



Research Report

Victim Participation and Transitional  
Justice in Cambodia: the case of the  
Extraordinary Chambers in the Courts  
of Cambodia (ECCC)

April 2016

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# **Victim Participation and Transitional Justice in Cambodia: the case of the Extraordinary Chambers in the Courts of Cambodia (ECCC)**

April 2016

## **Author**

Dr. Rudina Jasini

## **Acknowledgements**

The research that went into this report was conducted and supported by Impunity Watch, as part of the wider project “Promoting Active Participation in Dealing with the Past and Transitional Justice.” Our gratitude goes to the organisations and individuals who contributed to and supported the research in Cambodia. Particularly we would like to thank the Victims Support Section at the Extraordinary Chambers in the Courts of Cambodia (ECCC), Civil Party Lead Co-Lawyers’ Section and civil party lawyers, the Documentation Center for Cambodia (DC-Cam), the Bophana Audio-visual Resource Center and Bridge International Translation for their outstanding support.

This report is dedicated to the 50 civil parties and victims who participated in the research, sharing their human stories of pain and loss as well as their stories of incredible human dignity and resilience. Their views and insights on the participation of victims as civil parties at the ECCC have informed the analysis and contributed to a better understanding of the role and scope of victim participation at the ECCC as well as the wider role of active victim participation in transitional justice mechanisms.

Editorial support: Megan O’Riordan, Ralph Sprenkels & David Taylor

*Cover Photo: Rudina Jasini. A focus group meeting with victims at Thon Serey Pagoda in Borseth District, Kompong Speu Province, Cambodia.*

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## Acronyms

|               |  |
|---------------|--|
| <b>ADHOC</b>  | Cambodian Human Rights and Development           |
| <b>CDP</b>    | Cambodian Defenders Project                      |
| <b>DC-Cam</b> | Documentation Center for Cambodia                |
| <b>ECCC</b>   | Extraordinary Chambers in the Courts of Cambodia |
| <b>IW</b>     | Impunity Watch                                   |
| <b>LAC</b>    | Legal Aid of Cambodia                            |
| <b>TJ</b>     | Transitional Justice                             |
| <b>TPO</b>    | Transcultural Psychosocial Organisation          |
| <b>UN</b>     | United Nations                                   |
| <b>VSS</b>    | Victims Support Section                          |

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## Executive Summary

Between 1975 and 1979 Cambodia was the site of one of the greatest tragedies of the twentieth century. The Khmer Rouge regime set out to mould Cambodian society into a utopian communist ideal through the repression of culture, technology and religion, as well as forced labour and marriages. In the process they systematically worked, starved and beat to death 1.7 million ethnic and non-ethnic Cambodians. The Extraordinary Chambers in the Courts of Cambodia (ECCC) was established in 2006 as a transitional justice mechanism to deal with these events. The interrelated goals of individual accountability and national reconciliation serve as the foundations upon which this justice mechanism operates.

This research project examines the dynamics of victim participation at the ECCC. The research analyses how the rights of victims to remedies for human rights violations have been dealt with by the ECCC. It specifically looks at how participation has shaped perceptions, attitudes and experiences of victims and other stakeholders.

The research was conducted through a mixed-method approach of in-depth, qualitative interviews with victims, and focus groups with affected communities. The research captures the experiences of three primary groups: victims recognised as civil parties, victims-complainants, and a broader category of victims and affected communities who have not sought to participate officially or directly in the ECCC proceedings.

The ECCC was chosen as a case study because of the judicial innovation that led to the creation of a novel system of victim participation through the civil party system. Victim participation at the ECCC is distinct in both scope and form from other judicial mechanisms, as seen most clearly in the unprecedented characterisation of victims as full ‘parties’ to the proceedings, rather than as mere ‘participants’. This stands in contrast to the victim participation system at the ICC. Yet the ECCC has had to contend with the difficulty of striking a balance between the rights of the accused to a fair trial and the rights of victims to participate. Despite the intention to ensure active victim participation, the ECCC was unprepared for the scope and structural and procedural complications that would ensue.

What emerged from researching the ECCC’s practice of victim participation was that there are external factors hampering the Court. Problems that the ECCC faces are partly due to the scale of atrocities in Cambodia, which makes it difficult to adequately single out and assign guilt to specific parties. Furthermore, not every victim or crime can be acknowledged or compensated, leading to the dilemma of which crimes and victims to acknowledge, and which to exclude. The Court is responsible to its national participants and adheres to already established international standards and norms of justice and donor regulations. The interests of these parties are at times mutually exclusive.

A second factor affecting the ECCC is the ‘problematic’ Cambodian justice system and endemic corruption. Cambodian *realpolitik* is reflected in the legal and structural complexities of the Court. The government has been keen to retain ownership and impede investigations and there is limited accountability for public officials. There are also institutional constraints such as the inapplicability of the 1956 Criminal Code, unfamiliarity of Cambodian judges with international law and gaps in substantive procedural rules governing the ECCC.

Thirdly, the particular dynamics of Cambodian society render the pursuit of justice even more complex. Authoritarian traditions have fed into a political culture in which subservience is an important factor. This is accompanied by the fact that Cambodians are predominantly Buddhist and are brought up with a religious tradition of forgiveness.



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The format and internal structure of the ECCC also presents certain challenges to victim participation. Findings suggest that the specific regulations regarding the proceedings of the Court create difficulties for dynamic participation. Victims have to choose before they participate whether they wish to do so as a civil party, witness or victim. Participating victims may be denied the opportunity to testify under oath, which may hinder the prosecution, with the result that their testimonies are accorded less weight. Due to a lack of comprehensive rules and procedures, participating parties do not always do so under the same banner, potentially impeding the equilibrium between prosecution and defence and at times impinging on the rights of the accused to a fair trial. Furthermore this has in some instances lead to a prolongation of proceedings and issues with disclosure.

Moreover, victims participate for different and intersecting reasons such as: justice, truth, telling one's story, educating the world, reparations, and reconciliation. At times, these goals can be mutually exclusive. For instance, 'justice' can be defined from a collectivist as well as individualist perspective, and implies punishment for some, whilst acknowledgement is predominant for others. Many victims also participated in the hope that trials would allow them to question the accused regarding the fate of loved ones as well as in order to tell their personal stories. A courtroom is however beset by structural limitations, as its structure allows only for responses to specific questions, as opposed to personal narratives in their entirety. As an institutionalised venue, the ECCC is however able to construct a general national narrative, but this can come at the cost of personal ones. This begs the question whether an institution like the ECCC can negotiate its responsibility to the individual as well as the collective. This issue is also reflected in the reparations scheme. Due to the scope of the crimes, victims' wishes and needs for reparation cannot all be accommodated. However, it should be acknowledged that the Court does attempt to minimise any personal disappointment regarding reparations with programmes for collective reparation.

The research indicates that there is an inherent restoration of empowerment and dignity through participation. The amount of participants who believed reconciliation had been achieved or was in process was high. It is thus important that these initiatives continue. Yet, the ECCC is ill equipped and in need of greater resources, in order to be able to provide meaningful participation to victims. Recognition of victims' rights to equal and effective access to justice and to reparations for harm suffered demands a comprehensive and integrated approach, which courts are not designed to achieve on their own. There is therefore a need for more meaningful reparation projects to address the scope of impacts, as well as increased transparency and access to information regarding participatory practice prior to and during proceedings. Through delineating the scope of the Court, proceedings can be expedited and jurisdictional limitations can be addressed. Additional mechanisms, such as truth and reconciliation commissions and educational initiatives, should be used to accompany and, where shortcomings are identified, supplement the civil party participation regime at the ECCC.

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# 1. Introduction

This study was conducted as part of Impunity Watch's (IW) wider research programme into victim participation.<sup>1</sup> Six different countries were selected as case studies within a comparative framework. The purpose of the research is to supply practitioners and policymakers with findings that can help them to enhance and support the meaningful and active participation of victims in transitional justice (TJ).<sup>2</sup> The country studies mainly look at victim participation with respect to institutionalised mechanisms of TJ, highlighting the perspective of victims and affected communities.

This report is the outcome of a six-month research project (July – December 2014) conducted by IW into the participation of victims in proceedings before the Extraordinary Chambers in the Courts of Cambodia (ECCC). The objective of this research is to provide empirical evidence and further insights into the dynamics of victim participation at the ECCC, building on the views, expectations, attitudes and experiences of victims participating in Cambodia's principal TJ mechanism. The research study is based on interviews and focus group discussions with 50 civil parties and victim-complainants about their experiences of participation.

TJ is a landscape of evolving philosophy and practice. The innovative approach endorsed by the ECCC is to include victims of alleged crimes as civil parties rather than as mere witnesses. This has revealed potential strengths and weaknesses as well as the possibilities for the future direction of development in TJ. Whilst the benefits of participation like affording victims greater procedural rights and substantive remedies, appear self-evident, so far there is limited jurisprudential and empirical evidence to support many of the supposed benefits.<sup>3</sup> The potential negative impact of victim participation, including possible damaging consequences for victims, affected communities and TJ in Cambodia, also requires more thorough evaluation and understanding. Although a number of important empirical studies conducted in recent years have contributed to a better understanding of participation in practice (e.g. Stover, Balhazard & Koeng, 2011; Pham et al., 2011; Hoven, 2013), victim participation as a novelty in TJ remains nonetheless underexplored. It is in this context that this report aims to shed further light on the complexities of victim participation.

The research underlying this report aims to contribute to policy discussion and policymaking on victim participation and its impact on TJ. It explores how a number of victims and affected communities have experienced participation, whether as civil parties or as victim-complainants in proceedings before the ECCC. It offers practical understanding of, and insights into, the assumed benefits and harms resulting from victim participation. The research aims to provide a thorough normative and empirical examination of the implications of the incorporation of victim participation as a supposed restorative justice element into a retributive justice mechanism. It critically examines the ways in which civil party participation has been interpreted and shaped in the trials before the ECCC. It does so by analysing how the rights of victims to remedies for gross violations of human rights have been dealt with by the ECCC. On a more specific level, it also evaluates how such participation has shaped victims' perceptions, attitudes and experiences.

After introducing the research, its methodology and limitations, the report then focuses broadly on the

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<sup>1</sup> For an overview of the state of the art with respect to victim participation and for an outline of the conceptual framework for this research, see: Taylor, D (2014) Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?, Discussion Paper, Impunity Watch. Available at: [http://www.impunitywatch.org/docs/IW\\_Discussion\\_Paper\\_Victim\\_Participation1.pdf](http://www.impunitywatch.org/docs/IW_Discussion_Paper_Victim_Participation1.pdf) (accessed 12 October 2015).

<sup>2</sup> The six countries concerned are: Burundi, Cambodia, Guatemala, Honduras, Kenya and Tunisia.

<sup>3</sup> Taylor, D (2014) Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?, Discussion Paper, Impunity Watch.



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historical events and social and political dynamics leading up to the nascent process of TJ in Cambodia and the establishment of the ECCC. It then proceeds to a broad examination of the legal and procedural framework in relation to both the ECCC's institutional structure and the participatory rights granted to victims. The focus of the report then shifts to a theoretical and empirical analysis of the virtues, the role, scope and impact of participation. It evaluates whether and how participation leads to the benefits that are commonly assumed, whether there are unintended consequences of victim participation, as well as whether there are possible negative dynamics. In essence, the report examines how participation has helped victims obtain justice from within; seek truth through participation by learning more about the regime and the motivations behind the crimes committed; foster reconciliation; and, equally importantly, obtain meaningful reparations.

Finally, this report hopes to contribute depth and dimension to the general understanding of victim participation in TJ mechanisms.



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## 2. Methodology

### 2.1 Research methodology

The framework developed by IW for this comparative research project has been designed with a view to offering further insight into the dynamics of victim participation in TJ mechanisms.<sup>4</sup> It builds on victims' views, expectations, experiences and motivations to enhance the ability of policymakers and practitioners to put into effect systems of meaningful victim participation.

The wider research explores how certain victims and affected communities experience participation as direct or indirect, active or passive participants.<sup>5</sup> It also offers practical insight into the socio-psychological subtleties of participation as a way to produce comparative understandings of the real-life benefits and risks of participation. The research project seeks to document in particular how victims and affected communities, represented by a sample of individuals and groups interviewed, experience and perceive victim participation, identifying the meaning and significance of both participation and non-participation. The research further endeavours to produce a broad picture of how victim participation is experienced on the ground, including an analysis of the views of non-participating victims, and the formulation of advice for practitioners and policymakers.

This report, as well as the five other country-specific reports, although a stand-alone document should be read alongside the literature governing the scope and parameters of this project. In particular the IW Discussion Paper on victim participation provides a conceptual framework, and IW's Research Protocol outlines the methodological framework for the research.

The qualitative research conducted in Cambodia adopts a mixed method approach, principally utilising in-depth qualitative interviews and focus groups with victims and affected communities. The primary methods are complemented by literature and case law reviews specific to Cambodia as well as interviews and informal interactions with practitioners, policymakers, and experts.

The overarching conceptual framework is based on a range of extant theoretical approaches. The literature review component of the research, embedded in the detailed analysis of the issues raised in this report, includes *inter alia* various publications on TJ and international criminal justice, statutes, treaties, conventions, laws and internal rules governing victim participation at the ECCC. These publications are all in the public domain and available at libraries and/or online. The case law review consists of an analysis of the body of case law of the ECCC. Though the jurisprudence generated by this Court is limited in terms of quantity, the manner in which victims' participatory rights have been crafted by the ECCC through the judgements, decisions and interpretation attached to them, provides for a qualitative analysis of this important legal mechanism. Summaries of judgements, decisions and opinions handed down by the ECCC are particularly valuable for this research, as the manner in which the right of victims to participate has been interpreted has defined the scope and content of such participation.

The in-depth qualitative interviews constitute the principal focus of the research. This component interrogates leads and insights gleaned from literature and case law-based research to further pursue the

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<sup>4</sup> The research included in this frame work include country studies for Kenya, Burundi, Guatemala, Honduras, Tunisia and this Cambodia research.

<sup>5</sup> For a comprehensive discussion of these differences, see: Taylor, D (2014) Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?, Discussion Paper, Impunity Watch. Available at: [http://www.impunitywatch.org/docs/IW\\_Discussion\\_Paper\\_Victim\\_Participation1.pdf](http://www.impunitywatch.org/docs/IW_Discussion_Paper_Victim_Participation1.pdf) (accessed 15 November 2015).

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main themes and questions of the research. It builds on the theoretical framework for the research into victim participation in TJ provided in IW's Discussion Paper.<sup>6</sup> The goal is to explore the views, attitudes and experiences of civil parties and victim-complainants in proceedings before the ECCC. The empirical research underpinning the study of the participation of victims as civil parties at the ECCC was conducted over two and a half months consisting of data collection through semi-structured interviews, informal discussions and interactions with civil parties and victim-complainants, and focus groups. It is through the analyses and experiences of the victims interviewed that this research is able to shed light on the form, scope and implications of civil party participation regarding the presumed benefits as well as some of the anticipated harms resulting from victim participation.

In addition to the theoretical and empirical research conducted for this project, the context of the report's findings was also borne out of a wider research agenda that was conducted as part of the author's doctoral thesis.

## 2.2 Research design

Fifty civil parties and victim-complainants were interviewed and five focus group discussions were organised between 5 September and 10 November 2014. The interviews and focus groups were conducted in the following locations: Phnom Penh city and surrounding districts; Borseth District in Kampong Speu province; Siem Reap city and surrounding districts; Pouk District, Prey Veng province; Kampong Cham province and Odongk district. A purposive sampling approach was taken for the identification of participants in the field research. The fieldwork aimed to capture the views and experiences of three primary groups: (1) victims officially recognised by the ECCC as civil parties; (2) victim-complainants; and (3) wider victims and affected communities who have not sought to participate officially or 'directly' in the ECCC proceedings.

For the purposes of the research, the ECCC definitions of different groups of victims were relied upon. To this end, 'civil parties' are defined as:

Formal participants in the proceedings against those allegedly responsible for the crimes under investigation by the ECCC [...] they enjoy rights broadly similar to the prosecution and the defence. Becoming a Civil Party not only gives Victims the right to actively participate in the proceedings, but it also allows Victims to ask the Court for collective and moral reparations from the convicted persons.<sup>7</sup>

On the other hand, the term 'victim-complainant' is defined thus:

Any person or legal entity who has useful information regarding the crimes of the Khmer Rouge under the jurisdiction of the ECCC can file a complaint by filling out the Victim Information Form and submitting it to the Victims Support Section (VSS). The information in the complaint may then be used to help in the investigations. Complainants do not participate as parties in hearings, and they are not entitled to ask the Court for reparations.

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<sup>6</sup> Ibid.

<sup>7</sup> See <http://www.eccc.gov.kh/en/victims-support/participation> (accessed 18 November 2015).



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They may however be requested to give evidence or testify as witnesses.<sup>8</sup>

The first sampling frame focused on a finite sample of 35 victims who have had their applications for formal recognition accepted by the ECCC, have given testimony and have received reparations. This group was sampled using information obtained from the VSS, the Civil Party Lead Co-Lawyers' Section and civil party lawyers. More specifically, Mr. Hang Vannak, who heads the VSS at the ECCC, provided a hard copy of a list containing names of civil parties divided according to geographic region. The Lead Co-Lawyers were contacted upon the receipt of the list from the VSS. They then obtained an introduction to the procedure in place for contacting civil parties. Lawyers for the civil parties in turn made contact with civil party representatives in the designated districts, towns and villages where interviews were to be conducted. These locations were selected upon the information and advice provided by the civil party lawyers, with a view to maximising resources and overcoming geographical limitations.

The second sampling frame focused on a finite sample of 15 victims who had filed complaints by filling out and submitting to the VSS the Victim Information Form, but who have not been granted civil party status. This group was sampled using contact lists provided by the VSS, local NGOs and a snowball sample. Within the particular geographical location where interviews with civil parties were conducted, arrangements were made for contacting and interviewing victim-complainants. For this purpose, contacts with local NGOs and human rights activists proved valuable.

The final sampling frame utilised the same sample of geographic locations from the first and second sampling frames. It used a purposive random sample to identify victims and affected communities who have not sought to participate officially or directly in the proceedings. The overall impression from these interviews was that those interviewed regarded themselves as representative of their respective communities, and that no notable discontent or frustration with either the selection or the interview process was observed.

