiveness. This is also part of how forgiveness is used in personal relationships between individuals. And from this it is more natural to think of forgiveness as something that can be lifted from the personal relationship between the victim and the perpetrator. Buddhist religion on the other hand is more practically oriented, with more emphasis on action. And from this it is perhaps not so natural to expand the concept of forgiveness to count for all perpetrators in general. I will elaborate on this later when I provide an example given by one of my informants.

The point I want to make here is that one of the main differences between a Buddhist and a Christian conception of forgiveness is that while Christians relate to a more spiritual God who one can ask for forgiveness for sins, Buddhist conceptions of forgiveness seem to be more practical. Kok-Thay elaborates on this:

Buddhism is more practical and more communal. But for Theravada Buddhism there is this syncretism, a mixture of Hinduism belief with Buddhist belief as well. So the belief in spirits does happen, it does exist for many Buddhists, and Buddhism does not prohibit them from believing in that sort of thing. If you believe in spirits it is more superstition than Buddhism.

So is there not a tradition of asking for forgiveness, where the perpetrator can approach the victim asking for forgiveness?

That is not typical at all. Not typical at all. But what he can do, and what is easy for him to do, is serving at the pagoda or at festivities and he try to talk and say a few words. And if there is feedback from the victims, then he can approach further and more (interaction/reconciliation) may happen, but that is often all that happens after 30 years.

The Buddhist way of forgiveness is more related to action. Forgiveness is then mostly communicated through action rather than words. One question that surfaces here is whether the strategy of not talking to the former Khmer Rouge is somehow breaking with a Buddhist notion of forgiveness and compassion for all human beings, including the wrong doers. By not talking to the perpetrators it is also hard to guide them in the right direction, which is central to a Buddhist notion of forgiveness. I asked Kok-Thay to clarify this.

If you are very religious, this is the ideal. It is the right thing that the victims should do. This is for the very noble person, but for ordinary people the

guideline to try to transform the person that hurt you and make him into something better, is a very hard thing to do for normal people.

To illustrate his point Kok-Thay tells me about a folktale in Khmer in which there was a bad man who killed many people and cut off their fingers to make a necklace. For every person he killed he kept one finger. And then he just kept killing people with no remorse at all, and one day he wanted to kill the Buddha. Then according to the story the Buddha had some influence on him in some way so he could not kill the Buddha. And then the Buddha teaches him and makes him understand that this is a crime, and that this is a sin. And the Buddha does not punish him, but he becomes a changed man. He becomes a religious person.

According to Kok-Thay, the idea of changing a person without punishment is central to a Buddhist understanding of forgiveness. The character in the folktale suffered for his sins by feeling bad. In the Buddhist tradition it is central to make the perpetrator understand the implications of his or her actions and the gravity of what he or she did by using soft measures to change the perpetrator without doing any violence.

There seems to be a separation or limit between the ideals of Buddhism and the legal and retributive way of finding justice for the violent past. This interpretation is strengthened by one of my informants, when asked about how the Buddhist belief that you should not hold a grudge relates to how he wants the nations to respond to the conflicting past:

That's religion, but in terms of law, we have to reinforce (it). We don't wait for the next life. If so, other people will also wait until the next life. If Buddha wants to punish them, it is up to Buddha. For me, we have to punish them.

Is the ECCC tribunal breaking with a Buddhist ideal of how to respond to past crimes? I asked Kok-Thay if it is acceptable in Buddhism to detain the perpetrators and put them in prison. Again he points to a separation between the Buddhist belief system and the legal system: "In the Buddhist way they do not talk about that, but in our legal system there is a prison system. And this is separate."

To learn some more about whether my informant's reflection on forgiveness is mostly related to Khmer cultural codes of acting or a Buddhist religious code of acting, I asked a Buddhist monk what would happen if the country were governed by monks, and if someone acted as badly as the Khmer Rouge. How would they punish the perpetrators? He responded:

If it is grave mistakes, they can be detained in a cell to correct them to become a good citizen again. We don't wait until the next life. Actually, in Buddhism, we

will receive two consequences. One, you will be lonely, no one likes you, two, you go to hell after you die. It is a place where you will be so lonely, no food, no water ... nothing. You have all kinds of sufferings. They eat their neighbor's flesh.

One way of interpreting this is to say that detaining the perpetrators based on a legal judgment is not breaking with a Buddhist approach to the crimes since it could be seen as part of a process of assisting the perpetrators to acknowledge their mistakes and change their way of living. On the other hand, it could be said to break with the Buddhist notion that you should not have grudges and that you should not be vindictive in relation to past crimes.

Another Buddhist monk told me the following when I asked him if the perpetrators should be forgiven if they admit their mistakes:

If they confess, it only means that they acknowledge their mistakes. In fact, their mistakes do not go away even if they confess. So, they need to have punishment. It means even if you confess, you have still made mistakes. The only difference is that you show your willingness to accept that you did wrong.

This brings us to the question of the relationship between justice and forgiveness.

10.6.3 Forgiveness, justice and memory

When asking a school teacher from Siem Reap to clarify what she means by forgiveness I was reminded of the connection between forgiveness, justice and memory.

Forgiveness means that if somebody did something wrong then we will not be angry and keep these memories in our mind, we just forgive it. We just try to make friends. We are not angry and we do not want to hurt them back. We just forget it. That is forgiveness. This is related to Buddhism's teaching. If we say that we can forgive the Khmer Rouge we would not argue for a (legal) judgment. It is too painful so people cannot forgive the Khmer Rouge. It is too much. Sometimes if we just think like a Buddhist we cannot stop the burning in our heart. It is too much. We need the tribunal. We will punish the Khmer Rouge, but if we do not get the chance to do this we just say we forgive them.

She equates forgiveness with the lack of justice through punishing the perpetrators.

I asked another female Khmer Rouge victim if the perpetrators should be forgiven.

For these leaders, we can't forgive them. We can't forgive them due to the loss of the lives of almost three million. If we lost our education, we can restore it; but when our parent is lost, we can't bring them back. We cannot bring back the lives of the three million.

One of the other informants clarified this point in another interview: “If we keep forgiving the killers, then in the future anyone will be able to kill others.”

This statement illustrates interesting narrative elements of justice in times of transition as addressed earlier. The belief that “if we forgive the perpetrators anyone will be able to kill others in the future” is an important future-oriented element of the processes of judging the perpetrators. The assumption is that the perpetrators need to be punished to prevent similar things from happening again in the future. Again, this is an essential element of narrative justice that helps us understand how retributive and legal justice needs to be evaluated and understood in reference to the time dimension of past, present and future.

If we relate this to the theories of historical consciousness, we see how reflections on forgiveness are related to narrative elements of justice by relating past, present and future. Narrative justice could then be described as the followability of the transitional justice narrative, convincing the victims that the stories of the crimes of the past and the judgment of the crimes in the present will become part of collective memory and historical consciousness that could prevent this from happening again in the future.

This is illustrated further by the interviews of two informants at the DC-Cam before they went to attend the first public hearing at the tribunal: “We cannot forgive them because they committed genocide.”

One of the other informants followed up by saying: “If the guilt is not so serious, we can forgive, but otherwise they cannot be forgiven by law. This is the history.”

The first informant then said: “We cannot forgive them because it is the whole society.”

