

Transitional Justice in Cambodia – Can NGOs keep their promise?

A critical assessment of heterogeneous civil society contributions
towards a victim-centred approach to dealing with the past



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Image on the cover page:

Pictures of victims arrested, tortured and executed,
documented by the Khmer Rouge themselves.

(Source: GIZ Cambodia)

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Abstract. In addition to the Extraordinary Chambers in the Courts of Cambodia (ECCC), local NGOs with both punitive and restorative approaches to TJ have considerably added to the process of dealing with the past. After presenting the ECCC and local NGOs as actors in the Cambodian case, the contributions of NGOs are first outlined along Backer's conceptualisation of civil society functions in TJ processes, and later assessed against Robin's concept of victim-centredness. It is argued that NGOs have provided significant contributions in terms of e.g. broadening and localising the TJ process. Furthermore, measures in both the punitive and restorative field are crucial for victims due to a complex understanding of justice. However, while markedly in line with the local population's understanding of central concepts in TJ, can NGO activities be considered as responding to victims' explicit needs and preferences rather than acting according to their own or rather externally influenced agendas, if a strong focus is placed on reconciliation and symbolic reparations, which rank low in victims' hierarchies of needs? Furthermore, can empowerment be ensured where participation of victims in the project design stage is essentially limited? This thesis contends that rather than corresponding to a victim-centred approach, based on needs as defined by victims themselves and involving them at all stages of the project cycle, NGO activities in Cambodia should be considered as focusing on the victims in their implementation phase only.

TABLE OF ACRONYMS

ADHOC	Cambodian Human Rights and Development Association
BZFO	Behandlungszentrum für Folteropfer Berlin e.V. / Berlin Center for the Treatment of Torture Victims
CDP	Cambodian Defenders Project
CHRAC	Cambodian Human Rights Action Committee (coalition of 23 Cambodian NGOs)
CIVICUS	CIVICUS: Center for Cambodian Civic Education
CJR	Center for Justice and Reconciliation
CSD	Center for Social Development
DC-Cam	Documentation Center of Cambodia
ECCC	Extraordinary Chambers in the Courts of Cambodia
FIDH	International Federation for Human Rights
GIZ	German Society for International Cooperation / Deutsche Gesellschaft für Internationale Zusammenarbeit
ICfC	International Center for Conciliation (now incorporated in Kdei Karuna)
KID	Khmer Institute of Democracy
LAC	Legal Aid Cambodia
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
NGOs	non-governmental organizations
OSJI	Open Society Justice Initiative
PAS	Public Affairs Section (of the ECCC)
TJ	transitional justice
TPO	Transcultural Psychosocial Organization
UN	United Nations
UNDP	United Nations Development Program
VSS	Victims Support Section (of the ECCC)
VU	Victims Unit (of the ECC; renamed Victims Support Section in 2010)
YFP	Youth for Peace
YRDP	Youth Resource Development Program

TABLE OF CONTENTS

INTRODUCTION	1
1. MAIN ACTORS IN THE CAMBODIAN TRANSITIONAL JUSTICE PROCESS	6
1.1. ECCC	6
1.2. Civil Society and transitional justice in Cambodia	10
1.2.1. Cambodian civil society – an independent sector?	10
1.2.2. What’s the ‘justice’ in transitional justice? – An overview of NGOs in the field	13
2. THE ADDED VALUE OF NGO CONTRIBUTIONS TO THE TRANSITIONAL JUSTICE PROCESS.....	18
2.1. Framework: Civil society functions in transitional justice	18
2.2. “Moving forward through justice” via the ECCC.....	19
2.2.1. Representation and advocacy	19
2.2.2. Collaboration, facilitation and consultation	22
2.2.3. Research	28
2.3. Going beyond the ECCC: embracing a restorative approach to transitional justice	29
2.3.1. Education.....	29
2.3.2. Services targeting transformations on the community level	31
2.3.3. Acknowledgement and compensation/reparation	37
2.4. Civil society and the ECCC – opposing forces or acting in concert?	40
2.4.1. Civil society cooperation – two sides of the same coin?	40
2.4.2. Civil society and the ECCC – a marriage of convenience	42
3. TOWARDS A VICTIM-CENTRED APPROACH OF DEALING WITH THE PAST?	44
3.1. ‘Focus on the victim’ vs. ‘victim-centredness’ - what’s the difference? ..	44
3.2. What ‘victim’ are we talking about? – Unravelling the complex nature of victimhood	47
3.2.1. Faces of victimhood in the Cambodian context.....	48

3.2.2. ‘Victims’ or ‘perpetrators’? – The difficulty of accommodating former Khmer Rouge	50
3.2.2.1. <i>Former Khmer Rouge in the ECCC and Court-supporting NGOs</i>	52
3.2.2.2. <i>Former Khmer Rouge in NGOs with a restorative approach</i>	55
3.3. Focusing on the victim or victim-centred? – An assessment of NGO activities	57
3.3.1. Approaching victims’ needs – starting from empirical data	57
3.3.2. Cambodian NGOs – are they responsive to victims’ needs?	58
3.3.2.1. <i>A complex understanding of justice</i>	59
3.3.2.2. <i>Accountability</i>	62
3.3.2.3. <i>Reconciliation</i>	63
3.3.2.4. <i>Reparations</i>	68
3.3.3. TJ <i>for</i> or <i>by</i> the victims? - Participation and empowerment of victims in the project cycle.....	71
3.3.3.1. <i>Participation of victims</i>	71
3.3.3.2. <i>NGO activities – a means of empowerment?</i>	73
3.3.4. Limits of the analysis	78
CONCLUSION	81
BIBLIOGRAPHY	87
ANNEXES	107
Annex I: Vision, mission and selected project goals of NGOs.....	108
Annex II: Overview – NGO involvement in the transitional justice process..	118
Annex III: Selected data from surveys.....	122

INTRODUCTION

“I lost more than half of my family members. Years later, I constantly think about them. I need to know what happened to them. I want justice.”

(Chhin Mea, Civil Party in Case 002)¹

Like Chhin Mea, most Cambodians lost relatives and friends under the Khmer Rouge regime as well as during preceding and following civil wars, and are still striving for justice. Between 17 April 1975 and 6 January 1979, under the leadership of Pol Pot, over 1.7 million people,² almost one fifth of the then overall population,³ perished due to execution, starvation, disease and overwork in an attempt at establishing a classless society and “Maoist agrarian utopia”⁴ in ‘Democratic Kampuchea’, as Cambodia was called at that time. While all parts of society suffered deeply under the Khmer Rouge, violence was above all directed against political opposition, intellectuals, Buddhist monks and religious and ethnic minorities.⁵ The legacy continues until today, notably in form of psychological impacts,⁶ but is likewise lingering on in current political discourse just ahead of the national elections in July 2013.⁷ In 2010, approximately 80% of the country’s population identified themselves as victims, including half of the younger generation who did not experience the regime.⁸ But what kind of ‘justice’ is it that they are longing for?

For long, the political violence had remained largely unaccounted for. It took almost three decades until the Extraordinary Chambers in the Courts of Cambodia (ECCC), also commonly known as the ‘Khmer Rouge Tribunal’, were established with support

¹ FIDH, *Victims’ Rights Before the ECCC*, 2012, p. 6.

² Cambodia Genocide Program at Yale University, at <http://www.yale.edu/cgp/>.

³ Report of the Group of Experts for Cambodia established pursuant to UN General Assembly resolution 52/135, 18 February 1999, para. 1.

⁴ Vicheka, 2008, p. 289.

⁵ Herman, 2010, p. 2.

⁶ Bockers et al., 2011, p. 71.

⁷ As part of their election campaigns, the opposition under Sam Rainsy is depicting the ruling party as former Khmer Rouge, while current Prime Minister Hun Sen warns that national and international war will be inevitable if the opposition wins. – Cfr. Khemara, *VOA Khmer*, 4 May 2013.

⁸ Pham et al., 2011(a), p. 35. It is acknowledged that the use of the terms ‘victims’ and/or ‘survivors’ is debated in post-conflict countries. However, due to the predominant self-perception of Cambodians as victims, both terms will be used interchangeably in this thesis.

and pressure of the international community, which avowedly had till then taken the position of a bystander rather than intervened to manage the conflict.⁹ However, the current transitional justice (TJ)¹⁰ process goes far beyond the Court established by political actors, to comprise a multiplicity of activities by Cambodian civil society, notably non-governmental organizations (NGOs). Can they contribute to achieving justice for victims by supporting the work of the ECCC or offering alternative approaches to dealing with the past? NGO contributions are scarcely considered in academic literature, especially with regard to converging and diverging approaches of NGOs. Therefore, this thesis aims to address this issue.

By studying the contributions of Cambodian NGOs to the national TJ process as a case study, this thesis hopes to critically assess and respond to two interrelated vital questions: In how far have projects by Cambodian NGOs provided added value to the process of dealing with the past in Cambodia? Based on these findings, to what extent, if at all, can they keep the promise of reflecting a victim-centred approach to TJ in their activities, regarding victims' understandings of and attached importance to justice, accountability, truth, reconciliation, reparations and their participation in the project cycle?

Cambodian NGOs generally present themselves as representative of and responsive to the needs of the population and victims.¹¹ This corresponds to the generally increasing focus on victims and their needs in TJ processes,¹² based on the premise that ignoring their needs and thus failure of addressing profound grievances from previous violence might result in a perpetuation of conflict.¹³ However, the mere participation of

⁹ On the politics and interests of the international community, see Ainley, 2013.

¹⁰ Transitional Justice (TJ) can be defined as the recurrence to "processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation." TJ mechanisms can comprise a wide range of judicial as well as non-judicial mechanisms. - Report by the UN Secretary-General, UN Security Council, 'The rule of law and transitional justice in conflict and post-conflict societies', S/2004/616, 23 August 2004, para. 8. While TJ "is always concerned with a conscious strategic and political process to deal with injustice during and after political change" and 'dealing with the past' can be understood as a rather umbrella concept and a more unconscious process taking place in all societies (Kayser-Whande & Schell-Faucon, 2008, p. 18), these expressions will be used interchangeably for the present purpose.

¹¹ Christie, 2013, p. 39.

¹² *Cfr.* supra footnote 10.

¹³ Robins, 2011, p. 78.

purportedly representative civil society actors in the TJ process might lead to the premature assumption that they will indeed act entirely in the interest of victims and their needs. It is in this context that a critical assessment of NGO activities regarding their victim-centredness comes to the fore.

It will be argued that, although NGO activities in the field of TJ are crucial to meet victims' demands in the process of dealing with the past – both in line with a retributive and restorative approach to justice -, these initiatives hardly live up to the concept of victim-centredness as defined by Robins. While NGO contributions are markedly in line with the local population's understanding of central concepts in TJ, the strong focus on reconciliation and symbolic reparations, which seem to rank low in victims' hierarchies of needs, suggests that NGOs might be acting according to their own or externally influenced agendas instead of responding to victims' explicit needs. Furthermore, although centring on victim-participation in the implementation phase of all projects, victims and their preferences as voiced by themselves are remarkably absent in the design and evaluation stage, embracing an unsatisfactory process of project conceptualization, which contains the risk of disempowerment.

For the thesis, both primary and secondary sources have been consulted in the fields of international relations, political science, development studies, sociology and law. The analysis of NGOs and their activities draws strongly on sources provided directly by the organizations, such as their homepages, project reports or evaluations, press releases as well as NGO-directed movies and videos. Similarly, information on the ECCC is based both on scholarly literature as well as primary sources such as legal documents by the Court, the ECCC's website and available video material transmitting the ongoing trials via live stream online. It was supplemented by updates provided via monthly Court Reports, weekly Court newsletters, and daily summaries of the proceedings provided via social media channels. The analysis of NGO activities with regard to the needs of victims follows a deductive approach, testing their victim-centredness against the

concept provided by Robins. It is grounded in available surveys based on quantitative and qualitative data.¹⁴

Moreover, in order to gain deeper knowledge on the work of local NGOs in the early phases of research, two informal conversations were conducted in the headquarters of the German Society for International Cooperation (GIZ, Development Service and Civil Peace Service), Bonn, as well as a skype interview with a former senior advisor to a Cambodian NGO. Furthermore, the attendance of a brownbag lunch in Brussels and informal talks afterwards with Sam Rainsy, Cambodian opposition leader, and Mu Sochua, Member of Parliament in Cambodia, in March allowed for valuable critical insights into the Cambodian context.

Rather than restricting the analysis to a defined limited number of NGOs as detailed illustrative cases, it has been deliberately opted for a broad sample of activities, allowing for a more comprehensive overview, although it does not claim to be exhaustive. Consequently, however, this thesis will not evaluate the victim-centredness of individual NGOs, but rather in terms of different approaches to TJ. The focus is limited to local NGOs, omitting an analysis of international civil society and victim-centredness of the ECCC *per se*, although it is acknowledged that the evaluation of further actors as well as their interaction with local civil society is indispensable for a more comprehensive analysis. Furthermore, an in-depth analysis of activities and their degree of victim-centredness would require deeper critical insights into the workings of NGOs, which was, however, beyond the scope of the thesis. The reliance on information provided chiefly by NGOs online and in publications naturally risks the idealization of their work and furthermore does not allow for critical elucidation of tensions among them. Lastly, while framed in the context of the ongoing debate of complementarity of punitive and restorative justice as well as the concepts such as justice and reconciliation, the thesis does not aim to ponder thereupon theoretically, but rather on how this debate is informed by the Cambodian context as a case study.

¹⁴ For more information on the surveys, refer to section 3.3.1. Also see annexes for an overview of NGO activities and selected data from the surveys.

To begin with, I will first identify the main actors of the Cambodian TJ process with a focus on local NGOs, in order to examine whether their conception of justice differ according to predominantly retributive or restorative approaches to justice (Chapter 1). Furthermore, an understanding of NGOs' activities centring on the work of the ECCC necessitates basic knowledge on the Court as well an awareness of the general historical and political context of civil society in which they operate. The next chapter (Chapter 2) will open with a short introduction to Backer's framework for categorisation of roles of civil society in a TJ process, as his framework seems to provide for the most comprehensive attempt at theorising civil society functions in this context. Along this structure, civil society activities surrounding the TJ process will consequently be traced with regard to punitive and restorative approaches to TJ. It is followed by a succinct assessment of the relationship among civil society actors and between civil society and the ECCC. This collation of NGO initiatives serves as the basis for their assessment against the concept of victim-centredness, as defined by Robins, in the last chapter (Chapter 3). Following an introduction to the theoretical concept, which seems to provide the most valuable insights with regard to the standing of the victim in the TJ process compared to conventional theories of 'victim-centredness', the notion of 'victim', which is at the bottom of the theory, will be explored in the Cambodian context. Subsequently, based on empirical data drawn from existing surveys, the activities of NGOs will be evaluated for their congruence with the understandings of and importance attached to the concepts of justice, accountability and truth, as well as reconciliation and reparations, as defined by the Cambodian population. This is followed by an examination of victim participation and empowerment in the project cycle before an overall decision on the conformance of projects and victims' interests can be drawn. The thesis will eventually close with a conclusion of the main findings.

1. MAIN ACTORS IN THE CAMBODIAN TJ PROCESS

For many, the ECCC, formally established by the Cambodian government with the strong support and pressure of the international community, epitomises the Cambodian TJ process. However, other actors have been and continue to be involved in the Cambodian TJ process, such as the Cambodian government, the UN, foreign donors and both national and international civil society. Cambodian civil society became significantly involved in the TJ process at the outset of the Court, either directly facilitating its functioning or extending the process of dealing with the past beyond the legal arena.

Considering that civil society involvement to a considerable extent evolves around the Tribunal, some basic information will first be provided on the ECCC (Section 1.1). Subsequently, the historical and political context of civil society activities will be briefly introduced before the reader will be concisely familiarised with the NGOs most engaged in the process of dealing with the past and their heterogeneous approaches to justice (Section 1.2).

1.1. ECCC

While for long the Cambodian government eschewed actively confronting the past, sincere discussions on an internationally recognised TJ process in Cambodia were initiated by the then Co-Prime Ministers Hun Sen and Norodom Ranariddh only in 1997 following international pressure, when they requested assistance from the UN in holding the perpetrators of the atrocities accountable. What followed was a lengthy and arduous process of negotiations between the two sides with deep disagreement prevailing over the design, with the UN preference for a purely international tribunal confronted by the Cambodian government's insistence on a hybrid court anchored in the national legal system. Notably, civil society was basically excluded from the negotiations.¹⁵

¹⁵ Lak & Khoun, 2012, p. 15; McGrew, 2009, pp. 264-266.

A political compromise was finally achieved in 2003 with the official Agreement between the UN and the Cambodian government and subsequently the Law on the Establishment of the ECCC, which both operate as the legal basis for the Tribunal¹⁶ and were in 2007 complemented by Internal Rules, outlining procedures in more detail. The result is a hybrid tribunal, located 40 km outside of Phnom Penh, with a majority of Cambodian judges in its Pre-Trial, Trial and the Supreme Court Chambers, but where decisions are cast by ‘supermajority’, thus requiring the agreement of at least one international judge. Fundamentally, the ECCC is characterised by double staffing of national and international experts, in the form of e.g. Co-Prosecutors, Co-Investigating Judges, but also the Victims as well as Defence Support Sections and the Office of Administration.

The jurisdiction of the Tribunal is limited to the period of the Khmer Rouge regime, i.e. between 17 April 1975 and 6 January 1979, and only senior leaders as well as those believed to be “most responsible” can be prosecuted under both national and international law.¹⁷ With no more than four cases opened, only a very limited amount of former Khmer Rouge will be tried. The first verdict of the ECCC was rendered in July 2010 against Kaing Guek Eav, alias ‘Duch’, the former head of the infamous Tuol Sleng prison, or ‘S-21’, where over 12,000 people were tortured and executed.¹⁸ In the current Case 002, Nuon Chea, ideologist and ‘Brother Number Two’ to Pol Pot, and Khieu Samphan, head of state of Democratic Kampuchea, are indicted of crimes against humanity, war crimes and genocide against the Muslim Cham and Vietnamese.¹⁹ However, proceedings are severed, with the focus in Case 002/01 on forced movement of the population. Commenced in late 2011, a judgment for Case 002/01 is expected for beginning 2014 the earliest.²⁰ In contrast, the crimes of e.g. genocide and forced marriages are relegated to later subtrials.²¹ However, due to the advanced age of the

¹⁶ Weiss, 2008, pp. 115-116.

¹⁷ ECCC Law on Establishment, NS/RKM/1004/006, 27 October 2004, Arts. 1-8.

¹⁸ ECCC Judgement Case 001, E188, 26 July 2010, para. 141.

¹⁹ While originally two more accused were in the dock, proceedings were stayed against Ieng Thirith in September 2012 when found unfit to stand trial and terminated against Ieng Sary following his death in March 2013.

²⁰ Sothanarith, *VOA Khmer*, 26 June 2013.

²¹ ECCC Decision on Severance of Case 002, E284, 26 April 2013.

defendants, it is not sure whether the following subtrials will eventually take place as envisaged.

While the establishment of the ECCC undoubtedly presents an important step in the TJ process, its hybrid structure has been widely criticised by human rights organizations, such as Amnesty International and Human Rights Watch as the “ECCC’s strongest critics”²², who claim that it fails to meet international standards of due process due to the “precarious state of Cambodia’s judiciary”.²³ Furthermore, persistent allegations of political interference and corruption, as well as its soaring costs and recurrent funding crises cast a cloud over the work of the Court.²⁴ Open rejection of the continuation of investigations in Cases 003 and 004 by Prime Minister Hun Sen, who prefers to ‘bury the past’ as a form of ‘national reconciliation’ rather than holding more leaders to account, make it doubtful that the ECCC will successfully complete its caseload.²⁵ Moreover, the Court has likewise been criticised for not meeting cultural needs combined with claims that a truth commission might in a way better serve the needs of the population.²⁶ However, initial considerations of a truth commission complementing the punitive approach, recommended by a UN Expert Group,²⁷ were not followed up by neither side.

An innovative aspect and special characteristic of the ECCC is the extensive victim-participation and reparations mandate, though this was only included upon adoption of the Internal Rules in 2007. The international community and civil society expect these elements to maximise the impact of the legal proceedings.²⁸ Beyond being called as witnesses, victims can file complaints and can as Civil Parties take part in the proceedings with “rights broadly similar to the prosecution and the defence” and the

²² McGrew, 2009, p. 257.

²³ Amnesty International, ASA 23/005/2003, 24 April 2003, p. 3; Human Rights Watch, 30 April 2003.

²⁴ See e.g. the OSJI reports on Political Interference at the ECCC, July 2010, and on Recent Developments at the ECCC, March 2013; Maguire, 2012; McCargo, 2011. The ECCC estimates that international expenditure from 2006-2013 will total \$208.7 million, most of which is provided by international donors. – ECCC Financial Outlook, 31 May 2013.

²⁵ Ainley, 2013, p. 10; OSJI, March 2013; Norén-Nilsson, 2013, p. 15.

²⁶ Ramji-Nogales, 2010, p. 41.

²⁷ *Cfr.* supra footnote 3.

²⁸ Herman, 2010, p. 2; Herman, 2013, p. 113. Notably, no mentioning of victim-participation was made in the Agreement or Law on Establishment.

right to claim collective and moral reparations.²⁹ The foundation for the enhanced status of the victim can be found in the hybrid character of the Court, more specifically in the provision of victim-participation in the Cambodian Code of Criminal Procedure, formed after the French civil party model.³⁰ While 90 Civil Parties participated in Case 001,³¹ the Court faces a greater challenge in the current proceedings with the handling of 3,866 admitted Civil Parties.³²

In order to facilitate the process of victim-participation and maximise the impact on the population, the Victims Support Section (VSS),³³ deemed as the “sole contact for victims or their representatives for participation in the proceedings”³⁴ in terms of the application process and legal representation, and the Public Affairs Section (PAS),³⁵ entrusted with outreach activities, were set up. However, due to drastic lack of funding, both institutions started operating effectively only in late 2009, towards the end of the first trial.³⁶ Since then, however, the ECCC has significantly stepped up its actions with regard to victim-participation, and provides e.g. numerous court-sponsored “study tours” to historical sites in Phnom Penh and the ECCC, broadcasts a weekly radio show and facilitates the attendance of at least 300 Cambodians every trial day.³⁷ While in the beginning, envisaged reparations were limited to admitted Civil Parties, the VSS was in early 2010 additionally assigned with the development and implementation of non-judicial measures to benefit the broader base of victims.³⁸

Although the ECCC was established as a retributive mechanism to prosecute the main perpetrators of Democratic Kampuchea, hopes rank high that the it will also

²⁹ ECCC, at <http://www.eccc.gov.kh/en/victims-support/participation>; also *Cfr.* Internal Rule 23 and ECCC Practice Direction on Victim Participation.