## 2.3 Challenges and limitations

Conducting fieldwork in the context of post-conflict societies ravaged by war and poverty presents a particular set of personal and ethical challenges for any researcher. Such a task becomes even more challenging when the focus of the empirical research is on the victims of gross violations of human rights.

A number of preliminary questions were considered before embarking on this project. We had particular regard to the ethics of conducting empirical research among victim communities. Questions included: What is different about interviewing victims and survivors of violence and tragedy compared to other types of interviews conducted with legal practitioners and policymakers? What are the special techniques and ethical obligations in these types of interviews? How can we avoid re-victimising already-traumatised individuals? How is a balance to be struck between obtaining high-quality information from the interviews and limiting the inherent risks involved in trying to obtain that data?

Considering the overall challenges confronted in the research, it is important to acknowledge that two particular issues - poor infrastructure and extreme poverty - had a considerable impact on the accessibility of victims as well as the quality of interviews. In this context, it was helpful liaising with local agencies and individuals to obtain the most relevant information particularly with regard to infrastructure.

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<sup>8</sup> Ibid.

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Finally, cultural characteristics, the dominance of the Buddhist faith and in particular the issue of language, should be acknowledged as factors influencing research in Cambodia. They may represent further barriers to effective interviewing, especially since being able to speak the native language may be important in gaining access to respondents and to establishing trust (Andrews 1995; Tsang, 1998). From a practical perspective, experienced local interpreters were engaged during the interviews, thereafter working to transcribe the interview recordings and notes. The potential for error was further reduced by leaving all quotations taken from the interviews with victims in their original wording. On a normative level, there is always a risk that the interpreter as an outsider to the research process may undermine the trust and rapport that the researcher must work hard to secure.

Despite various challenges and obstacles encountered in the course of this research, the quality of interviews was not affected and the core objectives were met satisfactorily *inter alia* through the facilitation and assistance given by third parties, such as interpreters, the VSS, and civil party lawyers.



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### 3. Background and Development

Cambodia, once admired for its ancient civilisation and mighty Khmer empire, instead became notorious in the twentieth century for one of mankind's greatest human tragedies and most gruesome mass atrocities (Jasini & Phan, 2011: 379). The Khmer Rouge<sup>9</sup> was a unique example of a regime that combined 'extremist ideology with ethnic animosity and diabolical disregard for human life.'<sup>10</sup> Unequalled in its form, magnitude and cruelty, the Khmer Rouge regime carried out a systematic campaign of murder and starvation from April 1975 through to January 1979, which eradicated over 1.7 million ethnic and non-ethnic Cambodians.

The Khmer Rouge embarked upon a ruthless mission of deconstructing Cambodian society. This is no better illustrated than by the regime's campaign to return society to 'Year Zero' (Kiernan, 2008: 339). This campaign entailed drastic measures that subjected human beings to forced labour, forced marriages, ignorance, as well as repression of the rights to worship, conscience and cultural expression. The horrors inflicted by the regime were driven by anti-imperialist ideologies. The result of the regime was a nation 'kidnapped and besieged from within'. It was the creation of 'a prison camp state, where eight million prisoners served most of their time in solitary confinement' and many inmates 'were worked, starved and beaten to death.' (Kiernan, 2002: 9).

The real impact of these numbers and figures was vividly brought to life during the interviews conducted with victims of the Khmer Rouge as part of the field research undertaken for this project. A thorough appreciation and analysis of the needs of victims that participate in Cambodia's TJ process is impossible without exemplifying the magnitude of victims' suffering. Furthermore, a proper understanding of the historical and social implications of the Khmer Rouge regime cannot take place independently of the individual experiences and traumas suffered by victims.<sup>11</sup>

This point is best illustrated by reference to the testimonies of some of the individuals interviewed. As one of the civil parties interviewed for this research expressed:

I experienced countless sufferings during that time. I have three siblings. My younger brother was shot to death in military operation. My brother-in-law was arrested in accusation of being Vietnamese national and was sent to Kampong Speu province where he was captured in a cave and probably died there. My grandmother, on the other hand, died from starvation. My sister worked in an agricultural corporation and later died after Pol Pot regime. My parents were separated ... During Pol Pot time, we had to be very careful in speaking. A little mistake could lead to death.<sup>12</sup>

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<sup>9</sup> The Khmer Rouge – a term coined by Cambodia's former king, Norodom Sihanouk – was the communist ruling political party of Cambodia from 1975 to 1979.

<sup>10</sup> See Cambodian Genocide Program at Yale University. Available at: <http://www.yale.edu/cgp/> (accessed 10 October 2015).

<sup>11</sup> Reliving these experiences was very often a traumatic event for the interviewees in itself. This can be discerned from the following extract from an interview conducted with a civil party in Phnom Penh:

*Actually, I do not want to recall my story. I do not want to imagine again what happened in Khmer Rouge regime, as I thought that all my life is meaningless ... I lost all members in the family ... I lost my future as I lived with other family and had no opportunity to study. In 1979, I was 17 years old ... I volunteered to be a soldier, which does not mean that I wanted to be a patriot, but because I wanted to die.*

(Transcript of interview on file with the author: Civil Party Case 002, Phnom Penh, 3 October 2014)

<sup>12</sup> Transcript of interview on file with the author (Civil Party Case 001 & Case 002, Siem Reap, 24 October 2014).

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The mechanisms, processes and innovations developed by a society in the wake of a tragedy must be assessed against the harm suffered. Thus any consideration of the motivations and appraisals behind victim participation in Cambodia cannot be separated from the scale of suffering under the Khmer Rouge. For example, many may regard the scale of the atrocities committed by the Khmer Rouge as precluding any possibility for real compensation, but nevertheless consider their participation in proceedings as being highly significant. This is illustrated by the following quotation:

After the fall of the Khmer Rouge regime, I knew that I had been given a new life. When I learnt that the ECCC was established to prosecute Khmer Rouge leaders, I was very keen to know about the ECCC... I didn't think that the Court would be able to find justice for the Cambodian people. But the ADHOC<sup>13</sup> organisation came here to search for victims who wanted to file complaints in Case 002. I joined those victims to file my complaint in Case 002 in order to hold the perpetrators accountable for what they had done to me and my family. I wanted justice for myself *and Cambodian people*. I wanted to help the Court to find out the crimes that those four accused had committed. They brought suffering to all Cambodian people... And such suffering cannot be compensated, they are immeasurable.<sup>14</sup>

The sheer scale of the events that unfolded in Cambodia that provide the backdrop to this report and our understanding of victim participation are encapsulated in the words of one of the victims who suggested that he 'had never seen a nation kill its own people like that.'<sup>15</sup>

### 3.1 Dynamics in Cambodia's post-conflict society

As a post-conflict society, Cambodia is still struggling to come to terms with its past and faces challenges in the quest for justice. The extent to which perpetrators and offences should be acknowledged remains contentious. The balance between fostering reconciliation and addressing the needs and rights of victims remains elusive.<sup>16</sup> There are thus different dynamics conditioning the transitional state of Cambodian society, which has been described by one commentator as 'a corporate body in abrupt transition, fractured and disturbed for decades...in every conceivable way,' (Wilshire, 2005: 69). The unique matrix of factors and particular dynamics that make up Cambodian society, a country in transition, renders the pursuit of justice all the more complex and arduous, both for Cambodian society in general and for victims in particular. Obstacles of a legal, evidential and procedural nature lie in the way of holding the surviving perpetrators of the Khmer Rouge regime to account.

These difficulties are not of a purely technical nature, but are linked to the perceived limitations of Cambodia's domestic criminal justice system, as well as the endemic problem of corruption and more generally the *realpolitik* of the system – 'the political power wielded by the government' (Bates, 2007: 185). These dynamics are reflected in the legal and structural complexities of the ECCC.<sup>17</sup>

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<sup>13</sup> ADHOC (Cambodian Human Rights and Development Organisation) is a Cambodian NGO founded by Khmer Rouge political prisoners. It provides free legal advice and conducts investigations into human rights violations in Cambodia. ADHOC's outreach programme was instrumental in the high demand of victim participation in the trials before the ECCC. See: [www.adhoc-cambodia.org](http://www.adhoc-cambodia.org) (accessed 8 November 2015).

<sup>14</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014); emphasis added.

<sup>15</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 18 September 2014).

<sup>16</sup> Jasini, R (2015) Contextualising Victim Participation in International Criminal Proceedings, Unpublished dissertation, University of Oxford, Oxford, UK.

<sup>17</sup> The Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (ECCC Law), with inclusion of amendments as promulgated on 27



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The ECCC is at the heart of Cambodia's TJ process. It is a hybrid mixed tribunal, combining Cambodian and international judges and legal practitioners. It stands as the sole judicial body to conduct the trials of those most responsible for the crimes of the Khmer Rouge regime. The Court has the difficult task of navigating between the interests of its national and international constituents, as well as courtroom participants including the prosecution, defence and, crucially, victims. The ECCC offers a unique opportunity for the victims of the Khmer Rouge to participate as civil parties in legal proceedings, marking in this way a significant advance for the rights of victims of gross violations of human rights. Indeed, the nature and degree of participation afforded to victims in the trial process has been the litmus test of the success and impact of the ECCC as a transitional justice mechanism.

Nonetheless, such participation is shaped not only by the internal factors just considered, but also by external factors such as the social and cultural dynamics that characterise Cambodian society. An overview of the key socio-cultural and legal-political dynamics of Cambodian society will deepen our understanding of the complexities surrounding civil party participation in Cambodia's TJ model.

### 3.2 Socio-cultural dynamics

The socio-cultural dynamics underlying Cambodian society become apparent through the unfolding of the mass atrocities committed by the Khmer Rouge and in the aftermath of the regime, as Cambodia struggles to make sense of the events and strives to move towards justice and reconciliation. The reintegration and rehabilitation of a great number of former Khmer Rouge cadres has proved particularly difficult. When asked why they participated in the mass killings, for example, many former members and mercenaries of the regime state that they were 'just following orders.'

There is much debate on whether subservience to the demands of authority can be seen as a Cambodian cultural characteristic. It is clear however, that authoritarian traditions have fed into a political culture in which subservience is an important factor. This manifested itself in manifold ways during the rule of the Khmer Rouge. Thereafter, a culture of acceptance and obedience actively imposed by the government partly explains why Cambodian society has been described as being averse, or downright resistant to, transformation and change; Chandler went so far as to describe the country as characterised by a sense of 'changelessness' (2008: 14). This state of affairs is amplified by the dimension of religious worship and cultural practice in Cambodia. As an almost exclusively Buddhist country, Cambodian society approaches justice predominantly on the basis of reconciliation rather than retribution (Harris, 2005). It is thus commonly assumed that acceptance, tolerance, and compassion, as well as a belief in reincarnation - concepts traditionally associated with the Buddhist faith - often eclipse demands for accountability, which is an aspect that is inherent to the concept of criminal justice. Yet the empirical research in the form of victim interviews conducted for this research revealed a more nuanced picture, particularly since interviewees stressed the significance to them of the accountability mechanism provided by the ECCC. A number of these dynamics at play are brought out in the following:

My first impression is I need to find justice for my parents. I thought that if I have a chance I would find justice for my parents as well as other Cambodian people. But the first thing I was most interested in was the information that the Royal Government of Cambodia and the United Nations had the plan to establish the Court, and I was happy to hear so. I hope

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October 2004 (NS/RKM/1004/006) arts 3-8. Available at: [http://www.eccc.gov.kh/sites/default/files/legal-documents/KR\\_Law\\_as\\_amended\\_27\\_Oct\\_2004\\_Eng.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf) (accessed 14 October 2015).



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that if such a court was successfully established, I would try any ways I could to file the complaint to the court so that I can find justice for my parents and Cambodian nationals. I was happy and hopeful about the establishment of the Court, because I thought that even if my parents were to die, they would do so in the knowledge that their son tried his best to find justice for them. I hope that people in the world, not just only Cambodian people, will participate in sentencing the Khmer Rouge leaders so that they may be held to account for the crimes they committed.<sup>18</sup>

The quest for justice in Cambodia's post-conflict society is thus rendered all the more challenging and complex not only by socio-cultural factors, but crucially also by the politico-legal dynamics, which will be discussed in the following subsections.

### 3.3 Politico-legal dynamics

An understanding of certain political and legal dynamics in Cambodia will further provide context to the findings and views of victims contained in this report.

The Cambodian government has been keen to retain ownership of the legal proceedings at the ECCC, which comes at a cost to the independent and efficient functioning of the Court. Cambodian officials, prosecutors and judges appointed by the government to the ECCC have continuously shown reluctance and occasionally even overt objection to cooperating with regards to the prosecution of further suspects. Arguably this is because a considerable number of government officials are themselves former Khmer Rouge members. It has been alleged that Cambodian Prime Minister Hun Sen, himself a former Khmer Rouge official, has implicitly supported police forces refusing to co-operate in arresting suspects.<sup>19</sup> According to Human Rights Watch, Hun Sen moreover asserted that further prosecutions would threaten political stability in the country.<sup>20</sup> More recently, following the announcement on 27 March 2015 by the international Co-Investigating Judge that a second accused had been formally charged in Case 004, Hun Sen stated that Cambodia might sink back into a 'civil war' if further charges against former Khmer Rouge cadres were to be brought.<sup>21</sup>

This hostility to the Court should also be considered in the light of Hun Sen's change of position and later prevarication with respect to criminal prosecutions. Immediately after the fall of the Khmer Rouge in 1979, the Vietnamese-backed government of Hun Sen set up what came to be regarded as show trials, sentencing former Khmer Rouge leaders to death *in absentia*. With the passage of time and the end of the Cold War, the appetite for prosecutions waned. Hun Sen meanwhile sought to attract Khmer Rouge defectors back to Cambodia with the promise of amnesty. Yet in 1997, an official request was made for UN assistance to set up a tribunal. Protracted negotiations of almost a decade ensued, before the ECCC officially started its operations in 2006.<sup>22</sup> This context demonstrates in strong terms the tense and politically charged atmosphere within which the ECCC operates.

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<sup>18</sup> Transcript of interview on file with the author (Civil Party Case 002, Siem Reap, 24 October 2014).

<sup>19</sup> The New York Times, 'Hun Sen Hostility Puts Decade-Old U.N. Khmer Rouge Tribunal in Doubt', 21 April 2015.

<sup>20</sup> Human Rights Watch Report, 'Cambodia: Stop Blocking Justice for Khmer Rouge Crimes' 22 March 2015. Available at: <http://www.hrw.org/news/2015/03/22/cambodia-stop-blocking-justice-khmer-rouge-crimes> (accessed 25 November 2015).

<sup>21</sup> See: [www.upi.com/top\\_news/world-news/2015/03/27/ex-khmer-rouge-official-charged-with-crimes-against-humanity/7231427498610/](http://www.upi.com/top_news/world-news/2015/03/27/ex-khmer-rouge-official-charged-with-crimes-against-humanity/7231427498610/) (accessed 29 November 2015).

<sup>22</sup> For a concise overview of this historical context to the ECCC, see: Impunity Watch, *Memorialisation as Related to Transitional Justice Processes in Cambodia: an Exploration*, 2015. Available at: <http://www.impunitywatch.org/docs/CambodiaCountryExploration.pdf> (accessed 16 November 2015).



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Such political interventions pose challenges for the pursuit of justice in Cambodia, not least because the Court is a hybrid tribunal with a strong connection to Cambodia's domestic legal system. To this end it should be remembered that judges and other officers of the Court are, at least in part, appointed by the government. A difficult dynamic is thus created whereby the independence of the Court, the impartiality of its officers and its adherence to international standards are under constant scrutiny.

In addition to the political complexities just outlined, there are also legal dynamics and challenges affecting Cambodia's TJ mechanism. Law is generally seen in Cambodia 'as an instrument to affirm the rightfulness of the power holders' (Bates, 2007: 191). Since rulers throughout Cambodian history were seen to be above the law, this is hardly surprising. There persists a limited concept of accountability of public officials; and although offences such as perjury, bribery, and coercion of witnesses exist in the criminal law of Cambodia, no specific criminal offence exists for perverting the course of justice.<sup>23</sup> Related to this, corruption remains yet another endemic problem.

These points are vividly underlined by a general reluctance among interviewees to talk about the role of the Cambodian government in securing justice for victims, betraying a degree of intimidation and unease. Thus, one person interviewed was adamant from the very beginning when approached for the interview that, 'I can only answer questions related to the ECCC, and [my] experiences at S21,<sup>24</sup> but cannot answer any questions that can affect the government.'<sup>25</sup> Adding to this, more institutional constraints such as doubts about the applicability of the 1956 Criminal Code, the unfamiliarity of Cambodian judges with norms of international law, and gaps in the substantive and procedural rules governing the ECCC and its jurisdiction intersect with the particular political, legal and procedural challenges to create formidable obstacles in Cambodia's quest for justice and reconciliation. Each of these has a direct effect on the victims of the regime and their participation in judicial proceedings.

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<sup>23</sup> Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period, 10 September 1992, passed during the United Nations Transitional Authority in Cambodia (UNTAC).

<sup>24</sup> A former high school, the notorious Security Prison 21 (S-21) was used by the Khmer Rouge regime throughout its reign. Its original Khmer denomination, 'Tuol Sleng' means 'Hill of the Poisonous Trees'. It is estimated that some 20,000 people died at S-21. The site now houses the Tuol Sleng Genocide Museum.

<sup>25</sup> Transcript of interview on file with the author (Civil Party Case 001 and Case 002, Tuol Sleng Genocide Museum, 18 September 2014).