I asked him if he would like the society to reconcile. “I want the society to reconcile with the perpetrators, but I alone cannot reconcile if the whole society does not.”

Many of the informants said that if the crime was less serious the perpetrators could be forgiven, but because the crimes of the Khmer Rouge were so brutal and because so many people suffered, they could not forgive. This illustrates how they relate personal and collective memory when reflecting on forgiveness and justice.

Ricoeur’s (2006) perspective on the relationship between personal and collective memory explains this as a desire among the victims to construct a collective singular of the personal memories of the conflicting past, as a narrative that would become part of collective memory that could prevent this from happening again.

Narrative justice, therefore, is about understanding how the transitional justice narratives may assist and empower the victims to construct a collective singular of the events in history as a narrative that relates past, present and future, and makes the memory of the conflicting past understandable through narrating and re-narrating the images of the conflicting past as being part of a future-oriented collective memory.

10.6.4 Pardon, imputation and justice

When explaining what is particular about a Khmer perspective on the concept of forgiveness, Kok-Thay presented an anecdote that illustrates interesting relations between forgiveness, pardon and justice in a Khmer Buddhist context:

There is a village where the perpetrator live in the same village as two of his victims. The victims here are a family where two of its family members were killed by the same persons living in the village. One woman had her father killed by the former Khmer Rouge and another woman had her uncle killed by the same former Khmer Rouge. They now live in the same village. Upon our investigation I learned that one day during the Khmer Rouge regime the guy was ordered by his superior to take a victim to be killed. And from the forensic investigation we could tell how he was killed standing in front of a hole in the ground where he was beaten to death.

Now the table has turned. The perpetrator who escaped into the jungle were never hurt or killed and moved back to the village, perhaps in the '90s. The situation now is that they live in the same village, and the former Khmer Rouge has a family of one or two children. He is quite old now and cannot walk properly. And the family of his victim, the daughter of the victim, has a better family, and they also have male family members who are strong enough to hurt the guy. And when I interviewed her she told me that sometimes she meets the guy in the pagoda. Because the villagers were all aware of his background, maybe there is no other place where he is accepted except at the pagoda, where he works with the priest serving other people during funerals and festivities. And he tries to serve tea for the family of the victims and when they meet each other at the pagoda he tries serve them and say a few words, but the victims never engage with him.

But asking the victims if they want revenge or to hurt (him) or get justice, they said that if they wanted to do that they could do it, but everybody knows what he did in the past, and he has no power now. He is weak and old and nobody supports him. But they think that he should be allowed to take care of his wife and children. They do not want to see a repetition of a widow taking care of her children alone since this is what happened to the victims. So they allow him to live like that at the same time as they do not want to engage with him. So for me I will say that this case is typical of an example of forgiveness in Cambodia. Forgiveness for me, where the victims and perpetrators are able to engage

again, is the ultimate forgiveness. But for them they can only reach that level of being able to co-exist in the village and being able to go to the same pagoda. And allowing him to continue to live and take care of his family is forgiveness for them.

According to Kok-Thay it is not the goal (for the victims) that the former perpetrator should be fully integrated in the society. Rather the goal for them is that he should stay in a humble position and if he continues to show remorseful action, communicating that he understands what he did, he may become more and more integrated in the community. According to Kok-Thay, the fact that they let him live is a big sacrifice for the victims and the perpetrator is expected to understand that this is a big sacrifice and therefore not demand more than that. It is interesting to see how this relates to pardon as a gift of letting the perpetrator to live. As Kok-Thay expressed it: “They give him (the former perpetrator) pardon in a way. If you want to classify pardon and forgiveness, pardon is on the way to forgiveness.”.

I interpret this as one central element of what is particular to a Khmer understanding of forgiveness where the first step to forgiveness is pardon by allowing the perpetrator to live, and then if he stays in that humble position you may forgive him in the end. According to Kok-Thay this is also related to a Buddhist notion of forgiveness:

The local victims are more proud to do something like that, as the Buddha teaches them to, like the story of the killer who met the Buddha I told you about earlier. If you are able to just not hurt the perpetrator back, then you are being stronger than the perpetrator, you are a much better person than the angry person that seeks revenge.

It is interesting to see how giving pardon is part of the process of empowering the victims and how this depends on the actions and attitude of the perpetrator. This reminds me of Ricoeur’s (2000 and 2007) theory of imputation. Imputation for Ricoeur as presented earlier is understood as an obligation to put things right, or to suffer the penalty. For the family mentioned above by Kok-Thay, pardon is related to imputation in that the character of the local crimes of the past is identified as an imputable individual, and that he is identified by others and by himself as obligated to compensate for the crimes and/or to serve the penalty in the form of not being included in the community and serving the family when they go to the pagoda. This form of sanction or punishment is led by the victims without any relations to the processes at the tribunal. The sanctioning is not institutionalized with the introduction of a mediating third party which I argue, with Ricoeur, is essential for transitional justice to happen.

Ricoeur (2007) also talks about how imputation should ideally not only be limited to an obligation shared by the society to put things right and to make someone suffer the penalty for the crimes they have committed. Imputation also includes the perspective of the perpetrators where he or she views him/herself as imputable, accepting the guilt being willing to suffer the penalty. Many of the Khmer Rouge victims I interviewed stressed that they could only forgive the perpetrators if they admitted what they had done. How does this relate to a Buddhist understanding?

I interviewed a Buddhist monk, asking him about his view on the Khmer Rouge tribunal and people accused of the crimes.

They need to be held responsible for what they did from 1975 to 1979. Actually, I was born in 1980 but I believe that it really happened because my family told me about this and I also heard and seen evidences. I lost three relatives. The lives of my siblings were very hard especially their eating. Even food for pigs, they were not allowed to eat. Older people in my village told me about killing and I have seen the memorial statue which they built to store skulls. It is really tragic about the regime.

I asked him if he believed the tribunal was important

It is very important for all people because the doer shall be the receiver of their action. So, we need (the tribunal) and (the tribunal) needs to bring them to justice. If they did wrong, they must be responsible for what they did. This will be fair for the victims.

His answer is interesting because it, in my first interpretation, combines a Buddhist saying that “the doer should be the receiver” possibly referring to the idea of karma, whereby the perpetrators would suffer in the next life. So I was interested to learn more about how he reflects on the tribunal in reference to Buddhist teaching. I asked him: In the teaching of Buddha, a grudge should be ceased by having no grudge. Why do you support the idea of trying them?

Buddha taught about this proverb. If they kill our family, we should not kill their family back but we need to seek peaceful solutions which are considered to be acceptable by both victims and perpetrators. For their actions of killing their own race, they need to be held responsible. The Khmer Rouge tribunal is (set up) to find justice for victims but we don’t kill them back. We need the court to seek acceptable solutions. We should not kill them back but seek peaceful solutions. This is what the proverb means.

It seems that he includes the retributive justice of the tribunal to be part of a Buddhist response to the crimes of the past. To find out if he refers to Buddhist sayings or more general conceptions of retribution I asked him if he wanted to try them in this life or the next:

The doer is the receiver. They need to be responsible. There is no need to wait for next life. As you can see, they are detained. So, it is in this life not next life.