³⁰ Elander, 2013, p. 107; Herman, 2010, p. 3.

³¹ ECCC Judgment Case 001, E188, 26 July 2010, Annex III: List of Civil Parties.

³² ECCC, at <http://www.eccc.gov.kh/en/blog/topic/1274>.

³³ Internal Rule 12. Until amendments to the Internal Rules were made in early 2010, the VSS was called Victims Unit. With renaming, the mandate of the institution was likewise extended e.g. with regard to reparations and non-judicial measures.

³⁴ ECCC, Practice Direction on Victim Participation 02/2007/Rev.1, Art. 1(2).

³⁵ Internal Rule 9(4).

³⁶ Crucial funding of €1,5 million to jump-start VSS activities was provided by the German Federal Foreign Office in late 2008. - Dosch, 2012, p. 1078. For an overview of PAS outreach activities 2009-2012, see ECCC PAS Court Report February 2013, p. 6.

³⁷ ECCC PAS Court Report February 2013, pp. 1, 6.

³⁸ Herman, 2010, p. 5. *Cfr.* amendments in Internal Rule 23*quinquies*, Rev.6, 17 September 2010, compared to Rev.5, 9 February 2010.

impact positively on the Cambodian judicial system, healing and national reconciliation.³⁹ Furthermore, it has been claimed that the ECCC has served as “the central entry point for reconciliation and peacebuilding initiatives” in the form of restorative justice by NGOs.⁴⁰

1.2. Civil Society and TJ in Cambodia

Traditionally, especially due to the emphasis on legal approaches, national governments and the international community have been considered as the main actors on the centre stage of TJ processes and therefore been devoted most scholarly literature. Only rather recently has the impact of civil society been assessed and synthesised in the context of dealing with the past, where it has significantly influenced the timing and design of TJ mechanisms in various post-conflict countries.⁴¹ It is clear that the nature of a country’s civil society is crucial with regard to impact on TJ. Therefore, light will first be shed on the historical and political circumstances that shape their activities, before introducing the NGOs that are most active in the Cambodian context and their approaches to justice. This will serve as basis for analysis of NGO contributions in the following chapter.

1.2.1. Cambodian civil society – an independent sector?

Under the Khmer Rouge regime, traditional organisation of Cambodian civil society around the village and Buddhist monastic communities was essentially obliterated in an attempt to shatter personal ties and attain unconditional reliance and loyalty.⁴² Still today, a “reluctance to trust, to plan, and to make decisions” as a relict inherited from the past hampers the development of associational behaviour in Cambodian society, considering that a simple change of political regime does not automatically implicate a

³⁹ Sperfeldt, 2012, p. 151. Notably, ‘national reconciliation’ is recognized as a “legitimate concern” of the Government in the Preambles of the 2003 Agreement between the UN and the RGC, and the Internal Rules.

⁴⁰ Dosch, 2012, p. 1069.

⁴¹ Zupan & Servaes, 2009, pp. 2-4.

⁴² Christie, 2013, pp. 68, 219; Downie & Kingsbury, 2001, p. 7. Approximately 96% of the Cambodian population is Buddhist. – United States Central Intelligence Agency, at <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>.

change in conditioned mindsets.⁴³ Although grassroots Pagoda associations survived the repressive regime, under which specifically Buddhist monks were targeted, and resurfaced shortly thereafter, they seem disconnected from the NGO sector and development/peacebuilding programmes.⁴⁴ This largely grounds in the approach of a liberal associational model of civil society promoted by the international community following the 1991 Peace Agreement, considering NGOs as a means for empowerment of the population and attributing them a ‘watch dog’ function of the state.⁴⁵ In relation to this, the increasingly dominant discourse in development cooperation regarding grassroots involvement and thus a need for local partners for the implementation of their projects strongly fostered the growth of the Cambodian NGO sector at the expense of alternative forms of civil society, with approximately 450 local NGOs currently active in the country.⁴⁶

In contrast to grassroots organisations, NGOs often suffer from lack of representativity.⁴⁷ Cambodian NGOs are predominantly based in and managed from the capital and other large urban areas, and by some considered as elitist organisations disconnected with the villagers.⁴⁸ NGO staff is generally better educated, often abroad, and enjoys an above-average living standard, representing the urban middle class rather than the overwhelmingly poor rural population.⁴⁹ Furthermore, as a majority of NGOs was founded by returnees from exile and much staff before worked in international NGOs, their work is often influenced by “western values of democracy and development.”⁵⁰

As in most post-conflict countries, Cambodian civil society is still weak and lacking independence.⁵¹ This can be ascribed especially to its relation with the state and dependence on foreign donors. Generally, Cambodian actors agree that civil society is

⁴³ Downie & Kingsbury, 2001, p. 7; Sarkin & Daly, 2003-2004, p. 687.

⁴⁴ Asian Development Bank, 2011, *n. pag.*; UNDP, 2010, pp. 11-12.

⁴⁵ Christie, 2013, pp. 10, 41, 91.

⁴⁶ UNDP, 2010, p. 10; Christie, 2013, pp. 82-84, 89-91; Dosch, 2012, p. 1068. In 2010, approximately 20% of overall official development assistance to the country was disbursed through NGOs. – UNDP, 2010, p. 33.

⁴⁷ UNDP, 2010, p. 25.

⁴⁸ *Ibid.*; Christie, 2013, pp. 113-114.

⁴⁹ Christie, 2013, pp. 60, 131.

⁵⁰ UNDP, 2010, p. 11.

⁵¹ Brahm, 2007, p. 62.

considered as a sector distinct and independent from the government, political parties and business.⁵² However, Dosch asserts that, instead, Cambodian civil society should be “best understood as a state-tolerated, and, in some limited cases, state-coopted, loosely organised, collective actor that comes into play wherever and whenever the government does not, or cannot, get involved.”⁵³ This statement attributes to civil society a collaborative but subordinate role to the government, or the status of a “sort of shadow government”⁵⁴ in the provision of services. Although certainly, civil society is increasingly taking a critical stance towards the powers of government, a tendency of avoiding direct confrontation still prevails.⁵⁵ Moreover, while the government has been remarkably receptive to the work of NGOs, the latter are nevertheless vulnerable to state intervention, especially smaller ones or those active in the human rights field.⁵⁶ With repeated attempts at legal regulation of the non-governmental sector by the state, local NGOs above all fear for their freedom of association and are afraid of increased meddling of the government in their activities.⁵⁷

Furthermore, Cambodian civil society is heavily dependent on foreign financing and technical advice.⁵⁸ This dependency has created competition among NGOs for funding and led them to readily accept donor project proposals and to align their agenda with foreign preferences, resulting in considerable international influence on local civil society’s agenda-setting.⁵⁹ Thereby, not only their autonomy and legitimacy are undermined, but also the sustainability of their work as external funding is often short-term and projects are rarely pursued independently thereafter.⁶⁰ Moreover, the need for

⁵² See e.g. the statement made by HRH Prince Norodom Sirivudh, founder and chairman of the Cambodian Institute for Cooperation and Peace, at the Asia Society panel discussion, ‘Cambodian Civil Society: Challenges and Prospects’, 24 June 2000.

⁵³ Dosch, 2012, p. 1072.

⁵⁴ Statement made by Ambassador Nicholas Platt, president of Asia Society. – *Cfr. supra* footnote 52.

⁵⁵ Christie, 2013, p. 188.

⁵⁶ *Ibid.*, pp. 107, 112-113, 127, 177; Asian Development Bank, 2011, *n. pag.*

⁵⁷ Cook et al., 2011(a), *n. pag.*

⁵⁸ Dosch asserts that the opinion of Cambodian NGOs requiring foreign support and capacity-building is shared by many local NGO activists. – Dosch, 2012, p. 1073.

⁵⁹ Dosch, 2012, pp. 1070, 1074; Christie, 2013, p. 12.

⁶⁰ UNDP, 2010, p. 26.

external funding has given rise to an increasing accountability towards international donors rather than the local population.⁶¹

All these characteristics of civil society also strongly apply to the TJ process. Firstly, the TJ process is vastly dominated by NGOs, formed in the post-Paris Peace Agreement period and reflecting the emphasis placed on a liberal form of civil society engaging in the TJ process as part of the internationally dominant paradigm of peacebuilding.⁶² Secondly, they are essentially dependent on international funding, with donors even claiming that without their involvement after all no TJ initiatives would occur.⁶³ Thirdly, although many NGOs comprise staff who themselves suffered under the Khmer Rouge regime, their elitist character and social background generally distinguishes them from the overwhelming majority of victims and the NGOs are thereby faced with a similar challenge of representativity. This claim is reinforced by the assertion that “NGOs’ dependency on external funds introduces motives relating to self-preservation” and the fact that tensions obviously exist among survivor groups and NGOs, even though they might pursue similar objectives.⁶⁴ Moreover, service delivery complementary to the ECCC is the main field of activities, although NGOs have also increasingly been involved in critical advocacy and monitoring activities. While it is acknowledged that civil society comprises more spheres than NGOs and that there are initiatives of religious entities aimed at coming to terms with the past, the predominant actors are NGOs, which justifies their taking as unit of analysis for the thesis at hand.⁶⁵

1.2.2. What’s the ‘justice’ in TJ? – An overview of NGOs in the field

Over time, approximately 10-15 Cambodian NGOs have been active in the TJ process, which gathered momentum after the creation of the ECCC.⁶⁶ All of them generally

⁶¹ Cook et al., 2011(a), *n. pag.*

⁶² See e.g. Boutros-Ghali’s *An Agenda for Peace*, 1992; UN OHCHR, 2008, pp. 20-21. For a discussion on the role of civil society in post-conflict countries also see Christie, 2013.

⁶³ Dosch, 2012, p. 1070; Dosch et al., 2011, p. 25.

⁶⁴ Sperfeldt, 2012, p. 157.

⁶⁵ Therefore, the terms ‘civil society’ and ‘NGOs’ will be used interchangeably for the sake of this analysis.

⁶⁶ Sperfeldt, 2012, p. 150.

support international human rights standards of accountability, that is, they hold the premise that “in the aftermath of conflict or authoritarian repression, those suspected of mass atrocities will be held criminally accountable”⁶⁷ and thus in principle support the ECCC as crucial element, around which the Cambodian TJ process evolves.

However, rather than taking a homogeneous approach, Cambodian NGOs have advanced distinct strategies for TJ based on divergent ideas about what constitutes ‘justice’ in a post-conflict situation. These varied understandings nature their inclination towards specific ways of dealing with the past, with different weights attached to e.g. prosecution, accountability, reparation, truth and acknowledgement.⁶⁸ Except for one, NGOs active in the Cambodian TJ process can roughly be divided into two groups, either predominantly supporting the retributive approach of the ECCC or an alternative or complementary restorative approach. Notably, this distinction is also reflected in statements of vision and mission of the respective NGOs.⁶⁹

Regarding the first group, the ECCC as legal mechanism is the principal manner to achieve justice, or as expressed by one NGO, “[j]ustice comes from respect of law”⁷⁰. The retributive approach to justice centres on individual accountability and the punishment of the perpetrators.⁷¹ These NGOs hence attribute to the TJ process in form of the ECCC predominantly goals that include e.g. (legal) justice for victims, punishment of the leaders of Democratic Kampuchea, deterrence and the promotion of the rule of law and human rights.⁷² Furthermore, advocates of this form of justice generally hold that reconciliation will eventually flow from the establishment of the rule of law, combating impunity, democracy and individual accountability or punishment,⁷³ with reconciliation thus subordinate to retributive justice and in line with the UN premise that “only by finding justice can a society then move towards reconciliation.”⁷⁴

⁶⁷ Boesenecker & Vinjamuri, 2011, p. 346.

⁶⁸ *Cfr.* also Robins, 2011, p. 91.

⁶⁹ Please refer to Annex I for an overview of the NGOs’ indicative statements of vision and missions. The following section is based on information provided on the respective NGO’s websites, consulted on 12 May 2013, unless otherwise indicated.

⁷⁰ Legal Aid Cambodia (LAC), at http://lac.org.kh/en/?page_id=16.

⁷¹ Bockers et al., 2011, p. 72.

⁷² Lak & Khoun, 2012, p. 11.

⁷³ *Ibid.*; Fletcher & Weinstein, 2002, p. 636; Kirchenbauer et al., 2013, p. 2.

⁷⁴ McGrew, 2006, p. 141.

This group supporting the ECCC comprises largely NGOs engaged in the promotion of human rights, democracy and provision of legal aid, and who since 1994 also coordinate their work and conduct additional activities under the name of the Cambodian Human Rights Action Committee (CHRAC). Of nowadays 23 member organisations, six are involved in the TJ process, namely the Cambodian Human Rights and Development Association (ADHOC), Cambodian Defenders Project (CDP), Center for Social Development (CSD), Khmer Institute of Democracy (KID), Khmer Kampuchea Krom Human Rights Organization (KKKHRO) and Legal Aid Cambodia (LAC).

As to the second group of NGOs, these assert that justice must above all also be sought outside of the established legal mechanism via complementary or alternative means. This is based on the idea that the impact of the ECCC as sole TJ mechanism on the local population is inherently limited, as trials alone are not enough “to address the wounds of a society affected by mass atrocities, or bring about healing, closure, and reconciliation to victims or to the larger population.”⁷⁵ Therefore, they underpin the legal view of justice, individual accountability and the predominant human rights discourse of the previous group with additional components of restorative justice⁷⁶ such as truth-telling, memory initiatives, local conflict resolution practices, reconciliation and religious dimensions, aimed at involving all conflict participants and better addressing victims’ needs. While considering the ECCC as a “national symbolic process”⁷⁷, these initiatives place a stronger emphasis on intervention on the local level, aiming at reconciliation and trauma healing on the individual and interpersonal level, i.e. between the victim and direct perpetrator(s).

Currently, five NGOs are especially active under the banner of restorative justice. These are the International Center for Conciliation (ICfC) (re-named “Kdei Karuna” in 2012), the Transcultural Psychosocial Organization (TPO) with a focus on trauma and mental health, and Youth for Peace (YFP) as well as the Youth Resource Development

⁷⁵ Pham et al., 2011(b), p. 284.

⁷⁶ “Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.” – Zehr, 2002, p. 37.

⁷⁷ Transcultural Psychosocial Organization, 2012(b), p. 1.

Program (YRDP) targeting the younger generation as their main target group, and CIVICUS⁷⁸ with a focus on civic education and reconciliation/peacebuilding.

In contrast, the Documentation Center of Cambodia (DC-Cam), which is the oldest and presumably most comprehensive local NGO focused on dealing with the past, established in 1995 as the field office for the Cambodian Genocide Program at Yale University,⁷⁹ cannot be assigned to a predominantly punitive or restorative approach. While placing considerable emphasis on the rule of law and attaching great weight to the prosecution of the leaders of Democratic Kampuchea to achieve justice, it also conducts a substantial amount of projects in the area of restorative justice regarding e.g. memorialisation, truth-telling and a focus on reconciliation.

While this distinction of actors is useful for the sake of study, it needs to be kept in mind throughout the thesis that the categorisation of NGOs is nevertheless a simplification. Generally, no NGO entirely rejects one or the other form of TJ and they frequently integrate aspects of the respectively other concept. For instance, while classified as supporting the predominantly retributive approach, most NGOs of the first group also participate in commemoration ceremonies⁸⁰ or involve in truth-telling initiatives,⁸¹ while conversely, NGOs taking a restorative approach likewise might consider prosecution as a fundamental part of reconciliation,⁸² or provide the population with information and updates about the ECCC.⁸³ Nevertheless, the tendency of a

⁷⁸ CIVICUS – Center for Cambodian Civic Education (CIVICUS) has its roots in the work of CSD. Due to an internal dispute, CSD was restructured in July 2009 and ECCC-related projects in outreach on victim participation as well as Justice and Reconciliation Dialogues were transferred to the Center for Justice & Reconciliation (CJR), which was subsequently founded by former CSD staff. - Manning, 2011(a), footnote 7. CJR now itself forms component of CIVICUS, which was founded in 2010 and is led by the very visible personality of Theary Seng, former executive director of CSD.

⁷⁹ The Cambodian Genocide Program at Yale University received extensive funding in the framework of the Cambodian Genocide Justice Act. This was passed by the United States government in April 1994, declaring it US policy to bring to court the perpetrators of crimes under the Khmer Rouge and earmarking funds for the investigation of atrocities of Democratic Kampuchea. – Stanton, at <http://www.genocidewatch.org/reviewoffirstfiveyrs.html>.

⁸⁰ E.g. the one preceding the opening of Case 002 in November 2011. – See joint press release by ADHOC et al., 20 November 2011.

⁸¹ See e.g. CDP's Women's Hearing in 2011. – CDP, 2012.

⁸² See e.g. CJR/CIVICUS, at <http://www.civics-cam.org/>.

⁸³ E.g. YFP in *Understand, Remember and Change workshops*. – YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=42>.

predominant inclination towards one of the categories can generally be ascertained and therefore justifies such cautious grouping as basis for analysis.

2. THE ADDED VALUE OF NGO CONTRIBUTIONS TO THE TJ PROCESS

The NGOs shortly introduced above have contributed significantly and continue to do so to the efforts of dealing with the past. After a concise presentation of Backer's classification of civil society functions in TJ processes (Section 2.1), this framework will help to explore NGOs' precise contributions in the Cambodian context, first those measures taken in direct relation to the ECCC (Section 2.2), and secondly, those that extend the process of dealing with the past beyond the legal proceedings (Section 2.3). On this basis, this chapter will eventually close with the question whether the relationship among NGOs and between the former and the ECCC is one of cooperation or opposition (Section 2.4). Throughout this chapter, the analysis is informed by NGOs' discourse on added value of NGO contributions, before this will be confronted with the victim-centred approach by Robins in the following chapter.⁸⁴

2.1. Framework: Civil society functions in TJ

Civil society contribution in Cambodia has been vast. In order to be able to better digest and conceptualize their contributions to the TJ process, Backer has distilled six primary functions assumed by NGOs in the course of dealing with the past, under the headings of (i) data collection and monitoring of human rights violations, (ii) representation and advocacy for TJ mechanisms, (iii) collaboration, facilitation and consultation in the process, (iv) service delivery, (v) acknowledgement and compensation, and (vi) research and education.⁸⁵ These functions also provide a valuable guidance for the analysis of the Cambodian case. However, as they partly overlap in the case study at hand, they will, for the sake of clarity, be regrouped, as will be elaborated below.

⁸⁴ While recognizing that tensions within civil society exist beyond the understanding of justice, for instance, regarding different forms of memorialisation, they will be omitted due to lack of information in available sources. As DC-Cam admits, such conflicts are generally tried to be kept hidden from the public. - DC-Cam, Annual Report (2008-2011), p. 24.

⁸⁵ Backer, 2003, pp. 302-305.

Overall, this framework appears to treat civil society as a homogeneous entity, assumed to be inherently supportive of a governmentally installed TJ process. While Backer parenthetically recognizes himself that this is not necessarily the case due to potentially different interests and competences of the different actors,⁸⁶ the heterogeneity of civil society contribution based on different understandings of justice in the Cambodian context will be accentuated via the categorisation of initiatives into (1) punitive or ECCC-supportive and (2) restorative measures that go beyond the reach and jurisdiction of the ECCC.

2.2. “Moving forward through justice”⁸⁷ via the ECCC

In fact, NGOs supportive of the ECCC’s retributive approach have engaged in five out of the six listed functions, namely (i) data collection, (ii) representation and advocacy; (iii) collaboration, facilitation and consultation, (iv) service delivery and (vi) research. However, to avoid repetition, data collection and service delivery related to the ECCC will be subsumed under the collaborative function.

2.2.1. Representation and advocacy

The function of civil society regarding representation and advocacy relates to civil society involvement in policy debates turning around formal TJ mechanisms, either through the backing of existing policy proposals or the advancement of own initiatives.⁸⁸ Furthermore, as regards timing, NGO engagement matters in both the creation and the operational phase of the TJ mechanism.⁸⁹ In Cambodia, civil society impact was limited in the creation phase, while its involvement augmented after the establishment of the ECCC.

⁸⁶ *Ibid.*, p. 311.

⁸⁷ Slogan of the monthly ECCC Court Report. - ECCC, at <http://www.eccc.gov.kh/en/public-affair/publication/report>.

⁸⁸ Backer, 2003, p. 303.

⁸⁹ Brahm, 2007, pp. 64-65.

Before concrete discussions on the Court, little advocacy in favour of a tribunal or alternative TJ mechanism seems to have taken place on the local level. Attempts at dealing with the past were essentially limited to religious initiatives, i.e. with a focus on justice and reconciliation via Buddhist processes.⁹⁰ Following the request from the Cambodian government and the appropriation of first draft agreements, however, 70 % of Cambodians was by and large supportive of the establishment of a tribunal with UN participation,⁹¹ a preference grounded in deep mistrust of government by a large part of the population.⁹² While a debate even within both national and international civil society arose around the structure of the ECCC,⁹³ only few NGO representatives voiced their opinion for the need of alternative mechanisms such as a truth commission.⁹⁴ Furthermore, for long, few NGOs actively considered dealing with the past an explicit goal of their actions, with the notable exception of TPO focusing on mental health,⁹⁵ DC-Cam active in the documentation of the past (also for potential use in prosecutions at a later stage),⁹⁶ and CSD conducting Public Forums on Justice & Reconciliation in 2000 to capture the opinion of the population on a tribunal.⁹⁷ Overall, the ECCC establishment process thus almost entirely lacked the inclusion of and consultation with the Cambodian public and was conveyed to the exclusive domain of the national government and the international community to spare public criticism.⁹⁸

It was only after the passing of the ECCC Law on Establishment in 2003 that civil society contributions became appreciated and that NGOs engaged in monitoring and advocacy towards the functioning of the Tribunal.⁹⁹ For instance, local NGOs such as

⁹⁰ See e.g. Vannath, 2003, p. 51 on the annual *Dhammayietra*, or peace walk, initiated in 1992 by the famous monk Maha Ghosananda (“Gandhi of Cambodia” – Hunt, 2004); and Pouligny et al., 2007-2008 on spiritual healing and purification rituals to facilitate reconciliation and healing.