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## 4. Transitional Justice in Cambodia

An examination of the conceptual and philosophical foundations underpinning the role of TJ in the case of gross violations of human rights is indispensable to a critical analysis of victim participation at the ECCC and its role in Cambodia's post-conflict society more generally. Post-conflict societies are often faced with the fundamental questions of 'how to address the heavy burden of their dark past' (Weitekamp et al., 2006: 218) and what kind of TJ they wish to pursue. Having some TJ mechanism in place is a vital component of any post-conflict society for the task of building sustainable peace by advancing justice and securing reconciliation (Kerr & Mobekk 2007: 226). TJ is a complex notion, and its form and content depend greatly on the context of the particular society at issue. This notwithstanding, we define the term 'transitional justice' generically as:

The set of judicial and non-judicial measures implemented in countries attempting to deal with a violent past in order to redress the legacies of massive human rights abuses. Measures include criminal prosecutions, truth commissions, reparations programmes, and various kinds of institutional reforms.<sup>27</sup>

The pursuit of TJ in Cambodia, as in any other post-conflict society, requires careful planning and a thorough and realistic evaluation of what might be achieved. The comprehensive notion of TJ encompasses more distinct concepts, including retributive and restorative justice, which, as Weitekamp and others illustrate, are often reflected in the intertwined concepts of accountability, truth, reparation and reconciliation (Weitekamp et al. 2006: 218). In this light, contemporary TJ mechanisms have increasingly focused on the particular role played by victims, as part of more victim-centred processes.

This increasing focus can be observed not only in the realm of policymaking and judicial processes, but equally in academic discourse. Thus, the expansive role granted to victims of the Khmer Rouge, through greater procedural rights and substantive remedies, has been the subject of elaborate debate among policymakers, academics and practitioners alike. Although still in its infancy, the application of civil party participation in the first and second trials at the ECCC has offered the international community valuable insights into, and an understanding of, the complexities surrounding victim participation, and more specifically of victims' perceptions and attitudes towards active participation at the ECCC.

Most distinctively, the ECCC offers a unique opportunity for the victims of the Khmer Rouge to participate as civil parties in legal proceedings, marking this way a significant advance for the rights of victims of gross violations of human rights.

### 4.1 The ECCC as a TJ mechanism

As in many post-conflict societies, the architects of the ECCC 'had to consider a range of sometimes competing objectives' (Ciorcari, 2008), striking a balance between the right of the accused to a fair and expeditious trial, and the right of victims to participate.

Mindful of the political and social context in which the trials would occur, it is deemed important that

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<sup>26</sup> R. Kerr & E. Mobekk (2007), p.2.

<sup>27</sup> Impunity Watch, *Promoting Victim Participation in Dealing with the Past and Transitional Justice*, Comparative Research Framework (March 2014).



‘Cambodians reflect on a process that would be most desirable to the Cambodian people.’<sup>28</sup> The interrelated goals of individual accountability and national reconciliation would serve as the pillars upon which this justice mechanism would operate. Following the UN-Cambodia Agreement,<sup>29</sup> a unique criminal tribunal with a strong restorative justice element, embodied in the institution of civil party participation, was established. This effort marked the first step of what would ultimately become the ECCC. Six years of scrupulous negotiations brought forth a hybrid criminal tribunal that has no true precedent in international criminal justice. To understand the uniqueness of this tribunal, it must be viewed in light of the underlying ‘balance struck between the Cambodian Government’s desire to retain ownership (or arguably control) and the United Nations’ concern to ensure that international standards of justice are protected’ (Rose, 2012).

Crucially, the parties involved equally had to bear in mind that the work of the ECCC would be measured against already established standards and norms of international criminal justice. In this context, Jain has argued as follows:

Ubiquitous and multifaceted, there seems to be no limit to what [international criminal tribunals] are expected to achieve – in addition to the usual goals of criminal justice, they are tasked with achieving peace, telling a much contested truth, creating historical records for societies and educating the world against the horrors of mass violence (Jain, 2009: 289).

Yet among all the aforementioned objectives, an additional goal of the ECCC is to accommodate the needs of victims of the Khmer Rouge and to deliver justice to them. The ECCC was from the outset a tribunal beset by protracted domestic and international negotiations, lacking reliable political support, marred by occasional political interference, to which may be added inadequate and uncertain funding, and lack of facilities required to run such a complex tribunal. In view of all this the ECCC’s mission may very well appear nigh on impossible.

## 4.2 Victim participation at the ECCC: Expensive typographical error or judicial innovation?

Despite victim participation at the ECCC being a salient feature and heralded as one of the Court’s achievements, the way in which civil party participation has been handled since its inception remains a point of contention for the Court and all stakeholders. Indeed, it appears that the expanded role of victims at the ECCC was a direct result of the ECCC’s hybrid structure (Boyle, 206: 308). In this context, the ECCC initially seemed to be unprepared for victim participation, and questions of victims’ involvement were some of the last issues addressed by the Court (McGonigle Leyh, 2011: 173). While the inclusion of victims at trial found some reference in the ECCC Agreement and Law,<sup>30</sup> the scope and contours of such participation did

<sup>28</sup> See ‘Report of the Group of Experts for Cambodia established pursuant to General Assembly Resolution 52/135’, Document No. S/1999/231, 16 March 1999, 33-34. Available at: [http://cambodia.ohchr.org/WebDOCs/DocReports/4-Other-Reports/Other\\_CMB16031999E.pdf](http://cambodia.ohchr.org/WebDOCs/DocReports/4-Other-Reports/Other_CMB16031999E.pdf) (accessed on 18 October 2015).

<sup>29</sup> See the Agreement between the UN and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, UN Resolution 57/228 of 18 December 2002. Available at: [http://www.eccc.gov.kh/sites/default/files/legal-documents/Agreement\\_between\\_UN\\_and\\_RGC.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/Agreement_between_UN_and_RGC.pdf) (accessed 6 November 2015).

<sup>30</sup> The Agreement refers, in Article 23, to the ECCC’s responsibility to offer protection to victims and witnesses. The ECCC Law does the same in Article 33, and also establishes procedures whereby the Co-Prosecutors can question victims (Art. 23) and victims can appeal an unfavourable verdict at the trial level (Art. 36). It is the Internal Rules; however that provide the full legal framework of civil party participation in the ECCC.

not crystallise until the passage of the ECCC's Internal Rules on 12 June 2007 (Bair, 2009: 506). The only pertinent reference to the concept of civil party participation can be found in Article 36 of the ECCC Law, which grants *victims* a right of appeal to the Supreme Court Chamber. It is arguably no more than a stray word in the foundational legal text. In this regard, as one senior legal officer in Chambers explained,

I understand that the only basis for putting a form of victim participation [in] is an interpretation of this one phrase. It was as if it were to be a typographical error, as there is no reference to victims in the legal framework of the ECCC. And the answer to that from the civil lawyers was that, we are not quite sure as to how to give effect to that, but one system that we are familiar with is the civil party system, and hence it was born. I refer to it as the most expensive typographical error in the history of the courts.<sup>31</sup>

This quote is revealing in many ways. The Court interpreted an ambiguous provision in the underlying legislation in such a way as to import victim participation. This legislation itself is based on the familiar civil party system prevalent in France and in jurisdictions whose legal systems derive from the French (such as Cambodia's). Practically, in France, as in many other civil law jurisdictions, victims have the opportunity of joining their civil claims to the criminal prosecution or of triggering criminal proceedings themselves, thus allowing victims to participate as civil parties (*partie civile*) in the case. In the French legal system, *partie civile* have a number of rights at the pre-trial, trial, and appeal stages (Bacik et al, 1998: 59). Importantly, the participatory rights for civil parties are generally only available insofar as they pertain to a victim's claim for damages against the accused (Doak, 2005: 311; Van Dijk et al, 1986).

In the context of victim participation in Cambodia, it is important to acknowledge the role of victims' advocate groups and human rights organisations in advancing the role of victims at the ECCC. Thanks to immense lobbying by organisations such as the Documentation Center of Cambodia (DC-CAM),<sup>32</sup> the Cambodian Human Rights and Development Association (ADHOC),<sup>33</sup> the Cambodian Defenders Project (CDP)<sup>34</sup> and others, victim participation has since become a significant feature of the Court and has found much greater presence in the Court's revised governing documents (Bair, 2009: 519; McGonigle Leyh, 2011:172).

While the importance of victim participation and its centrality to TJ has therefore been recognised and trumpeted by human rights advocates and policymakers, such recognition gains more traction when acknowledged by the judges themselves. As Judge Cartwright has highlighted:

Any lawyer or judge will tell you that the dry words of an indictment charging an accused with serious crimes come alive when the victim speaks in Court ... More significantly for me, the victim testimony gave a real vibrancy to the history of the regime and took us all back to the country as it was in the 1970's under Pol Pot's leadership.<sup>35</sup>

This judicial recognition is not however of a purely symbolic nature. The meaningful role that could

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<sup>31</sup> Conversation with a Senior Legal Officer, ECCC Judicial Chambers, notes on file with author.

<sup>32</sup> See: <http://www.dccam.org/> (accessed 12 November 2015).

<sup>33</sup> See: <http://www.adhoc-cambodia.org/> (accessed 12 November 2015).

<sup>34</sup> See: <http://www.cdpcambodia.org/content.php?id=46> (accessed 14 November 2015).

<sup>35</sup> Dame Silvia Cartwright (ECCC Trial Chamber Judge), International Criminal Trial. A promise fulfilled?, 2011 Annual Hawke Lecture, Adelaide 9 June 2011. Available at: [http://w3.unisa.edu.au/hawkecentre/ahl/2011AHL\\_Cartwright.pdf](http://w3.unisa.edu.au/hawkecentre/ahl/2011AHL_Cartwright.pdf) (accessed 12 November 2015).



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potentially be played by victims in criminal trials of the scale conducted at the ECCC has been reinforced by the International Lead Co-Lawyer representing civil parties in Case 002/01: ‘in a way civil party participation brings a human aspect to the proceedings.’<sup>36</sup> This view fits well with the rhetoric of victims’ rights advocates who regard victim participation at the ECCC as a platform for victims and as an expression of our humanity by affording victims a voice to express their injury and victimisation (Elander, 2013: 95-115).

The ECCC model has however demonstrated that, notwithstanding the foregoing, such a development in TJ demands careful evaluation of the question whether or not victim participation beyond the traditional role of ‘the victim as a witness’ really always is in the best interests of victims or justice. More detailed critical analysis reveals certain assumptions about the role and effects of victim participation that are concealed, untested and largely obscured in the comfortable liberal discourse on victim participation. We need to probe further into how victim participation is being practised.

To be more precise, discussions conducted by the author with legal experts and practitioners at the ECCC have revealed a rather sceptical view on victim participation, and have shed further light on the complexities and implications of the application of this legal mechanism. As one senior legal officer has explained:

I am often a bit puzzled when this [victim participation] is described as very innovative and ground-breaking. To me it is the most conservative reactionary system you can imagine. There was no creativity in setting it up. Basically it was incorporating wholesale the civil party system as it exists in France into this environment here.<sup>37</sup>

The research confirms that this is not an isolated opinion. Similar views were shared by members of the Office of the Co-Prosecutors, the Defence, as well as others who have a stake in the proceedings. For example, one senior prosecutor highlighted that:

This Court has not done a very good job in creating and managing victims’ expectations. They put in place this model of full participation as parties in proceedings, went out and advertised it to the world that here is a system that is so different and more inclusive, without giving careful consideration to the implications that this system would have for the Court and the victims.<sup>38</sup>

The principal themes underlying these quotes are that victim participation is a reactionary rather than a truly revolutionary legal mechanism, and that the framers and the ECCC itself were not in fact well-prepared to incorporate victim participation into its procedures. This initial lack of preparation, presumably occasioned by the daunting and complex task of having to design an appropriate and viable scheme for the participation of victims, was exacerbated further by government officials’ reluctance to co-operate fully, as explained in detail above.

### 4.3 Civil party participatory rights

The ECCC Internal Rules define ‘victim’ as referring to a natural person or legal entity that has suffered harm

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<sup>36</sup> Conversation with Elisabeth Simonneau-Fort, ECCC Civil Party Lead Co-Lawyer in Case 002/01, notes on file with author.

<sup>37</sup> Conversation with a Senior Legal Officer, ECCC Judicial Chambers, notes on file with author.

<sup>38</sup> Conversation with a Senior Assistant Prosecutor, ECCC Office of the Co-Prosecutors, notes on file with author.

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as a result of the commission of any crime within the jurisdiction of the ECCC.<sup>39</sup> The ECCC Internal Rules allow victims to participate in one of three ways: as victim-complainant, witness or civil party. In this regard, it should be noted that due to the lack of procedural space in the rules governing the ECCC's procedure, a victim is required to choose early on in the proceedings whether he or she wants to participate as a witness, as a victim-complainant, or as a civil party. Participating victims may be denied the opportunity to testify under oath as witnesses, which may well affect the prosecution's opportunity to present information that could assist in incriminating the accused. This problem was particularly evident during Case 001, where several direct victims 'who potentially could have provided sworn testimony on the guilt of the accused opted instead to participate as civil parties' (McGonigle Leyh, 2009: 212). By consequence of it not being given under oath, their testimony carries less weight than that of witnesses.

However, it is nevertheless the case that civil parties exercise important rights under the Internal Rules, the ECCC's body of procedural law. They have the right to have full access to the case file, to make limited pre-trial and trial appeals, to make legal and factual submissions, to attend hearings, to request witnesses, to question witnesses, to question the accused, to make closing arguments, to rebut the closing arguments of the accused, and most importantly to request reparations. The role played by the lawyers for the civil parties is in exercising these rights. During Case 002 the role of civil party lawyers was augmented through procedural streamlining. Only the two Lead Co-Lawyers are now permitted to voice victims' concerns in proceedings. Whether or not this results in a diminished role for civil parties is a debatable point. What has transpired from the research however is that the position of civil parties has in fact been enhanced by channelling a multitude of voices through two advocates in court, yielding considerable consistency and efficiency gains. Whether victims participate as civil parties or witnesses in proceedings carries a differing impact. The scope of this impact naturally depends on the perspective and aim of that participant and interested parties. The question of relevant impact can therefore not be answered on a generalised basis. There is a dilemma, in that a choice needs to be made between the ability to give testimony under oath and the ability to seek reparations and to pursue an appeal.

Victim participation is thus distinct in scope and form, and has given a new dimension to the accountability mechanism established to address the atrocities committed by the Khmer Rouge. The implications of this have been amplified mainly by the unprecedented characterisation of victims as full 'parties' to the proceedings, rather than as mere 'participants'. This stands in contrast to the status granted to victims before the ICC.<sup>40</sup>

This point ought not to be pressed too far, as the role of civil party participation in trial proceedings differs in degree and in kind from participation by conventional full parties, namely prosecution and defence. Understanding the real role played by victims in the process requires a realistic appreciation of the fact that the scheme was adopted to give a voice to those who had suffered harm, without undermining either the ability of the tribunal to proceed against those who had committed the crimes, or the overriding objectives of fairness and efficiency.

This is best exemplified by reference to the Internal Rules. Rule 23(1) states that the purpose of a civil party action is to allow the victim to participate in the proceedings 'against those responsible by supporting the prosecution' and to allow him or her to 'seek moral and collective reparations.' The wording of this provision is remarkable on several fronts. In particular, the expression 'by supporting the prosecution' leaves room

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<sup>39</sup> Internal Rules (Rev. 9), 16 January 2015, glossary.

<sup>40</sup> In the terminology of the Statute and Rules of Procedure and Evidence, the Prosecution and Defence are referred to as 'parties' and participating victims as 'participants'. See: [http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf?wptouch\\_preview\\_theme=enabled](http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf?wptouch_preview_theme=enabled) (accessed 8 November 2015).





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for interpretation and could potentially entail unfortunate consequences. As McGonigle Leyh has argued, ‘the wording suggests the possibility that civil parties may support the prosecution similar to the way an auxiliary prosecutor supports the public prosecutor in many national systems, such as through submitting evidence on the guilt of the accused and that participation is not limited to their interest in reparations’ (2012: 388). On another front, the wording would also appear to suggest that victims joining as civil parties must seek the conviction of the accused. Victims calling for a dismissal of charges, for example in the name of national reconciliation, would be unlikely to fit the criterion stipulated in the Rule. Ultimately, the wording pertaining to reparations is significant because it recognises that victims are entitled to redress and that, together with supporting the prosecution, this is a principal rationale for their participation in the proceedings (McGonigle Leyh, 2012; 388). It should however be noted that no trust fund has ever been established at the ECCC, meaning that victims claiming reparations must attach claims to the criminal proceedings and cannot obtain redress other than as civil parties. As a result, while it may not be the case that all civil parties seek reparations, it is nevertheless imperative for all those victims wishing to seek reparations to join as civil parties.

The regime just described has been the subject of both praise and criticism. It has been praised because for the first time a significant number of victims of mass atrocities were able to actively participate as civil parties in an international criminal trial. One of the civil parties interviewed highlighted the virtues of and personal benefit derived from participation thus:

For those who spend their time and participate in the Court, such participation has great value ... To me, what was important was being able to join the proceedings to find the perpetrators responsible; learning more about the Khmer Rouge regime; facing the accused; and finally, talking about my suffering.<sup>41</sup>

On the other hand, victim participation before the ECCC has been criticised in a number of ways. From the victims’ perspective, the remedial responses available to the Court are too restrictive, reparations being limited to moral and collective reparations. This dissatisfaction on the part of victims, observed throughout the interviews, is exemplified in the following quotes:

In terms of reparations, the Court only awarded collective reparations such as the building of memorials. I was satisfied with that. But I want the Court to try and understand the feelings shared by all civil parties. All civil parties in Case 001 and Case 002 want individual reparations. We understand that individual reparations are not provided for in the Internal Rules, but such reparations were requested from the very beginning. And now we feel that something is left unfulfilled.<sup>42</sup>

Similarly, another interviewee stated that,

The Court only offered victims memorials and documentation. So, participating is perhaps itself a form of justice, but in terms of reparations, it really is not justice, as it did not match what we lost during the Khmer Rouge regime, as we lost our parents and relatives.

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<sup>41</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

<sup>42</sup> Transcript of interview on file with the author (Civil Party Case 001 and Case 002, Phnom Penh, 29 October 2014).



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Therefore, I'm not happy.<sup>43</sup>

Furthermore, from a wider perspective and in the eyes of practitioners working at the Court, civil party participation has noticeably been associated with unnecessary delays in trial proceedings as well as the perception that the rights of the accused to a fair and expeditious trial may have been infringed. Victim participation has also been characterised as a cumbersome legal instrument.

#### 4.3.1. Civil party participation in practice

The trial proceedings in Case 001 and Case 002 have been material in the ECCC's shaping of the form and scope of victim participation. The definition and demarcation of the parameters of civil party participation in Case 001 furnished the grounds for Case 002. This is significantly more complex due to a higher number of accused, a more complex factual situation, and a greater number of victims. Case 002 has been severed into two separate trials, each addressing a different section of the indictment.<sup>44</sup> About 4,000 individuals applied to participate as civil parties in Case 002 and 3,866 have been granted the status of, and are currently acting as, civil parties.