His answer confirmed my suspicion that when he talked about how “the doer is the receiver” he was not mainly referring to the idea of karma. To learn more how he reflects on the concept of forgiveness I asked him if he believed that the perpetrators should be forgiven. I introduced the question by referring to the fact that Buddha talked about forgiveness.

If they accept their mistakes, we can forgive them all regardless of whether they are friends or enemies. We must not discriminate against race, color (...) In Cambodia, we need to try them so they will accept their mistakes. If they resist, we warn them and finally we can force but we do not that in a violent way. These are the three steps.

This brings us back to the question of imputation. For the Buddhist monk it is important to try the perpetrators at the tribunal to make them accept their mistakes. In this way the tribunal serves as an instrument to reach the Buddhist goals of making the wrongdoer accept their mistakes.

Imputation in the sense of attributing an action to someone as its actual author is part of both local and national processes. On the local level there are stories of how victims live side by side with perpetrators, and how this is possible due to intricate rules of how they should interact. My interpretation is that the Buddhist teaching and way of living is influencing how this is possible due to expectations of how victims and perpetrators should interact. This could be studied as imputation and perhaps forgiveness on a local level.

How does this relate to narrative justice explaining how the idea of imputation on a national or collective level is part of understanding the function of the followability of the transitional justice narratives in narrative justice? How does this relate to questions of transitional justice? If we relate this to the story told by Kok-Thai of the family living in the same village as the perpetrator, narrative justice helps us to understand how the relation between the family and the perpetrator on a personal level needs to move on from a personal relationship to something common or public that exceeds the relations between the individual victim and perpetrator for transitional justice to happen. If we relate this to the previous discussions on Ricoeur we could say that there needs to be established a just distance with the introduction of a mediating neutral third party. As discussed earlier, only in this way can the good, under the heading of justice, become a common good. And it is by relating personal memories to the transitional justice narrative that this may happen.

To learn more about how the local processes relate to the collective public processes of transitional justice or not, I asked Kok-Thay how the example of the family's interaction with the perpetrator relates to the concept of justice. On the one side, there are the stories of pardon and forgiveness like the one in the village, and on the other side there is the tribunal that is actually punishing some of the people that were responsible for it. I asked: Is it related do you think, or do people see it as separate processes? He replied:

But I do not think that people do relate the tribunal to their personal case. The prosecution will deliver justice for the nation, but not for the individual person. They never link it to those top leaders. Some people try to interpret what is happening at the ECCC, but for others they only saw the local Khmer Rouge killing their siblings and deciding over their lives, and they never connect it to these top leaders, because they never see them. They only hear about the name Angkar everywhere, with everything. Prosecuting those people gives them a sense of justice for the nation in general, but it will never be related to the local.

According to Kok-Thay, local people are not so much interested in the tribunal. He sees this as partly being the result of the fact that they do not follow the news and that they are not used to thinking broadly about their society, their focus is more local. One question then is how the local people can get justice. I asked him about this:

They may never get it. They have been living with that for a very long time. They may as well be able to continue like this without justice. They can exist without justice because the nation mourns with them in a communal healing process. The government recognizes their suffering. So they can still continue to exist without this total justice.

So the tribunal is then not so important for some people?

Yes, for some people. But since they are so occupied with their locality, we have to decide for them that the nation should have this justice thorough the ECCC.

The fact that people may not relate their personal cases of suffering to the processes of searching for justice at the tribunal is pointing at the importance of establishing narrative justice empowering the victims to render the transitional justice narrative as followable. This happens when the victims relate their personal memories and stories to collective memory and narratives, ultimately empowering them to orient themselves towards a better future.

This raises many challenges for transitional justice to happen in Cambodia. One way of addressing this is to look at it as a communicative challenge related to the establishment of transitional justice.

10.7 Communicative challenges

The fact pointed out by Kok-Thay, that only a few educated people may be able to see how punishing only a few of the most senior perpetrators should count as justice for all, whereas perhaps the majority look for other forms of justice in the form of direct vengeance or compensation, represents a huge challenge for the tribunal. As argued earlier, transitional justice depends on the success of relating the processes of establishing justice and historical truth at the tribunal to the individual's search for truth and justice. This is why I argue that it is so important to establish followable transitional justice narratives relating past, present and future, and to communicate these in such a way that the individual feels engaged and empowered to relate their personal memories to the establishment of future-oriented collective memories and narratives that can prevent the crimes from happening again in the future.

It is important to realize that convincing the individual of the value of narrative justice is a huge communicative challenge that takes time. It is not necessarily the first thing the victims reflect on when thinking of justice for past crimes. Kok-Thay elaborates on this:

For people I talk to in the village they say that justice for them is to give them some money so they can eat proper food and send their children to school. (Then) they would be happy and they can forget, they say. But they cannot really forget about the genocide.

According to Kok-Thay, the tribunal does not have so much personal effect for the poor people living in the provinces. They are more occupied with their daily life, taking care of their daily effort at finding food. Kok-Thay tells me that they (the DC-Cam staff) have to force the villagers to be interested when they visit. The way the DC-Cam staff approach the people is by starting the session by informing them about the tribunal and then they tell them who is being prosecuted. According to Kok-Thay, the villagers are then generally occupied with knowing why Cambodians killed Cambodian people. Another common question is if Hun Sen will be prosecuted because he was with the Khmer Rouge.

I ask Kok-Thay what the DC-Cam staff want to achieve by telling villagers about the tribunal.

We want them to be engaging more with the healing process. We want them to discuss more in the community. We want them to not have a misapprehension about the tribunal, like the belief that by punishing the former leaders at the tribunal there will be conflict again. Also we teach them about history in general and not only the local history.

Do you feel that they connect their own memories and stories to the bigger histories? Or do you think they see it as separate? He replied: “They see it as one when they learn about it. Yes, I can say that. (...)”.

This is referring to perhaps the biggest challenge of achieving the goals of transitional justice. As argued earlier, for transitional justice to happen the processes of achieving retributive or legal justice at the tribunal need to be narrated as part of a transitional justice narrative relating past, present and future. This needs to happen before the victims can relate their own memories and stories to the transitional justice processes, ultimately reconfiguring disempowering memories and orienting themselves towards a brighter future.

10.8 Preliminary summary and discussion: Punishment and pardon

The example provided by Kok-Thai of the family giving pardon to the former perpetrator reminds me of Ricoeur’s study of the relationship between sanction, rehabilitation and pardon in *The Just* (2000). This relationship, studied together with memory, history and justice, have helped me highlight some of the core elements from Ricoeur’s philosophy I adapt to explain common elements of the transitional justice mechanism summed up in the theory of narrative justice.

Ricoeur (2007) emphasizes the importance of the institution of the court for setting up what he describes as a just distance between the victim and the perpetrators. This just distance is mediated by the law – the legal texts stating something as a crime, and thus also distinguishing between victim and perpetrators as two separate characters. This establishes a just distance based on the final neutral judgments delivered by the tribunal.

Another element of the court highlighted by Ricoeur (2007:89) in establishing a just distance is the role of the judge as a neutral party making fair judgments. According to Ricoeur, it is essential that these two elements – the written law and the judge – be seen as neutral parties in the mediation, argumentation and final judgments of the trial process. This belief in a neutral mediation of truth and justice is what makes it possible for victims to hand over the right to punish the perpetrator to a third party, which is the court or the tribunal. And according to Ricoeur (2000:134) it is essential that this break takes place before the punishment are imposed in the trial process.