⁹¹ Chhang, 2007, p. 171; also *cfr.* Kiza et al., 2006, p. 100.

⁹² Approximately 85% of Cambodians are distrustful of local courts. - McGrew, 2009, p. 276.

⁹³ See e.g. the calls through press releases by Amnesty International (24 April 2003), Human Rights Watch (30 April 2003) and local NGOs such as CDP (13 March 2003) and CHRAC (21 February 2002, 9 December 2002) for a more independent and more internationalized tribunal to meet international standards of due process. In contrast, e.g. DC-Cam and the OSJI were more favourable of the hybrid structure of the ECCC. - McGrew, 2009, pp. 257, 278.

⁹⁴ See e.g. one representative of KID, cited in CSD, 2006, p. 10.

⁹⁵ TPO, at www.tpocambodia.org.

⁹⁶ DC-Cam, 2008.

⁹⁷ CSD, 2006; Vannath, 2002.

⁹⁸ Sperfeldt, 2012, pp. 153-154.

⁹⁹ McGrew, 2009, p. 264.

ADHOC and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) together with international actors engaged in advocacy to ensure the right to participation and reparations in the Internal Rules.¹⁰⁰ Furthermore, since the beginning of the trials, local NGOs have advocated with regard to substantive issues (not) dealt with in the ECCC, such as for the scope and beneficiaries of reparations,¹⁰¹ as well as advancing the interests of minority groups¹⁰² and victims of gender-based violence¹⁰³ to be included in Case 002. Following the death of accused Ieng Sary in March 2013 and the perceived need to accelerate the process or focus on the most pressing needs and gravest violations of human rights, current advocacy mainly evolves around the insertion of genocide and forced marriage into Case 002/01.¹⁰⁴ However, while local NGOs participate in advocacy activities, it is not clear to what extent achieved changes can be attributed to their engagement rather than to the success of international NGOs, Civil Party lawyers, or foreign donors.¹⁰⁵

In contrast, critical monitoring seems largely left to international NGOs such as the Open Society Justice Initiative (OSJI), Bridges Across Borders and the Asian International Justice Initiative. The website maintained jointly by DC-Cam and Northwestern University School of Law since 2007 appears to be the only continuous monitoring effort with local participation.¹⁰⁶ Following the state of general civil society laid out above, this might be due to a desire to avoid direct confrontation with the government. Furthermore, NGOs generally seem to voice criticism regarding the ECCC

¹⁰⁰ ECCC & CHRAC, 2012, p. 40; ADHOC, at <http://www.adhoc-cambodia.org/?p=1847>; McGrew, 2006, p. 141.

¹⁰¹ See e.g. the joint press release by ADHOC et al., 20 November 2011. Following dissatisfaction with reparations provided in Case 001, limited to the compilation and publication of apologies statements and the accused's recognition of criminal responsibility during the trial, an amendment of ECCC Internal Rule 23(*quinquies*) in September 2010 now provides for a larger scope for collective reparations and non-judicial measures, also through external funding. While the award of reparations is limited to Civil Parties, non-judicial measures are meant to address the broader population.

¹⁰² While Civil Party status of Vietnamese and Cham population was first rejected, an appeal by Civil Party lawyers later succeeded. See ECCC Decision on appeals, 24 June 2011, Document D411/3/6. For an overview of this issue, see Studzinsky and Nguyen, at http://www.civilparties.org/?page_id=71.

¹⁰³ Dosch, 2012, p. 1081.

¹⁰⁴ See e.g. the joint press release by the Applied Social Research Institute of Cambodia, CHRAC and Ksaem Ksan Victim Association, 24 March 2013.

¹⁰⁵ *Cfr.* the instrumental role attributed to the Civil Peace Service in this regard. – Dosch, 2011, p.16.

¹⁰⁶ Cambodia Tribunal Monitor, at www.cambodiatribunal.org.

preferably jointly via CHRAC or together with international NGOs,¹⁰⁷ possibly to mitigate government's response against disapproval, based on the idea that a network of NGOs or those with support of international actors are more difficult to squash.¹⁰⁸

In a nutshell, civil society impact in the establishment process of the ECCC has been rather poor due to the wilful ignorance of NGOs by national and international political actors and the absence of dealing with the past on the agendas of most NGOs. With advancement of the ECCC and mounting engagement in the field of TJ, however, advocacy efforts, and to a limited degree, critical monitoring activities increased.

2.2.2. Collaboration, facilitation and consultation

Some Cambodian NGOs extensively provide services, including data collection, that serve a collaborative or facilitative function of the Court. Fundamentally, these offices enable the Court to tap skills, competences and resources available in society that the tribunal itself does not possess or is unable or unwilling to provide. The ECCC profits from support of NGOs in five vital ways: (1) outreach activities, (2) logistical, legal and psychological support for victim-participation, (3) provision of documents for evidentiary purposes based on data collection and (4) consultative functions or training, and (5) support for a positive legacy.

Firstly, outreach activities mainly aim to enhance the victims' knowledge of the historical background, existence and procedures of the ECCC, manage expectations of the Court's outcome,¹⁰⁹ to provide updates on the legal proceedings, and to encourage victims' participation as witnesses, complainants or Civil Parties. Virtually all NGOs currently involved in the TJ process also conduct some kind of outreach activities informing about the Tribunal via a wide range of approaches, including the distribution

¹⁰⁷ See e.g. press releases by FIDH et al., 4 August 2011; ADHOC et al., 19 May 2011 and CHRAC, 6 March 2013.

¹⁰⁸ Christie, 2013, pp. 102, 177.

¹⁰⁹ For instance, while it is often referred to the 'Cambodian genocide', this is legally not entirely correct in that it only refers to the attempted extermination of the ethnic Vietnamese or Muslim Cham in Case 002. Awareness of official legal distinctions transmitted by NGOs might prevent disappointment based on wrong expectations and deficient legal knowledge, following the pronouncement of verdicts. – McGrew, 2009, p. 286.

of information materials about the legal proceedings, broadcasting of radio (call-in) shows and daily transmissions on national TV, streaming of films, and the conduct of public forums.¹¹⁰ Many NGOs, notably ADHOC, YFP and KID, make vital use of their existing local networks, building on long established trust relationships with the population through former projects in other topic areas such as conflict resolution or promotion of human rights, often focusing particularly on rural areas where proceedings in the capital often go unnoticed.¹¹¹ From 2008 to 2010, the percentage of population possessing some limited knowledge about the ECCC increased from 61 % to 75 %.¹¹² Considering that the ECCC's Public Affairs Section began outreach activities only in 2009,¹¹³ civil society contributions in this field from 2006 on have been crucial.¹¹⁴ Especially at the outset of the Court, NGOs thus functioned as a vital link between the population and the governmentally installed ECCC, contributing to a localisation of the ECCC process and "narrowing the gap between the Court and Cambodian society"¹¹⁵ both in geographical terms, i.e. taking outreach activities to the community level, and psychological terms, i.e. mitigating uncertainties due to limited legal knowledge and scepticism related to the Court.

Secondly, NGOs have also contributed extensively to the facilitation of victim-participation in terms of logistical, legal and psychological support. Especially the deficient start of the VVS and PAS prompted NGOs such as ADHOC, CDP, CSD, DC-Cam, KID, and KKKHRO to fill the gap and take on the task of assisting victims in the filing of application forms, including informing them about their rights and the complex procedures before the ECCC.¹¹⁶ Of 8,202 forms submitted to the VSS in Case 002, approximately 84 % have been submitted through NGOs, indicating their decisive facilitating role in the field of victim participation.¹¹⁷ Furthermore, especially CDP and LAC, have provided crucial legal representation in form of assignation of *pro bono*

¹¹⁰ See Annex II for more detailed information.

¹¹¹ CHRAC, 2012, p. 5.

¹¹² Compare Pham et al., 2009 and Pham et al., 2011(a).

¹¹³ Cook et al., 2011(a), *n. pag.*

¹¹⁴ ADHOC was the first NGO in this field. – ADHOC, at www.adhoc-cambodia.org/?p=1847.

¹¹⁵ Sperfeldt, 2012, p. 158.

¹¹⁶ CHRAC, 2010, p. 4. Among these, ADHOC has served as main supporting organisation in 65 % of the cases. – *Ibid.*

¹¹⁷ Pham et al. 2011(a), p. 13.

lawyers for all 90 Civil Parties in Case 001, when no legal aid scheme was envisioned by the ECCC.¹¹⁸ Additionally, to avoid re-traumatisation of victims through participation and thereby recalling of suffering and due to the lack of psychological support provided by the ECCC or the government, a support system providing psychological services to survivors prior, during and after their participation in the proceedings was initiated by TPO, via on-site meetings or a telephone monitoring system, especially used for follow-up assistance for survivors in rural areas.¹¹⁹ It is since 2007 affiliated to the Tribunal via a Memorandum of Understanding.¹²⁰ By 2011, the organisation has provided psychological support to all Civil Parties and further 31 witnesses in Case 001 and over 160 Civil Parties in the current Case 002.¹²¹ Sperfeldt maintains that TPO's efforts in this field were "crucial to the preparation and successful conduct of Case 001",¹²² and they undoubtedly continue to be vital in the current proceedings. Through all these activities of logistical, legal and psychological support, NGOs greatly facilitated the participation of victims, bridging the ECCC's innovative approach and opportunity with the actual realisation thereof in terms of the victims. These services have therefore been significant in connecting the Tribunal and the legal proceedings with the population.



Image 1: Trial Chamber of the ECCC, viewed from the public gallery. (Source: ECCC)

¹¹⁸ CHRAC, 2010, pp. 4, 8; CHRAC, 2012, p. 8.

¹¹⁹ TPO, 2012 (a), p. 10. In 2011, TPO contacted 182 survivors for follow-up counselling via telephone.

¹²⁰ ADHOC et al., 2010, para. 37.

¹²¹ Sperfeldt, 2012, p. 156; TPO, 2012(a), p. 10.

¹²² Sperfeldt, 2012, p. 156.

A third area of collaboration between the ECCC and civil society, first and foremost DC-Cam, has been the provision of documents for evidentiary purposes. Documents on stock with DC-Cam provide an indispensable source of evidence for the Court; approximately 85 % of the Case 002 documents - amounting to over 700,000 pages - were made available by the NGO.¹²³ Therefore, the ECCC would be immensely hampered without the NGO's provision thereof and support in the process of locating and accessing those materials via DC-Cam's *Legal Response Team*. It is not uncommon for civil society to turn over collected information to investigators.¹²⁴ However, presumptively, the extensive involvement of DC-Cam in the documentation and investigation into the mass killings reflected in the enormous reliance on evidence provided by the NGO can be considered a substitution of state authority to the extent that it is the responsibility of the Court to investigate into the crimes committed. In fact, the international defence counsel has dismissively designated it as “‘unprecedented’ for a private organisation to do the bulk of evidence-collecting in a criminal trial” and blamed DC-Cam to play a “gatekeeper” role with regard to evidence provided to the Tribunal.¹²⁵ Despite the fact that forensic investigations were carried out by DC-Cam without a legal mandate and could thus potentially be accused of being bias,¹²⁶ the ECCC seems to trust in the extensive investigative efforts undertaken by the NGO in the past, possibly due to ECCC's lack of capacity and infrastructure in this field at the beginning of the proceedings.¹²⁷

The substantial provision of material is based on DC-Cam's substantive efforts in the field of data collection. It proudly vaunts to be the “world's largest repository of Khmer Rouge related documents”¹²⁸ and, together with Yale University's Cambodian Genocide Program and the University of New South Wales, disposes of an extensive database of primary and secondary sources from the period of the Khmer Rouge regime as well as

¹²³ DC-Cam, 2012 Annual Report, p. 3.

¹²⁴ Brahm, 2007, p. 65.

¹²⁵ DeFalco, 2012, pp. 7, 9.

¹²⁶ Klinkner, 2008, p. 236.

¹²⁷ Sperfeldt, 2012, p. 152.

¹²⁸ DC-Cam, 2008; Cioricari & Chhang, 2005, p. 225.

the pre-1975 and post-1979 eras.¹²⁹ In addition, DC-Cam continues to conduct interviews with both survivors and perpetrators in order to record oral history, to keep records of grave human rights violations under the Khmer Rouge and thereby create a fuller picture of history. Markedly, through the meticulous documentation of crimes collected in archives, DC-Cam fulfils Backer's three main rationales for data collection,¹³⁰ namely to create a substantial historical record by rendering it compellingly unreasonable to dismiss the atrocities committed by the Khmer Rouge as myth, to preserve contemporaneous evidence and to acquire a more complete picture of atrocities committed in terms of patterns of violence and links between cases and events.

Fourthly, consultation or training is another service delivered by NGOs to the ECCC. On the one hand, consultation indirectly occurs through the transmittance of knowledge acquired by professional staff of NGOs who were later explicitly encouraged to apply for positions in the ECCC,¹³¹ thereby 'transferring' knowledge from civil society to the Tribunal. On the other hand, various NGOs have provided training to staff of the hybrid court. The above mentioned support in locating and accessing of documents by DC-Cam provides only one example, KID's training of police officers for victims and witness protection according to international standards another.¹³²

Lastly, NGOs supporting the ECCC are strongly engaged in efforts to ensure that the ECCC will leave a positive legacy, which can be defined as the "positive long-term impact on national justice efforts."¹³³ This might include, for instance, capacity-

¹²⁹ Documents stemming from the 1975-1979 period include e.g. notebooks of and correspondence between officials of the regime, prisoner confessions and biographies including photos of prisoners and members of the Khmer Rouge. Documents from the pre-1975 and post-1979 eras comprise, e.g., survivors' petitions and transcripts from interviews collected by the government of the People's Republic of Kampuchea (de facto government between 1979 and 1993) shortly after the end of Democratic Kampuchea ("Renakse records"), documents from the 1979 People's Revolutionary Tribunal that tried Pol Pot and Ieng Sary *in absentia*, mappings of execution centres and mass graves, publications, analyses and scholarly articles. A great deal of these primary and secondary sources are accessible to the public online. - DC-Cam, at <http://www.d.dccam.org/Database/Index1.htm>; Cioricari & Chhang, 2005, 227-231.

¹³⁰ Backer, 2003, pp. 302-303.

¹³¹ For example, DC-Cam 'lost' at least a dozen staff members to the ECCC at the outset of the Court. - DC-Cam, 2007 Annual Report, p. 2.

¹³² KID, at http://kidcambodia.org/index.php?option=com_content&task=view&id=11&Itemid=11.

¹³³ Reiger, cited in ECCC VU et al., 2009, p. 7. However, it has been remarked that apart from the legal legacy, activities beyond the ECCC can likewise contribute to a positive legacy of the Court, especially

building, archives and jurisprudence of the ECCC, positive impacts on reform of the national judicial system or greater engagement of civil society with issues of justice.¹³⁴ In addition to different offices within the Court working on legacy issues such as training for lawyers and law students as well as awareness of e.g. fair trial rights in the media and through outreach in the population, international organisations such as the Cambodian office of the UN High Commissioner for Human Rights and national organisations are supporting these efforts.¹³⁵ For instance, CHRAC has co-ordinated various meetings to work on legacy programmes.¹³⁶ Furthermore, ADHOC's Civil Party Representative Scheme aims to transfer skills gained in the context of the ECCC for future use and DC-Cam conducts legal training for law students and supports them in gaining internship opportunities with the Tribunal.¹³⁷ However, critics have voiced doubts that the ECCC can in fact serve as a role model for the domestic legal system and strengthen the rule of law, due to lack of political will.¹³⁸

Overall thus, NGOs have provided services in fields that at the beginning have not or only insufficiently been addressed by the government but which are crucial for the success of the proceedings of the ECCC. Especially the support and collaboration in the field of outreach and victim-participation are tasks that generally should have been provided by the Court itself from its outset.¹³⁹ Furthermore, training and the provision of evidentiary material has been crucial for the Tribunal's work. Hence, NGOs have added crucial positive value in the form of services that facilitate the working of the Court as envisioned by both the national government and the international community, and have since the involvement of ECCC offices responsible for outreach, victim-participation and legacy acted in a substantial complementary function.

those related to educating the youth on genocide and human rights, strengthening the historical record, memorial initiatives or art. – *Cfr.* e.g. ECCC & CHRAC, 2012, pp. 12, 19; ECCC Reparation Program 2013-2017, 14 January 2013, slide 23. For a detailed discussion of legal legacy in Cambodia, see Bialek, 2011.

¹³⁴ Reiger, cited in ECCC VU et al., 2009, p. 7.

¹³⁵ Bialek, 2011, pp. 11-14.

¹³⁶ *Cfr.* workshop reports; ECCC & CHRAC, 2012; CHRAC & Bar Association of the Kingdom of Cambodia, 2013.

¹³⁷ Bialek, 2011, p. 15.

¹³⁸ Drennan, *Phnom Penh Post*, 13 March 2013; OSJI, 2013.

¹³⁹ Sperfeldt, 2012, p. 152.

2.2.3. Research

Rather than referring to historical research, Backer subsumes under research the studies that deal with the mechanisms of TJ *per se*, to “[examine] the impact of various approaches and policies, seeking to distil lessons and to understand where particular processes have fallen short.”¹⁴⁰ While most research emanating from Cambodian NGOs seem to focus on the country-specific context,¹⁴¹ they are also increasingly assessing the impact of the hybrid court. For example, staff of TPO has participated in the academic analysis of victim-participation in Case 001, concluding that victims’ involvement is vital and necessary in the proceedings, however, by itself not enough to achieve healing of victims, closure, or reconciliation.¹⁴² Furthermore, ADHOC contends that results from an assessment of its own scheme to enhance victim-participation in Case 002 will be beneficial for future international and hybrid criminal tribunals with regard to participation of large amounts of victims.¹⁴³ Lessons-learnt extracted from such critical research can therefore not only serve to improve the implementation of victim-participation in potentially following Cases 003 and 004 in the ECCC, but research is also meant to contribute to improving prospective future TJ mechanisms aimed at coming to terms with grave human rights violations.

To conclude on the added value of NGOs supportive of the retributive approach towards justice represented by the ECCC, civil society has significantly supported the Court in making known the existence, possibilities and limitations of the tribunal to the population, notably on the community level, and has to a large extent facilitated the Court’s working in terms of victim-participation. Especially until 2009, when the VU/VSS and PAS were not yet effectively operating, their contributions have thus been crucial. Furthermore, NGOs have added to certain capacity-building of ECCC staff through consultative functions and have, together with other actors in the TJ process,

¹⁴⁰ Backer, 2003, p. 305.

¹⁴¹ This comprises e.g. much historical research by DC-Cam, second-generation effects of traumatised or culturally apt forms of rehabilitation by TPO, as well as gender-based violence under the Khmer Rouge by CDP.

¹⁴² See Pham et al., 2011(b).

¹⁴³ See Kirchenbauer et al., 2013.

engaged in advocacy and limited critical monitoring. Critical research on victim-participation does not only potentially serve for future improvements in the ECCC, but also for the broader development of international criminal law, drawing attention to the fact that healing of victims requires a broader set of measures than the Court can provide despite the unprecedented involvement of victims. This finding leads over to the distinct approach taken by a number of other NGOs; a rather restorative approach to TJ.

2.3. Going beyond the ECCC: embracing a restorative approach to TJ

*“[The] ECCC is **both** a court of law and a court of public opinion (the people’s court). In realizing this, we can be CREATIVE to look for ways to expand and multiply the benefits in the court of public opinion.”*

(Theary Seng)¹⁴⁴

As reflected by these words of Theary Seng, President of CIVICUS and the Association of Khmer Rouge Victims in Cambodia (AKRVC), civil society actors have considered the ECCC as an opportunity to expand the TJ process beyond the impact of the court of law and emanating legal justice to embrace restorative measures in a variety of ways. In terms of civil society functions listed by Backer, their contributions can be summarised under three headings, namely (vi) education, (iv) service delivery targeting the local level, and (v) acknowledgement and compensation, or reparations.

2.3.1. Education

Beyond educational projects linked directly to the ECCC in form of outreach activities conducted by NGOs directly supporting the Court, NGO contributions to education about the past beyond the punitive mechanism relate both to formal and non-formal education. The two main objectives of projects in this field can be summarised as (a) comprehensive education of the broad population about the past, and (b) the

¹⁴⁴ Statement made at the TEDxPhnomPenh talk, 05 February 2011 (Emphasis in the original).

enhancement of critical knowledge skills. While generally touching upon it in one or another way, they do not necessarily place the ECCC at their centre point.

As regards formal education, a significant contribution has been staged by DC-Cam. With much financial support from foreign donors, the organisation has authored a textbook on Cambodian recent history in 2007, which has been endorsed by the Ministry for historical education in secondary schools.¹⁴⁵ Considering that for long the government has refrained from teaching about the Khmer Rouge period, this is a huge step forward.¹⁴⁶ Related to it, over 3,000 teachers have been trained in the use of the textbook and supplementary materials in the context its *Genocide Education Project*.¹⁴⁷ Furthermore, NGOs aim to enhance historical knowledge of the overall population and especially youth through non-formal education such as through the participatory movie “We Want (U) To Know” by ICfC/Kdei Karuna, TPO and KID,¹⁴⁸ or Provincial Learning Centres/Memorials initiated by CJR in 2009, and now incorporated into the work of CIVICUS.¹⁴⁹ Such initiatives allow to draw attention to often rather neglected issues of the past such as e.g. the famine during the Democratic Kampuchea regime, which is the topic of a new radio show by DC-Cam launched in March 2013.¹⁵⁰ NGO contributions to education on Cambodia’s violent past are of special importance, considering that many teachers are survivors, both victims and former Khmer Rouge, who are still suffering from the past and are reluctant to teach about the Khmer Rouge era.¹⁵¹

Furthermore, especially YFP and YRDP aim at enhancing critical thinking skills of their workshop participants.¹⁵² By providing different perspectives of victims and perpetrators on the past and encouraging them to reflect on the broader historical and socio-political context, including circumstances leading up to the Khmer Rouge regime,

¹⁴⁵ DC-Cam, *Genocide Education in Cambodia*, n.d.

¹⁴⁶ DC-Cam, at http://www.d.dccam.org/Projects/Genocide/Genocide_Education.htm.