During the pre-trial stage of both cases, civil parties exercised a number of important participatory rights. Thus, the commencement of pre-trial proceedings in Case 001 was characterised by a favourable approach taken by the Co-Investigating Judges. Victims were afforded the right to access the case file, submit motions for specific investigations, confront the accused, file written and oral interventions, as well as appeal decisions to the Pre-Trial Chamber. The trial in Case 001 against *Duch* marked the first internationalised<sup>45</sup> trial where victims of mass atrocities actively participated as civil parties. To put it in numbers, 93 direct and indirect victims responded to the call to participate as civil parties. They were represented by four civil party legal teams, comprised of both national and international lawyers. Collaboration between the teams proved to be challenging despite all sharing the same goal. This was due to a number of disagreements on legal and procedural issues as well as advocacy tactics.<sup>46</sup> Thus, whilst it is true that civil parties exercised important rights during the trial proceedings, the lack of collaboration meant that civil parties did not necessarily speak with one voice in the courtroom.

There was thus a certain degree of disillusionment and disappointment among victims, which was further exacerbated by the Trial Chamber verdict in which *Duch*, convicted of crimes against humanity and grave breaches of the 1949 Geneva Conventions, was sentenced to a mere 35 years' imprisonment and where the number of civil parties was reduced from 93 to 64.<sup>47</sup> This was because of a Trial Chamber ruling to the effect that a civil party must be able to demonstrate 'a direct causal connection to a demonstrable injury personally suffered'.<sup>48</sup>

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<sup>43</sup> Transcript of interview on file with the author (Civil Party Case 001, Phnom Penh province, 19 September 2014).

<sup>44</sup> See, <http://www.eccc.gov.kh/en/case/topic/2> (accessed 15 November 2015).

<sup>45</sup> 'Internationalised' is a notion used to denote the characterisation of several mixed tribunals, composed of both international and national judges and applying international as well as national law. Examples of such tribunals include the Kosovo War and Ethnic Crimes Courts, the Special Panels for Serious Crimes in East Timor, the Special Court for Sierra Leone and Extraordinary Chambers in the Courts of Cambodia. See Romano, Nollkaemper, and Jann K. Kleffner (eds) (2004).

<sup>46</sup> Such disagreements ranged from whether the victims could participate with regards to sentencing issues, whether to support the Prosecution's pleading for the use of Joint Criminal Enterprise as a mode of criminal responsibility, and whether to pursue monetary reparations.

<sup>47</sup> *Case of Kaing Guek Eav (Case 001)*, Trial Chamber Judgement, 26 July 2010, paras 632 and 633. His sentence was reduced by five years as a remedy for his illegal detention by the Cambodian Military Court between 10 May 1999 and 30 July 2007. He also received credit for time already spent in detention under the authority of both the Cambodian Military Court and the ECCC.

<sup>48</sup> *Case of Kaing Guek Eav (Case 001)*, Decision of the Trial Chamber Concerning Proof of Identity for Civil Party Applicants, Trial Chamber, 26 February 2009, para 38.



The Accused and the Co-Prosecutors appealed the Trial Chamber verdict to the Supreme Court Chamber. In total, 41 civil parties, including 22 rejected civil party applicants, also filed appeals against the Trial Chamber's decision on their admissibility and/or claims for reparations. The Supreme Court Chamber rendered its decision on 3 February 2011, quashing the 35-year sentence handed down by the Trial Chamber on 6 July 2010 and instead sentencing *Duch* to life imprisonment, the maximum possible sentence that the ECCC could impose. The Supreme Court Chamber also granted the appeal of 10 civil party applicants whose applications had previously been rejected in the judgement of the Trial Chamber. On appeal, these civil party applicants substantiated their applications and were subsequently admitted as civil parties in Case 001.<sup>49</sup>

Without any doubt, civil party participation in Case 001 was characterised from the very beginning by significant legal and procedural challenges stemming primarily from the lack of clear and comprehensive rules and procedures.

Civil party participation in Case 002/01<sup>50</sup> often constituted a trial management issue, resulting in a process marked by constant amendments, re-amendments and reinterpretations. The ECCC judges repeatedly revised the provisions of the Internal Rules governing civil party participation in an attempt to secure fairness and efficiency in the proceedings, a recognition of the importance of victim participation as well as of the problems that had been highlighted in Case 001. As of 16 January 2015, the Internal Rules had been revised no less than nine times.<sup>51</sup>

The most substantial revisions in relation to trial procedures took effect in February 2010 and affected the proceedings in Case 002. One key amendment related to the establishment of two civil party Lead Co-Lawyers: a national and an international lawyer, selected and funded by the ECCC.<sup>52</sup> The Lead Co-Lawyers take charge of the bulk of the advocacy, strategy and in-court representation on behalf of all civil parties.<sup>53</sup> During the pre-trial stage, civil parties may also be represented by their own lawyers. Although not permitted to address arguments to the Court, those lawyers will nevertheless continue to play a significant role by submitting requests for investigations during the pre-trial stage, and by providing support to the Lead Co-Lawyers at trial. It should also be noted that the Co-Lawyers usually consult the civil party lawyers in order to coordinate strategy and advocacy.

Case 002/01 concluded on 31 October 2013 and the trial judgment was pronounced on 7 August 2014 whereby the two remaining accused, Nuon Chea and Khieu Samphan (as Ieng Thirith was found unfit to stand trial, and Ieng Sary died on 14 March 2013), were found guilty of crimes against humanity and sentenced to life imprisonment.<sup>54</sup> Both accused have since filed appeals against the judgement, appeals proceedings are ongoing. The complexity of Case 002, which involved the two remaining ageing accused, a crime scene that covered diverse sites throughout Cambodia, and a group of around 4,000 civil parties,

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<sup>49</sup> *Case of Kaing Guek Eav (Case 001)*, Supreme Court Chamber Judgement, 03 February 2012. Available at: <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/Case%20001AppealJudgementEn.pdf> (accessed 12 November 2015).

<sup>50</sup> The first trial (Case 002/01) commenced on 21 November 2011, primarily focusing on alleged crimes against humanity related to the forced movement of the population from Phnom Penh and later from other regions and execution of Khmer Republic soldiers at Toul Po Chrey execution site immediately after the Khmer Rouge takeover in 1975. See: <http://www.eccc.gov.kh/en/case/topic/2>.

<sup>51</sup> See [http://www.eccc.gov.kh/sites/default/files/legal-documents/Internal\\_Rules\\_Rev\\_9\\_Eng.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/Internal_Rules_Rev_9_Eng.pdf) (accessed 13 November 2015).

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Prosecutors v. Nuon Chea and Khieu Samphan Case No. 002/19-09-2007/ECCC/TC*, Judgement (7 August 2014). Available at: [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017-04/E313\\_Trial%20Chamber%20Judgement%20Case%20002\\_01\\_ENG.pdf](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017-04/E313_Trial%20Chamber%20Judgement%20Case%20002_01_ENG.pdf) (accessed 17 November 2015).

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undoubtedly demanded significant and necessary reforms with regard to civil party participation. The evidentiary hearings in Case 002/02 against Khieu Samphan and Nuon Chea commenced on 17 October 2014.<sup>55</sup> It remains to be seen and measured what the overall implications of the collectivised participation at the trial stage in Case 002/02 will be.

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<sup>55</sup> See: <http://www.eccc.gov.kh/en/case/topic/1299> (accessed 18 November 2015).



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## 5. Victim Participation Role and Impact

The empowerment of Khmer Rouge victims reflected in the direct and active form of participation as primary stakeholders with ‘decision-making clout’ (Arnstein, 1969)<sup>56</sup> at the ECCC has brought into sharper focus the need for a more critical and comprehensive understanding of the virtues and impact - with a corresponding focus on the benefits and possible negative dynamics - of victim participation. The incorporation of victims as civil parties is a novelty in the realm of international criminal justice. The application of this mechanism as it sailed through uncharted waters at the ECCC has undoubtedly revealed potential advances and limitations.<sup>57</sup>

The findings of the following analysis have built on the various perspectives on victim participation at the ECCC, and on the empirical research conducted with victims on the ground in Cambodia in 2014. They seek to substantiate the presumed benefits as well as shed light on the potential shortcomings of victim participation.

### 5.1 Victims’ motivations to participate

As a precursor to a thorough appreciation of the role and impact of victim participation, it is crucial to understand the motivations behind decisions to seek participation. Certain core motivations underlying victim participation were identified by Stover and others in their instructive research in 2011. These themes encompassed: the need to know; the quest for justice; the need to tell one’s story; and the need to educate the world. Importantly, the research conducted for this report has broadly affirmed these findings, reflecting squarely the research conducted by Stover et al. (2011). As will be elaborated upon shortly however, this report will also look at how these already emerged themes have evolved, extending the crucial analysis of Stover et al. (2011). Furthermore, the interviews with victims and focus groups conducted in Cambodia have shown the significance of seeking reparations and fostering reconciliation in terms of victims’ motivations to participate. Therefore these key motivations will form the core of the following analysis:

- Seeking justice;
- Seeking truth;
- Telling one’s story;
- Educating the world;
- Seeking reparations;
- Fostering reconciliation.

There are thus different reasons why victims are motivated to participate in proceedings before the ECCC as civil parties. These are brought out in the following comments made by civil parties in the course of interviews conducted in Cambodia. For example, one person said,

I carry with me the injury. I have lost both my parents and it is highly personal and emotional for me to be part of this process.<sup>58</sup>

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<sup>56</sup> A figurative expression intended to denote victims’ indirect and intangible influence by virtue of their participation on the decision-making process.

<sup>57</sup> Jasini, R. (2015) Contextualising Victim Participation in International Criminal Proceedings, Unpublished dissertation, University of Oxford, Oxford, UK.

<sup>58</sup> Transcript of interview on file with the author (Civil Party Case 001, Phnom Penh, 30 October 2014).

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In the same context, one civil party said,

At first, I did not understand the procedures or goals of the Court. Primarily, when I filed a lawsuit at the time, I just wanted justice so that the victims and my deceased relatives would receive their justice. And I myself would be able to find peace of mind.<sup>59</sup>

As a civil party from Kampong Cham recalled:

The factors that motivated me to file the application to the ECCC are: Firstly, I was a direct victim and lost many relatives so first I want it be the history for the next generation to learn about history. Secondly, I want to find justice for my siblings and relatives...Next, I would like to provide inculpatory evidence to those accused...to inform that they had done something wrong.<sup>60</sup>

Another civil party who participated in Case 001 and who was subjected to torture and degrading treatment stated as follows:

The purpose I applied to be a civil party in Case 001 is to seek the truth for the people who survived and those who died, see the accused admit that they really committed the crimes at that time and ask for the reparation, moral and collective reparation.<sup>61</sup>

A slightly different perspective was put forth by yet another civil party, stating that,

When the ECCC conducted the trial, with my suffering I have endured, I wanted to fill a complaint so that my suffering could be eased. I want a country that has the rule of law. So that in the future, people will not be executed without standing trial.<sup>62</sup>

The following sections will examine these points individually, as well as their inter-connections. In the course of the analysis, reference to victims' personal stories and perceptions is crucial to a thorough understanding of the motivations of, and reasons for, victims to participate in proceedings before the ECCC.

## 5.2 Seeking justice

Seeking justice for others and oneself is undoubtedly the fundamental theme common to virtually all interviews conducted. Clearly though, justice is a protean word.

In a broad sense, integral to the idea of justice is the notion of restitution to right an *injustice*, to right the wrong. In practice, from the perspective of the victims and others, this may be concretised through a verdict of guilt. However, a guilty verdict will not in and of itself 'right the wrong'. This points to other notions of justice, which are inseparable from the other motivations underlying victim participation. Firstly, it entails the quest for truth and reconciliation and secondly, the question of reparations in particular. Each of these motivations ultimately flows from the ideal of justice. It should also be noted that justice may be understood

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<sup>59</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Phnom Penh, 29 October 2014).

<sup>60</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Kampong Cham, 4 November 2014).

<sup>61</sup> Transcript of interview on file with the author (Civil Party Case 001, Phnom Penh district, 19 September 2014).

<sup>62</sup> Transcript of interview on file with the author (Civil Party Case 001, Phnom Penh, 29 October 2014).



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from both an individual and a collective perspective, as was put by one interviewee:

I was a direct victim of the Khmer Rouge. My participation at the ECCC is important for two reasons: first, to seek justice for myself and my relatives. Second, help the system to provide inculpatory evidence towards establishing accountability, in this way serving justice.<sup>63</sup>

As will also be seen below, the notion of justice was prevalent in virtually all interviews. What follows from this is that, from the victims' perspectives, they believe their participation as civil parties to be meaningful in terms of achieving justice in Cambodia, often on both an individual and a collective level. It is noteworthy to state that the interviews conducted for this research seem to suggest that civil parties, by virtue of their close connection with the proceedings through their participation, are more invested in the pursuit of justice. This is partly due to their enhanced access to information and support resources, as opposed to the victim-complainants who were also interviewed, but lacked this support. This is all the more true for the community at large, which does not have a tangible stake in the ECCC proceedings. Nonetheless, it is true that Cambodian society attaches considerable importance to the ideal of justice. Yet, the question whether justice can be obtained *outside* the confines of the courtroom, i.e. other than through civil party participation, can only be answered by looking at the discrete manifestations of the abstract ideal of justice in the subsequent discussion. This ultimately raises the question whether civil party participation really does take the most effective and meaningful form to enhance justice.

Rule 23(1) of the ECCC Internal Rules states that the purpose of an action brought by a civil party is to participate in proceedings before the Court 'against those responsible by supporting the prosecution', and to allow victims to 'seek moral and collective reparations.' We shall revert below to the legal framework of reparations and their significance for victims. For now, the duality of victims' role in proceedings before the ECCC should be noted: supporting the prosecution is essentially related to the definition of justice mentioned above.

Stover et al. in their study found that victims' concern was primarily related to personal justice:

For the most part ... grounded their need to testify in personal and intrinsic terms rather than in feeling a responsibility to perform a universal good for all Cambodians or all humanity, although such sentiments were not completely absent. (Stover et al, 2011: 520)

To an extent, this picture is reflected in the research conducted for this project in Cambodia. Thus, one civil party from Prey Veng who was imprisoned at Prey Sor during the Khmer Rouge spoke about his quest for justice and his understanding of the role of victim participation at the ECCC in this context in the following words:

Primarily, when I filed my complaint at that time, I just wanted justice so that the victims of my deceased relatives would receive their justice. And I myself would be able to find peace of mind, not having any regrets for not filing a complaint in order to find justice for myself.

The research did however reveal a slightly more nuanced picture. The quest for justice was not only seen as seeking justice and accountability for personal suffering, but also for Cambodian people in general. For

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<sup>63</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Phnom Penh, 4 November 2014).

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them 35 years after the horrors of the Khmer Rouge regime, reconciliation and other communal goals have become indispensable for moving forward.

This duality becomes apparent in other interviews conducted with civil parties. One civil party who had been subjected to forced evacuation and to cruel treatment, and was given the opportunity to testify before the Court, emphasised her determination to hold the perpetrators of the atrocities of the Khmer Rouge regime accountable for the benefit of herself and Cambodians generally:

The establishment of the ECCC gave me so much hope. When ADHOC came to our district searching for victims who wanted to file complaints in Case 002, I thought this was a very good opportunity for me to have my voice heard and seek justice. So, I joined the proceedings in order to hold the perpetrators accountable for what they had done to me and my family and I wanted justice for myself *and Cambodian people*. I thought it was important that I help the Court to find the guilt of the accused.<sup>64</sup>

A similar sentiment was expressed by another civil party, who said that,

I would like to tell you that I want to seek justice for me *and all victims around the country*. And I wanted the tribunal to help me seek justice. I believe that the tribunal will be able to find justice for me. When the tribunal can find justice for the victims, I am happy because it helps me and the victims seek justice, and to let the next generation know it so that they will not commit such cruel acts.<sup>65</sup>

It is clear from the above that seeking justice is intrinsically linked to the other motivations for victims to participate in proceedings. It is also related to other core rationales for victim participation at the ECCC, such as seeking truth, telling the next generation about the horrors of the Khmer Rouge, and obtaining moral and collective reparations. For this reason, an ‘ordinary’ criminal trial which may attain the objectives and motivations that underlie civil party participation only in an attenuated form, if at all, and which has an almost exclusive focus on accountability, would not be sufficient to bring about justice, at the very least as that term is understood in an individual as opposed to a collective sense. Such findings were reflected also in the study conducted by Pham et al., whereby civil parties interviewed emphasised the guilty verdict, which was the most frequently cited positive outcome of the trial. Other important outcomes were: the contribution of the trial to establishing an historical record; an opportunity for civil parties to tell their story; allowing the accused to provide a direct account of what happened from his perspective and recognise and offer apologies for what he had done (Pham et al, 2011: 280).

### 5.2.1 Reactions to the verdicts

The attainment of justice for victims can only be measured by reference to the verdicts handed down by the ECCC. As will be recalled, the Supreme Court Chamber on appeal sentenced *Duch* to life imprisonment, overturning the first-instance decision in Case 001, which had sentenced *Duch* to 35 years’ imprisonment.<sup>66</sup> In Case 002 the Court sentenced the two remaining individuals convicted of crimes against humanity committed during the Khmer Rouge regime to life imprisonment, the maximum penalty under the ECCC

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<sup>64</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 4 November 2014); emphasis added.

<sup>65</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014); emphasis added.

<sup>66</sup> *Case of Kaing Guek Eav (Case 001)*, Supreme Court Chamber Judgement, 03 February 2012. Available at: <http://www.eccc.gov.kh/sites/default/files/documents/court/doc/Case%20001AppealJudgementEn.pdf> (accessed 8 November 2015).