It is accordingly in terms of the structure of the court process that we have to seek the principle of the break between vengeance and justice (Ricoeur 2000). The question then posed by Ricoeur is by what means, with what resources, and in the name of what principles, the trial process breaks with personal vengeance. The first is the belief in a third party. This could, according to Ricoeur (2000), be the institution of the state distinct from civil society, the juridical institution distinct from other powers of the state and finally the human figure of the judge (2000:135). In addition Ricoeur identifies the significance of written laws to define crimes and separate between perpetrators and victims, and crime and punishment.

In the hearing both perpetrators and victims are made into actors in the trial process (Ricoeur 2000:136). These elements, together with the lawyers of both parties and witnesses, come together in establishing a just distance in the hearing of the court proceedings. It is this process of establishing certainty and truth about the conflicting past based on open discussion and argumentation that establish a just distance enabling the victims to hand over their right and desire to seek personal vengeance to a mediating third party. In some ways, the just distance is thus established by a promise of establishing certainty and truth about the past. And from this legal justice may be provided with the final verdict.

Ricoeur (2000:137) argues that the sanction is owed to the victims because it is owed to the law. In this lie some important perspectives on the establishment of a just distance between victims and perpetrators. The sanction is not only inflicted as a response to the crimes committed by the single individual, but the sanction is inflicted because the offender has committed a crime that is a crime against the social order of the whole society.

Since the just distance is established where the crime is defined as a crime based on the interpretation of legal texts and rules, the offence is lifted from an offence limited to personal relations, to an offence that concerns the basic order and rules of the society. This illustrates the value of establishing a just distance between the victims and the offender where the crime is lifted from a personal crime to a crime against the order of the society. This awareness is what makes it possible for the victim to hand over the right to punish to a neutral third party. One effect of what Ricoeur (2000:138) describes as the moral significance of the sanction is the reestablishment of the dignity of the moral status of the victim. Here Ricoeur touches on an important element of what I have described as narrative elements of transitional justice. Ricoeur (2000:138) writes:

In the great trials to which the disasters of our society have given rise, this work of mourning is offered not just to the victims, if they still exist, but to their descendants, kin, and allies, whose pain merits being honored. In this work of mourning, prolonging the public recognition of the offense, it is possible to recognize the moral and not just the aesthetic version of the catharsis offered by the tragic spectacle, according to Aristotle (...). We cannot overemphasize the effect of publicity, in the sense of making public, given among others by the media to the ceremony of the trial process and the promulgation of the penalty. This publicity should consist in an education about fairness, by disciplining our impure vindictive desire.

According to Ricoeur, pardon does not belong to the juridical order. It is ultimately the victim that can carry out pardon and pardon is not something that can be expected. The victims have the right to refuse to give pardon to the perpetrator. This does not however mean that pardon is without an end. According to Ricoeur, thus the end of pardon has to do with memory :

Its “project” is not to wipe away memory. It is not forgetting. On the contrary, its project, which is to overlook the debt, is incompatible with that of overlooking what is forgotten. Pardon is a kind of healing of memory, the end of mourning. Delivered from the weight of debt, memory is freed for great projects. Pardon gives memory a future. (Ricoeur 2000: 144).

Ricoeur (2000:139) asks whether the perpetrator’s self-recognition of guilt is a kind of recognition that is symmetrically expected as corresponding to this recognition on the part of the victim? Ricoeur is concerned that if the future of sanction should be rehabilitation and pardon of the perpetrator, thus the perpetrator must be recognized as a reasonable, responsible being who is the author of his or her acts (Ricoeur 2000:139).

I will now look into what practical implication the theory of narrative justice may have in transitional justice processes, and more specifically how narrative justice generates new insight on cases of transitional justice in Cambodia, showing how these may be re-situated by narrative justice. What does narrative justice add in terms of possibilities for practical approaches to achieve the goals of transitional justice?

10.9 Specific outcomes of narrative justice in relation to the field of transitional justice

As stated in previous chapters, the subject of transitional justice is still in the process of becoming a coherent field. The most important contribution the theory of narrative justice makes in the development of transitional justice into a coherent field of study is

to provide a better understanding of how the transitional justice processes may be related to the individual expected to take part in the transition or transformations. In exploring this, narrative justice helps us understand how there need to be established transitional justice narratives that are rendered as followable by the individual searching for truth and justice. By focusing on narrative aspects of how this may happen, and how narratives may relate the individual memories to collective memories forming a historical consciousness relating past, present and future; narrative justice opens the way for new understandings that can be implemented in practical methods of reaching the goals of transitional justice.

In short; narrative justice helps us understand how the retributive justice established at the tribunal needs to be paired with and continued by narrative justice establishing a historical consciousness legitimating the victim's dark memories as part of historical truths that could eventually become part of collective memories and historical narratives. Narrative justice show how historical consciousness relating past, present and future is an element of justice in transitional justice: As a followable narrative of shared historical truths and collective memories of the public condemnation and judgment of the perpetrators, with a future-oriented consciousness of how the publicly established transitional justice narrative may prevent this from happening again in the future.

By illuminating and explaining the interconnection between the time dimension of past, present and future in transitional justice, narrative justice suggests an additional perspective to understand how the goals of transitional justice can be realized. I argue that the established models and literature on transitional justice are often limited by the commitment of transitional justice to a juridical or restorative model of justice, failing to explain what happens, or what needs to happen, in between the retributive or restorative models of justice and the ultimate goals of transitional justice. Narrative justice aims to fill this knowledge gap as a middle position between the tribunal and the ultimate goals of transitional justice.

My goal is that narrative justice could serve as a theory that points in the direction of important practical consequences of thinking about narrative, relating the time dimension of past, present and future in transitional justice. Since this is the first attempt at establishing narrative justice as a theory within the field of transitional justice, it is my hope that the theory will be developed further in relation to how it may serve practical consequences. For example the theories of historical consciousness were first developed as a response to a knowledge gap within the field of history and history didactics in Germany after the Second World War, where the subject of history

could no longer be studied in isolation from the present challenges of dealing with the difficult history after the war. This is how theories of historical consciousness developed when scholars first developed more or less abstract theories of how past, present and future need to be related in understanding how people relate to history. From this new theories of how history should be taught in schools developed. And from this, more and more practical models and theories are developed where school children are motivated to relate past, present and future when studying history, and from this relate the histories to their own historical consciousness.

This attempt at establishing a theory of narrative justice aims to fill a knowledge gap within the field of transitional justice. This could be viewed as a first step on the way of developing more concrete and detailed theories and models of how this may be implemented in practical transitional justice processes.

I will now point at how this may be realized in practice.

10.9.1 Transitional justice narratives in use

What I have described as transitional justice narratives is a key factor in establishing narrative justice. By identifying and explaining the importance of transitional justice narratives relating past, present and future in times of post-conflict transition, narrative justice opens the way for practical methods of constructing and communicating the narratives of truth and justice in such a way that the individual is empowered to orient him- or herself towards a brighter future.

There are several elements to this:

10.9.1.1 Establishing an empowering context of interpretation: Publicly communicating a legitimate collective history

Narrative justice points at how processes of constructing what I have described as transitional justice narratives should be approached more consciously as an instrument or method of achieving the goals of transitional justice. In practice several elements of this are already established as practical methods in transitional justice processes. What narrative justice adds to this is an explanation of how the various efforts may work together to achieve the goals of transitional justice.