¹⁴⁷ DC-Cam, *Genocide Education in Cambodia*, n.d.

¹⁴⁸ See the movie’s website, at www.we-want-u-to-know.com.

¹⁴⁹ CIVICUS, at <http://www.civicus-cam.org/programs/reconciliation-peacebuilding-kr-legacy/provincial-learningcentersmemorials>.

¹⁵⁰ DC-Cam, at <http://www.d.dccam.org/Projects/Radio/Radio.htm>.

¹⁵¹ DC-Cam, *Annual Report (2008-2011)*, p. 23.

¹⁵² YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=42>; YRDP, at <http://www.yrdp.org/website/work.php?lang=en> and <http://www.yrdp.org/website/read.php?lang=en&id=82>.

they provide entry points for a holistic understanding and discussion of the Khmer Rouge era, which is not possible in the ECCC due to its strict temporal jurisdiction. This is considerably important, as especially under the KR Cambodians were rather taught not to think critically.¹⁵³ Lack of knowledge and critical questioning has caused false pretences to persist in society, so that e.g. the blame for the atrocities committed by the Khmer Rouge is shifted on the ethnic Vietnamese or Chinese population in Cambodia.¹⁵⁴ Through critical thinking skills, the Cambodian population and especially the youth can challenge such controversies about the past. Furthermore, exchanges of Cambodian youth with young people from other countries that have undergone a TJ process can reveal other possibilities of dealing with the past than those promulgated by Hun Sen, i.e. the approach of ‘burying the past’ or ‘forgive and forget’.¹⁵⁵ Furthermore, it can encourage the younger generation to critically discern their own culturally-related understanding of reconciliation and justice as a starting point for future engagement in dealing with the past.¹⁵⁶

Moreover, educating the general population and especially the youth about genocide, and encouraging them to act for peace conveys the imperative of preventing mass atrocities in the future and simultaneously provides a means to commemorate victims.¹⁵⁷ These are certainly aspects that the ECCC as a legal mechanism itself simply cannot achieve, attributing major importance to these tasks taken over by NGOs.

2.3.2. Services targeting transformations on the community level

In addition to the provision of services that are crucial to the work of the ECCC, some NGOs have also embarked on service delivery going beyond the work of the Tribunal, targeting fundamental changes or processes at the grassroots level. While basically all NGOs refer to their projects as “outreach” of the ECCC, the designation of all initiatives as such might be heavily influenced by the attempt at framing project concepts in terms

¹⁵³ Bockers et al., 2011, p. 80.

¹⁵⁴ DC-Cam, Annual Report (2008-2011), p. 23.

¹⁵⁵ Dy, 2013, pp. 6-7.

¹⁵⁶ YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=42>.

¹⁵⁷ Cook et al., 2011(a), *n. pag.*

of “outreach” in order to be eligible for foreign funding opportunities that opened up with the establishment of the Tribunal. Instead of applying such a broad definition however, I would distinguish between outreach activities that aim to create knowledge about and deliver updates on the Court and additional projects that indeed evolved in the wake of the tribunal, but in fact go beyond the legal proceedings to tackle the past on a more local and less abstract level.

The services delivered as part of the restorative approach towards dealing with the past can be summarised under five headings: counselling, family tracing, victim-perpetrator dialogues and mediation, training, and collective memory and/or truth initiatives. As will be seen, activities by NGOs in this area are often interwoven.

Firstly, psychological support or counselling by TPO are not restricted to witnesses and Civil Parties before the tribunal, but also provided to victims that do not participate in the formally established TJ mechanism. In fact, the NGO was already founded in 1995 as a response to the needs of the survivors with regard to mental health, thus considerably before the discussions around the establishment of the tribunal emerged.¹⁵⁸ Beyond the ECCC, TPO, for instance, encourages the formation of self-help groups of survivors, or offers “testimonial therapy” as a form of healing for traumatised victims, where the survivors create a written testimony together with a counsellor, which is later read out aloud, embedded in Buddhist ceremonies.¹⁵⁹ With over 95 % of the population belonging to Buddhism,¹⁶⁰ such initiatives taking religion into account might be of paramount importance to provide mechanisms to deal with the past that are meaningful to the population in cultural terms. Furthermore, staff of TPO supports other NGOs in their activities by assisting with professional advice or absorbing emotional outbreaks of victims such as in the Women’s Hearing organised by CDP in 2011 or Art Workshops conducted by YFP in the context of its Youth for Justice and Reconciliation Project.¹⁶¹

Secondly, another service that is fundamental for many survivors is family tracing, which is provided mainly by DC-Cam from the outset of its creation, and the

¹⁵⁸ TPO, at <http://tpocambodia.org/index.php?id=5>.

¹⁵⁹ TPO, at <http://tpocambodia.org/index.php?id=justiceandreliefforsurvivors>.

¹⁶⁰ Christie, 2013, p. 151.

¹⁶¹ See e.g. CDP, 2012, p. ii; Dosch et al., 2011, p. 47.

Cambodian Red Cross. Their aim is to locate lost family members or friends and to learn about their fate in a country where several thousands of people are still unaccounted for.¹⁶² In their tracing efforts, both the Cambodian Red Cross and DC-Cam rely heavily on their established and constantly updated databases, which DC-Cam complements with names appearing in official records from the archives, produced by the Khmer Rouge cadre. So far, these amount to over a million names.¹⁶³ Furthermore, as a means of family tracing and the focus of DC-Cam's *Family Tracing Project*, the NGO is currently working on the "Book of Memories" based on data from the archives as well as data provided by survivors, which aims to compile almost two million names and stories of those who died or disappeared in Democratic Kampuchea.¹⁶⁴ While no numbers of successful searches could be found from DC-Cam, the Cambodian Red Cross levels the number of those being traced and found at almost 30.000 since the establishment of the project in 1989.¹⁶⁵ Even if it is not always possible to reunite friends and relatives, the certainty of death can sometimes bring "some level of closure" to survivors,¹⁶⁶ and thus positively support the process of dealing with the past.

Thirdly, NGOs activities extending the TJ process beyond the ECCC relate to the facilitation of victim-perpetrator dialogues, mediation or conciliation. As asserted in a Peacebuilding Lexicon compiled in the Cambodian TJ context, especially the latter is in line with customary models of conflict management in Cambodia.¹⁶⁷ Thereby, such measures provide more culturally adapted forms of coming to terms with the past. These interventions are based on the idea that settling conflicts and reconciliation on the

¹⁶² DC-Cam, Annual Report (2008-2011), p. 19; Ly & Lay, 2011, at <http://www.youtube.com/watch?v=dejiEHEbKX8&list=UUN97Dpvho6xvSsQBY8QLUOA&index=10>. The producers mention a number of active searchers between 10,000 and 12,000.

¹⁶³ DC-Cam, 2012 Annual Report, pp. 28-29. The Cambodian Red Cross in its efforts also resorts to the database of UNHCR in order to trace people who fled to foreign countries. See Ly & Lay, *cfr. supra* footnote 162.

¹⁶⁴ DC-Cam, Annual Report (2008-2011), p. 19; DC-Cam, Strategic Plan 2012-2014, p. 3. Other means for family tracing are e.g. the publication of requests and pictures published in DC-Cam's monthly magazine *Searching for the Truth* or efforts by local radio and TV stations such as 'Bayon'. For information on 'Bayon' see Ly & Lay, *cfr. supra* footnote 162.

¹⁶⁵ Cambodian Red Cross, at http://www.redcross.org.kh/ourservice_view.php?key=tracing.

¹⁶⁶ DC-Cam, 2012 Annual Report, p. 29.

¹⁶⁷ Ok Serei & Wharton, 2004, pp. 31-32. In contrast to third party interventions, the aim of dialogue is to enhance mutual understanding as a precursor to settling the dispute. While in mediation conflicting parties are assisted by a third party in finding themselves a solution to the conflict, a conciliator has greater authority and may e.g. suggest possible solutions or conduct fact-finding. – *Ibid.*, pp. 50, 31-32, 84-85.

interpersonal level is crucial in reckoning with the past, as those dialogues “address locally defined needs for healing”.¹⁶⁸ This assumption is e.g. the core rationale for the *Victim-Former Khmer Rouge Dialogue project* by ICfC/Kdei Karuna in cooperation with TPO, which “aimed to transform relationships between victims and direct perpetrators.”¹⁶⁹ This perceived need for dialogue and cooperation between former Khmer Rouge and victims is also strongly expressed by the fact that the Ksaem Ksan victim association is open to both categories of survivors, grounded in the supposition that a persisting division of the two groups would hamper the reconciliation process.¹⁷⁰ As a victim association formed in the context of the ECCC, this shared underlying assumption provides for a link between the Tribunal and the rationale for facilitation of dialogues and mediation as part of a restorative approach to TJ in the Cambodian context.

Fourthly, the previous point is closely related to the provision of training as form of empowerment of victims by providing them with knowledge that they in turn can apply in their active involvement in processes of dealing with the past and thereby becoming *actors* rather than *objects* of the TJ process on the local level. E.g., ICfC has in 2010 initiated the *Training of Trainer Project*, which aims to enhance the capacity of key actors on the community level to become active in conflict resolution and to facilitate community dialogues as part of the healing process.¹⁷¹ Similarly, YFP conducted training of monks to take on a mediating or conciliatory role between victims and perpetrators.¹⁷² Both the facilitation of these interventions as well as the empowerment of victims in the respective fields are an indication of more culturally adapted processes in line with customary practices. However, training is not only delivered to staff of the ECCC and as a form of empowerment of victims, as seen above, but also to other NGOs active in the TJ process. Notably, TPO has since 2007 provided a number of trainings to partner organisations such as YFP on such topics as mental health and gender-based

¹⁶⁸ Kdei Karuna, at <http://www.kdei-karuna.org/program/jho-1/>.

¹⁶⁹ TPO, at [http://tpocambodia.org/index.php?id=43&tx_ttnews\[year\]=2011&tx_ttnews\[month\]=11&tx_ttnews\[day\]=29&tx_ttnews\[tt_news\]=61&cHash=851ca643e11cc30492c4cff0805a0665](http://tpocambodia.org/index.php?id=43&tx_ttnews[year]=2011&tx_ttnews[month]=11&tx_ttnews[day]=29&tx_ttnews[tt_news]=61&cHash=851ca643e11cc30492c4cff0805a0665).

¹⁷⁰ Philipps-University Marburg & University of Augsburg, Minutes of the workshop, 2009, p. 8.

¹⁷¹ Kdei Karuna, at <http://www.kdei-karuna.org/program/tot/>.

¹⁷² *Healing Through Buddhism Project* by YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=42>.

violence.¹⁷³ As NGOs working in the field of dealing with the past are often dealing with traumatised people, they have to be sensitive to such issues and be able to both respond adequately with regard to the victims' emotions, and to handle their own.¹⁷⁴ This challenge displays the importance of NGO staff training in the field of trauma.

Fifthly, a number of local NGOs is engaged in a variety of truth initiatives for the construction of collective memory. On the one hand, they include the recording of survivors' testimonies, including victims and former Khmer Rouge as well as rescuers, by e.g. DC-Cam¹⁷⁵, TPO¹⁷⁶ and YFP¹⁷⁷. On the other hand, they also comprise interactive and intergenerational activities such as community dialogues by YFP in the

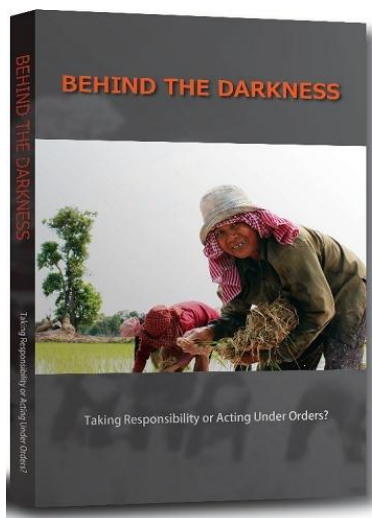


Image 2: „Behind the Darkness: Taking Responsibility or Acting Under Orders?” – Recording testimonies of former Khmer Rouge as a form of truth-telling. (Source: YFP)

context of the Youth for Justice and Reconciliation Project,¹⁷⁸ the participatory movie “We Want (U) To Know” as a collaboration by ICfC, KID and TPO, or the Women’s Hearing conducted by CDP in 2011 with a focus on sexual violence under the Khmer Rouge regime, a topic which has often been neglected and only been marginally touched upon in the ECCC. However, this form of truth-telling rarely includes former Khmer Rouge. The idea behind learning and exposing the truth of the painful past and thus driving truth-telling initiatives is that this knowledge will, similar to dialogues, mediation and conciliation, contribute to reconciliation.¹⁷⁹ Beyond this, however, truth-telling is

¹⁷³ TPO, 2012 (a), pp. 8, 11; TPO, at <http://tpocambodia.org/index.php?id=134>.

¹⁷⁴ TPO, at <http://tpocambodia.org/index.php?id=justiceandreliefforsurvivors>.

¹⁷⁵ E.g. with a focus on innocent victims in the context of the *Victim Participation Project*, the *Cham Muslim Oral History Project* and several film projects and with former Khmer Rouge in the centre of attention of the *Promoting Accountability Project*.

¹⁷⁶ See e.g. the publication “IWitness”. – TPO, 2012(b).

¹⁷⁷ See e.g. the publications “Behind the Darkness – Taking Responsibility or Acting Under Orders?” with a focus on former Khmer Rouge (YFP, 2011(a)) and “Picturing Moral Courage: The Rescuers” (YFP, 2011(b)).

¹⁷⁸ This includes resultant products such as memory calendars and the Art Memory book “Eyes on Darkness”. – YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=36>.

¹⁷⁹ Gibson, 2008, pp. 462-464.

also meant to improve the historical record by “preserving the oral history of the Khmer Rouge regime”¹⁸⁰ and to create a rather widespread acceptance of a certain historical narrative with regard to the suffering of the victims. Thereby, a collective memory of past events under the KR shall be constructed, which, firstly, is hoped to prevent the reoccurrence of such atrocities,¹⁸¹ and secondly, according to Halbwachs’s theoretical conceptualisation of collective memory, will in the future form the basis for identities of the Cambodian population.¹⁸²

Fundamentally, these services allow for active involvement of and benefits for victims and the broader population beyond Civil Parties admitted to the proceedings, notably the younger population. At the same time, they can potentially provide a local perspective to the process of dealing with the past by resorting to established customary conflict resolution mechanisms and Buddhist elements. Furthermore, educational measures and services provided under the restorative approach make it possible to transcend limitations of temporal, personal and material jurisdiction. This means that attention can, in theory, also be paid to the broader historical context of the rise and demise of Democratic Kampuchea, including abetting circumstances created by the context of the Cold War and geopolitical interests of the international community; that there is room for exposing accountability of lower Khmer Rouge cadres through truth initiatives and dialogues; and that crimes committed beyond the alleged responsibility of Duch, Khieu Samphan and Nuon Chea can be elucidated. The latter is especially important with regard to e.g. rape as a war crime, which was not picked up by the prosecutors as a crime to investigate in Case 002, or issues such as forced marriage and genocide that are currently postponed due to the severance of Case 002 into smaller trials and the current focus on forced evacuation only. Due to the advanced age of the defendants, it is not sure whether they will ever be dealt with in the Court. However, e.g. the Women’s Hearing made it possible for some victims to have their suffering from the past addressed and included in the historical record.

¹⁸⁰ DC-Cam, Annual Report (2008-2011), p. 15.

¹⁸¹ *Ibid.*, p. 16.

¹⁸² Olick, 2008, pp. 7-8.

2.3.3. Acknowledgement and compensation/reparation

In his framework, Backer seemingly restricts this function to the acknowledgement of wrongdoing and compensation emanating directly from the perpetrators, i.e. former Khmer Rouge. In this sense, the role of Cambodian civil society is rather limited. This is first and foremost due to general universal difficulties of encouraging former perpetrators to acknowledge their wrongdoing, aggravated by the Cambodian context where “cultural obstacles [...] hinder [...] the acknowledgement of crimes”,¹⁸³ with former Khmer Rouge declining to label their deeds as criminal activities. Moreover, many former members of the Khmer Rouge perceive themselves as victims of the regime and therefore wish to be recognised as such rather than as perpetrators. Nevertheless, a limited number of former Khmer Rouge has admitted their culpability and taken on responsibility in the framework of some NGO projects.¹⁸⁴ While presenting a spark of success for victims, these acknowledgements are nevertheless rare and happen only after a long time of trust-building between the former Khmer Rouge and NGO staff.¹⁸⁵

However, this restrictive definition excludes additional acknowledgement and symbolic reparation programs by NGOs, of which there are numerous. These include e.g. the compilation of victims’ names and stories in order to give a face to and acknowledge the suffering of those who died and disappeared under the Khmer Rouge.¹⁸⁶ Also, a number of NGOs and victim associations has jointly organised commemoration ceremonies to honour victims¹⁸⁷ and helped to construct a considerable amount of local memorial sites.¹⁸⁸ These initiatives have been further complemented by

¹⁸³ ICfC & TPO, 2011, p. 11.

¹⁸⁴ E.g. in the context of the radio program *Voice of Former Khmer Rouge* by YFP or in the context of the *Victim-Former Khmer Rouge Dialogue Project* conducted by ICfC/Kdei Karuna and TPO. – For quotes by former Khmer Rouge in this regard see YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=41> and ICfC & TPO, 2011.

¹⁸⁵ Interview with Kerstin Kastenholz, former advisor at YFP for the German Development Service (DED, now GIZ), 2008-2010, Skype interview, 18 April 2013.

¹⁸⁶ See e.g. DC-Cam’s “Book of Memories”.

¹⁸⁷ *Cfr.* supra footnote 80.

¹⁸⁸ E.g., CJR/CIVICUS has created Provincial Learning Centres/Memorials in six provinces as a pilot project since 2009, YFP has conducted various mapping projects at former killing fields and youth groups have developed action plans to build Peace Gardens in the framework of the *Youth for Justice and Reconciliation Project*, and stupas and information plaques have been erected as part of the *Community*

symbolic measures such as YFP youth groups providing support to survivors in building a house.¹⁸⁹ Such measures of acknowledgement simultaneously express and reinforce the collective memory about the suffering of the painful past. Furthermore, while traditionally memorials and museums in the capital area Phnom Penh have been in the spotlight of the remembrance process and caught to mind in educational materials, these local measures of acknowledgement in addition to e.g. local truth initiatives draw attention to the immediate environments, and therefore provide substantial added value for the population in respective villages. Moreover, by ‘personalising’ the Cambodian recent history through testimonies of villagers, relatives and other local key figures and everyday presence of the past in the form of memorials, it is most likely harder for the younger generation to dismiss the horrors of the past as unsubstantiated, as some youth are still doubting.¹⁹⁰

With regard to reparations, it becomes clear, when taking a closer look at NGO initiatives, that essentially all services and just mentioned measures of acknowledgement can be considered as such. According to the UN Basic Guidelines on reparations, reparations include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁹¹ In the case of Cambodia it is impossible to restore the victims to the situation that would have existed without the atrocities committed under the Khmer Rouge. Furthermore, NGOs are not in the position to provide financial compensation to victims nor to enunciate guarantees of non-repetition beyond advocacy for reforms, as these largely require the monopoly of force by the State. However, civil society activities effectively fall under the categories of rehabilitation and satisfaction. For example, rehabilitation includes both psychological care, which is extensively

Memory Initiatives Project by ICfC/Kdei Karuna. Furthermore, DC-Cam complements education around the new textbook with local memorials in high schools with statements encouraging people to remember, learn and talk about the past in Democratic Kampuchea as a means for reconciliation and prevention of genocide in the future. – CIVICUS, at <http://www.civicus-cam.org/programs/reconciliation-peacebuilding-kr-legacy/provinciallearningcentersmemorials>; YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=36>; Kdei Karuna, at <http://www.kdei-karuna.org/program/jho-1/>; Press release by DC-Cam, 10 May 2013.

¹⁸⁹ YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=36>.

¹⁹⁰ See e.g. ECCC, at www.eccc.gov.kh/en/blog/2013/05/21/khmer-rouge-it-true-or-not.

¹⁹¹ UN General Assembly, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation’, A/RES/60/147, 21 March 2006, paras 19-23. The following paragraph is based on the description of reparations laid out in this UN document.

provided by TPO, and legal services, which have been taken on by various NGOs in the context of the ECCC.¹⁹² Satisfaction, among other aspects, includes the revelation of the truth, location of disappeared and identification of the killed, declarations of acknowledgement, commemoration ceremonies and the “inclusion of an accurate account of the violations ... in educational material at all levels”.¹⁹³ As has been demonstrated, NGOs pursue a considerable amount of initiatives with regard to these aspects.

Overall, while the ECCC is entrusted with a reparations mandate to provide collective and moral reparations according to Internal Rule 23, civil society has up to now essentially substituted for the obligation of the State to provide reparation and filled parts of the gap that arose in the face of the Court’s inactivity in this area and dissatisfaction with reparations awarded in Case 001. This reflects the strong restorative approach by a handful of NGOs. While only Civil Parties benefit from reparations awarded by the ECCC, measures provided by NGOs benefit the wider population. Although civil society projects naturally do not have the authority that official government initiatives in the field of reparations would possess, they have been significantly valorised in this regard with the launching of the reparation and non-judicial measure framework recently set up by the ECCC at the beginning of 2013.¹⁹⁴ Notably, 11 out of 16 listed projects include the participation or delegation of responsibilities to NGOs, integrating some of their existing activities as ‘non-judicial measures’ in the ECCC reparation mandate.¹⁹⁵ This attests both NGOs’ significant and decisive previous involvement in the field of TJ as well as civil society influence on the determination of the precise content of the measures.

In a nutshell, all added value of NGO projects beyond the ECCC elaborated above can effectively be summarised as broadening and localising the TJ process, both in cultural

¹⁹² This shows that both ECCC-related and –unrelated activities can potentially fall under this category. However, as the majority falls within the reach of restorative measures, they are elaborated at this point.

¹⁹³ A/RES/60/147, *cfr.* *supra* footnote 191, para. 22(h).

¹⁹⁴ ECCC PAS, Court Report April 2013, p. 7. While reparations are awarded to Civil Parties through the judicial process after a judgment, non-judicial measures are meant to address general interests of victims, beyond those participating in the ECCC and thus also including second-generation victims.