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Law.<sup>67</sup>

In general terms, the research has shown that victims are on the whole in agreement with the life sentences now imposed on those convicted. However, concerns and lack of understanding remain in relation in particular to appeal rights. Thus, in relation to the verdicts delivered in Case 002, one civil party who described his suffering under the Khmer Rouge as ‘immeasurable’ and who had been evacuated from the capital, stated that,

I am satisfied with this verdict. If they were sentenced to one or two years in prison, they could still be able to live freely after the time has passed. But life imprisonment, we are satisfied with it. But the only thing is that they are now appealing against the verdicts and their lawyers have already filed the appeal papers, and are now waiting for the decision from the higher [Supreme] Court.<sup>68</sup>

This concern regarding the length of procedures, in particular in respect of appellate rights, was shared by most civil parties interviewed, as exemplified by the following comments made by a civil party who is one of the few remaining survivors of S-21 prison and who had participated in both cases:

My concern is that the accused may die before the [appeals] hearing. If so, there will be no justice for the victims, as well as for the world... So we tried to push the proceedings to be conducted as quickly as possible. But now I heard that the accused would appeal in Case 002 ... So that would take time.<sup>69</sup>

Civil parties’ key concerns thus appear to be, first, that the perpetrators convicted of crimes against humanity do not see the light of day; and, secondly, that there is a degree of finality with regards to the verdict. This is also reflected in the following comment made by the same civil party in relation to the first-instance verdict in Case 001:

The judge sentenced *Duch* to 35 years in prison. We, the 93 civil parties, were not satisfied with the decision and we appealed to the Supreme Court ... As a result, *Duch* was sentenced to life imprisonment, and this is justice for me and other victims.<sup>70</sup>

It emerges from the foregoing that civil parties attach significant importance to the outcome of the trial, specifically the verdict and the sentence. Furthermore, it appears that civil parties show greater concern with the outcome than victim-complainants, precisely because the former are more deeply invested in the proceedings at the ECCC.

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<sup>67</sup> Case 002/01, Trial Chamber Judgement, 07 August 2014, disposition. Available at: [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017:04/E313\\_Trial%20Chamber%20Judgement%20Case%20002\\_01\\_ENG.pdf](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017:04/E313_Trial%20Chamber%20Judgement%20Case%20002_01_ENG.pdf) (accessed 9 November 2015).

<sup>68</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014); emphasis added.

<sup>69</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Tuol Sleng Genocide Museum, 18 September 2014); emphasis added.

<sup>70</sup> Ibid.



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## 5.3 Seeking truth

As Stover et al., who conducted field research with victims early on after the trial in Case 001 had come to an end, have argued,

This palpable need for details about a loved one's fate – however painful – reverberates in families of the disappeared around the world, regardless of cultural or political context. (Stover et al, 2011: 519)

There is no denying the desire of victims to participate directly in trial proceedings by asking questions of the accused and witnesses, and that this is inextricably linked with their desire to confront the accused. This sets civil party participation apart from other forms of participation in TJ, such as indirect participation, notification, etc. Civil parties may take an active role in proceedings by asking questions and liaising with the prosecution. This will not normally be possible with regards to other forms of participation, which is more passive in nature. Indeed, for many of the victims who participated as civil parties in the *Duch* trial, confronting *Duch* and having an opportunity of asking questions as to the individual fates of their loved ones and friends constituted a key moment of their search for truth. This was also the conclusion of Stover et al., already mentioned above. Thus, it was found that the encounter with *Duch* during the trial proceedings,

...represented a pivotal moment in their quest to uncover the truth about the fate of their loved ones. When reflecting on the overall process, it is important to acknowledge that there have been some advances arising from the participation of victims. As highlighted in a survey conducted by Stover and others following the completion of the *Duch* trial, the participation of victims as civil parties at the ECCC has been perceived as valuable and often transformative for some, underscoring their motivation to bear witness on behalf of their deceased family members. (Stover et al, 536)

The foregoing quote highlights the point that, at least for some, victim participation can be of transformative value. Ideas of transformative justice encompass the need for structural and institutional transformation, socio-economic and political justice, and involve recognising and addressing the multiple needs and expectations of the local population. Transformation in this sense draws upon local approaches to justice that coexist with the dominant worldview and practice of transitional justice. However, the extent to which such transformation occurs on a broader, societal level, rather than just on the individual plane as envisaged by Stover requires observation of the effects of victim participation over a longer period of time.

What the present research has found is that even after Case 002, the findings of Stover et al. still hold true today: the confrontation of the accused is one of the drivers of victim participation at the ECCC. This is expressed in no clearer terms than in the interview conducted with one civil party, which is best set out in full:

I asked them that as you were the head of state of Democratic Kampuchea, have you ever thought about the purpose of establishment of this Democratic Kampuchea, and what the benefits of killing Cambodian people are? Who was in charge? Who was behind the killings of Cambodian people? This is my first question. The second question is, during the evacuation of people out of Phnom Penh city, why did you arrest and kill students, scholars,



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and the Khmer Republic civil servants? Was it the policy of Democratic Kampuchea, or was it the policy of other powerful countries? The third question is, after the evacuation of people out of Phnom Penh on 17 April 1975, why did you kill the evacuees? Why did you do so even with children ... The fourth question is, have you ever thought about the destiny of Cambodia when you formed the cruel Communist ideology, and victimised the people under your leadership? The fifth question is, as you are one of the scholars who had studied abroad, why did you create such a deranged concept to kill your own people? Because human beings need their right to live in a society with dignity ... Why did you kill people? So I wanted them to reveal [the answers thereto]. These are the five questions I asked Nuon Chea and Khieu Samphan.<sup>71</sup>

These five questions were posed to the two accused, and ultimately the convicted, in Case 002. The ECCC provided a forum to ask such questions. However, the degree to which victims' desire for the truth is satisfied naturally depends on the extent of information divulged by the accused. Thus, as the same civil party interviewed for this research continued in trenchant terms:

But the most important point that made me dissatisfied is that they did not answer comprehensively the five questions I asked. That means that they are still hiding some information ... According to my view, what I wanted is for them to be open and to concede that human beings deserve dignity and being treated morally; and to admit that what they had done to the Cambodian people was not acceptable. For me especially, and for my parents, this was a very serious tragedy. I still have traces of remorse, and I am not happy because my parents were killed, and the prospects for justice for my parents seem to be dark.<sup>72</sup>

Another civil party interviewed in Phnom Penh was more upbeat about the benefits of the truth-seeking role of victim participation before the ECCC, stating that,

I have learnt a lot from it. It has opened my eyes to the revolutionary ideology of which we had not previously been aware. Now it makes us, the victims, know the dark policies and cruel acts of the people in charge of Democratic Kampuchea. We have never known this, but now we do know it from the ECCC. I would like to thank the ECCC for helping open my eyes to the acts of those in Democratic Kampuchea.<sup>73</sup>

In similar tones, a civil party from Kampong Cham has been positively disposed towards the truth-seeking mechanism provided by victim participation at the ECCC, underlining the very limited information that was available during the Khmer Rouge regime and arguably even the years following, up to this day, itself:

With regards to the truth, before we only had DC-CAM<sup>74</sup>, which is the place where we can learn about the truth. But ever since its establishment the Court, as well as the investigating judges, has tried to find the truth. At the time, we did not know what Khieu Samphan, Ieng

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<sup>71</sup> Transcript of interview on file with the author (Civil Party Case 002, Siem Reap, 24 October 2014); emphasis added. The interviewee was an academic during the Khmer Rouge regime.

<sup>72</sup> Ibid.

<sup>73</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

<sup>74</sup> See: <http://www.dccam.org/> (accessed 12 November 2015).

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Sary, Ieng Thirith were doing, but later on I learnt about it through the court: those leaders were well-educated but why did they do such awful acts to lead the country?

A better understanding of the power dynamics, ideological underpinning and political structures of the Khmer Rouge, has been offered by the combination of two means of involvement: namely victims' participation in the trial proceedings, including interactions with lawyers, on the one hand and the information received by the VSS, ADHOC and further NGOs on the other hand. This was a common theme amongst interviewees, as manifested by a further example in which attention is drawn to the extent of suffering during the regime:

As a result of the Court, I have a better understanding. There are some terrible atrocities that I have learned from the trial. Before I knew only about what I had gone through and a few people around me. Having participated in the trial, I know more about the stories of people all over the country who suffered from the atrocities committed by the Khmer Rouge, especially sexual violence in Case 002, in relation to which I was listed as a victim.

This sentiment is brought out yet more strongly in the following extract from an interview conducted in Phnom Penh with a civil party in Case 002, who opined that attending the trial proceedings,

Has helped to have a better understanding about the Khmer Rouge. Before, we did not know the Khmer Rouge well. Under the Lon Nol regime, we just heard the word 'Khmer Rouge', but we did not know their leaders, such as Ieng Sary, Pol Pot, Nuon Chea. After the establishment of the ECCC, we know much better than before, because the court revealed the leaders of the Khmer Rouge for us to see, and we now know who ordered the wilful killing of people ... At that time, we only heard the word 'Angkar', but we did not know who or what 'Angkar' was.<sup>75</sup>

In many cases, therefore, the quest for truth poses new questions, and it may very well be questioned whether all of these are necessarily suited to trial proceedings in the ECCC. Whether the goal of unearthing the truth, considering the implications of the complex civil party scheme, can be equally ascertained in a forum outside the realm of international criminal tribunals remains a live issue.

What is clear, however, is that truth-seeking requires a considerable degree of support for victims, involving both judicial and non-judicial actors. As outlined above, organisations such as ADHOC, CDP, LAC and TPO, have been instrumental in the provision of victim support services. The VSS at the ECCC, including civil party lawyers, is responsible for the dissemination of information to civil parties and has organised on-site workshops as part of its outreach programme.

One civil party spoke of such engagement in positive tones, underlining the important work done by such outreach programmes:

Previously I did not know much, but ever since I started attending the workshops at many places... I have a better understanding of [Khmer Rouge leaders'] actions. When I visited

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<sup>75</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 October 2014). The "Angkar" referred to in the text is Khmer for "the organization" and denotes the Communist Party of Democratic Kampuchea. The spelling "Angka" is also occasionally encountered.



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torturing places such as Tuol Sleng prison, I saw it with my own eyes. They also took me to Cheung Ek. Before, I had not known about this. I have never known where the torturing places were, but now I know better and see more.<sup>76</sup>

It was not, however, only civil parties who stressed the importance for them to find the truth through the trial proceedings. As one interviewee who had not filed a complaint or an application to become a civil party stated,

This is my second time attending the trial from the public gallery. I have learnt a lot about the history and structure of the Khmer Rouge, and the motivations behind the regime... I have benefited from attending the trial even though I cannot be a civil party.<sup>77</sup>

This was echoed in other interviews with non-participant victims, as the following quote demonstrates:

For me, it is very important to be here in the court to attend the trial. The Victims Support Section has done a good job reaching out to victims like myself, because this has helped educate Cambodians on our shared painful history. But not being able to ask questions of the accused was a drawback, particularly where I did not seem to understand a difficult point.<sup>78</sup>

Two things are notable about the foregoing quotes.

First, the quest for truth may be pursued through means of participation other than as a civil party. However the passivity inherent in such indirect participation as a trial observer limits victims' ability to ask questions of the accused and generally to take a more active role in the proceedings. The second point to note is that the interviews conducted with both civil parties and non-participant victims did not in any way reveal that the exclusion of some from participating directly in proceedings caused resentment on the part of others.

The above quotes demonstrate clearly the importance for victims to learn the truth and understanding the past. All interviewees, including civil parties, victim-complainants and non-participants, regard the ECCC as a crucial development in the quest for truth. Naturally, direct participation by means of posing questions to the accused has been limited to a small number of civil parties. This goes to highlight the collectivist strand in the quest for justice on the one hand, and the individualist strand in terms of seeking a personal truth by direct confrontation with the accused on the other. The views expressed by civil parties and victim-complainants, as highlighted above, show that the issues of truth-seeking, telling one's story and teaching the world about the horrors and atrocities of the Khmer Rouge regime are closely-related. The focus of this report will now turn to these related issues.

## 5.4 Telling one's story

Whilst the dimension of truth-seeking represents the results-oriented view of the participation of victims as civil parties, *telling one's story* reflects a more input-based view, the importance of which can hardly be overstated. As psychoanalyst Dori Laub has argued, 'there is in each survivor, an imperative need to tell and

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<sup>76</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

<sup>77</sup> Transcript of interview on file with the author (Phnom Penh, 2 November 2014).

<sup>78</sup> Transcript of interview on file with the author (Phnom Penh, 2 November 2014).

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thus come to know one's story' (Laub, 1992: 98). References to the need to give expression to experiences during the Khmer Rouge are thus found in almost all interviews conducted for this research, usually by implication rather than being expressly spelled out. As one interviewee who elaborated on this specific point explained,

When testifying before the Court, firstly I was proud because among thousands of civil parties, I was selected by the tribunal to testify and describe my suffering and difficulties during Democratic Kampuchea to the public, so that they knew the suffering of the people. I was proud because I described this suffering to the Court before the accused. I was proud and excited to represent all the victims.<sup>79</sup>

This is not to say that telling one's story, even though often a psychological imperative is easy and testifying in court as a civil party, or as a witness for that matter, is more difficult still. Psychophysiological reactivity – the phenomenon that when describing past traumatic episodes survivors often react physically as well as psychologically – has been described in the literature (see for example Stover, 2011: 524). The difficulty of coming to terms with and reliving the past could also be observed in the interviews conducted for this research. Thus, as one civil party stated,

I do not want to recall my story. I do not want to imagine again what happened under the Khmer Rouge regime as I thought that all my life is meaningless. I think I will have to endure this until I die. This is my perception.<sup>80</sup>

Besides the difficulty of testifying, its importance is generally recognised by victims and other actors in the proceedings. As noted by de Hemptinne (2010: 167),

Granting victims the right to convey their suffering and claim compensation can help victims recover from the harm experienced. Besides this reparative purpose, victim participation also serves a symbolic value. Giving victims a 'say' in the proceedings could render the tribunal's work more transparent and accessible for the victims.

There are thus a variety of goals and values that victim participation is designed to serve that relate directly to victims' needs to share their stories. First, telling the Court and thereby the wider world about their experiences is part of victims' self-healing process, or what de Hemptinne (2010) calls the 'reparative purpose'. Connected therewith is the idea that victims' dignity is guarded by giving them participatory rights before the courts, regarding them as active participants rather than mere objects of the inquiry: we can call this the dignitarian perspective, regarding the right to tell one's story as an essential component of human dignity following mass victimisation.

The goals considered so far had an intrinsic value. There are however more instrumental reasons why allowing victims to give a voice to their stories could be beneficial. This includes the symbolic value of victim participation, which as de Hemptinne (2010) rightly argues, enhances transparency and accessibility on the part of the tribunal. This leads on to the final point, which is that being exposed to victims' direct testimonies - whether as witnesses or civil parties - enhances the Court's appreciation of what occurred during the

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<sup>79</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

<sup>80</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 October 2014).



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Khmer Rouge regime. As one civil party co-lawyer has argued in an interview, which was conducted separately, civil parties' testimonies 'bring life to the facts.'<sup>81</sup> Another lawyer argued that civil parties 'bring something different as protagonists of facts; what the civil parties bring is something they have suffered for which they seek a conviction and ask for reparations.'<sup>82</sup>

These underlying goals and values, intrinsic as well as instrumental, should be borne in mind in evaluating the extent to which the victim participation regime at the ECCC meets victims' expectations and ensures that their voices are heard. Despite the noble aspiration of victims to face the accused and have their voices heard, doing so in the context of trial proceedings does not necessarily offer the forum to freely share one's story. The courtroom is beset by inherent limitations. Civil parties will usually respond to specific questions put to them, rather than present a coherent and personal narrative. This perception was present in most interviews, and expressed in particularly trenchant terms in the following extract from an interview conducted with an S-21 survivor and former artist:

Yes, I had the chance to tell my story. But it was very short. In this regard, in the first trial [Case 001], I told the Court about what I had gone through during the Pol Pot regime. I was tortured even though I had not done anything wrong ... So I am very regretful since there is no justice for me.<sup>83</sup>

The research shows that telling one's story thus takes place in a multi-tiered matrix, with civil parties who have been granted leave to give testimonial evidence having the most profound involvement in the proceedings. Other civil parties have more limited opportunities to tell their stories and have their voices heard. This is primarily through submissions made by the Lead Co-Lawyers as opposed to direct evidence. Victim-complainants on the other hand, unless called by either side to give evidence under oath as witnesses, are not granted leave by the ECCC to testify in court. The Lead Co-Lawyers as well as the individual lawyers are therefore more deeply engaged in providing the necessary information as well as preparing the civil parties for their testimony before the Court.

## 5.5 Educating the world

The educative value of victims' testimonies is perceived as an equally important dimension of civil party participation. As another civil party, known for her strong voice in support of victims' rights and needs, has argued in relation to victim participation at the ECCC,

The whole idea is that you create narratives, build an archive, a record to the Cambodian history that can be read by family members, their children and the world.<sup>84</sup>

Naturally, the idea of educating the world, and in particular of imparting knowledge about the Khmer Rouge atrocities to the younger Cambodian generation, remains an imperative beyond the confines of the courtroom. It is inextricably linked to the psychological observations that people feel the need to tell their story. As a former lecturer and civil party in Case 002 has said,

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<sup>81</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Tuol Sleng Genocide Museum, 18 September 2014).

<sup>82</sup> Conversation with Elisabeth Simonneau-Fort, ECCC Civil Party Lead Co-Lawyer in Case 002/01, notes on file with author.

<sup>83</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Tuol Sleng Genocide Museum, 18 September 2014).

<sup>84</sup> Transcript of interview on file with the author (Civil Party Case 001, Phnom Penh, 30 October 2014).