For example, in the Cambodian case there are made many different efforts of communicating the value of the tribunal as part of narratives relating past, present and future. This is for example illustrated by the outreach projects of the DC-Cam, where

people from all over Cambodia are invited to take part in guided tours to the tribunal. In addition several other NGOs and the tribunal itself are arranging similar projects.

What narrative justice adds to these projects are explanations of how the processes could be centered more consciously on how this should be communicated as an element of justice. One practical consequence of this is that the processes of what happens at the tribunal – the retributive or procedural justice – are more closely related to a consciousness of how this is part of collective memories that may continue into the future as a narrative of historical truth and justice of the past crimes. Narrative justice may assist transitional justice actors in focusing more consciously and instrumentally on the meaning and potential effect of relating the time dimensions of past, present and future when engaging the individual in the transitional justice processes. Narrative justice helps us understand how reflections on justice in transitional justice should happen in reference to future-oriented perspectives of how the establishment of legal justice and historical truths may prevent this from happening again in the future.

Since narrative justice shows how the legitimization of the victims' memories in relation to the establishment of collective memories and narratives of historical truth and justice should be studied as elements of justice in transitional justice, the theory of narrative justice opens the way for approaching the question of legitimization of memories more consciously. I will give one example:

When NGO's invite victims to take part in guided tours to the tribunal or when they arrange public forums to engage the victims in the transitional justice processes, narrative justice could help them to focus the teaching and storytelling on relating past, present and future into what I have presented as a followable transitional justice narrative. They should not study the tribunal in isolation from retrospective and future oriented perspectives on how the processes of establishing retributive and legal justice also legitimate and narrate historical truths about the past. And from this they should aim to convince the victims of how this may have consequences for the future. The main effort should then be to convince the victims of the followability of the transitional justice narrative. The narrative model presented in Chapter Seven could serve as a structure for how to structure the storytelling.

This could be done more systematically using different pedagogical tools.

First, teaching materials in the form of books, brochures and films should be produced. This teaching material should follow the narrative structure of the transitional justice narrative where historical truths about the past are related to the processes of establishing justice at the tribunal. This is then related to present

challenges of how to deal with the conflicted memories of the past where the processes of establishing historical truths and legal justice are related to future-oriented perspectives of how this serves as the foundation for building a better future. It needs to be made explicit how the processes of establishing retributive or legal justice at the tribunal at the same time establishes collective memories and histories that are legitimated as truths about the past, and how this historical truth as part of narrative justice may prevent this from happening again in the future.

There are several different pedagogical models that could be applied to assist the victims to relate to the transitional justice narratives. For example, this could be guided tours to the tribunal like those arranged by the DC-Cam, where past, present and future are related. Or it could be classroom teaching where students could take part in different didactic exercises of relating the conflicting past to the present processes of establishing justice and perspectives on how this could prevent the wrongs from happening again in the future.

10.9.1.2 Relating the transitional justice processes to the victims

Narrative justice may assist transitional justice advocates to understand better the relevance of historical narratives to social and personal transformation in times of transition. Narrative justice explains how we need to look at stories and narratives of the past as something more than just historical facts and knowledge. By explaining how we need to look at the narrative structure of the histories that are documented, constructed and then narrated to serve particular transitional purposes, narrative justice opens the way for understanding which particular elements of transitional justice efforts may determine how the narrative is interpreted. And from this it is possible to construct narrative lines (Teitel 2000) that could determine how the narrative is interpreted and related to the individual searching for truth and justice.

Since narrative justice explains the transformative role of transitional justice narratives as a change in interpretation of the memories of the violent past, the theory of narrative justice points in the direction of how the change in interpretation could be guided by storytelling efforts. This change in interpretation could be guided by communicating a narrative turning point in the narrative line, opening up a possibility for change and transition.

This could be realized by communicating the narrative line of transitional justice in such a way that it determines how the narrative is interpreted and related to the individual searching for truth and justice. One element of this is to narrate and

communicate the transitional justice processes as defining historical moments that mark a separation from the past and the start of a better future. This making of a separation from the past is an essential element of narrative justice that could be implemented in practical transitional justice methods.

For example, there could be arranged various teaching and storytelling efforts communicating how the tribunal marks a historical turning point that allows the victims to form a historical consciousness of how their narrative identity is related to their cultural, social and historical surroundings. As described in Chapter Six, it could be seen as a historical consciousness about the relationship between the past, present and future that crystallizes how victims may re-interpret their own identity as witnesses and survivors in a way that empowers them to move on towards a better future.

10.9.1.3 Witness participation

Another essential element of narrative justice is making people aware of their right to know what happened and to know who was responsible for the crimes of the past. In this sense the Khmer Rouge tribunal's rules on victim participation could be studied as one element of practical approaches to establish narrative justice. As presented above in Chapter Four, the tribunal provides for victims to participate in three ways; by volunteering to be witnesses, by filing complaints, and by applying to join the proceedings as civil party.

The tribunal's victims unit describes this initiative as a tool of empowerment that allows the victims to tell their story. Victim participation is part of the latest transitional justice developments aimed at improving international and hybrid tribunals. Allowing the victims to tell their stories at the tribunal can also legitimize the value of their memories as part of a bigger narrative of what happened in the past. In this way their identity may be transformed from disempowering identification as victims, to empowering consciousness of how their memories as witnesses are part of a historic transformation that may prevent this from happening again.

This transformation from personal memory to historical awareness and consciousness of shared collective memories are essential elements of narrative justice. By explaining how these processes are related to the individual through the formation of historical consciousness and narrative identity, the theory of narrative justice may lead to more effective transitional justice methods. For example, practical initiatives allowing victims to file complaints, telling their stories, with the tribunal, is

one example of what could lead to narrative justice by empowering the victims to relate their personal memories to the transitional justice narrative. Narrative justice helps us understand how the victims, by filing the complaints, relate their own memories to processes of establishing justice, historical truth and collective memories that can prevent the crimes from happening again. This knowledge can lead to more effective methods of relating the individual to the transitional justice processes through narratives.

As illustrated by the interviews with the first groups of victims taking part in this ground-breaking project of inviting victims to take an active part in the tribunal as witnesses, many of them reflected on this within the time dimension of past, present and future, reflecting on how they wanted to tell their stories so future generations can learn from this to prevent it from happening again. As a practical method of narrative justice, victims' participation is obviously limited by the tribunal's capacity for the number of people it can accommodate taking part in the processes. Nevertheless, since many of the victims I talked to were planning to communicate their experiences to the members of their village community, their participation would serve as important storytelling efforts to achieve transitional justice. The mere fact that victims are allowed to file complaints and be represented as civil parties at the tribunal has important symbolic and narrative effects in convincing other victims of the followability of the transitional justice narrative.

10.10 Summary and reflections

Narrative justice is about understanding how constructive expectation of the future is inscribed in the present, based on interpretations and mediation of experiences of the past in the processes of establishing truth and justice. Narrative justice explains how this can happen through establishing followable transitional justice narratives. One result of the theory of narrative justice is the establishment of different practical methods that allow the victims to understand and critically engage the function of the transitional justice narratives. These efforts could be studied as contributing to establishing narrative justice in so far as they provide the victims with an opportunity to re-interpret or re-narrate the past in relation to the transitional justice narratives, to form new constructive expectations of the future.