¹⁹⁵ *Cfr.* ECCC Reparation Program 2013-2017, 14 January 2013.

and geographical terms. Firstly, it is broadened by incorporating alternative approaches to justice beyond the legal approach, including creative mechanisms such as art or movies, which allows for transcending the limited jurisdiction of the Court, as well as involving a larger number of Cambodians than is possible in the legal proceedings. Secondly, the process of dealing with the past is potentially culturally more familiar to the population due to the recurrence to e.g. traditional conflict resolution mechanisms and many initiatives embedded in Buddhist rituals. Furthermore, localisation in geographical terms also takes place through restorative measures in that e.g. many projects such as truth-telling, conflict resolution or measures of acknowledgement are conducted on the commune or district level and potentially have a more direct impact on the victims than the distant legal proceedings. Moreover, in addition to broadening and localising the process, most restorative measures taken by NGOs amount to reparations, something the ECCC so far only involved in to a very limited extent, although this is explicitly provided for in its mandate.

2.4. Civil society and the ECCC – opposing forces or acting in concert?

To conclude the reflection NGOs' activities in the TJ process, the question regarding the relationships between the different actors is reasonable. To what extent do the initiatives reveal conflictive relationships or exhibit efforts of collaboration among NGOs themselves, as well as between civil society and the ECCC? And what are the driving motivations underlying these relationships?

2.4.1. Civil society cooperation – two sides of the same coin?

Despite the grounding of their work in different understandings of justice, NGOs in the Cambodian TJ sector largely seem to coordinate their work and cooperate. This crystallises not only in the cooperation of ECCC-related NGOs under the umbrella of

CHRAC's support scheme,¹⁹⁶ but especially in projects and events conducted jointly and 'cross-sectoral', i.e. combining the retributive and restorative approach, by several organisations and joint press releases, as has been seen.¹⁹⁷ All in all, this cooperation faultlessly reflects the wider international consensus today that "strategies must be holistic,"¹⁹⁸ i.e. balancing e.g. the quests for legal accountability, truth, and forms of reparation through a variety of differently angled projects.

However, the strong influence of donors on the agenda-setting and portfolio management of local NGOs, due to the latter's dependence on foreign funding, presumably presents a significant additional factor for cooperative behaviour. Undoubtedly, bilateral and multilateral donors, who simultaneously substantially fund the ECCC and, moreover, finance civil society activities, are interested in maximising the impact of the TJ process around the Tribunal.¹⁹⁹ Therefore, they will rationally not engage in projects with contradicting objectives or that fundamentally challenge the punitive approach. Notably, the evaluation report of Germany's Civil Peace Service, which presents itself as the driving force behind both victim-participation in the ECCC and the restorative approach taken by NGOs, points to achieved synergies achieved through cooperation among various NGOs, an explicitly stated goal of the program.²⁰⁰

However, information available conjures the impression that interaction between DC-Cam on the one hand and the larger body of other NGOs on the other is less well established. DC-Cam itself has acknowledged donors' criticism that "improvements should be made in DC-Cam's cooperation with other local NGOs" and that other organisations perceive a lack of coordination.²⁰¹ However, the organisation also points out that it refrains from joint efforts where purportedly politics are involved.²⁰² Nevertheless, this warrants doubt to what extent NGO duplicate their work where DC-Cam and other organisations engage in similar projects. One indicative example is DC-Cam's proposal for an informal 'truth commission', which aims "to establish a big

¹⁹⁶ See CHRAC, 2010.

¹⁹⁷ Also refer to Annex II.

¹⁹⁸ Report by the UN Secretary-General, S/2004/616, 23 August 2004, paras. 14-18.

¹⁹⁹ *Cfr.* supra footnote 24.

²⁰⁰ Dosch et al., 2011, pp. 47-49.

²⁰¹ DC-Cam, 2005, p. 19; DC-Cam, 2012, p. 23.

²⁰² DC-Cam, 2012, p. 24.

picture narrative of this important period of Cambodian history” on the basis of many initiatives such as collection of testimonies of victims and perpetrators, music and poetry.²⁰³ The fact that there is no reference to incorporation of work done in these fields by other NGOs such as e.g. YFP’s collection of statements by former Khmer Rouge,²⁰⁴ raises the question to what extent DC-Cam is disposed to cooperating.

Overall, despite potential competition or lack of cooperation among NGOs, their activities in the punitive and restorative field are closely related in that they essentially evolve around the ECCC as the crux and catalyst of the TJ process. In that, they indeed present two sides of the same coin in coming to terms with the past. The international consensus on a multifaceted approach as well as foreign funding act as crucial factors in reconciling punitive and restorative approaches and forging rather supportive and cooperative relationships among NGOs as well as between civil society and the ECCC, although exceptions might exist with regard to some NGOs.

2.4.2. Civil society and the ECCC – a marriage of convenience

While civil society actors attempt to tie in with the TJ process emanating from the ECCC, the Court is also remarkably receptive of civil society contribution to coping with the past. At the beginning, coordination with civil society was scarce, however, the ECCC PAS organises coordination meetings since 2010.²⁰⁵ The NGOs’ work has by now been largely endorsed or even embraced by the government and the Tribunal, which is also reflected in the inclusion of information on NGO activities in the monthly Court Reports in a section on “partner outreach”,²⁰⁶ and the participation of ECCC staff in NGO outreach activities.²⁰⁷ Three main reasons can be advanced in this regard. Two pragmatic motivations are, firstly, the “comparative advantages”²⁰⁸ of NGOs compared to the ECCC in terms of local networks and achieving outreach in remote areas, and

²⁰³ DC-Cam, 2011, pp. 4-7.

²⁰⁴ YFP, 2011(a).

²⁰⁵ Sperfeldt, 2012, p. 153.

²⁰⁶ See monthly Court Reports, available on the ECCC’s website; <http://www.eccc.gov.kh/en/public-affair/publication>.

²⁰⁷ Manning, 2011, p. 168.

²⁰⁸ Sperfeldt, 2012, p. 158.

secondly, lack of funding and “gaps of capacity and knowledge left by the Cambodian government and the UN,” where NGOs can provide crucial value to the work of the Court.²⁰⁹ In a way, the ECCC is explicitly inviting NGOs to take over tasks that it itself is not able to fulfil, such as is the case with the provision of psycho-social services by TPO, institutionalised via a Memorandum of Understanding with the Court, as seen above. Thirdly and fundamentally, however, government’s receptiveness of civil society engagement can also be attributed to the strategic motive of enhancing the legitimacy of the ECCC through augmented participation by the population and enhanced acceptance of and trust in the Court. Increased legitimacy of the ECCC is likely to also boost the internal and external legitimacy as political co-sponsor of the tribunal, which is clearly beneficial for the Cambodian government.²¹⁰

Thus, while NGOs effectively see the Court as a kick-off to the vital process of dealing with the past and structuring their work around it, the ECCC conversely strongly relies on civil society, both punitive and restorative NGOs, to maximise the overall impact of the Court among the general population. Arguably, this might also help to increase legitimacy of the Court and government, and, ultimately, to hopefully leave a positive legacy of the TJ process behind. This earmarked cooperative relationship thus underlines the added value of NGO activities.

²⁰⁹ Cook et al., 2011(a), *n. pag*; Sperfeldt, 2012, p. 156.

²¹⁰ McGrew, 2009, pp. 264-265, 270.

3. TOWARDS A VICTIM-CENTRED APPROACH OF DEALING WITH THE PAST?

As seen in the previous chapter, NGOs have staged a considerable amount of projects that they deem in the interest of victims. Indeed, many proponents supporting the claim of civil society's central role in TJ are driven by the normative belief that civil society will more likely than the state work in victims' interests and thereby support the healing process and a more peaceful future.²¹¹ This opinion is also shared by national and international NGOs in Cambodia.²¹² However, can we unquestioningly assume that local civil society will inherently be responsive to victims' needs, specifically regarding their understanding of 'justice' in the TJ context? The dependency on foreign donors and funding laid out in the first chapter raises preliminary doubts in this regard, keeping in mind that donor-driven TJ initiatives might be dominated by geo-political and economic interests rather than neutral and a-political decisions.²¹³

To begin with, the concept of 'victim-centredness' as defined by Robins will be elucidated (Section 3.1). Secondly, the question of who is actually considered a 'victim' will be posed, which is indispensable considering that this is the central unit of assessment (Section 3.2). Based on available surveys, the approaches to projects elaborated in the previous chapter will then be evaluated against Robin's concept of 'victim-centredness' (Section 3.3).

3.1. 'Focus on the victim' vs. 'victim-centredness' – what's the difference?

Historically, the role of victims in TJ processes has increased parallel to a shift of focus from the perpetrator to the victim, influenced by the spread of international human rights norms, the rise of victimology, and developments in criminal law on both the

²¹¹ Boesenecker & Vinjamuri, 2011, p. 363

²¹² Christie, 2013, p. 39.

²¹³ Lundy & McGovern, 2008, pp. 275-277.

national and international level.²¹⁴ With increasing attention paid to truth commissions, reparations and mounting consideration of the treatment of traumatic experiences as part of restorative justice in the early 1990s, advocates have essentially equated the concept of restorative justice with victim-centredness, accentuating the unprecedented involvement of victims and the focus on their needs, rather than on the perpetrator.²¹⁵ Likewise, however, awareness of the victim also increased in punitive approaches to justice such as the enhanced standing of the victim in the International Criminal Court, swayed by harsh criticism and advocacy related to the disregard of victims' needs in the international criminal tribunals for former Yugoslavia and Rwanda.²¹⁶ The latter development also powerfully manifests itself in the innovative approach to victim-participation in the ECCC, where victims' enhanced standing has prompted authors to similarly designate the Tribunal and punitive approach as 'victim-centred'.²¹⁷

In contrast, Robins does not yet consider the focus on the victim through mere possibilities of participation within the implementation phase of TJ mechanisms enough to characterize them as victim-centred. According to him, 'victim-centred' designates "a transitional justice process or mechanism that arises as a *response to the explicit needs of victims, as defined by victims themselves*."²¹⁸ This premise affects not only the operation of established TJ mechanisms, i.e. the implementation phase, but especially has impact also on the creation thereof, i.e. the planning phase, and on the baseline for impact evaluation of TJ processes.²¹⁹ Due to his immense weight attached to the experiences, understanding and attitudes of the victims, he consequently stresses the need for engagement with the population and documentation of victims' interests via an anthropological or ethnographic approach based on data collected at the level of victims, to achieve 'evidence-based transitional justice'.²²⁰ This distinguishes a victim-centred approach from other approaches, where TJ goals and mechanisms are often

²¹⁴ See e.g. Bonacker, 2013; Bonacker et al., 2011; Aldana-Pindell, 2004.

²¹⁵ See e.g. Zehr, 2002; Humphrey, 2003, pp. 174-180.

²¹⁶ Aldana-Pindell, 2004, pp. 657-658; Bonacker, 2013, p. 119.

²¹⁷ Herman, 2013; Mohan, 2009, p. 736.

²¹⁸ Robins, 2011, p. 77 (emphases added).

²¹⁹ Robins, 2012, p. 86.

²²⁰ 'Evidence-based TJ' is defined as "the process of using empirically based data to inform the development, implementation and evaluation of transitional justice mechanisms." - Pham & Vinck, 2007, p. 233.

determined dominantly according to international standards and norms of dealing with the past, following the blueprint of a “one-size-fits-all approach” based on Western liberalism.²²¹ Consequently, empirical studies that serve to determine the needs as defined by victims themselves have to form the basis for an investigation into the victim-centredness of civil society contribution to the Cambodian process of dealing with the past.

Furthermore, the integrated and continuous consultation and participation of survivors at all stages of the process is imperative, starting from the conception and design over the operation of projects, i.e. decision-making and management, as well as evaluation of the process.²²² Despite the evolving consensus that the local context, population and interests of victims significantly matter,²²³ consultation and involvement of the affected communities in the design stage of TJ mechanisms remains rather exceptional.²²⁴ In addition to fostering a sense of ownership, participation is essentially considered as the means to empowerment of victims to drive their own TJ process and “do’ their own ‘development’”, through which sustainability of projects beyond the involvement of foreign donors shall be ensured.²²⁵ Consequently, participation and empowerment are vital aspects to consider when assessing the victim-centredness of civil society contribution to the Cambodian TJ process. However, it also has to be kept in mind that precisely this participation can also entrench and reproduce existing power relations in society.²²⁶

Overall, following Robins, the fundamental strength of a victim-centred approach based on empirical data consists in “[challenging] external and prescriptive approaches, [countering] elite control of the transitional justice agenda and [optimising] the addressing of victims’ needs.”²²⁷ In other words, a victim-centred TJ process thus defies a ‘one-size fits all’ approach or externally influenced mechanism over a customised process adapted to the local context, is driven by the affected population in a bottom-up

²²¹ Andrieu, 2010, p. 554.

²²² Lundy & McGovern, 2008, p. 266; Pham & Vinck, 2007.

²²³ See e.g. the report by the UN Secretary-General, S/2004/616, 23 August 2004, paras. 14-18.

²²⁴ Pham & Vinck, 2007, p. 232.

²²⁵ Lundy & McGovern, 2008, p. 280; Vinck & Pham, 2008, p. 399.

²²⁶ Lundy & McGovern, 2008, p. 283.

²²⁷ Robins, 2011, p. 77.

rather than elite-driven top-down manner, and takes victims' interests as a starting point.²²⁸

Ultimately thus, Robin's approach to victim-centredness takes a different angle from existing practices by the international community in that the creation and impact evaluation of a TJ process are based "not on global practice and international prescription but on the needs of those most impacted by violence",²²⁹ or stated differently, are based "not on the assumptions of those who developed it but on the voices of those who are most in need of it."²³⁰ This prevents that their interests are subordinated to broader potentially political goals such as 'nation-building' and 'reconciliation'.²³¹ Nevertheless, Robins acknowledges that victims' interests might interfere with legitimate national goals in the TJ process.²³² In the Cambodian case, this might e.g. be the limit to collective and moral reparations, with the awarding of individual financial compensation beyond the means of the Cambodian government. While legitimate national goals thus might justify a deviation from victims' needs, the conscious centrality of victims and their needs, even where digressed from for legitimate reasons, makes the fundamental difference.²³³

3.2. What 'victim' are we talking about? – Unravelling the complex nature of victimhood

The concept of 'victim-centredness' takes 'the victim' as central unit of analysis, but does not provide for a definition. As claimed by Lambourne, it is crucial in peacebuilding to bear in mind the expectations, experiences and needs of all conflict participants, including those of victims, former perpetrators, survivors and further members of society concerned by the violent past.²³⁴ Up to now, the term 'victim' in the previous chapters has gone unchallenged, echoing the generally undefined use thereof in

²²⁸ *Cfr.* also Madlingozi, 2010.

²²⁹ Robins, 2012, p. 83.

²³⁰ *Ibid.*, p. 105.

²³¹ Lundy & McGovern, 2008, p. 286.

²³² Robins, 2011, p. 77.

²³³ *Ibid.*, p. 77.

²³⁴ Lambourne, 2009, p. 29.

discourse surrounding the Cambodian TJ process as well as in Robins theoretical concept. However, it is indispensable to discuss the notion of ‘victim’ in activities surrounding the ECCC and thereby to consider the potential exclusion of conflict participants in NGO activities.

3.2.1. Faces of victimhood in the Cambodian context

Huyse emphasizes that in a TJ process, “many faces of victimhood” have to be taken into account, specifically pointing out three broad distinctions, namely individual/collective, direct/indirect and first-generation/second-generation victims.²³⁵ Firstly, these categories highlight that apart from attacks directed at individuals, violence can specifically target collective groups based on ethnicity or religion, as was the case with e.g. ethnic Vietnamese and Muslim Cham minorities.²³⁶ Secondly, family members of direct victims, i.e. those who personally suffered from e.g. torture, starvation or evacuation in the Cambodian context, can be victimised due to their “[link] to direct victims in such a way that they too suffer because of that link.”²³⁷ These two categories of victims are in line with the definition of ‘victim’ as defined by the UN General Assembly.²³⁸ As a third dimension, Huyse adds second-generation victims, that is, children born after the fall of Democratic Kampuchea and who thus did not personally experience the atrocities but might nevertheless suffer and display indications of trauma handed down from their parents. Psychologists assert that this has fundamentally been the case in Cambodia, where some children “tend to over-identify with their parents’ trauma”.²³⁹

NGOs directly supporting the ECCC predominantly focus their work on direct/indirect and individual/collective victims in the period of 1975-1979, but largely omit second-generation victims. This is due to their major focus on (applicant) Civil

²³⁵ Huyse, 2003, p. 54-56.

²³⁶ According to Kiernan, “approximately 250.000 Chinese, 100.000 Muslim Chams, all 10.000 ethnic Vietnamese civilians resident in Cambodia, members of the Thai and Lao minority groups, and perhaps 50.000 Khmer Buddhist monks” perished under the Khmer Rouge. – Kiernan, 2005, p. 32.

²³⁷ Huyse, 2003, p. 54.

²³⁸ *Cfr.* supra footnote 191, para. 8.

²³⁹ CSD, 2008, pp. 104-105.

Parties, thus bound by the Court's definition of who qualifies for such status. For the ECCC, "[a]ny person or legal entity who has suffered from physical, psychological, or material harm as a direct consequence of the crimes committed in Cambodia by the Democratic Kampuchea regime between 17 April 1975 and 6 January 1979 that are under the jurisdiction of the ECCC" is considered a victim.²⁴⁰ ECCC case law indicates that this definition comprises both the individual and collective dimension - with the charges of genocide and crimes against humanity that are, by definition, directed against a collective -,²⁴¹ as well as direct and indirect victims.²⁴² However, the Court ruled that applicants born after the regime do not fulfil "the explicit requirement that harm suffered by the victim result as a direct consequence of the crimes",²⁴³ thus rejecting the claim of second-generation victim status. Consequently, the focus of NGOs supporting Civil Parties is on direct and indirect, as well as individual and collective victims, with LAC and ADHOC paying special attention to ethnic Vietnamese and Muslim Cham, respectively, while the accused have not been indicted for genocide against other minorities.²⁴⁴

In contrast, NGOs working beyond the Court are not externally restricted in definition of target groups or time period, and generally aim at a broad audience of villagers, transcending the above mentioned categories of victims. Notably, as seen, the younger generations or second-generation victims have become the focal group of educational programs by especially YFP, YRDP and DC-Cam. Furthermore, there are a number of activities targeted precisely at e.g. the Cham minority group.²⁴⁵ In contrast, however, available information does not provide indications of restorative activities involving the ethnic Vietnamese population. This corresponds with Christie's finding that overall there seem to be no NGOs in Cambodia focused on work with Vietnamese

²⁴⁰ ECCC, at <http://www.eccc.gov.kh/en/victims-support/participation>.

²⁴¹ See e.g. ECCC Decision on appeals, 24 June 2011, D411/3/6, para. 78.

²⁴² See e.g. ECCC Judgment Case 001, 26 July 2010, E188, paras. 642-643.

²⁴³ ECCC Appeal Judgment Case 001, 3 February 2012, F28, para. 584.

²⁴⁴ CHRAC, 2012, p. 8; & CHRAC, 2010, pp. 6, 12. For the indictment for genocide against Cham and Vietnamese only, see ECCC, Closing Order (Indictment) in Case 002, 15 September 2010, D427, paras. 1336-1349.

²⁴⁵ See e.g. Field et al., 2009, pp. 10-11; DC-Cam, *Cham Oral History Project*, at http://www.d.dccam.org/Projects/Public_Info/Public_Information.htm.

communities, despite their rather substantial size as a minority group in the country.²⁴⁶ This is especially significant against the background of historically laden and contentious conflict with the Vietnamese, imbuing Cambodian nationalism “with a strong anti-Vietnamese [...] character”.²⁴⁷ Not only might the ethnic Vietnamese minority benefit less from installed TJ mechanisms and empowerment, but the work of local NGOs on the ground in terms of restorative measures might indeed reflect and reinforce exclusionary practices that reflect the power of politics on the ground.²⁴⁸ This affirms the claim stated above that participation of civil society can in fact entrench and reproduce existing power relations to the detriment of a certain group. Such assertion is fortified by the fact that even some Cambodian human rights organisations are leading a negative discourse against the Vietnamese population in Cambodia.²⁴⁹ However, more research is needed to substantiate this preliminary claim.

3.2.2. ‘Victims’ or ‘perpetrators’? – The difficulty of accommodating former Khmer Rouge

Victimhood in the TJ context often evokes the impression of innocence as precondition for the attainment of victim status, with the category of ‘victim’ presented as opposed to the one of ‘perpetrators’, or the ‘good people’ being contrasted with the ‘bad people’.²⁵⁰ However, the relationship between the two categories is generally more complex, and it is often impossible to draw a clear line between them in post-conflict societies.²⁵¹

In Cambodia, a number of former Khmer Rouge refute the label of ‘perpetrator’ and lay themselves claim to victimhood based on their experience under the Khmer Rouge regime and personal loss of family members.²⁵² This loss, however, is not limited to the ECCC-jurisdiction, i.e. the 1975-1979 period, but also potentially includes the killing of

²⁴⁶ Christie, 2013, p. 156. The government numbers ethnic Vietnamese at roughly 110.000, while others estimate the presence of up to 500.000. – *Ibid.*

²⁴⁷ Christie, 2013, p. 143; Minority Rights Group International, 1995, pp. 8, 17-25; Integrated Regional Information Networks, 24 May 2010.

²⁴⁸ *Cfr.* McEvoy & McGregor, 2008, p. 9.

²⁴⁹ Christie, 2013, p. 157.

²⁵⁰ McEvoy & McConnachie, 2012, p. 531; Lefranc, 2006, p. 21.

²⁵¹ Huyse, 2003, p. 64.