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I can turn my anger into story-telling. When I have free time at night, I would tell my grandchildren about what happened under the Khmer Rouge regime. In this generation, some young people don't believe that people can survive with a bowl of porridge per meal and still be able to work from dusk till dawn. And when there is a civil party meeting and a regional meeting, I recall my story, and I can see that nowadays, I have calmed down. Unlike before, when we recalled what we had been through, we wanted to kill them, or ourselves. Recalling these events made us suffer.<sup>85</sup>

The ECCC however provides a formal, institutionalised venue for the educative value of victims' testimonies, and indeed, this aspect of victim participation was at the forefront of the motivations to take part in proceedings of many of the persons interviewed. Thus, in the context of a request for reparation demanding the inclusion of the Khmer Rouge in Cambodia's national curriculum, one participant of a focus group meeting at Thon Serey pagoda said that,

By including the history in the curriculum, the next generation will know about the atrocities that happened during the Khmer Rouge regime... I also want to include the judgement made by the ECCC, and also reparations awarded to the victims, so that they will know both the history of the Khmer Rouge and the result of the trial of the perpetrators.<sup>86</sup>

This sentiment was echoed among all other participants of the focus group. The essence of historical studies and education is two-fold, in that knowing about one's past is intrinsically valuable in understanding present circumstances. Understanding history has the further objective of allowing people to shape the future. In the present context, this primarily denotes the preventative aim of ensuring that atrocities such as those committed by the Khmer Rouge do not occur again, as exemplified by the following extract:

When the tribunal finds justice for the victims, I will be happy because it helps me and the victims seek justice, and lets the next generation know about it, so that they will not commit such cruel acts.<sup>87</sup>

Indeed, this notion of history is at the very heart of international criminal justice broadly conceived. While recognising the considerable value that victims attach to receiving information and the educative value of their participation, we equally have to acknowledge that the goal of education can be achieved by wider outreach programmes. In this regard, the various outreach activities in local communities are arguably as important as is the work of the ECCC itself. These outreach activities are organised primarily by the Court's VSS, and they have proven remarkably successful. Thus, more than 100,000 people have come so far to observe the proceedings at the ECCC. We ought to be mindful of the question whether the goal of educating the Cambodian people and the world can ultimately be attained through the Court's judicial record or the outreach programmes. This brings us back to the point made at the outset of this section, which places emphasis on personal engagement with young people, as well as governmental programmes, over and beyond the confines of the courtroom.

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<sup>85</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

<sup>86</sup> See Focus Group Civil Parties Case 002, Thon Serey Pagoda, Kampong Trabek Village, Trabek Commune, Kampong Trabek District, Prey Veng Province, 10 October 2014. Transcript of meeting on file with the author.

<sup>87</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).





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We saw in the discussion of the quest for truth that, to an extent, this may be pursued even without having the formal status of civil party. A similar point can be made more strongly here: taking part in the many outreach programmes offered by the Court and a range of NGOs may itself be regarded as a form of meaningful participation, both through the dissemination of information and the facilitation of observance of trial proceedings. In relation to the need to educate the world, the outreach programmes are arguably even a more effective form of participation, as they are able to take account of the polycentric complexities that a criminal trial, with or without civil party participation, cannot possibly consider – provided at least that the right mediums of communication are used, as literacy levels are still low in Cambodia.

Related to the foregoing points is the idea implied in many interviews, that truth-seeking, the need to tell one's story and educating the world are as a matter of fact different sides of the same coin. As was aptly said by one interviewee, the establishment of the ECCC and the inclusion therein on the civil party participation scheme,

Really helped them reveal the truth, so that they know about crimes committed by the Khmer Rouge, and so people understand this better. Moreover, the next generation also has the opportunity to know more about the regime.<sup>88</sup>

## 5.6 Seeking reparations

### 5.6.1 Legal and practical implications

One of the most contentious and complex issues, the question of reparations - described by the Court as 'intended to be essentially symbolic rather than compensatory' - has presented the ECCC with an array of challenges and difficulties. This is so far both legal and practical reasons, which will briefly be addressed in turn. It should however be borne in mind that the legal and practical implications and limitations are necessarily intertwined.

In legal terms, reparations were traditionally seen as remedies for inter-state disputes rather than as redress for victims. However, international law has taken great strides since then, notably culminating in the 2006 UN Resolution on Basic Principles and Guidelines, which states in unequivocal terms that victims of mass atrocities have a right to 'adequate, effective and prompt reparation for the harm suffered.'

Similarly, UN Secretary General Ban Ki-moon stated in a Report in 2011 that,

Reparations are arguably the most victim-centred mechanism available and the most significant means of making a difference in the lives of victims. UN experiences demonstrate that reparations may facilitate reconciliation and confidence in the [S]tate, and thus lead to more stable and durable peace in post-conflict societies.

The availability of reparations is at the core of victim participation in relation to the ECCC. Although notably absent from the ECCC founding statute, the ECCC Internal Rules state that the underlying goal of civil party participation in proceedings is two-fold. Rule 23 *quinquies* provides as follows:

If an Accused is convicted, the Chambers may award only collective and moral reparations

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<sup>88</sup> Transcript of interview on file with the author (Victim-complainant, Srah Kaev Village, Veang Chas Sub-district, Odongk District, 4 November 2014).



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to Civil Parties. Collective and moral reparations for the purpose of these Rules are measures that:

- (a) Acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which the Accused is convicted, and
- (b) Provide benefits to the Civil Parties which address this harm.

These benefits shall not take the form of monetary payments to Civil Parties.

On the one hand, victim participation provides support for the prosecution. On the other hand, as seen above, it also allows for ‘collective and moral reparations’ to be claimed, albeit only by civil parties. ‘Moral’ harm has been interpreted as meaning designed to repair moral as opposed to material harm, and ‘collective’ as confirming the unavailability of individual financial awards.<sup>89</sup> Reparations are, in the words of Bassiouni (2006: 205), ‘a way of inducing victims to participate’.

In practical terms, the absence of any kind of trust fund for victims is remarkable. In view of the fact that only three accused have been convicted to date, and that those convicted had all been deemed indigent and were in receipt of legal aid, the theoretical availability of reparations does not stand the test of impecuniosity.

Furthermore, it has been argued forcefully that the prospect of meaningful reparations to victims is in fact discouraged by the *ad hoc* way in which proceedings are often conducted. This displays both procedural and substantive shortcomings of the reparations regime. Thus Judge Cartwright has stated that,

The process of participation and the seeking of reparations was, to my mind, most unsatisfactory ... After working through a complex, time-consuming and traumatic process ... the victims found that the Trial Chamber had no jurisdiction to order anything apart from formal recognition in the judgement.<sup>90</sup>

Rule 23 *quinquies* set out above already hints at the problems encountered by victims seeking reparations. First, reparations may be awarded only against individual perpetrators, which is inherently insufficient to grant redress to those who have suffered from mass victimisation. Secondly, the ECCC lacks any formal enforcement jurisdiction. In its judgement in Case 001, the Court made clear that ‘the ECCC lacks the competence to enforce reparations awards. Reparations awarded by the ECCC against an accused can therefore only be enforced, where necessary, within the ordinary Cambodian court system.’<sup>91</sup> Such co-operation from Cambodian judicial authorities may not be forthcoming, and reform of the ECCC’s legal framework would be even more difficult to agree upon.

Evidently these numerous shortcomings stand in stark contrast to victims’ high expectations in relation to reparations. In Case 001, the ECCC only granted two of the victims’ joint reparations requests, namely the inclusion of the names of all civil parties in the judgement, and the compilation, publication and dissemination of *Duch’s* statements of apology. The remaining requests – such as access to free medical

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<sup>89</sup> *Case of Kaing Guek Eav (Case 001)*, Trial Chamber Judgement, 26 July 2010, para 662- 663.

<sup>90</sup> Dame Silvia Cartwright (ECCC Trial Chamber Judge), ‘International Criminal Trial. A promise fulfilled?’ (The 2011 Annual Hawke Lecture, Adelaide 9 June 2011). Available at: [http://w3.unisa.edu.au/hawkecentre/ahl/2011AHL\\_Cartwright.pdf](http://w3.unisa.edu.au/hawkecentre/ahl/2011AHL_Cartwright.pdf) (accessed 8 November 2015).

<sup>91</sup> *Case of Kaing Guek Eav (Case 001)*, Trial Chamber Judgement, 26 July 2010, para 661, footnote 1144.



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care, the funding of education programmes and the erection of memorials – were rejected on different grounds, either due to lack of specificity or because they went beyond the ECCC’s jurisdiction. The judgement was described by one civil party lawyer as ‘the most minimal, most conservative, and perhaps it is fair to say unimaginative that could have been ordered.’<sup>92</sup> The ECCC itself stated in its judgement in Case 002/01 that ‘[a]s evidenced by Case 001, where convicted persons are indigent, reparations awarded under the classic Civil Party model are unlikely to yield significant tangible results for Civil Parties.’<sup>93</sup>

In fact, the ECCC did not regard itself as competent of broadening the reparations regime any further than this, as

The Chambers is... constrained in its task by the requests before it and the type of reparations permitted under its Internal Rules. Limitations of this nature cannot be circumvented through jurisprudence but instead require Rule amendments.<sup>94</sup>

The disconnect between expectation and reality on the ground is brought out in strong terms by a senior legal officer in Chambers, who said that,

People who are divorced from the realities of legal proceedings have unbelievably high expectations of this reparations scheme. Sadly, it was never grounded in reality. We have a system forced upon us, because that is what everybody wanted, but when we apply it we are accused of lack of creativity. The reparations scheme was completed mis-designed.<sup>95</sup>

And as one defence counsel has poignantly stated,

They are offering victims nothing here. When you read the Appeals Judgement in the *Duch* case, you cannot help but be astonished. Is it meaningful reparation for someone in Cambodia only to have the names of civil parties published on a website, I really do not know, but I would assume it is not.<sup>96</sup>

Aware of such criticism, the Court in Case 002/01 encouraged lawyers to focus on the second limb of the reparations regime, enabling civil party lawyers to identify projects funded primarily by third-party donors. In fact, civil party lawyers are tasked with agreeing a project for which sufficient external funding has been secured with the ECCC’s Victim Support Service (VSS). Evidently, civil party lawyers find themselves in very difficult territory here. Nevertheless, the new approach did represent a broader approach taken by the ECCC in relation to reparations awarded to civil parties, and the Court in its judgement acceded to 11 out of 13 total reparations requests, including requests for educational projects, the erection of memorials, and self-help programmes.<sup>97</sup>

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<sup>92</sup> Conversation with a Civil Party Co-Lawyer Case 001 ECCC, notes on file with author.

<sup>93</sup> Prosecutors v. *Nuon Chea and Khieu Samphan* Case No. 002/19-09-2007/ECCC/TC, Judgement (7 August 2014), para.1112. Available at: [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017:04/E313\\_Trial%20Chamber%20Judgement%20Case%20002\\_01\\_ENG.pdf](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017:04/E313_Trial%20Chamber%20Judgement%20Case%20002_01_ENG.pdf) (accessed 10 November 2015).

<sup>94</sup> *Case of Kaing Guek Eav (Case 001)*, Trial Chamber Judgement, 26 July 2010, para 662.

<sup>95</sup> Conversation with a Senior Legal Officer, ECCC Judicial Chambers, notes on file with author.

<sup>96</sup> Conversation with a Defence Counsel, Ieng Sary’s Defence, Case 002, ECCC notes on file with author.

<sup>97</sup> Prosecutors v. *Nuon Chea and Khieu Samphan* Case No. 002/19-09-2007/ECCC/TC, Judgement (7 August 2014), para.1151-1164. Available at:

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To understand whether the limited approach reflected in the reparations awarded by the Court in Case 001 and Case 002/01 has met victims' expectations, it is essential that we examine victims' perspectives in this regard.

### 5.6.2 Victims' perspectives

The legal and practical implications of the reparations regime in relation to civil parties have been examined above. This section will focus on victim's perceptions and views on, as well as insights into, reparations in light of the aforementioned implications. As has been seen, victims' expectations with regards to reparations tend to be high, but realities on the ground may not match those expectations. We shall return to this point below, after examining victims' testimonies regarding their experiences with the ECCC's reparations regime.

As a preliminary point, it is of some significance to draw a distinction between civil parties and victim. The importance of reparations was powerfully reflected not only amongst the 35 civil parties interviewed who have a stake in the proceedings and are therefore, at least arguably, better informed, but also amongst the 15 victim-complainants. The latter have no right to reparations. Nonetheless, they do have an expectation, as victims of the same regime, to obtain similar redress to formal civil parties. Perhaps the most commonly expressed view was that access to free health care is crucial. These points are clearly brought out in the following statement by a victim-complainant interviewed in Siem Reap:

I want a card that allows me to access free health care and free high education for my children. I want this kind of reparation offered to *all victims*.<sup>98</sup>

The fundamental need for free health care is also apparent in this extract from an interview conducted with a civil party in Case 001:

Personally, I would like the Court to collaborate with the Cambodian government, to provide a system to the victims by distributing health cards to the victims who survived the Khmer Rouge regime, so that they can access health services without paying money, because they are poor.<sup>99</sup>

The reasons for the need for free access to health care are set out by another interview, who said that,

If they have hospitals and organisations for the victims, it's good so that we won't have to pay a lot for these services. Nowadays we do have commune health centres, but if we are sick and do not have money, it's not easy for us... During the meeting, I have already raised my concerns that hospitals should be available for the victims, so that we don't have to pay a lot. We, the victims, have already suffered a lot from that period, and now when we get

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[http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017:04/E313\\_Trial%20Chamber%20Judgement%20Case%20002\\_01\\_ENG.pdf](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-08-07%2017:04/E313_Trial%20Chamber%20Judgement%20Case%20002_01_ENG.pdf) (accessed on 18 November 2015).

<sup>98</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Siem Reap, 24 October 2014); emphasis added.

<sup>99</sup> Transcript of interview on file with the author (Civil Party Case 001, Phnom Penh District, 19 September 2014).



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sick and go to the hospital, we have to pay full fees. This is the only thing I want.<sup>100</sup>

Whilst health care was the predominant concern of victims interviewed, another common theme in the interviews conducted concerned the ECCC's jurisdiction being limited to the award of collective as opposed to individual reparations. Opinion on this point was in general divided, with one interviewee asserting that,

With regard to reparation, some victims want individual reparation and some want collective reparation. But lastly, the individual reparation is impossible. And this is the impact related to their demand: if the Court, for example, offers each victim \$10,000, the Court needs to spend millions of dollars as there are millions of victims. So we just can't do that. The total number of civil parties is over 4,000 people, and this number would increase if the court did not close the application for being a civil party.<sup>101</sup>

In a similar vein, the following comment was made during a different interview:

Talking about reparations, it has nothing to make me worry because the reparation cannot be made to each individual. So it must be in the forms of collective reparation because not only my family members died but a lot of people. Therefore, it is impossible to have individual reparation. So it must be collective reparation as the symbol, and it is acceptable for me. And I also think the state does not have enough money to pay to each individual. So it is acceptable for us with regards to the reparation awarded. So it is reasonable for me.<sup>102</sup>

Two significant points emerge from these comments: first, civil parties acknowledge that resources are finite and that reparations to those who suffered from mass victimisation will therefore be limited. Secondly, it is also acknowledged that suffering was widespread and not limited to one particular family.

However, not everyone shares this view, with a greater focus on the individual harm suffered. Thus, the absence of jurisdiction to award individual reparations has been described as a 'loophole' by one interviewee.<sup>103</sup> Another interviewee stated that,

There are two types of reparations: moral reparation and collective reparation ... The two kinds of reparations are already good but it lacks individual reparation. The Court should have individual reparation for all civil parties because they have a very low standard of living. Therefore, the Court should at least provide a little amount of money by way of individual reparation. In fact, the lives of relatives they lost during the Khmer Rouge regime are invaluable.<sup>104</sup>

Yet another interviewee made short shrift of the argument of limited resources, drawing the distinction between civil parties and victim-complainants described above, stressing that,

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<sup>100</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

<sup>101</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Tuol Sleng Genocide Museum, 18 September 2014).

<sup>102</sup> Transcript of interview on file with the author (Civil Party Case 002, Siem Reap, 24 October 2014).

<sup>103</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Phnom Penh, 18 September 2014).

<sup>104</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 18 September 2014).

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The victims requested the individual reparation as they are old and need money to support their life and to pay for their health treatment. This was the request made by the victims. I'm also a representative of civil parties in Phnom Penh, and I also requested the same thing. We just tried to request even if we know that will not be granted. Some people said there are a lot of victims, so victims should not request that. And some people argued that no, there are 4,000 people only who filed the application. So the individual reparation is for those who filed the application, and it is not for those who did not file the application. Of course, there are millions of victims, but according to the proceedings in the Court, only the ones who filed the application will be given compensation.<sup>105</sup>

The strongest tones emerged in an interview conducted with a civil party and survivor of S-21, where it was said, in critical comments in relation to the ECCC,

But as a victim, I have received no individual reparation. This makes me disappointed. So the ECCC is just a make-up Court. It is just to show the world that there is a trial, but there is no individual reparation. So this Court does not promote humanity. For more than 15 to 20 years, there is no individual reparation for victims, and this will not be a model for the world to follow.<sup>106</sup>

Similar disagreements could also be observed in the five focus group sessions held in Cambodia, with some agreeing with the sole availability of collective reparations, and others lamenting the absence of jurisdiction to award individual reparations, in particular with a view to obtaining free health care.<sup>107</sup>

After analysis of the focus groups meetings and the interviews conducted, the importance of memorials also becomes readily apparent. Within Cambodian culture and religion, memorials are seen as a focal point of both ceremony and social life. As one interviewee put it, 'I want to have a stupa in a place for memorial. With that, we can perform our ritual easily and it's not difficult for us to go somewhere far.'<sup>108</sup> In this context, the majority of victims interviewed expressed satisfaction with the reparations measures awarded by the Court in Case 002/01 with regard to the erection of memorials. However, there were certain reservations in respect of the number of memorials, as well as their geographical location, as exemplified by the following comment made by a civil party in Case 002/01 during the interview:

Nowadays we kept the Purchrey Hill intact, and we awaited from the Court in case the court orders a memorial to be built there. If the memorial will only be built in Phnom Penh to go there to pray for the dead relatives, since it is far away from here, and... we requested the Court to build a memorial in each province.<sup>109</sup>

For some interviewees, the construction of memorials ranked equally with the provision of free health care, in terms of reparations. As another interviewee put it,

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<sup>105</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 October 2014).

<sup>106</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Tuol Sleng Genocide Museum, 18 September 2014).

<sup>107</sup> See Focus Group Civil Parties Case 002, Borseth District, Kompong Speu Province, 10 October 2014; Civil Parties Cases 001 and 002, Prey Veng Province, 28 October 2014. Transcripts of meetings on file with the author.

<sup>108</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

<sup>109</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).