One potential practical consequence of introducing narrative justice to the field of transitional justice is the establishment of methods relating the various pre-understandings of the individuals that are expected to be part of the transition to the

transitional justice narratives. By establishing the theory of narrative justice based on Ricoeur's narrative theories on mimesis, memory, imagination and identity; narrative justice explains how they work together in forming historical consciousness in relation to the transitional justice narrative.

By relating past, present and future, narrative justice shows how the individual victims may be empowered to realize the array of actions that they can undertake based on re-interpretations of the past. This is related to Ricoeur's theory of what he describes as the horizon of expectation, which cannot be derived directly from the previous existing space of experience. Narrative justice helps us understand how victims in a post-conflict transitional period have to go on a detour of already mediated meanings, stories and narratives to deal with the memories of the conflicting past as they orient themselves towards a brighter future.

By understanding the mediation of meaning in narratives relating past, present and future as a hermeneutical detour, narrative justice adds new perspectives on how to implement narrative methods in transitional justice processes. By understanding how the experiences of the past are given new meaning through retroactive expectation when relating to the transitional justice narratives narrative justice explains how the transition from the violent past towards a peaceful future needs to be studied in relation to the complexity and variety of how individuals and societies form historical consciousness. This adds a new set of knowledge that can assist the planners of transitional justice to relate more effectively the processes to the individual expected to take part in the transition.

One essential element of this that may lead to new practical approaches in transitional justice is the understanding of how the expectation of the future may change when we open up the past to be changed. In transitional justice processes the past is opened up to be re-narrated by legitimate institutions that are believed to deliver true and just accounts of the violent past. Narrative justice shows how this re-narration of the past should be related to the individual relating their pre-understanding to the transitional justice narrative, and in the process form new and constructive expectations of the future.

Narrative justice adds explanations of how transitional justice narratives placing the events in relation to each other within the plot may give new value and direction to the memory events. Transitional justice narratives are a form of symbolic representation that joins together sequences of events that would otherwise be fragmented and perhaps confusing. Narrative justice helps us understand how the plot of the transitional justice narrative may empower the victims to orient themselves

towards a brighter future. From this it is possible to establish narrative methods providing new meaning to historical events by plotting them within the time dimensions of past, present and future.

By understanding how documentation centers and the tribunals construct and configure meaning and value into historical narratives, narrative justice points at how these processes should be studied together from a narrative perspective on justice. In practice this could be achieved by historiographical operations transforming personal memory and witness statements into legitimate historical narratives. These historical operations can take many forms.

Another essential knowledge related to the theory of narrative justice that could have important practical consequences is the knowledge of how these historiographical operations need to be narrated as part of collective symbolic mediations of the past that may prevent this from happening again in the future. This is related to the understanding of the mediating functions of the plot which makes it possible to follow the story as a meaningful whole. Narrative justice is about marking the valued end point of the narrative as the establishment of historical truths and justice that can prevent the crimes of the past from being repeating in the future. This is related to how I presented the reading of the transitional justice narrative in a reconfigured future as part of Mimesis³ of Ricoeur's mimetic model of emplotment. Narrative justice happens when the victims read the valued endpoint of the transitional justice narrative forming a historical consciousness of how others may read the transitional justice narrative in a reconfigured future. Narrative justice then points at how transitional justice processes should assist the victims to read the ending of the transitional justice narrative in relation to the beginning and its valued turning points. Even though this at first seems very theoretical and perhaps abstract, I am convinced that this knowledge may have important practical consequences. For example, by being aware of the hermeneutic mechanisms in how the victims may relate to the transitional justice processes, it is possible to construct practical narrative methods in accordance with this knowledge. One parallel that can illustrate my point is how the concept of historical consciousness by its focus on how the relationship between the time dimension of past, present and future has shaped much of the pedagogical methods of how to teach history in relation to other subjects in schools. In the same way, narrative justice has the potential of explaining interconnections that may guide the way the transitional justice methods are arranged and related to the individual.

It is Ricoeur's theory of emplotment that makes it possible to explain how the individual victims may relate to the transitional justice narrative through reading

(understood as a configuration of meaning): Where the plot joins together the pre-understanding of the victims and the reconfiguration of the memories and narratives of the past in relation to mediations of meaning in the present at the tribunal, and the consciousness of a valued end-point of the transitional justice process that will prevent this from happening again in the future.

Narrative justice helps us to understand how the transitional justice processes could be studied as an emplotment process where events in the past gain a new meaning from its contribution to the development of the plot of the transitional justice narrative. By understanding the mediating character of emplotment in relation to transitional justice processes, narrative justice explains how heterogeneous factors such as agents, interactions, circumstances and institutions, allow one to understand important narrative elements of justice in times of post-conflict transition.

From this narrative justice could lead to practical methods of realizing the configurational dimension of the plot of the transitional justice narratives. In practice this should be methods transferring the events of the past into narratives by making claims of historical truths and documentary proofs, and by recognizing witness statements at the tribunal as legitimate accounts of the past. This is related to the followability of the transitional justice narrative where the different events of transitional justice are turned into a story.

A central element of this is to understand how the perceived legitimacy of the transitional justice institutions that construct and communicate the narratives of truth and justice influences the followability of the narrative. This represents important communicative challenges. What narrative justice adds to this are explanations of how the victims need to be convinced of the legitimacy of the transitional justice institutions in providing truth and justice. By addressing this in relation to the understanding of the followability of the transitional justice narrative, narrative justice points at how this represents an important communicative challenge to the establishment of transitional justice projects.

Narrative justice points at how the victims need to feel related to the transitional justice narrative and that their life story and memories are being narrated in a legitimate and just manner as part of a broader historical narrative. This is where narrative justice adds new perspectives on how the individual relates to the transitional justice processes that may lead to new and better methods of relating the transitional justice processes to the individual. By addressing the relationship between historical consciousness and narrative identity, narrative justice helps us understand how transitional justice narratives may enable the individual to form historical

consciousness orienting him- or herself towards a brighter future when reflecting about the history, stories and memories of his or her conflicting past in relation to the transitional justice narratives.

Narrative justice explains, with Ricoeur (1985 [1990:220]), how the critical mediation on the future calls for the complement of a similar mediation of the past, and vice versa: How the critical mediation of the past as part of the legal processes at the tribunal at the same time calls for a complement mediation of the future. By explaining this from a narrative perspective on historical consciousness, narrative justice adds new knowledge on how to communicate and relate the processes of establishing legal justice at the tribunal to the individual expecting to take part in the transition.

11. Conclusion

Ricoeur (2007:224) says that no one is authorized to do justice for himself. We need distance between the victims and the perpetrators to achieve justice. Distance is a key concept in understanding justice from a narrative perspective.

In *Oneself as Another*, Ricoeur (1992) says the philosophical place of the just lies at the intersection between two ontological axes, the horizontal axis being the dialogical constitution of the self, and the vertical axis “the predicates that qualify human actions in terms of morality” (Ricoeur 2000:xii). By placing a philosophical theory of the just in relation to this *ipseity* of identity in opposition to sameness, Ricoeur explains how justice needs to be studied in relation to both the relational structures of the constitution of the self, and in relation to the other.