²⁵² *Cfr.* Manning, 2011; YFP, 2011(a).

former Khmer Rouge by the villagers upon return to their homes, which is thus outside the mandate of the ECCC, but potentially within the reach of NGOs in the restorative sector.²⁵³ The intricate relationship between the two categories is also mirrored in the Cambodian population's perception, where there is no consensus as to potential victim status of former Khmer Rouge. In fact, a survey conducted by DC-Cam in 2002, thus during the negotiations on the Court, suggests that more people (41%) attributed to lower-ranking cadres a mixed status of perpetrators and victims, than regarding them purely as victims of the Khmer Rouge regime (30%) or perpetrators (24%).²⁵⁴

Similarly, the ECCC and NGOs active in the TJ process do not have a coherent or consistent stance towards former Khmer Rouge. Underlying the label of 'victim' is a complex and sometimes contradicting understanding in terms of innocence and the embracing of former Khmer Rouge, which cannot be generalised over the different Cambodian TJ actors. This complexity, which is analysed in the following, can schematically be presented as follows, with internal contradictions marked:

	antagonistic categorization ("victim" vs. "former KR")?	"victim" = including former KR?	"victim" = demanding innocence?	accountability of lower-ranking KR?
ECCC (official definition)	NO	YES	NO	NO
ECCC (courtroom)	YES	NO	YES	NO
NGOs (ECCC-related)	NO	YES	NO (moral) YES (discourse)	NO
NGOs (beyond ECCC)	YES	YES (but trumped by antagonistic categorization)	NO / YES (due to antagonistic categorization)	YES

Table 1: Complexity of victimhood and innocence

²⁵³ The fact that many Khmer Rouge soldiers were killed upon return to their villages is documented in two of four case studies in communities where ICfC conducted its project evaluation. – Field et al., 2009, pp. 9-10.

²⁵⁴ 2002 DC-Cam survey, referred to in ICfC & TPO, 2011, p. 2.

3.2.2.1. Former Khmer Rouge in the ECCC and Court-supporting NGOs

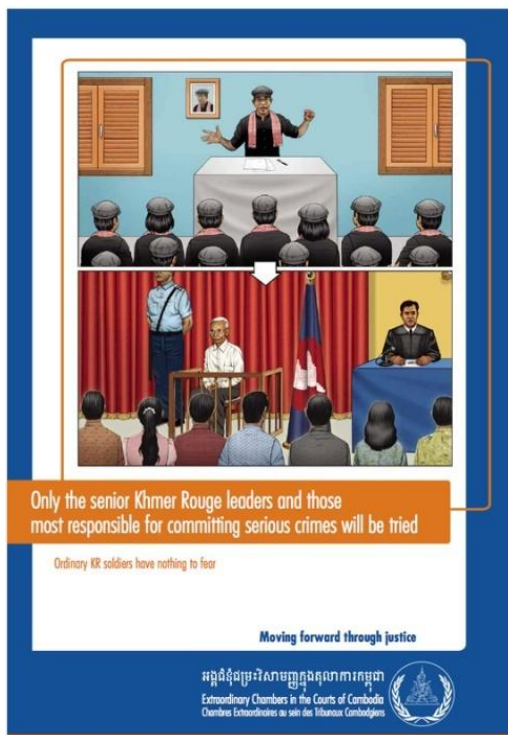


Image 3: Poster by the ECCC - "Only the senior Khmer Rouge leaders and those most responsible for committing serious crimes will be tried / Ordinary [Khmer Rouge] soldiers have nothing to fear." (Source: ECCC)

The broad definition of ‘victim’ by the ECCC does not *per se* exclude former perpetrators from acquiring victim status in the legal proceedings, if they simultaneously suffered direct or indirect harm under the Khmer Rouge regime.²⁵⁵ Essentially, justice emanating from the Court implies “the prosecution of a ‘neat’ set of perpetrators in the name of a largely vague understanding of all Cambodians as ‘victims’ of the 1975-79 rupture.”²⁵⁶ This display of former Khmer Rouge as victims is in line with the Cambodian government’s national reconciliation strategy. That is, individualising guilt of the top leaders, and essentially resulting in a blanket amnesty for lower-ranking cadres and thereby exculpating them

from their responsibility.²⁵⁷ ECCC posters spread throughout Cambodia are indicative in this regard, emphasising that “[o]rdinary [Khmer Rouge] soldiers have nothing to fear” (see Image 3).

However, this victim status of former Khmer Rouge can seemingly not be accommodated within the official ECCC discourse. On the one hand, the victims of Tuol Sleng and Choeung Ek were at the centre of Case 001, publicly mourned and at the heart of the memory process.²⁵⁸ Considering that the overwhelming majority of these victims - approximately five out of six of over 12,000 victims - were members of the

²⁵⁵ In fact, 3% of all respondents in a 2012 ADHOC survey among Civil Parties identified “as a Khmer Rouge soldier or as having been in the army”. – Kirchenbauer et al., 2013, p. 14.

²⁵⁶ Manning, 2011(a), p. 178.

²⁵⁷ *Ibid.*, pp. 167, 173.

²⁵⁸ On a discussion of how a certain memory is created through outreach trips to Tuol Sleng and Choeung Ek see Manning, 2011(a).

Khmer Rouge²⁵⁹ who fell prey to paranoia of fighting ‘enemies’ within their own ranks, undoubtedly attributes victimhood to these former Khmer Rouge.

On the other hand, however, a similar considerate perception of former Khmer Rouge cannot bear up with the legal proceedings in the courtroom, where those speaking out as Civil Parties rather chime with the discourse of the ‘innocent’ victim,²⁶⁰ and where witnesses are termed and treated differently, depending on their roles in Democratic Kampuchea. That is, while those who suffered under the Khmer Rouge (*superstes*) were invited to embark on personal narratives, former Khmer Rouge such as guards (*testis*) have been strictly limited to providing impartial statements on facts, barred from presenting their personal experiences.²⁶¹

This distinct treatment of former Khmer Rouge yet again presents a simplistic picture of the ‘victim’ as innocent and with a clean slate, opposed to those on the ‘wicked side’ of the Khmer Rouge regime. The latter are thereby somewhat blended out as beneficiaries of the ECCC, which goes against the official definition. This finding leads Elander to conclude that the ECCC is not able to “hold the complexity of victimization”.²⁶² In public discourse, former Khmer Rouge seemingly cannot be grieved, explaining why the identity of victims in Tuol Sleng museum and thus the “complex interplay between perpetrator and victim has mostly been brushed over”.²⁶³

NGOs supporting the ECCC take a mixed stance, combining the official Court definition with regard to potential victim status for former Khmer Rouge, and the emphasis on innocence propagated in the courtroom. In line with the official definition, these NGOs defy the antagonistic categorisation and distinct treatment of victims and former Khmer Rouge promulgated in the courtroom and return to the permeable definition where former Khmer Rouge can attain equal victim status. That former Khmer Rouge can also be victims despite having committed crimes has been explicitly

²⁵⁹ Elander, 2013, p. 105; *Cfr.* ECCC Judgement Case 001, para. 141.

²⁶⁰ *Cfr.* trial transcripts of Civil Party hearings in Case 002, available at <http://www.eccc.gov.kh/en/topic/890?page=1>.

²⁶¹ Elander, 2013, p. 112, citing trial transcripts, 16 July 2009, p. 9. *Superstes* and *testis* are both translated as ‘testimony’ in English. – *Ibid.*

²⁶² *Ibid.*, p. 114.

²⁶³ *Ibid.*, p. 105.

emphasised by some NGOs such as CSD during their outreach activities,²⁶⁴ and implicitly been buttressed through outreach trips to Tuol Sleng and Choeung Ek, e.g. in the context of DC-Cam's *Living Documents Project*.²⁶⁵

In contrast, the significance of ostensible innocence, which is of no significance in the official ECCC definition but displayed in the courtroom, is perpetuated. A statement by an ADHOC representative is symptomatic in this regard:

“If [former members of the Khmer Rouge] think that they have not committed any crimes, they need not worry. [...] A trial should not be motivated by malice against the Khmer Rouge, but it should be a search for the truth and also for justice for those Khmer Rouge leaders who have not committed any crimes.”²⁶⁶

This statement purports a certain subjective or ambiguous innocence as basis for victimhood. A simplistic distinction of *either* innocent *or* guilty prevails, with only those guilty tried in the ECCC. Guilt is thus limited to the top leaders, while other former Khmer Rouge who might well have committed crimes and killings in Democratic Kampuchea can hide their responsibility behind a veil of ‘official’ (but not moral) innocence. In their strategy of achieving justice through the individualisation of guilt, NGOs with a punitive approach thus reinforce the *de facto* amnesty attributed to lower cadres.²⁶⁷

While it is important to recognize potential victimhood of former perpetrators, Elander criticizes that the lack of debate on the complexity of the issue, i.e. the portrayal of lower-ranking Khmer Rouge exclusively as victims rather than perpetrator-victims, victimizes the ‘real’ innocents, i.e. ‘the good’ who did not contribute in any way to the atrocities.²⁶⁸ However, while this is arguably true, the selected focus on the 1975-1979 period likewise does not allow for the challenging of their ‘real’ innocence regarding structural and political violence before and following Democratic Kampuchea. It is thus ‘innocence’ purely related to the Khmer Rouge regime.

²⁶⁴ Manning, 2011(a), p. 174.

²⁶⁵ DC-Cam, 2008.

²⁶⁶ ADHOC representative, recited in CSD, 2006, p. 9-10.

²⁶⁷ On social and strategic construction of victimhood, see Roussel, 2009.

²⁶⁸ Elander, 2013, p. 105.

3.2.2.2. *Former Khmer Rouge in NGOs with a restorative approach*

In contrast, NGOs promoting predominantly restorative measures approach the categorisation of the two groups in a different way. Fundamentally, they explicitly consider both groups as significant and active stakeholders of the peace and reconciliation process and therefore proactively include former Khmer Rouge in their activities or ‘catering their needs’ via e.g. call-in radio shows.²⁶⁹ Many of their projects, such as critical educational projects or YFP’s collection of perpetrators’ statements, aim at creating a sense of empathy and putting the rise of the Khmer Rouge and their narratives in perspective, to thereby allow for a more nuanced understanding of the labels.²⁷⁰ As Kdei Karuna states, dialogues have already achieved that

“many villagers are beginning to accept the possibility of an alternative viewpoint to the traditional notions of evil associated with anyone who worked for the Khmer Rouge regime, the possibility that these Khmer Rouge cadres are victims as well.”²⁷¹

Yet, while thereby allowing for a consideration of former Khmer Rouge as victims, these NGOs nevertheless generally uphold the antagonistic positions, with ‘victims’ on the one hand and ‘former Khmer Rouge’ on the other, contradicting the previous rapprochement of recognising their victim status. With view to this assertion, the name of the *Victim-former Khmer Rouge Project* by ICfC and TPO is designative. Moreover, alluding to Ksaem Ksan victims association open also to former Khmer Rouge, a TPO representative advocated for separated ‘victims associations’ for the two groups, arguing for the need of distinction.²⁷² Such differentiation seems to create a ‘hierarchy of victims’²⁷³: Although former Khmer Rouge can attain victim status, their different roles and crimes committed distinguish them from other victims who possess innocence in this regard.

²⁶⁹ Cfr. e.g. YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=41>.

²⁷⁰ YFP, 2011(a). Interestingly, this is not the case with DC-Cam’s 2007 textbook. With a focus on genocide education, it focuses almost exclusively on the period from 1975-1979, omitting pre-1975 and post-1979 violence, emanating from notably the US bombing and Vietnamese government respectively.

²⁷¹ Kdei Karuna, at www.kdei-karuna.org/program/tot/.

²⁷² Philipps-University Marburg & University of Augsburg, 2009, p. 8.

²⁷³ McEvoy & McConnachie, 2012.

While projects are generally not restricted to the jurisdiction of the ECCC, i.e. the period between 1975-1979, few NGOs in their dialogues and forums seem to question the complete innocence of non-Khmer Rouge. In fact, from the available information, I would contend that DC-Cam, with bringing to light and discussing the killing of returning Khmer Rouge to their villages,²⁷⁴ is the only NGO explicitly challenging this ‘one-way permeability’ of former Khmer Rouge being able to attain victim status while non-Khmer Rouge never seem to slip into the role of perpetrators committing atrocities. While not claiming that those having suffered in Democratic Kampuchea should be considered as ‘perpetrators’, a thorough understanding of the complexity of victimhood would demand a more open debate on this issue in a process aiming at truth and reconciliation.

With regard to accountability, as has been pointed out in the previous chapter, some restorative projects are specifically aimed at extracting acknowledgement from perpetrators, and to encourage them to take responsibility, thereby achieving some moral accountability of lower Khmer Rouge cadres. This presents a certain incompatibility with the *de facto* blanket amnesty and innocence granted to lower-ranking cadres by NGOs working in direct support of the ECCC. While the retributive and restorative approaches taken by NGOs in the TJ process seem largely complementary, this finding attests a tension between them, grounded in the underlying philosophy of justice with regard to the approach to the victim and perpetrators and resulting accountability.

Concluding, different groups are referred to by Cambodian NGOs under the label of ‘victim’. Those with a punitive approach subsume thereunder indirect/collective and direct/indirect victims, potentially including former Khmer Rouge, but exclude second-generation victims. In contrast, those working beyond the ECCC take account of direct/indirect and individual/collective victims and extend victimhood to include second-generation victims as stakeholders in the peacebuilding process. However, preliminary findings suggest that certain population groups such as ethnic Vietnamese

²⁷⁴ DC-Cam, 2011, p. 7.

are debarred. Furthermore, while recognising potential victim status of former Khmer Rouge, the antagonistic categorisation of the two groups seems to implicate that the label of ‘victim’ is nevertheless reserved for those innocent in Democratic Kampuchea. Even so, ultimately, the recognition of victim status by both groups of NGOs demands that the needs of former Khmer Rouge be considered in the TJ process.

3.3. Focusing on the victim or victim-centred? – An assessment of NGO activities

To recall, the concept of victim-centredness according to Robins necessitates meeting victims’ needs according to their own definition, grounded in empirical data, and their integral involvement throughout all phases of the project. After presenting the surveys that form the basis for the following analysis, it will therefore be reflected on the NGO activities and the extent to which they are in line with victims’ needs and understandings of concepts related to the TJ process, as well the degree of their involvement in the different stages of the initiatives.

3.3.1. Approaching victims’ needs – starting from empirical data

As argued earlier, victim-centred TJ processes need to be based on the needs as identified by those most affected themselves. In the Cambodian context, a number of surveys have been conducted related to TJ and especially the then upcoming trials, which, however, are not representative of the overall population due to small or unrepresentative samples chosen.²⁷⁵ Two representative empirically-based surveys were carried out in 2008 and 2010 by scholars affiliated to the Human Rights Center at the University of California, Berkeley, which has been at the forefront of resorting to social science research methods to ascertain victims’ needs and interests.²⁷⁶ These surveys analysed opinions regarding the TJ process from the overall Cambodian population, of

²⁷⁵ See e.g. Kiza et al., 2006; CSD, 2006; KID, 2004.

²⁷⁶ Robins, 2011, pp. 79-80. These surveys are Pham et al., *So we will never forget*, 2009, and Pham et al., 2011(a), *After the first trial*, 2011(a).

which 80% self-identified as ‘victims’.²⁷⁷ Although recognising that the results are thus tainted with opinions from non-victims rather than reflecting exclusively victims’ needs, they might, of all those available, best fulfil the present purpose as basis for analysis.²⁷⁸ Furthermore, the self-categorisation as victim allows for a broad definition, including second-generation and former Khmer Rouge, and therefore corresponds to the broad definition of NGOs working in the restorative approach. In order to shed light on the concurrent or diverging needs of Civil Parties as strictly defined victims in the ECCC, who form to a large extent the focal point of the NGO activities supporting the Court, an additional survey conducted in 2012 with exclusively ADHOC-assisted Civil Parties will serve to complement the perspective of victims.²⁷⁹

As essentially the same questionnaire lies at the bottom of all three surveys,²⁸⁰ this allows for the assessment of changes among the general population over the period from 2008 to 2010, and at the same time for an analysis of differences between opinions of the general population and those actively involved in Case 002 as Civil Parties. Data extracted from these surveys will form the basis for assessment, but will be complemented with findings from additional surveys where these provide a more thorough insight.²⁸¹

3.3.2. Cambodian NGOs – are they responsive to victims’ needs?

The following analysis will focus on the compliance of NGO projects with victims’ understandings of and importance attached to concepts central to the TJ process, namely justice, accountability, truth, reconciliation, and reparations. Acknowledging that these concepts are difficult to measure, the analysis aims at the consideration of ‘appropriateness’ of approaches rather than results.

²⁷⁷ Pham et al., 2009, p. 24; Pham et al., 2011(a), p. 35.

²⁷⁸ Consequently, it will be referred to “victims’ needs” although it is acknowledged that they indeed refer to the overall population.

²⁷⁹ Kirchenbauer et al., *Victims Participation Before the ECCC*, 2013.

²⁸⁰ The questionnaire was developed by Pham and Vinck. – *Ibid.*, p. 11.

²⁸¹ Please refer to Annex III for a summary of selected data from the three main surveys underlying the following analysis. Complementing surveys are not representative and not summarized in the Annex.

However, an analysis of the degree of victim-centredness in the TJ process cannot go unnoticed without conceding the low priority of justice in the hierarchy of overall needs of the Cambodian population. The surveys strikingly reveal that material aspects such as employment and poverty reduction (98%) and the meeting of basic needs, including health (35%) and food (9%), undoubtedly supersede concerns of justice, rule of law and governance (3%) by far.²⁸² Similarly, an increasingly larger majority prefers the government to tackle problems arising in daily lives rather than the atrocities committed by the Khmer Rouge (76% in 2008 vs. 83% in 2010) and to shift expenditures from the ECCC to more pressing issues (53% in 2008 vs. 63% in 2010).²⁸³ These preferences are reasonable, given that over a third of the Cambodian population lives below the national poverty line (US\$ 0.61/day).²⁸⁴ Considering that thus ever-soaring costs of the TJ process might potentially impact negatively on the perception of initiatives, this hierarchy of needs to be kept in mind throughout the analysis.

3.3.2.1. A complex understanding of justice

In an attempt at merging punitive and restorative approaches to TJ, Jasini and Phan claim that justice is essentially based on four pillars, namely truth, accountability, restoration of victims and reconciliation.²⁸⁵ As will be seen, all these concepts are in a way important to Cambodian victims. However, the theoretical claim of such encompassing elements of justice is rebutted by the definition thereof emerging from the results of the surveys, where respondents place an emphasis on legal accountability and partly truth as inherent aspects of justice, whereas indicators of reconciliation or reparations seem not to be considered as integral to this concept. This will become clear throughout the rest of this chapter.

Rather than being static, victims' needs and understandings of concepts surrounding the process of coming to terms with the past generally evolve over time.²⁸⁶ From 2008

²⁸² Pham et al., 2011(a), p. 19.

²⁸³ Pham et al., 2009, pp. 34-35; Pham et al., 2011(a), pp. 19-20.

²⁸⁴ UNDP Cambodia, at <http://www.un.org.kh/undp/what-we-do/poverty-reduction>.

²⁸⁵ Jasini & Phan, 2011, pp. 86-87.

²⁸⁶ Robins, 2011, p. 85.

to 2010, a shift took place in the perception of justice, from a strong focus on truth towards an increasingly legal understanding of justice. More precisely, in 2008, the concept of justice was strongly associated with the establishment of truth (43%),²⁸⁷ followed by ‘being fair’²⁸⁸ (37%), ‘enforcing and respecting existing laws’ (15%) and ‘knowing who is right and who is wrong’ (9%).²⁸⁹ In contrast, only two years later, the emphasis had shifted significantly to the latter three understandings.²⁹⁰ The authors of the study attribute this modified framing of the concept to the impact of the legal proceedings and the discourse on justice in the ECCC,²⁹¹ thus indicating the potential external influence on the framing of concepts related to TJ over time.

While thus the general population increasingly seems to dissociate truth from justice and rely on a more legal understanding thereof, the understanding of the term shows greater complexity considering the respondents among Civil Parties only.²⁹² In fact, while 76% mentioned receiving justice for deceased relatives as chief motivation for their application,²⁹³ 12% expect through their participation to learn the (private) truth. This is in line with their definition of justice, which 9% of Civil Parties defined as learning the truth, while the concept is simultaneously imbued with a predominantly legal understanding.²⁹⁴ This complexity of the understanding of justice to be achieved via the ECCC is furthermore fortified by the additional motivation of getting space to tell their personal story in Court and receiving acknowledgement for their sorrow (43%) or to obtain individual reparations (37%).²⁹⁵ Thus, a significant number of Civil Parties still attaches a meaning to justice that goes beyond the legal definition thereof, bringing

²⁸⁷ Interestingly, while almost half of the victims (45%) in 2008 did not know through which mechanisms one should arrive at finding the truth, about the same proportion put forward the impact of trials (14%) and victim dialogues (12%), followed by a truth commission (8%) and free talk about the past (7%). – Pham et al., 2009, p. 27.

²⁸⁸ In the surveys, it remains undefined what ‘being fair’ precisely means to the population.

²⁸⁹ Pham et al., 2009, p. 33.

²⁹⁰ Pham et al., 2011(a), p. 29. In fact, no data is provided in the 2010 survey beyond the three most mentioned associations with justice, i.e. it is not evident how many people, if any, still frame ‘justice’ in terms of truth.

²⁹¹ Pham et al., 2011(a), p. 29.

²⁹² *Cfr.* the claim that “the respondents’ meaning of justice is more complex than the legal perspective alone.” – Kirchenbauer et al., 2013, p. 19.

²⁹³ *Cfr.* ‘We Receive Some Justice by Becoming Civil Parties’, ECCC press release, 2 August 2011.

²⁹⁴ Kirchenbauer et al., 2013, pp. 19-20.

²⁹⁵ *Ibid.*, p. 19. However, it must be recalled that individual reparations are beyond the mandate of the ECCC, which according to Internal Rule 23 can only award collective or moral reparations.

in elements that are traditionally associated with restorative justice and thus revealing a complex understanding of justice associated with the Tribunal.

Following this analysis, the predominantly legal understanding of the concept corroborates the need for the ECCC as punitive mechanism to achieve justice for both the general population and Civil Parties. Consequently, NGO activities that contribute directly to the working of the Tribunal, including DC-Cam's provision of evidence, and dissemination of information on the occurrence and results emanating from it in outreach activities, work imminently in the interest of the large majority of the population. While the surveys shed no light on victims' opinions regarding the significance of direct participation, the underlying motivations of applying – notably the desire to tell their story and to receive acknowledgement – are only achievable via their enhanced status in the proceedings. As discussed in the previous chapter, collaboration of civil society with regard to victim-participation - especially support in filing applications and the provision of legal representation - has been substantial and thus meets the needs of Civil Parties as a specific limited group of victims in the ECCC.