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... what we want the most is health care service card and the construction of more memorials in each province and district. However, we do not know whether we will get what we requested... According to the information I received, the construction of memorials needs land for building, and also approval from the local authority.<sup>110</sup>

In contrast, during an interview conducted with a different civil party, a link was drawn between the question of memorials on the one hand, and the issue of collective versus individual reparations on the other hand:

It's impossible to build a memorial in each province. I want individual reparation.<sup>111</sup>

There are thus real issues raised by victim-complainants and civil parties interviewed concerning reparations. Of most concern were the non-availability of individual reparations, limited access to free health care, and the construction of memorials in Cambodian provinces.

Undoubtedly, this disappointment of their expectations has affected victims' perspectives on their participation in the proceedings before the ECCC, the issue of reparations being the most contested and most discussed. It remains to be seen how the reparations awarded in Case 001 and Case 002/01 will have an impact on victim participation, and whether it will discourage applications from victims to participate as civil parties in potential upcoming trials (Case 003 & Case 004). What should not however be forgotten is that, as highlighted in the quotes used in this section, the collective reparations awarded by the ECCC are nevertheless regarded as meaningful and important by civil parties. Their dissatisfaction with the current reparations regime must be assessed not only against the non-availability of individual reparations but also against victims' recognition of the significance of collective reparations. All the while it should be borne in mind that, most Cambodians regard themselves as poor and therefore monetary reparations provide a distinct and necessary benefit.

As implied above, one must be mindful of the fact that information is the key to meeting expectations. In this context the limited availability of resources for outreach and the distribution of information play a hugely important role. Public discourse on reparations with regards to civil parties was driven by civil society groups, human rights lawyers and NGOs, and may to some extent have painted a rather distorted image that caused unrealistic expectations. This is illustrated by the very fact that individual civil parties do not necessarily have a clear understanding of the limitations of the ECCC's jurisdiction. Particularly problematic is the limited awareness regarding the lack of individual reparations, despite it being incumbent on civil party lawyers to ensure that civil parties are adequately informed as to their procedural rights and substantive remedies. Throughout the trials at the ECCC, the flow of information with regards to the availability of reparations thus appears to have been somewhat inadequate, leading to an extent to false expectations by civil parties. Nevertheless, there have been considerable improvements over the course of Case 002 on the part of the VSS, the two Lead Co-Lawyers and individual legal representatives, who have become more proactive and have provided greater access to information on reparations for victims.

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<sup>110</sup> See Focus Group Civil Parties Case 002, Borseth District, Kompong Speu Province, 10 October 2014.

<sup>111</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Siem Reap, 24 October 2014).

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## 5.7. Reconciliation

The Agreement between the UN and the Royal Government of Cambodia recognises the ‘legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security.’<sup>112</sup> Reconciliation is thus a core aim of what the ECCC ultimately aims to achieve. The same point has been made by Thoms et al. (2010), whose research concluded that a common theme in the literature on transitional justice is the healing effect of international criminal trials on survivors of mass atrocities, including fostering forgiveness and reconciliation among the population in the aftermath of widespread violence. Indeed, Gee-kin Ip (2013: 867) goes so far as to describe the need for national reconciliation as the ‘overriding objective’ of the ECCC.

It was interesting to note that reconciliation was brought up by civil parties and victim-complainants in virtually all interviews conducted. It will however become apparent in the following analysis that there is by no means a clear, universally accepted definition of what ‘reconciliation’ actually denotes, although it will also be seen that there is a common core shared by the majority of interviewees.

For one civil party who survived the S-21 prison camp, reconciliation is essentially the antithesis of segregation and separation. Thus, he argues that,

People celebrate religious ceremony here [at the Tuol Sleng Genocide Museum], so both victims and perpetrators can come together. As a result, they are no longer angry and want to exercise revenge on each other. If we separate the victim and the perpetrator, they will still pursue revenge and so Cambodia will not reconcile at all. But if we act throughout the country in the way we act here at Tuol Sleng, then our whole nation can reconcile.

This extract draws attention to the importance of the Buddhist faith in Cambodian society, already referenced in the context of the socio-cultural factors affecting victim participation at the ECCC. The centrality of reconciliation as opposed to retribution to Buddhist thought should not be underestimated. As Gee-kin Ip has argued, in view of the fact that the ECCC focuses on accountability aimed at ending impunity, ‘it is doubtful whether the Cambodian people can appreciate this given that notions such as acceptance, tolerance and compassion often gain greater currency in the Cambodian community’ (Gee-kin Ip, 2013: 868).

These values also feature strongly in the following replies. One victim-complainant for example struck a remarkably conciliatory note:

They [Cambodian people] can live together in the community peacefully as now people even in the rural area have a better understanding and good friendship, and they should know about their wrong actions and that those actions should not have been committed.<sup>113</sup>

For this civil party in Case 002, forgiveness rather than retribution was also a direct result of the ECCC verdicts:

What the Court does is to encourage me to reconcile with the perpetrators. After what the

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<sup>112</sup> See: [http://www.eccc.gov.kh/sites/default/files/legal-documents/Agreement\\_between\\_UN\\_and\\_RGC.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/Agreement_between_UN_and_RGC.pdf) (accessed 12 November 2015).

<sup>113</sup> Transcript of interview on file with the author (Victim-complainant, Phnom Penh, 3 November 2014).





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Court has done, I can accept it now. The Court has found justice for me and proved that the perpetrators did commit the crimes. Thus, it is acceptable for me, as the accused did confess to committing the crimes, and I can forgive the perpetrators and do not wish for any retaliation against them.<sup>114</sup>

The same theme was picked up by yet another optimistic interviewee who linked forgiveness and peacefulness with the advancement of Cambodian society:

We were told and recommended to love and live with each other in peace. We should reunite and move our country forward because we are all Khmer. The victim and the perpetrator live together in a village. Sometimes we see the person who tried to kill us and we feel afraid. But I think everything will be ok in the future.

It would however be inaccurate to assume that the sentiment expressed in the above examples were universally shared.

As stated at the outset, reconciliation can mean different things to different people. Thus, another set of interviewees that can for present purposes be grouped together believed that retribution is inextricably linked with punishment. As one civil party in this group put it, reconciliation and retribution are polar opposites. However, he 'can reconcile only with the people on the sub-national level. As for the leaders and higher responsible officials, [he] can reconcile only once sentenced to life imprisonment.'<sup>115</sup> Similarly, another civil party stated during an interview that,

Before attending the hearing at the ECCC, I felt that I was not satisfied, because how could we reconcile when we had lost everything! Later on, we felt relieved after listening to the news that the ECCC was working to find justice for victims by holding the perpetrators to account. I am satisfied with this because the hybrid court, the ECCC, in collaboration with the United Nations, would search for the perpetrators and sentence them so that future leaders would never do as the perpetrators did. Lastly, the ECCC really did sentence them to life imprisonment, and I am satisfied with this.<sup>116</sup>

For another civil party, who believed that strengthening 'social equity' and restoring human dignity are paramount, two conditions have to be satisfied before the Cambodian people could move on from the past:

We need to have national reconciliation. But we have to consider as well the importance of law and punishment. We need to have national reconciliation because we cannot let our country immersing itself in war crimes again. The second point is that we need to punish the perpetrators. Reconciliation is acceptable for us but we need to punish the Khmer Rouge leaders and the perpetrators... What I want most is to strengthen social equity. We want not just the Cambodian leaders but leaders around the world to prioritise care for humanity

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<sup>114</sup> Transcript of interview on file with the author (Civil Party Case 002, Srah Kaev Village, Veang Chas Sub-district, Odongk District, 4 November 2014).

<sup>115</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Phnom Penh, 19 September 2014).

<sup>116</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 4 November 2014).



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and the right to live. Human beings need dignity.<sup>117</sup>

According to this view, the reconciliation and restoration of social equity and human dignity is impossible without the punishment of Khmer Rouge cadres responsible for war crimes. This might appear as a tall order which will be difficult if not impossible to achieve, in light of the limitations of the ECCC considered in the first part of this report. The necessary limitations of punishing the perpetrators and of ‘finding justice’ are recognised in the following extract, all the while reiterating the close inter-connectedness of reconciliation and punishment:

It’s a very hard question to answer about mental reconciliation between the victims and the perpetrators who have not been arrested. As I know the feelings of the civil parties and my own, similarly the key is that if we want to attain mental reconciliation, firstly we have to find justice for victims; not 100 per cent of justice, but between 60 to 70 per cent of justice would be acceptable. But now, we have not reached that target.<sup>118</sup>

This naturally raises difficult questions as to quantification – how do you measure ‘justice’? This does not even consider the distinction between justice and punishment, although as stated above, from victims’ perspectives, the two concepts are virtually indistinguishable. These two broad camps or groups of civil parties and victim-complainants differ in their attitude towards retribution or punishment, and its connection with national reconciliation. There is furthermore an intermediary group who clearly reject any notion of revenge or vindictiveness, all the while recognising that retributive justice is, and should be, part of Cambodians’ post-conflict society. However, retribution and reconciliation are not regarded as mutually reinforcing each other.

Thus for a participant in a focus group meeting held on 28 October 2014, the very institutionalisation of retributive justice in the form of the ECCC has itself made great strides towards reconciliation:

I stopped thinking about revenge when I heard about the establishment of the ECCC. It makes me feel relieved from our suffering and the bad treatment we endured during that time. Our anger demanded that they pay with their lives for the dead victims, but we felt relieved after the establishment of the Court, as the Court is trying very hard to bring us justice. So we should control our feelings.<sup>119</sup>

A similar point was made in a focus group discussion on 10 October 2014, during which one participant, stressing the importance of education campaigns and the dissemination of information, commented that,

Of course, it [the ECCC] has really helped to reconcile and we have already reconciled; otherwise we would still seek revenge. Immediately after the collapse of the Khmer Rouge, we felt angry with them and sought revenge. But later on, after the establishment of the ECCC, we were educated and things were explained to us. So we do not have any anger, nor

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<sup>117</sup> Transcript of interview on file with the author (Civil Party Case 001, Siem Reap Province, 24 October 2014).

<sup>118</sup> Transcript of interview on file with the author (Civil Party Cases 001 and 002, Phnom Penh, 29 October 2014).

<sup>119</sup> See Focus Group Civil Parties Cases 001 and 002, Serrey Sakor Pagoda, Prey Veng Province, 28 October 2014. Transcript of meeting on file with the author.



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any intention of vengeance, even though they [the perpetrators] are also living with us.<sup>120</sup>

Broadly speaking, the group of interviewees who favoured separating punishment from reconciliation, regarded the latter as already having been achieved. The other group opined that obstacles still remained on the path to national reconciliation. As a matter of fact, the number of interviewees, including both civil parties and victim-complainants, who believed that reconciliation had already been achieved, or was at least in the process of being so, was remarkably high. For some, reconciliation was limited to those who had been civil parties for a number of years, and who through their participation have been able to reconcile with the perpetrators. As was said at the time,

For those who have participated as a civil party in the court proceedings for 6 to 7 years, I can say that it is acceptable to reconcile. *We have already reconciled.* This just refers to those who participated in the Court as a civil party. For those who do not participate, they just do their business, they never care.<sup>121</sup>

We should guard ourselves against ready assumptions that victim-complainants without the formal status of civil party ‘do not care’. As seen above, there may be a variety of reasons why a victim cannot or will not take part in proceedings. In any event, national reconciliation must involve all people, not just the quantitatively negligible number of civil parties. This requires the system to foster reconciliation beyond the confines of the courtroom by employing other mechanisms of transitional justice, such as potentially truth and reconciliation commissions, outreach programmes etc., which will be of direct benefit not only to civil parties, but the community at large. In this context, another civil party was of the opinion that the mere passage of time was enough to heal many wounds. In his words,

It is about the duration. It was 35 years ago, so our malice and sufferings have been reduced gradually over time until the ECCC was established to try the accused. And the Court is searching for evidence to hold those accused accountable for the crimes they committed, and we as civil parties as well as the victims were allowed to participate in the court process. We can see that our minds have calmed down, and now we are becoming calmer and calmer. Before, when I saw those perpetrators, I wanted to kill them instantly when we saw them... But now we also know that our country follows the rule of law, we obey the law and human rights.<sup>122</sup>

Many other considerations should be taken into account when discussing the issue of reconciliation. As Bockers et al. have argued that, ‘how soon a post-conflict country is able to reconcile and reconstruct depends on various factors, including the nature of the conflict, the present-day situation of the society, and the manner in which the society deals with its past’ (Bockers, Stammel & Knaevelsrud, 2011: 71).

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<sup>120</sup> See Focus Group Civil Parties Case 002, Thon Serey Pagoda, 10 October 2014. Transcript of meeting on file with the author.

<sup>121</sup> Transcript of interview on file with the author (Civil Parties Case 002, Phnom Penh, 3 October 2014); emphasis added.

<sup>122</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 3 November 2014).

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## 6. Presumed Benefits and Anticipated Harms of Victim Participation: A Reality Check

The foregoing analysis has offered essential insights into the ‘virtues’ and presumed benefits of victim participation, such as ensuring that victims’ interests are taken into account, dignifying victims, offering a platform for their voice to be heard, supporting them in the process of seeking justice, truth, reparations and fostering reconciliation. As has been seen in the analysis of the various aspects of victim participation, victims’ empowerment in the form of active participation has led to some meaningful benefits for the victims themselves, as well as the very institution of TJ. It may be argued that the empirical evidence supports the idea that ‘participation equals empowerment’ and that such participation has allowed victims to gain ‘a sense of control, an ability to lessen their isolation and be reintegrated into their community’ as well as ‘the possibility of finding meaning through participation’ (Roht-Arriaza, 1995: 19).

In that context, the various benefits of participation seem to lie beyond those of victims who engaged actively with the Court. Victims’ participation is seen to have a wider impact on the TJ process itself, particularly since the ECCC is based in a country of transition and therefore the presumed benefits are more tangible. Nonetheless, it remains to be measured whether such benefits are attributed to civil party participation exclusively/particularly, or whether the outreach and the geographical proximity have also had any impact on the overall engagement with the institution in the country. Nonetheless, civil party participation at the ECCC - as a restorative justice element incorporated into an inherently retributive justice mechanism - has revealed the multifaceted and complex nature of this novel construction. The foregoing analysis has shed light on the multitude of issues, tensions as well as outstanding needs among civil parties, victims, affected communities, practitioners and policymakers.

### 6.1 Anticipated harms of victim participation

When analysing the purpose and role of civil party participation, careful consideration should be given to the practical implications that such participation has for the interests of all parties as well as court proceedings. In spite of this noteworthy development, the complex civil party process has not been without challenges.

One of the most evident procedural issues arising out of the participation has been the frequent criticism that participation ‘impedes the equilibrium between prosecution and defence’ (Baumgartner, 2008: 432) and that it impinges upon the right of the accused to a fair and expeditious trial. The trials in Case 001 and Case 002/01 have demonstrated that civil party participation has had a bearing on equality of arms and the functionality of trial proceedings. As will be analysed below, issues concerning the prolongation of Court proceedings, disclosure issues, as well as the effects of victim participation on the Prosecution, represent some of the most contentious aspects of the civil party participation regime. Furthermore, the findings of this research have also questioned the assumption that expansive participation in criminal proceedings furthers victims’ interests. Views from both civil parties and victim-complainants have provided for a better understanding of the impact of civil party participation on the victims themselves.

#### 6.1.1 Prolongation of Court proceedings

One major challenge presented by civil party participation relates to the impact that civil party participation has had on the prolongation of trial proceedings, thus increasing the cost of trials (McGonigle Leyh, 2011: 204). Even in Case 001, which was a confined case with a narrow scope of criminal responsibility, with one



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accused who admitted guilt and with a mere 96 civil parties, civil party participation added four months to the length of the trial, according to a conservative estimate. Bearing in mind the shortcomings of victim participation as it played out in the *Duch* trial, and being aware in advance of the complexities of Case 002, it became evident to the Court, as a senior legal officer in Chambers asserted, that ‘the civil party participation scheme on its own as applied in the *Duch* trial would have sunk the [second] trial.’<sup>123</sup> As a result, the new scheme of collectivised participation in trial proceedings endeavoured to remove the worst of the limitations from the civil party system that jeopardised the first trial.

### 6.1.2 Disclosure issues

Another important concern arising out of civil party participation in trial proceedings relates to the issue of disclosure. According to the model adopted by the ECCC, both the Office of the Co-Prosecutors and the Defence are required to disclose exculpatory evidence. However, civil parties are not under this obligation. Now, this in itself raises an issue of concern, and as a senior prosecutor argued,

When going over witnesses’ applications and testimonies, civil parties are actually collecting evidence, even though it may not be called like that. If in that process, they are collecting material, which might be exculpatory, they are actually not required to disclose it.<sup>124</sup>

This consequently hinders even further the equality of arms between the parties, in particular at the expense of the defence. From a principled perspective, the duty to disclose both inculpatory and exculpatory evidence goes to the very heart of the notion of a fair trial and due process.

### 6.1.3 Effects on prosecution and defence

The implications of and the costs created by victim participation for the prosecution and defence have brought into sharper focus the need for the ECCC and other international criminal tribunals to shape victim participation in such a way as to best accommodate competing interests. The effects of civil party participation on the rights of the defendant came to the fore during the *Duch* trial and despite amendments to reduce unnecessary delays; tension remained throughout the second trial. One of the fundamental principles upon which the ECCC functions is that proceedings shall ‘be fair and adversarial and preserve a balance between the rights of the parties.’<sup>125</sup> Although the Internal Rules provide for the ‘skeleton guidance’ on how to balance the respective rights of the parties (Prosecution, Defence and Civil Parties), it is has been incumbent upon the judges to determine the parameters of civil party participation, which in itself can lead to ‘legal uncertainty for all parties involved’ (Khan and Rudy, 2010).

At the ECCC trials, civil party participation often became a trial management issue, prompting the Chamber to impose a system of time limits to all the parties as a ‘response to concerns over the slow pace of the proceedings’ (McGonigle Leyh, 2011: 209). The Defence has often objected to the time allocated to them, arguing that faced with ‘two prosecutors’ and expected ‘to respond to a barrage of motions by the civil parties’,<sup>126</sup> the imbalance amounted to a violation of the rights of the defendant.<sup>127</sup> As a defence counsel argued,

From a Defence perspective, it is a waste of valuable court time. I do not mean it in a kind

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<sup>123</sup> Conversation with a Senior Legal Officer, ECCC Judicial Chambers, notes on file with author.