This theoretical perspective underpins the importance of studying the DC-Cam and the ECCC tribunal from a narrative perspective, as institutions that identify the characters of the transitional justice narrative – perpetrators, victims and judges – as another, and also narrating a distance from the other. According to Ricoeur (2000), the degree of justice is contingent upon distance from the other. This relation to the other is immediately mediated by the institution (Ricoeur 2000):

With the institution of the tribunal, the trial brings into confrontation parties who are constituted as “others” by the judicial procedure. What is more, the institution is incarnated in the person of the judge, who, as a third party between the two parties, takes on the figure of a second-order third party. The judge marks out the just distance the trial establishes between the parties in conflict. (Ricoeur 2000:xiv)

Only a third-party institution that regulates the legitimate use of punishment or reprisals can provide this distance. Such reprisals and punishment must comply with the rules, laws or values regulated by the third-party institution. The institutions of the transition cannot mete out violent or unauthorized punishment, lest this appear as reprisal.

Suppose a former Khmer Rouge cadre is not welcomed in the village by a family living there who suffered great losses due to his actions in the past. This form of sanction or punishment would be legitimate. But would this punishment qualify as justice?

If all others in the community do not punish him in the same way by excluding him from the local society, but keep inviting him to various public gatherings, the family’s punishment would not have any force. Therefore, a third-party institution is

necessary to lift the punishment and retribution to a higher level based on a social agreement to the process of punishment. Constructing this distance between the victim and the perpetrator could ensure that punishment of only the senior leaders of the Khmer Rouge may count as justice for all the victims.

The abductive and retroductive moves of this thesis adopting and adapting Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice have been to show how this issue could be studied from a narrative perspective, explaining how a narrative relation needs to be established between the two spheres to describe the process of the tribunal as transitional justice. The victim has to be involved in the process as the one on whose behalf justice is served. DC-Cam's participation program for victims in relation to the ECCC tribunal is one example of how this could be achieved in practice as part of the transitional justice processes. The victim should be authorized to demand that the perpetrator is punished and that the presumed damage is rectified or compensated (Ricoeur 2006:318).

I asked the questions: If the victims are not informed about the procedures and the proceedings of the tribunal in a way they understand, would this count as justice? If the perpetrators are convicted, judged and punished at a tribunal in a foreign country without informing the majority of the victims, would this be justice? I argue that we can only speak of transitional justice if the victims share a feeling that they are handing over to a third-party institution the right to punish the perpetrators on their behalf, and if they find the transitional justice narrative communicated by the institutions to be followable.

By adapting Ricoeur's theories of historical consciousness, emplotment, narrative identity and memory I have explained parts of the victims' context and pre-supposition for interpreting what I describe as the transitional justice narratives. This also enabled me to understand the context of the transitional justice institutions and initiatives from a narrative perspective that may be part of how the victims interpret the transitional justice processes.

To understand how transitional justice efforts may be related to the individual searching for truth and justice in post-conflict societies, one needs to make creative theoretical claims about relationships and dynamics that are not directly observable. My abductive and retroductive moves have been to show ways in which Ricoeur's theories of historical consciousness, emplotment, narrative identity, memory, forgiveness, and justice help us to understand the mechanisms of transitional justice. By theoretically re-describing the cases of transitional justice under my investigation

and by developing new theoretical accounts of the phenomenon based on the case study, I have contributed to filling parts of the knowledge gap in the field of transitional justice.

Parts of this reconceptualization are summed up in the concept of narrative justice. By conceptualizing justice in times of transition as something more than just criminal justice, I have explained how justice also needs to be studied from a narrative perspective as a liberating instrument of social change. By introducing the concept of narrative justice I have contributed to a new conceptualization of the historical and liberating function of justice. This serves not as an alternative but as a complementary conception of justice in times of post-conflict transition.

As identified in Chapter Three, one knowledge gap in the existing transitional justice literature is theories explaining how the processes are related to the individual who is expected to be part of the transition. Narrative justice explains how transitional justice processes are related to the individual searching for truth and justice by illuminating how this has much to do with the followability of the transitional justice narrative. Rather than looking at the liberalizing potential of history from a linear Enlightenment view, I have explained the significance of the relationship between the individual and social context from where the search for the truth about the past is motivated and the institutional context where the historical narratives are constructed. I have tried to explain how transitional justice is much about understanding how the narratives of the tribunal are being related to the individual searching for truth and justice.

Victims handing over the rights to seek justice on their behalf to third-party institutions have an effect on the followability of the transitional justice narrative. The victims need to see the institution providing justice as legitimately working on their behalf. They need to feel part of the institutions and culture of the transition. Story-telling that relates the past, present and future makes this connection. This establishes the importance of narrative and story-telling in reaching the goals of transitional justice.

If the transitional justice narrative is followable by the victims, they still need to accept that the third-party institution to which they hand over the right to punish the perpetrators on their behalf is a legitimate provider of truth and justice. This represents a huge communicative challenge to institutions like the tribunals, documentation and learning centers and other NGOs working to achieve the goals of transitional justice.

Ricoeur's statement that nobody is authorized to do justice for himself explains why a third-party institution needs to be involved if justice is to be fulfilled. But this

does not mean that no action is required by the victims. According to Ricoeur, justice requires that the victims accept that the punishment the perpetrator will receive would not be the same as the suffering he or she caused the victims. An “eye for an eye” punishment would be vengeance, not justice. For Ricoeur, all justice requires at least a degree of pardon on the part of the victim of the crime. Justice obeys the “economy of the gift of pardon” (Simms 2003:120). Pardon is a gift given with no expectation of receiving something in return.

Narrative justice has to do with understanding how pardon can be sought by not forgetting, by fulfilling the obligation of remembering the violent past. To explain this I have adapted Ricoeur’s sketch of a phenomenology of memory illuminating some interconnections between collective and personal memory juxtaposed with memory and identity. I have used this theoretical distinction to explain how the personal memories of the victims in post-conflict societies may be reinterpreted in relation to the consciousness of a collective memory of legitimate truth claims about the past and collective judgements of the crimes of the past, marking a historical turning point.

The Khmer Rouge victims I interviewed reflected on justice in terms of perspectives on a future-oriented collective memory of the conflicting past that could prevent history from repeating itself in new forms. Understanding the relation between personal and collective memory is therefore an essential part of understanding the concept of narrative justice.

My argument is that in the relationship between personal and collective memory lies some of the potential for a constructive transformation for the victims, as they learn that their bad memories are shared by a collective group of victims. By reflecting on their memories in relation to the transitional justice narratives, they learn that the brutal events in the past are part of a collective memory that is now being legitimized as historical truths about the past. The followability of the transitional justice narrative reflects a process of re-identification and empowerment of the victims, so that they reconcile with the past and orient towards a brighter future.

However, the obligation to remember the crimes of the past means that pardon is not the same as forgetting. Pardon is tied to memory, in that the victim’s conscious decision not to seek personal vengeance but narrative justice is firmly rooted in memories of past sufferings. The obligation to remember goes both for the individual life stories and memories, and for society as a whole. On the level of society, the collective memory of the sufferings of the past would need to be acknowledged by a legitimate institution before pardon can be asked for. The story-telling and narratives

of the processes of establishing truth and justice become important as interpretative frameworks for the victims at this higher stage.