The achievement of the complex understanding of justice by especially Civil Parties, however, likewise seems to depend on NGOs with a restorative approach to absorb stated needs of Civil Parties that most likely cannot be met within the ECCC. Possibly, a certain acknowledgement of suffering can be achieved by publishing Civil Parties' names in the final verdict, as happened in Case 001.²⁹⁶ Yet, overall it is doubtful that the proceedings in the Tribunal will live up to the expectations of Civil Parties regarding truth and space for their testimonies. Firstly, only very few victims are actually provided the space to provide their testimony in the courtroom and directly confront the indicted²⁹⁷ and besides were in a way demanded by the judges to constrain their emotions.²⁹⁸ This might have led to the sentiment of the overall population that in Case

²⁹⁶ *Ibid.*, p. 20. *Cfr.* Judgment Case 001, paras. 645, 650.

²⁹⁷ In Case 001, only 22 out of 90 could speak up in the courtroom. – Herman, 2010, p. 5. In Case 002/01, these have been 31 Civil Parties in the first 200 trial days, i.e. until 26 June 2013. – ECCC, at www.eccc.gov.kh/en/blog/2013/06/26/200-days-triall.

²⁹⁸ Elander, 2013, pp. 110-111, referring e.g. to comments regarding sobbing Civil Party Bou Meng, Trial Transcript, 1 July 2009, p. 14.

001, “victims did not have enough time to tell their story.”²⁹⁹ Secondly, Civil Parties seemingly hope to learn the truth with regard to the ‘private truth’ directly related to the fate of their relatives rather than ‘only’ the elucidation of a national or ‘historical truth’ in terms of scale of crimes.³⁰⁰ While this is essentially what would give them a sense of justice, it is unlikely that this private truth of e.g. direct perpetrators will be exposed in the trials.³⁰¹ It is against this gap of Civil Party expectations and the possible achievements of the Court that local truth-telling initiatives, forums, family tracing and possibly measures of acknowledgment by NGOs with a restorative approach can contribute to meeting the understanding of justice as defined by Civil Parties and further Cambodians who attach paramount importance to such elements.

Overall, without the combined involvement of the two groups of NGOs toward TJ, the ECCC “would not be able to contribute to the establishment of truth,”³⁰² and acknowledgement, inherent elements to justice for many Civil Parties. With regard to the overall population, the role of Court-supporting NGOs seems vital, though the restorative approach in meeting their ever more legal understanding of justice is less clear, as not enough data is provided in the surveys to embark on a more detailed analysis.

3.3.2.2. *Accountability*

The rather legal meaning attached to justice accommodates very well the overall populations’ understanding of accountability, which is primarily associated with retributive elements such as prosecution or punishment, more than aspects associated with restorative justice, including truth, confession or apologies (approximately 13%).³⁰³

While, as elaborated above, NGOs supporting the Court buttress the blanket amnesty granted to lower-ranking cadres and essentially ascribe to them certain innocence, this

²⁹⁹ Pham et al., 2011(a), p. 27.

³⁰⁰ The terms of ‘historical’ and ‘private truth’ are coined by Robins. – Robins, 2011, p. 80.

³⁰¹ Kirchenbauer et al., 2013, p. 20.

³⁰² Dosch et al., 2011, p. 26.

³⁰³ Pham et al., 2009, p. 32; *Cfr.* Kirchenbauer et al., 2013, p. 17.

lack of accountability does not seem to be significantly challenged by the overall population. When asked the question of who should be held accountable, a clear preference for prosecution of the top leaders emerged in 2008, including those already deceased. In contrast, only 6% mentioned a desire for legal accountability of local officials.³⁰⁴ This finding attributes to NGOs limiting prosecutions to the top leaders a reasonable responsiveness to victims' needs.

3.3.2.3. *Reconciliation*

The concept of reconciliation in transitional societies, especially regarding the relationship between reconciliation and justice, is not yet well understood and has been promoted very differently in specific country-contexts.³⁰⁵ In Cambodia, the results of all surveys suggest that the population considers justice and reconciliation as two largely distinct but potentially complementary operating concepts of TJ. To this effect, respondents barely mentioned measures traditionally associated with restorative justice among the definition of justice, nor does reconciliation surface in the list of overall priorities. Reconciliation thus seems subordinate to justice in the hierarchy of needs and its promotion does for the large majority of the population not inherently lead to justice, as the theory of restorative justice might suggest.

Taking a look at the definition of reconciliation despite its low priority, it seems that NGOs with a restorative approach are more apt with regard to meeting the local understanding of reconciliation in terms of interpersonal relationships than the ECCC or the NGOs supporting the Court. Similar to justice, the meaning of 'reconciliation' underwent a considerable development in the recent past. While in 2008 the notion was predominantly understood as the 'absence of violence and conflict' (56%), or 'negative peace' in the words of Galtung,³⁰⁶ the focus has subsequently shifted to interpersonal

³⁰⁴ Significantly more of those who lived under the Khmer Rouge mentioned local officials (7,8%) than those who did not live under the Khmer Rouge (1,9%). Interestingly, while 55% opine that those who killed friends or relatives should be held accountable, Pham et al., explain the contradicting responses with many people considering top leaders imminently responsible for having killed their relatives rather than lower-ranking cadres. – Pham et al., 2009, pp. 30-31.

³⁰⁵ For a theoretical debate on this, see Sarkin & Daly, 2003-2004.

³⁰⁶ Galtung, 1969.

relationships and the local level in terms of chiefly ‘unity and living together’ (54%), communication or mutual understanding (38%) and compassion (27%).³⁰⁷ This meaning attached to reconciliation is understandable, considering that many victims are living in the same or neighbouring villages as former Khmer Rouge, who sometimes even still hold positions of power,³⁰⁸ and that negative feelings towards former Khmer Rouge are still ranking high.³⁰⁹ Recalling activities such as village dialogues, mediating efforts such as in the *Victim-Former Khmer Rouge Project*, or training in conflict resolution capacities by restorative NGOs precisely target these goals of peaceful cohabitation, empathy and acknowledgement.³¹⁰

Additionally, while a greater majority of respondents answered positively in 2010 than in 2008 (93% compared to 85%) that establishing the truth was necessary and while notably Civil Parties mentioned truth as a motivation and expectation in the Court, results likewise indicate that the general population ever more perceives truth as necessary for reconciliation (81% compared to 64%) and relief of suffering (83% compared to 64%). This fortifies the assertion that the overall population might gradually dissociate the two concepts of truth and justice and instead assign greater importance to truth for their personal healing and as pre-condition for reconciliation. The conditionality of truth for reconciliation is also supported by DC-Cam, which claims that “Cambodians cannot forgive one another until they know who to forgive, and for what.”³¹¹ In this sense, the same truth-telling initiatives that might contribute to meeting some Civil Parties’ needs for justice – as claimed above -, might also have a positive impact on the healing and reconciliation process of many Cambodians.

³⁰⁷ Pham et al., 2011(a), p. 33. In 2008, only approximately a third construed the concept as harmony and peaceful cohabitation. In contrast, in 2010 only 15% defined reconciliation in terms of negative peace. – *Ibid.*

³⁰⁸ Berlin Center for the Treatment of Torture Victims (BZFO), 2010, pp. 30, 65; also *cfr.* Field et al., 2009.

³⁰⁹ E.g., 81% of the population still harbour feelings of hate and 39% the desire for revenge. – Pham et al., 2011(a), p. 33.

³¹⁰ Notably, beyond targeting reconciliation, these projects likewise help to potentially address conflicts faced in their daily lives. To recall, 83% of the population considered this as more important than to address crimes committed by the Khmer Rouge.

³¹¹ DC-Cam, at <http://www.dccam.org/About/History/Histories.htm>.

Furthermore, certain NGOs have repeatedly claimed that their projects also address the needs of former Khmer Rouge cadres,³¹² thereby involving both victims and former perpetrators in the reconciliation process, which is a pre-condition for any form of reconciliation.³¹³ This is in line with former Khmer Rouge cadres' claim that a stronger focus on the broader historical context beyond 1975-1979 is needed if "real reconciliation" is to be achieved from their point of view.³¹⁴

In contrast, the punitive mechanism and NGOs' activities surrounding the ECCC appear not to meet victims' understanding of reconciliation. Although it is common discourse of the Court to claim that the ECCC will promote forgiveness and support the process of reconciliation,³¹⁵ it has been generally countered that "using trials for the purpose of promoting reconciliation is a difficult task that few countries have successfully managed."³¹⁶ This rather pessimistic vision seems to be supported in the population. Although 67% of the overall population answered positively in 2008 when asked whether, yes or no, the ECCC would contribute to national reconciliation, only 1% mentioned national reconciliation as a potential impact of the ECCC in an open question.³¹⁷ This might indicate that the ECCC is perceived as not obstructing it, but not actively furthering it either.

Moreover, Manning holds that through the exclusive focus of accountability on top leaders of the Khmer Rouge and essentially blanket amnesties provided to lower ranking cadres in the ECCC, NGOs supporting this stance might reproduce reconciliatory politics employed by the government in the past, essentially equating 'reconciliation' with 'peace'.³¹⁸ In this sense, they thus echo Hun Sen's attempt at limiting trials to the top leaders to prevent conflict that might erupt if former Khmer Rouge cadres fear to be tried.³¹⁹ Comparing this approach of reconciliation, visibly in

³¹² See e.g. ICfC & TPO, 2011, p. 18; YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=41>.

³¹³ Jasini & Phan, 2011, p. 387.

³¹⁴ Manning, 2011(a), p. 178, citing a former Khmer Rouge; CSD, 2006.

³¹⁵ See e.g. the references to national reconciliation in the Preambles to the ECCC Law on Establishment and the Internal Rules, and the ECCC Reparation Program 2013-2017.

³¹⁶ Sarkin & Daly, 2003-2004, pp. 713, 691.

³¹⁷ Pham et al., 2009, pp. 40-41.

³¹⁸ Manning, 2011(a), p. 176.

³¹⁹ See e.g. Hun Sen quoted in Mydans, *New York Times*, 29 December 1998.

terms of peace on the national level, with the perception of the concept as expressed by the population in 2008, the desire for the absence of conflict, i.e. negative peace, was salient. However, the more recent definition in more interpersonal and local level terms and the findings on the perception of the Court's role in reconciliation elaborated above imply that NGO activities focusing on the ECCC seem to have an evanescent role to play in the process of achieving reconciliation according to victims' understanding.

Despite potentially positive effects of restorative NGO activities on reconciliation, fierce criticism has been voiced in scholarly literature against a strong focus on reconciliatory measures in post-conflict countries, which also should be reflected on in the Cambodian context. Firstly, essentially, all NGO activities, both related to and extended beyond the ECCC, rely on therapeutic assumptions, i.e. that truth-telling – in the ECCC, through dialogues or concessions – will lead to individual healing from trauma, a sense of closure and consequently induce reconciliation with former perpetrators.³²⁰ While this has been challenged by a variety of scholars,³²¹ interestingly, more than four out of five Cambodians in fact do perceive the establishment of truth as necessary for reconciliation and relief of their suffering,³²² and thus seem to approve of this therapeutic ethic underlying NGO activities. Yet, whether these individual needs will eventually translate into reconciliation on a broader level remains to be seen. So far, the results of the 2008 and 2010 surveys are little promising, showing only a slight decrease in feelings of hatred and the level of uncomfortableness in dealing with former Khmer Rouge, despite interventions of the ECCC and civil society.³²³ However, recognising that a thorough process of reconciliation will take time, conclusions on this for the Cambodian case can realistically only be drawn in several years from now.³²⁴

Secondly, in a general context, many authors warn that the strong emphasis of reconciliation in restorative measures might put pressure on victims to forgive and forge strong social ties with their former perpetrators, which might go against their feelings of

³²⁰ Manning, 2011(a), p. 168; Moon, 2009, p. 79; Mendeloff, 2004, p. 359; Uprimny & Saffon, *n.d.*, p. 4. This is indeed also the underlying rationale for the support by the German Civil Peace Service to YFP village forums. – *Cfr.* Dosch et al., 2011, p. 37.

³²¹ Mohan, 2009; Mendeloff, 2004, pp. 363-364; Robins, 2012, p. 104.

³²² Pham et al., 2011(a), p. 31.

³²³ *Cfr. Ibid.*, p. 33.

³²⁴ *Cfr.* also Dosch et al., 2011, pp. 38-39.

revenge and might even end up de-legitimising their reluctant point of view.³²⁵ According to Minow, “[f]orgiveness is a power held by the victimized, not a right to be claimed. [...] To expect survivors to forgive is to heap yet another burden on them.”³²⁶ Considering continuing feelings of hatred (81%), revenge (39%) and the desire to see former Khmer Rouge in misery (68%),³²⁷ this does indeed hint to a dire need for reconciliation in the country, but is also evocative of taking these feelings seriously and avoiding fomenting further animosity by urging victims to forgive the aggressors and reconcile. In this regard, a survey by the Berlin Center for the Treatment of Torture Victims has shown that victims are strongly divided on the effects of dialogue with former Khmer Rouge on their personal healing process and reconciliation, which is promoted by restorative NGOs.³²⁸ To avoid negative impacts of NGO initiatives, the voluntary character of participation in projects is of paramount importance in this regard, which seems to be given by the local NGOs in all cases of interaction between the two groups.

Thirdly, reconciliation has gained a negative reputation where reconciliation discourse has led to amnesty laws or *de facto* amnesties at the cost of criminal proceedings to achieve (legal) justice.³²⁹ Considering that even those NGOs taking a predominantly restorative approach generally support the legal proceedings surrounding the ECCC, as laid out in the first chapter, this fear can be partly refuted. Nevertheless, a focus on reconciliation might in fact legitimize the absence of trials for lower-ranking cadres. To the extent that only a minority of the population would like to see local officials held legally accountable, this is reconcilable with a victim-centred approach to TJ. Yet, the fact that reconciliation itself was not mentioned among the aspects inherent to their understanding of ‘justice’ reinforces the need for successful completion of trial

³²⁵ McEvoy & McConnachie, 2012, p. 530; Uprimny & Saffon, *n.d.*, pp. 6-7.

³²⁶ Minow, cited in Sarkin & Daly, 2003-2004, p. 706.

³²⁷ Pham et al., 2011(a), p. 33.

³²⁸ BZFO, 2010, p. 59.

³²⁹ Sarkin & Daly, 2003-2004, p. 691.

002 in due time, as well as potentially cases 003 and 004, to achieve justice for the victims.³³⁰

3.3.2.4. *Reparations*

Parallel to the enhanced status of victims, the reparations mandate of the Court, even though limited to collective and moral reparations, is a similarly innovative element in criminal justice, corresponding to the international discourse where in recent times “reparation has been cast as a ‘right’ in itself”.³³¹ As elaborated in the previous chapter, essentially all services provided by NGOs in direct relation to the ECCC – legal advice, psychological support and training related to the Court - and independent of the Tribunal – counselling, family tracing, victim-perpetrator dialogues and mediation, truth initiatives, education and training – amount to forms of reparations as defined in the UN Basic Guidelines on reparations.³³² Through their integration as non-judicial measures in the ECCC’s reparation framework, some NGO activities have been endorsed by the Court and government, and arguably gained greater authority. However, this does not yet answer, to what extent these reparations respond to the needs for reparations voiced by victims themselves.

When asked what should generally be done for victims, independent of the ECCC’s restricted reparations mandate, indicated preferences were in line with overall priorities, thus focusing on material and financial assistance, whereas symbolic measures within the purview of the Court were barely mentioned.³³³ However, it is remarkable to note that the request for (legal) justice in form of trials and punishment in 2010 ranked second to accompany livelihood and social support (31% compared to 2% in 2008). NGO contribution to material reparations or social services is rare, preponderantly

³³⁰ Names for Cases 003 and 004 are not yet officially released. While the survey in 2008 revealed only names of deceased or those already indicted, the general desire to hold Khmer Rouge leaders to account might more generally subsume the quest for prosecution of those investigated in Case 003 and 004. However, an ultimate claim on whether Cambodians in fact desire Cases 003 and 004 would require further research. – *Cfr.* Pham et al., 2009, p. 31.

³³¹ Moon, 2012(b), p. 188.

³³² *Cfr.* supra footnote 191, paras 18-23.

³³³ For survey results on reparations referred to in the following paragraphs, see Pham et al., 2009, pp. 43-44; Pham et al., 2011(a), pp. 35-37.

restricted to the limited but significant contributions of TPO in the field of mental health and e.g. DC-Cam's advocacy and cooperation with the government for the establishment of a national mental health clinic.³³⁴ However, the strong focus on justice attributes once more paramount importance to those NGOs directly supporting the legal proceedings.

Nevertheless, confronted with the ECCC's reparation mandate limited to collective and moral reparations, nine out of ten participants considered these notwithstanding as important. Hence, this might indicate a hierarchy of preferences, with victims falling back on symbolic reparations as a second choice, if their general priorities of reparations cannot be met in the first place. From 2008 to 2010, a significant shift in the form of desired reparations to be awarded by the ECCC is detectable, presumably attributable to NGO outreach measures. While the results of the 2008 survey saw a strong focus on collective *material* reparations, this was bypassed by an overwhelming preference for collective *moral*, or *symbolic*, reparations in 2010, including memorials (47%), public ceremonies (34%), songs, books and movies (10%) or commemoration days (6%). Recalling measures of acknowledgement promoted by NGOs with a restorative approach, these thereby seem to fundamentally address the current preferences in terms of memorialisation, ceremonies, and multimedia, literature and art. Furthermore, NGOs such as YFP and ICfC/Kdei Karuna have significantly transferred the focus of memorials from the national level, embodied by Tuol Sleng Museum and Choeung Ek killing fields, to the community, which has been voiced by victims as the desired administrative level of implementation, as against the district, province or national level.³³⁵

Despite this seemingly match of reparations promoted by NGOs in the Cambodian context, some cautious remarks are warranted. Firstly and interestingly, reparations or compensation were rarely brought up by victims when talking about receiving justice and the ECCC in general.³³⁶ Consequently, similar to the concept of reconciliation, it might be claimed that they do not consider reparations as integral to justice, which is

³³⁴ DC-Cam, Summary Work Plan for FY 2012, p. 2; DC-Cam, 2012 Annual Report, p. 6.

³³⁵ Pham et al., 2011(a), p. 40.

³³⁶ *Ibid.*, p. 35.

instead dominated by legal concepts. This raises the question to what extent the concept of reparations was brought in by external actors in the establishment of the TJ process.

Secondly, the implementation of memorials at any level of implementation is rife with debate, going along with claims of culturally insensitive forms of notably *stupas*, Buddhist memorial architectures, e.g. where skulls are displayed while critics claim that Buddhist religion demands urgent cremation especially in cases of murder.³³⁷ Beyond meeting demands for memorials, thus, being responsive to the needs of the population also demands cultural sensibility in memorialisation.

Thirdly, reparation laws have evoked outcries in other post-conflict countries, perceived by victims as an attempt at silencing their demands for investigations and criminal proceedings.³³⁸ Up to now, this has arguably not been the case in Cambodia, where reparations have been essentially provided by NGOs generally supporting the trials in the ECCC, thus independent of national TJ policies, and where accountability limited to top leaders seems supported by victims. However, the new reparation programme 2013-2017 integrates some of these activities and foresees the involvement of the Cambodian government in its implementation. While this might be positively imbued with a commitment of the state's acknowledgement of the past, first reactions to the government's recent approval of reparation programs in June 2013 have been received with care. For instance, one Civil Party identified reparations as a "tricky matter", adding that "[c]lear justice from the courts, without politics or corruption, would be a step in the right direction".³³⁹ This might in fact hint to the fear that reparations by the government could be used to distract from political interference and allegations of corruption in the ECCC, rather than as a means to sincerely acknowledge the suffering of the victims, and thus be perceived to come close to silencing demands for justice emanating from the Court.

Lastly, memorialisation efforts such as the annual "Day of Anger" on 20 May are claimed to have been politicised under the Hun Sen government in the past. Meant as a

³³⁷ Manning, 2011(a), p. 171. Dorsch (2012, p. 1079) points out that memorialisation generally is an area where conflicts among civil society rank high. However, an elaboration would go beyond the scope of this thesis.

³³⁸ See e.g. the case of the *Madres de Plaza de Mayo* in Argentina. – Moon, 2012(b).

³³⁹ Khemara, *VOA Khmer*, 22 June 2013.

day of remembrance for the victims, Ciorciari holds that instead it was abused by the ruling party to rally against the Khmer Rouge and gain support for the then ongoing civil war.³⁴⁰ Similarly, efforts at including chapters in school books have for long been advocated by DC-Cam but were only rather recently endorsed by the government, presumably for reasons of vested interests. Now that the incorporation of additional documents from the Khmer Rouge period has been approved, it remains to be seen, however, whether the teaching will be free from political influence.³⁴¹

3.3.3. TJ *for* or *by* the victims? - Participation and empowerment of victims in the project cycle

Virtually all NGOs, both supporting and extending the work of the ECCC, frame their TJ-related projects in principal terms of achieving ‘justice for the victims’, that is, they officially place the survivors of the grave human rights violations under the Khmer Rouge at their centre.³⁴² However, as elaborated earlier, a victim-centred approach as defined by Robins requires more than focusing on the victim. Instead, it demands the partaking of survivors at all stages of the project cycle, with participation serving as a way of victims’ empowerment to take greater control over the process of dealing with the past and to become themselves active drivers of a sustainable TJ process that addresses their own needs. Regarding Cambodia, in how far do victims actually participate in the project cycle and to what extent are they thereby empowered?

3.3.3.1. *Participation of victims*

From available information, it seems that victims are virtually excluded from the conception and design as well as evaluation of NGO projects in both the punitive and restorative approach, while the placing of the victim at the centre of projects lays the foundation for enhanced participation and potential empowerment at the implementation stage.

³⁴⁰ Ciorciari, 2011, p. 440.

³⁴¹ *Cfr.* Khemara, *VOA Khmer*, 22 June 2013.

³⁴² Refer to Annex I for an outline of vision, missions and selected program goals of NGOs and projects.