<sup>124</sup> Conversation with a Senior Assistant Prosecutor, ECCC Office of the Co-Prosecutors, notes on file with author.

<sup>125</sup> ECCC Internal Rules r 21 (1) (a).

<sup>126</sup> *Case of Kaing Guek Eav (Case 001)*, T, 16 June 2009, p.11.

<sup>127</sup> *Ibid.*

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of disparaging way, but the civil party lawyers stand up and ask questions to every witness, without adding much to what the prosecution has already covered.<sup>128</sup>

Another defence lawyer described civil party participation as ‘a cumbersome legal mechanism, which sometimes becomes more of an ego thing for lawyers rather than necessary for victims.’<sup>129</sup> According to this defence lawyer, this issue was particularly predominant in Case 001, where the civil parties were represented by different legal teams and lawyers, some of whom had not had previous experience practicing before international criminal tribunals and were not familiarised with the scope and demands of an international trial.<sup>130</sup> It is also worth noting that despite the issues facing the Defence, most defence counsels seem to understand the difficult territory in which civil party lawyers find themselves, more specifically in the second trial. As has been argued by yet another defence lawyer,

If I were to be in the shoes of the Lead Co-Lawyers, I would be much upset by the way civil parties are being side-lined in trial proceedings. Either they are going to come and take a much more forensic approach, by advancing the points which the Office of the Co-Prosecutors have not touched upon, or they are going to accept to be treated as ‘second-class citizens’ in the courtroom.<sup>131</sup>

Apart from the unnecessary delays and management of court time, another objection raised by the Defence concerns the actual scope of civil party participation. For instance, during the *Duch* trial, the Defence argued that ‘civil parties should not be permitted to question *Duch* or other witnesses on topics not directly related to their clients’ harm’ (McGonigle, 2011: 209). This tension has continued to be present in proceedings in Case 002/01 and most likely will continue also in Case 002/02.

Another remarkable angle, which is not instinctively apparent to most, is that civil party participation can have a bearing not only on the Defence, but also on the Prosecution’s job, often resulting in continuous tension over inconsistencies that range from theories of criminal responsibility to questionable evidence and so forth. As Trumbull has argued, ‘the claim that victim participation may assist the prosecution is dubious, and, in many cases, false’ (Trumbull, 2008: 807). A concrete example of these inconsistencies was evident in the *Duch* trial. The Co-Prosecutors and civil party lawyers took conflicting views on Joint Criminal Enterprise as a mode of responsibility, which one could interpret as having inadvertently undermined the Prosecution’s strategy at trial and as causing further delays. As a senior legal officer elaborated,

One could argue that this issue could be resolved with a greater calibre of counsel or more effective lawyering; nonetheless the potential is always there.<sup>132</sup>

Several instances in the first and second trials have demonstrated that the risk of tension on the Prosecution’s efforts will remain present, mainly due to the fact that civil party lawyers do not have access to all the evidence in a given case. The Prosecution is not under a legal obligation to divulge information to them beforehand. This could easily lead to scenarios where civil party lawyers would take the focus of the cross-examination beyond or in a different direction from that of the Prosecution, potentially ‘providing

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<sup>128</sup> Conversation with a Defence Counsel, Case 002/001, Phnom Penh, notes on file with author.

<sup>129</sup> Conversation with Defence Legal Consultant, Case 002/01, Phnom Penh, notes on file with author.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Conversation with a Senior Legal Officer, ECCC Judicial Chambers, notes on file with author.



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defence witnesses an opportunity to redeem mistakes made during the Prosecutor's cross-examination' (Trumbull, 2008: 809). In a classic example, in the *Duch* trial, 'a civil party lawyer questioning a victim-witness argued that his testimony contradicted previous statements on record with the Court' (McGonigle Leyh, 2011: 212) thereby inadvertently undermining the Prosecution's efforts by pointing to the inconsistencies of the witness's statements and his credibility. The Court has thus taken several steps in the second trial by streamlining the process and by lessening the effects of civil party participation on the Prosecution and Defence.

## 6.2 Unintended effects on victims

While acknowledging that efforts to enhance victims' rights can lead, at least in theory, to the realisation of the aspiration of restorative justice for victims, a practical evaluation demands a careful consideration of the often unquestioned assumption that expanded participation is in the victims' best interests. There are two dimensions to the effects of victim participation; first in respect of victims recognised as civil parties, and second in respect of un-recognised victims.

With regards to the former, because of the lack of procedural space in the Internal Rules, the victim is required, as outlined above, to choose quite early on in the proceedings whether he or she wants to participate as a witness or as a civil party. Therefore participating victims may be denied the opportunity to testify under oath as witnesses. This can also affect the Prosecution's opportunity to present information that could further assist in incriminating the accused (Trumbull, 2008: 810). For instance, in the *Duch* trial, several direct victims 'who potentially could have provided sworn testimony on the guilt of the accused opted instead to participate as civil parties' (McGonigle Leyh, 2009: 212). By contrast, civil party testimony is not given under oath, and it should therefore carry less weight than evidence given under oath. Furthermore, civil parties, unlike witnesses, attend all closed and public hearings before testimony, which could have an impact on the information that they provide. When asked what the reasons were for choosing to become a civil party rather than a witness in proceedings, the majority of victims interviewed indicated that the issue of reparation is the primary motivation underlying their decision. One of the civil parties interviewed in Prey Veng Province highlighted,

For me it is important to participate in the Court's proceedings. My decision to become a civil party was based on the information that I received from ADHOC and VSS. I would have been happy to participate as both a witness and a civil party. Unfortunately, the Court does not allow that and we have to choose early on in the trial whether we want to be a civil party or a witness. And I know that I can have reparations only if I act as a civil party but not as a witness.<sup>133</sup>

This view was shared with other victims during the focus group interviews in Prey Veng.<sup>134</sup> What emerged from the interviews is that victims' decision is greatly influenced by the information given to them by the VSS and ADHOC and that many of them did not know in the beginning what the key differences were between the two statuses. In this context, another civil party expressed,

I did not know what the main difference was between a witness and civil party. I thought both of them offered an opportunity to face the accused and talk about suffering. Only later

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<sup>133</sup> Transcript of interview on file with the author (Civil Party Case 002, Prey Veng, 10 October).

<sup>134</sup> See Focus Group Civil Parties Case 002, Thon Serey Pagoda, Kampong Trabek Village, Trabek Commune, Kampong Trabek District, Prey Veng Province, 10 October 2014. Transcript of meeting on file with the author.

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I learned that one of the main differences is that civil party can ask for reparations and witnesses cannot.<sup>135</sup>

A number of civil parties interviewed expressed disappointment when they learned that their testimony was not given under oath and therefore may carry less weight than that of a witness. One civil party argued, 'I know reparation is important, but to me finding the accused guilty is equally important. I want to feel that my participation has helped the Court.'<sup>136</sup>

Thus, it is essential to a meaningful victim participation that victims are provided with the most complete and adequate information on the advantages and disadvantages of both civil party and witness statuses as to allow them to make a more informed decision early on in the proceedings.

With regards to un-recognised victims (victim-complainants), compared to approximately 1.7 million people who perished under the Khmer Rouge, victims recognised as civil parties by the ECCC represent only a fraction of the overall number of direct and indirect victims. In determining the role and impact of victim participation at the ECCC, one should be cautious about the effects that such participation could have on victims who are not granted permission by the Court to take part in the proceedings. Granting permission to some victims at the exclusion of others could potentially bring about unintended and undesirable consequences, especially in light of national reconciliation and victims' aspiration to unearth the truth, both key objectives of any international criminal tribunal. In this context, the interviews with victim-complainants showed a varied perspective on the effects of civil party participation on both victims and Cambodian society as a whole. One victim argued,

I filed a complaint to inform the Court about my suffering. However, I was never invited to talk in front of the Court. I think this court does not give many Cambodian victims an opportunity to tell their painful story. It is only for a few victims. Nonetheless, I have learned a lot about the Khmer Rouge by following the trial.<sup>137</sup>

It appears that this degree of disappointment among victims who are not recognised as civil parties is closely related to the lack of clear and adequate information provided to them. Most victims interviewed did not seem to have a full and clear understanding of the scope and parameters of civil party participation and the nature of the ECCC in general.

However, the picture was slightly more nuanced among more educated victims, who seem to recognise the limits of the ECCC as a criminal tribunal. A victim who is also an academic argued,

The ECCC is a court and not a truth commission. It would be impossible for a court to listen to all the victims. The primary objective of the Court is to establish accountability. It is great that the Court has allowed some victims to participate as civil parties.<sup>138</sup>

Although the victim-oriented approach endorsed by the ECCC is likely to contribute positively to victims'

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<sup>135</sup> Transcript of interview on file with the author (Civil Party Case 002, Borseth District, Kompong Speu Province, 10 October 2014).

<sup>136</sup> Transcript of interview on file with the author (Civil Party Case 002, Phnom Penh, 4 November 2014).

<sup>137</sup> Transcript of interview on file with the author (Victim-complainant, Srah Kaev Village, Veang Chas Sub-district, Odongk District, 4 November 2014).

<sup>138</sup> Transcript of interview on file with the author (Victim-complainant, Siem Reap Province, 24 October 2014).



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experiences, it remains to be seen whether expanded participatory rights will provide an additional benefit to the victim.

Finally, as Trumbull has argued, in determining the optimal scope of civil party participation, the ECCC must carefully evaluate the marginal benefits to the participating civil party against the potential infringement of the defendant's rights, the effects of participation on court proceedings (Trumbull, 2008: 822) and equally important any potential (unintended) negative dynamics it may be introducing into communities.



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## 7. Conclusions

Civil party participation as a TJ mechanism is a novelty in international criminal law, and has in principle broadened the scope of procedural and substantive rights for victims of mass atrocities. Yet, as this report has shown, civil party participation gives rise to challenges and raises questions about the difficult trade-off between enhancing victims' rights and safeguarding the accused's rights to due process – in other words, the traditional notions of criminal responsibility and of transitional justice do not perfectly overlap. This complex tension and the ways in which the ECCC has sought to grapple with the problems raised thereby has informed the analysis of this report and led to enhanced understanding of the role, impact and dynamics of civil party participation. In this regard, the focus has not solely been on the justice system as such but on victims themselves, reflecting the victim-centred approach pursued by TJ mechanisms. Six points may be made by way of concluding thoughts.

First, from its inception, the ECCC appeared to have been caught 'off guard' by the development of civil party participation, which was apparent in the Court's hesitation and, to some degree, reluctance to fully embrace and implement the new mechanism. This lack of preparation was evident in respect of the ECCC judges, as well as the legal officers, members of the prosecution, the defence and civil party lawyers. However, it has been incumbent on these judicial actors to demarcate the boundaries of civil party participation and give full scope to its application in practice.

Second, there is a considerable disconnect between victims' high expectations and aspirations on the one hand, and realities on the ground on the other. The role of victims at the ECCC, and of civil parties in particular, has remained largely symbolic in nature despite victims availing themselves of their procedural rights. This has resulted in an as yet unattained full realisation of the substantive rights afforded to victims, especially in respect of the right to reparations. Indeed, the ECCC is characterised by inadequacies and limitations when it comes to victims' substantive rights, as clearly demonstrated in the interviews conducted. In light of the potential secondary psychological trauma that may be occasioned by the creation of false hopes in civil parties, an issue that was brought to the fore in the interviews, the ECCC should take measures to overcome jurisdictional and structural restrictions inherent in its reparations mandate, turning high-browed rhetoric about victims' rights into reality. Furthermore, it is important that victims be provided with accurate, comprehensive and accessible information about what the ECCC can achieve for them so as to prevent disappointment and, potentially, the devastating effects of secondary victimisation.

Third, the ECCC has at various junctures grappled with considerable legal and procedural obstacles relating to civil party participation, underlining the difficulty of defining with precision the scope and purpose of this TJ mechanism. A sound legal foundation with clear, detailed and comprehensive rules designed to guide the ECCC in furnishing procedural standards and safeguards with civil parties and victims is imperative, preferably by means of legislation which should clearly specify the rights of civil parties as well as the responsibilities of the court and its officers *vis-à-vis* civil parties. Future trials at the ECCC should no longer evoke the impression of being 'experimenting laboratories', as was the case with the first two trials, and instead focus on achieving real justice for victims on the basis of clear and well-understood procedural rules.

Fourth, a realistic understanding of, and appreciation for, the potential shortcomings of civil party participation is invaluable in order for the ECCC to balance the interests of different stakeholders in the proceedings fairly. This particularly pertains to the defendant's right to a just and fair trial, victims' rights and needs, and the court's inherent interest in a fair and efficient process. Thus, it is not enough simply to assume that an expansion of victims' participatory rights must in and of itself be beneficial for victims and



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civil parties; rather, any attempt to value expanded rights of participation demands careful consideration of whether this really is in the best interests of victims and justice more generally. On one view, therefore, the Court is faced with a rather difficult exercise of having to reconcile competing incommensurate values. On an alternative view, however, it may be inappropriate to use the language of ‘balance’ in this context, as this implicitly endorses the idea that the interests of the three actors are diametrically opposed, which is to a considerable extent incompatible with TJ’s conception of victims and their relationship with the Defence and the Court. The ECCC is aware of the need to safeguard the rights and interests of all actors involved, and do not engage in conceptual rigidity, instead adopting a casuistic approach designed to do justice in all circumstances.

Fifth, civil party participation and other forms of victim engagement in judicial proceedings is costly, both in terms of direct expenditure and in terms of additional time that is required for participation to work. The flip side of the point made immediately above is that absent adequate funding and manpower, a court or tribunal would be well advised to refrain from adopting expansive participatory rights for victims. The success of any TJ mechanism is dependent on a well-functioning, efficient legal framework that is generally accepted by participants, requiring resources to be devoted to victims’ services, including the provision of legal assistance. With regard to the ECCC, the research conducted for this report has revealed that the Court is ill equipped and in greater need of resources to provide meaningful participation to victims.

Lastly, the nature and structure of the legal process is not always ideally suited to the resolution of all disputes, particularly where there is a need on the part of victims to provide personal narratives and a collective exercise in social memory. This report has shown, as supported by the interviews with victims at the ECCC, that recognition of victims’ rights to equal and effective access to justice and to reparations for harm suffered demands a comprehensive and integrated approach, which courts are not designed to achieve on their own. There is a considerable and growing body of research on alternative TJ mechanisms such as truth and reconciliation commissions and educational initiatives which should be used to accompany and, where shortcomings are identified, supplement the civil party participation regime at the ECCC.

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## 8. Recommendations

### 8.1 For the attention of the ECCC:

- Ensure justice by promoting meaningful participation for civil parties and victims more generally, giving full effect to victims' procedural and substantive rights.
- Secure protection and support for victims as well as adequate and prompt remedies by developing comprehensive and meaningful reparation projects to address the full scope of material, psycho-social and other adverse impacts of the harm suffered by victims.
- Design and adopt a sound legal and procedural framework, by judicially delineating the scope of the Court's jurisdiction, on the basis of its governing laws; and by containing clear, detailed and comprehensive rules to provide guidance on the rights and duties of civil parties and the Court.
- Conceptualise and develop a standardised and transparent approach which allows the Court to weigh the competing objectives of different stakeholders in the proceedings, namely the right of the accused to a fair and expeditious trial, the functionality of court proceedings, and the rights of victims themselves.
- Adopt a proportionate approach to expediting proceedings and reducing the temporal effects on trial duration caused by virtue of civil party participation, by balancing the demands of all stakeholders in the process.
- Take measures to overcome structural and jurisdictional limitations inherent in the Court's reparations mandate, in order to move beyond rhetoric by delivering more tangible justice to victims of international crimes.
- Provide accurate, comprehensive and accessible information to victims about what the Court can realistically achieve for them in order to avoid potential secondary victimisation.
- Empower the VSS and civil party lawyers by providing greater resources and funding so that they can better fulfil their mandate, including dissemination of information about the Court's work, provision of in-depth information services, as well as working in close consultation with victims in designing reparation projects.
- Ensure the preservation of the memory of the victims not only as symbolic reparation but also as a TJ mechanism, by providing the necessary forum for victims' voices to be heard, and by creating a permanent record of victims' stories and experiences.
- Foster reconciliation as a core objective of what the Court ultimately aims to achieve as a TJ mechanism.
- Refrain from expanding victims' participatory rights beyond that which the Court with its capacity, resources and manpower can deliver.

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## 8.2 For the attention of the Royal Government of Cambodia:

- Safeguard the ECCC's judicial independence and refrain from any kind of interference with the Court's processes by upholding the principles of the rule of law.
- Provide redress and reparations for civil parties and victims in general, including monetary compensation and other victims' support services, in line with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law.
- Provide legal and other support services to as many victims as possible through programmes such as legal aid that is not restricted to civil party participation.
- Work closely with the ECCC to develop a sustainable and viable approach to the issue of reparations that meets the concerns and expectations of victims.

## 8.3 For the attention of the international community:

- Promote active victim participation by providing the necessary resources and funding to the ECCC in order for the Court to ensure meaningful yet manageable participation, and reducing potential negative dynamics of victim participation.
- Support and empower the ECCC in its role as a TJ mechanism by providing the necessary means to fulfil its mandate, especially with regard to substantive remedies and reparation for civil parties.
- Strengthen the ECCC by challenging the potential pressure and interferences and by empowering the Court as well as civil society organisations in their role of monitoring the trials.
- Demonstrate greater solidarity with victims' suffering by providing financial and other forms of support that contribute to their rehabilitation, reintegration, and restoration of dignity.
- Conceive an integrated and comprehensive scheme of TJ mechanisms that are complementary in order to offer greater scope for the realisation of victims' substantive rights, something the ECCC is inherently limited from achieving.

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Impunity Watch is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts periodic and sustained research on the root causes of impunity that includes the voices of affected communities to produce research-based policy advice on processes intended to enforce their rights to truth, justice, reparations and non-recurrence. IW works closely with civil society organisations to increase their influence on the creation and implementation of related policies. The present Research Report has been produced as part of a multi-year comparative project aimed at supporting and strengthening the participation of victims and affected communities in transitional justice processes. We are grateful to the Oak Foundation and Hivos for their financial assistance on the project and continued support for our work.

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