Narrative justice happens when the victims see the transitional justice narrative as followable, accepting narrative justice as a better response than personal vengeance. By accepting the followability of the transitional justice narrative, the victims are empowered to re-interpret memories of the conflicting past and orient themselves towards a better future.

12. Norsk sammendrag

I avhandlingen studerer jeg temaet overgangsrettferdighet i transformasjonen fra krig og konflikt til fred og demokrati i tidligere konfliktsamfunn. Studiet av overgangsrettferdighet, oversatt fra det engelske ordet *transitional justice*, ble etablert som et sammenhengende studiefelt for om lag ti år siden. Fra i hovedsak å være fokusert på juridiske spørsmål har feltet i løpet av de senere årene blitt åpnet opp for å inkludere et stort mangfold av praktiske og teoretiske tilnærminger. Dette har ført til at det i dag er en økende etterspørsel etter teoretiske redegjørelser som kan belyse og forklare deler av de mer underliggende dynamikkene som er nødvendig for å forstå hvordan de ulike overgangsrettferdighets-prosessene virker sammen. Spesielt er det få teoretiske bidrag som forklarer hvordan overgangsrettferdighets-prosessene relaterer seg til individet som forventes å ta del i transformasjonene.

Avhandlingen er et bidrag til å sette deler av dette kunnskapshullet innen feltet. Jeg gjør dette ved å forklare fenomenet overgangsrettferdighet fra et narrativt perspektiv som relaterer individets søken etter sannhet og rettferdighet til overgangsrettferdighets-prosessene. Jeg anvender Paul Ricoeurs teorier om mimesis, narrativ identitet, minne, historiebevissthet og rettferdighet studert som en konstellasjon av narrative teorier.

For å gjøre Ricoeurs narrative teorier tilgjengelige som et redskap for å komme opp med ny kunnskap om overgangsrettferdighet støtter jeg meg på abduksjon og retroduksjon som metodiske grep. Abduksjon og retroduksjon kan svært forenklet beskrives som en form for tankeoperasjoner for å tolke et bestemt fenomen fra et sett generelle ideer eller begrep for å komme opp med ny kunnskap om fenomenet som ikke var synlige før den teoretiske omformuleringen.

Fenomenet overgangsrettferdighet belyses gjennom en casestudie av overgangsrettferdighets-prosessene som finner sted i Kambodsja i dag med gjennomføringen av Røde Khmer-tribunalet. Jeg var blant annet med under de første høringene ved tribunaleet hvor ofrene fikk sitte ansikt til ansikt med Nuon Chea, kjent som Bror nummer to i Røde Khmer-regimet. I løpet av et om lag firemåneders langt opphold ved det Kambodsjanske dokumentasjonssenteret (DC-Cam) fulgte jeg ulike overgangsrettferdighets-prosesser. DC-Cam regnes å være den viktigste årsaken til at det finner sted et rettsoppgjør i Kambodsja i dag. Dokumentasjonssenteret har samlet inn over 500 000 dokumenter og intervjuet mer enn 5 000 overlevende etter Røde Khmer regimet. DC-Cam er hovedleverandør av bevismateriale for tribunaleet og arrangerer ulike prosjekt som forsøker å opplyse og involvere ofrene i prosessene med

å sikre overgangsrettferdighet. Dokumentasjonssenterets prosjekt i relasjon til tribunalet er derfor en god case for å belyse mangfoldet i fenomenet overgangsrettferdighet. I løpet av casestudieperioden intervjuet jeg 25 ofre.

For å forstå hvordan overgangsrettferdighets-prosesser kan relateres til individet har jeg fremsatt teoretiske påstander om forhold og dynamikker som ikke er direkte observerbare fra casestudiet. Deler av den abduktive og retroduktive bevegelsen har vært å anvende casestudie materialet for å forklare ulike måter hvor Ricoeur's narrative teorier gjør det mulig å omformulere forståelsen av de mer underliggende dynamikkene ved overgangsrettferdighets-prosessene.

Deler av omformuleringene er oppsummert i begrepet narrativ rettferdighet. Ved å omformulere rettferdighet i post-konflikt overgangsperioder som noe mer enn rettslig rettferdighet har jeg forklart hvordan rettferdighet også må studeres fra et narrativt perspektiv som et frigjørende instrument for sosial transformasjon. Ved å introdusere begrepet narrativ rettferdighet har jeg bidratt til en ny formulering av de historiske og frigjørende funksjonene ved rettferdighet i post-konfliktoverganger. Dette utgjør ikke en alternativ, men en komplementær formulering av rettferdighet i post-konfliktoverganger.

Et sentralt begrep jeg trekker ut og tilpasser studien av de empiriske funnene er Ricoeurs begrep om narrativets følgbarhet. I stedet for å studere historiens frigjørende potensial i overgangsrettferdighets-prosesser fra en lineær forståelse av historie, har jeg forklart betydningen av forholdet mellom individet og sosial kontekst fra hvor søken etter sannhet og rettferdighet er motivert, og den institusjonelle kontekst hvor de historiske narrativ konstrueres.

Overgangsrettferdighet handler mye om hvordan narrativ og fortellinger om prosessene relateres til individets søken etter sannhet og rettferdighet. Følgbarheten til det jeg beskriver som overgangsrettferdighets-narrativet handler da mye om hvordan institusjonene som kommuniserer dette lykkes i å overbevise individet om at de er en legitim forvalter av historiske fakta og at de er en legitim leverandør av sannhet og rettferdighet.

Dette er et avgjørende element i overgangsrettferdighets-prosessene. For at overgangsrettferdighet skal finne sted må individet være villig til å overlate retten til å søke rettferdighet til en tredje parts instans som tribunalet. Dette er et sentralt funn fra casestudiet av overgangsrettferdighets-prosesser i Kambodsja og intervjuene av ofrene hvor neste alle reflekterte rundt rettferdighetsbegrepet ved å trekke forbindelser mellom tidsdimensjonene fortid, nåtid og fremtid. For dem handlet rettferdighet ikke om å få personlig hevn, men om å sikre at sannheten og fortellingen om hva som

hendte i fortiden blir kjent, og at denne kan bli del av kommende generasjoners historiebevissthet, identitet og kollektive minner.

For å forklare dette anvender jeg blant annet Ricoeur's skisse av minnets fenomenologi til å belyse deler av forholdet mellom kollektivt og personlig minne knyttet sammen med identitet. Jeg bruker denne teoretiske distinksjonen til å forklare hvordan de personlige minnene i post-konfliktsamfunn kan re-fortolkes i relasjon til bevisstheten om etableringen av et kollektivt minne om den konfliktfulle fortiden. Narrativ rettferdighet handler om hvordan dette er basert på historier om legitime sannheter og fordømmelser av de kriminelle handlinger som ble begått i fortiden og hvordan disse prosessene markerer et historisk vendepunkt. Dette belyses gjennom å relatere de teoretiske studiene til de empiriske funnene.

Narrativ rettferdighet finner sted når ofrene tolker overgangsrettferdighets-narrativet som følgbart ved å akseptere narrativ rettferdighet som en bedre respons enn hevn. Ved å akseptere overgangsrettferdighets-narrativets følgbarhet myndiggjøres individet til å orientere seg mot en bedre fremtid.

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