Regarding the design stage, no information is on hand, from which it could be deducted that projects are in fact grounded in empirical research, which according to Robins is imperative for victim-centred TJ processes. Neither is there any hint that projects were conceived by or benefited from survivors' input. This assertion is reinforced by the fact that Cambodian NGOs overall, and those active in TJ specifically, lack proactivity and for the most part execute projects designed and commissioned by international actors in line with the latter's own interests and strategies.³⁴³

Considering that an evaluation generally serves to assess activities and achievements according to predetermined project goals, the seemingly absence of survivors' involvement in the design also inherently entails deficiencies with regard to victim-centredness in the evaluation of NGO projects. Thus, simply put, an evaluation in the Cambodian case will bring about a review of targets and processes defined by predominantly donors in the first place, rather than being informed by victims' needs and input. In terms of participation, this assertion is underpinned by the general claim of upward accountability rather than accountability towards the local population, discussed in the first chapter.³⁴⁴ This assertion of a missing link to the victim in the evaluation seems confirmed by the 2009 evaluation report of ICfC's *Justice and History Outreach Project*. While villagers are encouraged to develop their own "forward-looking actionable goals"³⁴⁵ within the context of the project, no reference is made thereto in the evaluation, proceeding entirely along predefined project goals.³⁴⁶ Similarly, the executive summary evaluation of ADHOC's *ECCC/ICC Justice Project* hails the project to have been "a vital contribution to ensuring the Khmer Rouge Trials to foster justice and reconciliation in Cambodia."³⁴⁷ A victim-centred evaluation would undoubtedly require the consideration of the concepts of 'justice' and 'reconciliation' in terms of victims' definitions. While the entire report is not available and therefore cannot be conclusively judged upon, it is worth recalling that the analysis in the

³⁴³ See section 1.2.1.; Dosch et al., 2011, p. 24.

³⁴⁴ Cfr. a statement by UNDP: "NGOs are evaluated, and evaluate themselves, in their capacity to deliver activities and manage resources according to contractual standards set by donors." – UNDP, 2010, p. 26.

³⁴⁵ Field et al., 2009, p. 3.

³⁴⁶ Cfr. the evaluation report by Field et al., 2009.

³⁴⁷ ADHOC, at www.adhoc-cambodia.org/?p=609.

previous section questions whether contributions to the punitive process could in fact contribute to reconciliation on the interpersonal level as victims understand it.

In contrast, the implementation of local NGO projects of both punitive and restorative approaches, such as participation of Civil Parties in the proceedings or the conducting of dialogues and forums, strongly hinge on the active participation of victims and sometimes to a limited extent encourage victims to fill the provided project framework with substance. Especially NGOs in the restorative sector are quick to point out their participatory approaches.³⁴⁸ ICfC/Kdei Karuna's *History and Outreach Project* with the overall goal on discussions on the past leaves the decision up to villagers, whether to achieve discussions through, for instance, the joint construction of memorials or study trips to Phnom Penh.³⁴⁹ Likewise, survivors and youth were handed the camera in the participatory movie "We Want (U) To Know" to thereby lead the intergenerational dialogue and share their stories according to own interests and needs.³⁵⁰ Likewise, ADHOC emphasises that the content of their training for Civil Party Representatives surrounding the ECCC is adapted to requests from the participants themselves.³⁵¹ However, these participatory approaches arguably only come to the fore in the operation phase of projects rather than being grounded in and responsive to needs directly expressed by victims beforehand as underlying incentive for the conception of the project.

3.3.3.2. NGO activities – a means of empowerment?

Both the participation of victims and the lack thereof in the project cycle present different opportunities for empowerment or disempowerment, both in punitive and restorative processes.

³⁴⁸ Cfr. e.g. Kdei Karuna, at <http://www.kdei-karuna.org/who-we-are/>; YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=42>; TPO, at <http://tpocambodia.org/index.php?id=6>.

³⁴⁹ Field et al., 2009.

³⁵⁰ See the movie's homepage, at <http://www.we-want-u-to-know.com/>.

³⁵¹ ECCC & CHRAC, 2012, p. 40.

Regarding those working to support the ECCC, the facilitation of victim-participation and encouragement of forming victims associations, in theory, empowers victims to raise their voice in the legal proceedings and to claim reparations, which would not be possible without their enhanced standing in the Court. Especially the possibility to direct questions at the indicted might give them a sense of empowerment in the process.³⁵²

However, procedural aspects related to the status of Civil Parties challenges the assertion that victims are empowered through victim-participation in the ECCC in five ways. Firstly, since the revision of the Internal Rules in 2010, victims are obliged to be represented by a lawyer and can ask questions only through them rather than addressing the accused directly.³⁵³ Secondly, in an effort at balancing the defendants' right to a prompt trial with victims' need for participation, time limits were introduced halfway through Case 001, which was perceived by some Civil Parties as a limitation of their role.³⁵⁴ Thirdly, all Civil Parties are since Case 002 represented collectively in Court by Civil Party Lead Co-Lawyers instead of their personally chosen Civil Party Lawyers, reducing individual experiences and narratives of 3,866 Civil Parties to one representation.³⁵⁵ Fourthly, as mentioned earlier, only a very restricted amount of Civil Parties is ultimately able to speak during the trials,³⁵⁶ chosen jointly by the Civil Party Co-Lawyers and Lead Co-Lawyers based on evidence that they could deliver and representativeness.³⁵⁷ Lastly, the denial of victim status in Court and therefore victims finding themselves not eligible for reparations, or disappointment over the legal proceedings such as related to the previously mentioned issues might become a source of re-victimisation,³⁵⁸ similar to the simplification of 'the victim' claimed earlier.³⁵⁹ Related to victims associations with the objective of unifying and increasing the voice of victims in the legal process, it is questionable to what extent these are actually driven by the needs and interests of victims rather than prominent and elitist figures, as is the

³⁵² Herman, 2010, p. 5.

³⁵³ *Cfr.* Internal Rule 23*ter*.

³⁵⁴ Herman, 2010, p. 5.

³⁵⁵ *Cfr.* Internal Rule 12*ter*.

³⁵⁶ *Cfr.* supra footnote 297.

³⁵⁷ ECCC, at <http://www.eccc.gov.kh/en/blog/2013/06/07/purpose-hearing-victims-suffering>.

³⁵⁸ Huyse, 2003, p. 61; Elander, 2013, p. 108.

³⁵⁹ *Cfr.* section 3.2.2.

case with the Association of Khmer Rouge Victims in Cambodia (AKRVC), which is presided over by Theary Seng, simultaneously the president of CIVICUS.³⁶⁰ Thus, the possibility of empowerment through participation in the legal proceedings and the formation of victims associations simultaneously encounters risks of feelings of disempowerment or re-victimisation of the Civil Parties.

Similarly, participation in NGO activities beyond the ECCC exhibits prospects for empowerment as well as disempowerment. Generally, where victims are given certain decision-making power in the implementation phase and can thus influence the substance of the projects for dealing with the past, they are in a way empowered to bring in their own ideas and thereby to a limited extent shape the local TJ process. The aim of empowerment by some organisations is reflected in their objective of transforming participants into “agents of social change”,³⁶¹ or ‘citizens’ rather than ‘subjects’³⁶². Exemplary projects meant for empowerment are, for instance, psycho-social support and self-help groups, education and training. While “suffering together” is believed to heal and empower victims to move forwards with their lives,³⁶³ education empowers not only youth to become active citizens promoting a culture of peace based on an informed understanding of the past, but also the older generation to become actors of the TJ process by handing down personal experiences in the context of broader understanding of the Khmer Rouge period. Furthermore, conflict resolution or memory initiative trainings, if conducted in a sustainable way, empower communities by enhancing skills so that they are more likely to solve problems affecting their daily lives and organise their own commemoration ceremonies.³⁶⁴ Last but not least, to the extent that the concept of reconciliation as currently understood by victims requires improved interpersonal relationships, the involvement of both victims and former Khmer Rouge are indispensable. Simply put, without changes in their personal opinions and relations, no reconciliation will take place. In a nutshell, Cambodians are elevated to the position

³⁶⁰ *Cfr.* AKRVC, at <http://www.akrvictims.org/>; homepage of Theary Seng, at <http://www.thearyseng.com/>.

³⁶¹ YFP, at <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=2&subMenuId=4>.

³⁶² CIVICUS, at <http://www.civicus-cam.org/>.

³⁶³ Huyse, 2003, p. 63.

³⁶⁴ *Cfr.* e.g. a commemoration ceremony organised for Khmer New Year 2013. – Kdei Karuna, at <https://www.facebook.com/kdeikaruna?fref=ts> [facebook update].

of actors and drivers of the reconciliation process rather than passive recipients, while national and international political actors that are generally the dominant drivers of the TJ process are in this aspect relegated to the position of facilitators. This ascribed actorhood and active role might be a strong indicator of empowerment.

However, other or even the same NGO projects with restorative intent might at the same time risk the perpetuation of victims as passive recipients of the TJ process or disempower them. As stated earlier, the value for truth initiatives grounded in a ‘therapeutic ethic’ is disputed. Rather than empowering, such projects could indeed contribute to a re-traumatisation by re-living the suffering or inflate expectations such as the hope that rape, broached in the Women’s Hearing by CDP, will sooner or later be included in the proceedings before the ECCC, which currently seems rather unlikely.³⁶⁵ All these examples of potential positive and negative impacts show that the question of empowerment is complex and that both punitive and restorative NGO activities can at the same time help to empower some victims while disempowering others.

Furthermore, three latent disempowering aspects resulting from the lack of participation in the design stage can be discerned. Firstly, the fact that victims are not directly involved in the conception and design of projects leads to a situation where they are considered as ‘stakeholders’ or ‘beneficiaries’ of services to be delivered by NGOs rather than as driving actors of the TJ process, which inherently “produces dependency and inevitable passivity” rather than empowerment.³⁶⁶ Instead of actively influencing the process of dealing with the past, therefore, Cambodian victims are consigned to passive recipients. Furthermore, the missing membership base and mandate given to NGOs to act on behalf of victims, along with projects placed before survivors, risk reinforcing NGOs’ or TJ experts’ positions “as the authoritative knower who is ordained to teach, civilize and rescue the benighted, hapless victim.”³⁶⁷ In essence, NGOs are thereby deciding what is best for the victim, depriving the latter of this decision and acting contrary to the aim of a bottom-up process in the TJ process.

³⁶⁵ Claim made by Mu Sochua at the brownbag lunch organized by the NGO No Peace Without Justice, 19 March 2013.

³⁶⁶ Madlingozi, 2010, p. 221.

³⁶⁷ *Ibid.*, p. 211.

Secondly, some scholars have voiced criticism at the resort to strong human rights discourse underlying TJ activities, including that of NGOs, as a means of disempowerment of victims. According to Madlingozi, a human rights discourse causes communities to be dependent on the state as duty-bearer for the fulfilment of their rights in the process of dealing with the past. This deprives the local communities of their own agency, relegating the population to the position of either the helpless victim that needs to be rescued or the culpable perpetrator that needs to be prosecuted.³⁶⁸ This peril can likewise arise in the strife for justice in the context of the ECCC and surrounding NGOs, to the extent that they take on the role of a “shadow government”,³⁶⁹ with the strict and simplistic distinction between victims and perpetrators previously ascertained.³⁷⁰

Thirdly, and related to it, the seeming lack of survivors’ involvement in the design and alignment of projects according to donors’ policies consequently raises the question of the victim as primary beneficiary of the project vs. the achievement of more encompassing goals of transition or peacebuilding in a post-conflict country. This scepticism is undoubtedly warranted considering the claim that some “international stakeholders see the ECCC mainly from the perspective of international law and try to establish it as a model for a specific legal system in the competitive situation between Civil Law (Roman Law) and Common Law”,³⁷¹ where the victim is seemingly not held at the centre, but rather subservient to the development of international criminal law. Furthermore, especially those NGOs facilitating the working of the Court frequently refer to more encompassing goals in the organisations’ visions and projects, aiming at fostering the rule of law, development of democratic norms and institutions, and the creation of the ECCC as a model court for the national legal system, all devised in a marked human rights discourse.³⁷² These supplementary objectives are also essentially

³⁶⁸ Madlingozi, 2010, pp. 212-213.

³⁶⁹ *Cfr.* section 1.2.1.

³⁷⁰ Notably, this cautious warning of resort to human rights discourse counters the increasingly emerging human rights-based approaches to development, which are generally hailed to empower the population to claim and realize certain rights based on established accountability of the government rather than being dependent on help. – For more information on human rights-based approaches to development, see Lundström-Sarelin, 2007, pp. 476-478; Gready, 2008; Hamm, 2001.

³⁷¹ Dosch et al., 2011, p. 20.

³⁷² See Annex I for examples.

the crux around which respective NGOs' legacy efforts around the ECCC evolve. While governance, democracy and rule of law take a similarly low priority as justice in the victims' overall rankings of concerns, these goals nevertheless do not seem inherently contradictory to those needs expressed by the survivors. Nevertheless, the wide range of project aims harbours the risk that "victims are [...] instrumentalized in the pursuit of larger political and social goals",³⁷³ thus that they are potentially seen as a means to achieve these broader objectives rather than an end in themselves, the end being to construe NGO activities with the main focus on achieving justice for the victims. Consequently, NGO activities would strongly benefit from the involvement of victims in the design of projects in order to ensure their centrality and increase their actorhood in the process.

3.3.4. Limits of the analysis

Although pursued with greatest care, the preceding analysis possesses inherent limits with regard to amount and quality of available sources, and further research on the ground would be needed to provide for more profound insights. Naturally, the reliance on a selected amount of NGO documents, provided mainly on their homepages and in form of publications, hampers a truly critical analysis of their activities as well as tensions among different NGOs.³⁷⁴ Furthermore, a more comprehensive investigation of NGO activities as regards meeting victims' needs, participation and empowerment of survivors as well as evaluation of NGO projects would require access to more detailed and a broader range of documents.

Moreover, the surveys forming the basis for analysis regarding the concept of victim-centredness present a number of limits and challenges in terms of assessment. Firstly, rather than providing a complete overview, only selected answers are provided. Therefore, for instance, the significance attached to truth as integral to the concept of justice as perceived by the general Cambodian population remains unclear, as only the most frequently mentioned answers, displaying the understanding of the notion in legal

³⁷³ McEvoy & McConnachie, 2012, p. 528.

³⁷⁴ The latter has for this reason largely been omitted in this thesis.

terms, are presented. Similarly, the meaning of ‘being fair’ as most common meaning attached to justice is left undefined. While this has been considered as referring to a legal understanding thereof, in line with the presentations of the surveys, respondents might subsume elements of truth or reconciliation thereunder, which would to a certain degree impact on the following analysis.

Secondly, while needs and attitudes towards trials have proven to differ before the ECCC was established,³⁷⁵ the surveys employed do not lay bare differences in opinions between victims and former Khmer Rouge, although most likely both groups are included among the samples.³⁷⁶

Thirdly, empirical knowledge on victims’ needs is “inevitably socially and politically constructed and open to political manipulation.”³⁷⁷ This has arguably already been the case with the perception of concepts related to TJ, influenced by the presence of the ECCC and surrounding discourse. Furthermore, a strong focus underlying the surveys regarding the impact of the ECCC, as well as the impact of NGO outreach activities might produce results more favourable for the kind of justice provided by the Court and promoted by NGOs at the expense of alternative TJ mechanisms.³⁷⁸ This is conspicuous, considering the comprehensive and rather positive answers given by respondents while many possessed only a rather smattering knowledge of the Tribunal. Simultaneously, the focus on the legal proceedings might have likewise foreclosed reference to e.g. the importance of spiritual rituals in the process of coming to terms with the past, of which seemingly no mentioning is made in the surveys. The complete absence of significance of religion is striking, comparing it to other surveys where

³⁷⁵ CSD, 2006; Vannath, 2002. One remarkable difference that emerged from CSD’s forums were e.g. the more extensive need of former Khmer Rouge to also address the pre-1975 and post-1979 period as part of a more holistic perspective.

³⁷⁶ In the 2010 survey it is noted that “more than 25% of respondents reported that they were ‘Old’ or ‘Base’ people under the Khmer Rouge regime, terms for those who lived in insurgent zones under Khmer Rouge control and who may have contributed in some fashion to the revolution.” – Pham et al., 2011(a), p. 18.

³⁷⁷ McEvoy & McConnachie, 2012, p. 534.

³⁷⁸ This claim is supported by the purpose of the studies, defined as the examination of “the lessons learned from the first trial” and the effort at understanding “views about justice and the Court ... to ensure that the proceedings are meaningful for the population.” – Pham et al., 2011(a), p. 7.

three-fourths of respondents considered that Buddhist ceremonies worshipping the dead would help them handling their suffering.³⁷⁹

Fourthly, regarding a victim-centred approach to victim-based studies Robins advocates for the inclusion of victims into the research design, e.g. in form of involvement of victim associations.³⁸⁰ However, it is not apparent that such a participatory research approach has been availed of in Cambodia, with the guiding questions developed by scholars of a US-based university.³⁸¹

Last but not least, coping with past experiences of political violence is a very individual process. While this analysis has assessed NGO activities according to ‘victim-centredness’, it is acknowledged that this perception of ‘victim-centredness’ might be reflective of a majority of Cambodians, but will inherently not hold the needs and interests of every single individual.

³⁷⁹ BZFO, 2010, p. 58.

³⁸⁰ Robins, 2011, p. 83.

³⁸¹ *Cfr. supra* footnote 280.

CONCLUSION

More than three decades after the fall of the Khmer Rouge regime, repercussions of the political violence in Cambodia are still noticeable today. Recent years saw increasing efforts of coming to terms with the past, generally epitomised by the ECCC. However, the analysis of the Cambodian case shows that the TJ process goes far beyond the hybrid Court, to embrace significant civil society involvement. With a focus on local NGOs, it has been shown that they have staged a significant amount of projects surrounding the process of dealing with the past. Despite some tensions in terms of substance, approaches to TJ or the underlying definition of ‘victim’, they seem largely complementary and stand in a chiefly cooperative relationship with the ECCC.

Combining punitive and restorative approaches to justice and coordinating their work around the Court rather than contradicting or rejecting it, these NGOs have added considerable value in mainly five ways. Firstly, especially NGOs working with a restorative approach have contributed to broadening the TJ process by incorporating alternative approaches towards dealing with the past, including dialogues, truth-telling, art etc., beyond the legal proceedings, which allows, in theory, for transcending the limited personal, material and temporal jurisdiction of the ECCC. Furthermore, as these organisations are not restricted by any definition of ‘victim’, they can address and actively involve a broader audience and include notably second-generation victims. However, civil society engagement might likewise bear the risk of reproducing existing power relations and thereby exclude certain groups as victims, as is potentially the case with ethnic Vietnamese in Cambodia.

Secondly, both groups of NGOs have significantly localised the TJ process, either by narrowing the gap between the Court and the population in terms of knowledge and facilitation of victim-participation in the ECCC, or more generally by conducting activities on the community level. While the Court itself is now actively involved in local outreach activities, facilitation of victim-participation and population’s attendance of the proceedings, the established relationships of trust with communities continue to be vital. Moreover, resort to e.g. traditional conflict resolution mechanisms and

initiatives embedded in Buddhist rituals in restorative initiatives are more familiar and potentially closer to the population in cultural terms.

Thirdly, the combined approach of NGOs supporting and extending Court activities have been conducive to meeting victims' understandings of concepts related to the TJ process. Notably, victims' complex meaning attached to the concept of justice necessitates both contributions in form of direct support to the ECCC as well as restorative measures beyond the Court proceedings. On the one hand, the predominantly legal understanding in forms of trials and punishment and demands for legal accountability of top leaders valorises NGOs' collaboration with and facilitation of the Court's work, including the facilitation of victim-participation, provision of evidence and related advocacy and limited critical monitoring. NGOs' outreach activities, support in filing applications, legal representation and psycho-social support have been especially crucial at the beginning, when the designated Victims Unit and Public Affairs Section of the ECCC were not yet operational. However, especially Civil Parties' expectations in the Court related to victim-participation such as learning the truth about the fate of relatives and friends, offering space for personal narratives, and receiving acknowledgement for their suffering are unlikely to be met sufficiently by the Tribunal. In this sense, local truth-telling initiatives, dialogues, family tracing and memory initiatives significantly complement the process of working towards justice for Civil Parties, though it is less clear whether this also accounts for the general population. With regard to reconciliation, measures conducted by NGOs taking a restorative approach on the local level have provided entry points to improve interpersonal relationships, the meaning that the Cambodian population attaches to the concept. Dialogues, truth initiatives as well as training in mediation and conflict resolution, aimed at understanding and peaceful cohabitation seem vital in this regard.

Fourthly, taking the UN Basic Guidelines as a starting point, most activities of both groups of NGOs amount to some form of reparation in the form of rehabilitation and satisfaction. Especially symbolic reparations in form of memorials and public ceremonies at the community level are in line with victims' preferences when faced by

ECCC's limited mandate to award collective and moral reparations as well as non-judicial measures.

Lastly, the considerable involvement of the population in projects provides a means for empowerment of victims to partly shape the process to the extent that they can exert limited influence on the decision-making in projects or raise their voice in the legal proceedings and e.g. face the indicted. Furthermore, education on the Khmer Rouge period as well as training in conflict resolution, mediation or memory initiatives have encouraged some bottom-up initiatives where the local population takes the process of dealing with the past into their own hands. At the same time, however, it has to be born in mind that procedural limitations of the ECCC and excessive expectations of the legal proceedings, as well as the re-living of suffering evoked through e.g. truth-telling initiatives might also bear the risk of re-traumatisation of victims.

An assessment of NGO activities against the concept of victim-centredness provides valuable insights with regard to the standing of the victim in the process of dealing with the past. It suggests that while NGOs have undoubtedly provided added value to the TJ process by the ECCC, their activities can only partially be considered as victim-centred according to Robins' definition, i.e. based on the meeting of victims' explicit needs as defined by themselves and their consultation or inclusion in all stages of the project cycle. Markedly, it seems that the three key strengths of a victim-centred process - namely the challenging of external and prescriptive approaches to TJ, a bottom-up process countering elite control, and the better addressing of victims' needs and preferences - are only to a limited extent brought to fruition.

The latter two requirements are partially met in two ways. Firstly, this is to the extent that activities in the punitive and restorative approach to TJ largely correspond to the Cambodian population's understanding of the concepts – though to different degrees among approaches, with punitive NGOs hitting higher with regard to justice and accountability, while restorative NGOs score better as regards reconciliation, truth, and symbolic reparations. Secondly, a bottom-up approach is achieved where empowerment in the implementation phase has subsequently led to TJ activities initiated by the community, such as commemoration ceremonies.

However, despite their general correspondence to the Cambodian population's understanding of the concepts, it is nevertheless questionable whether NGO activities can eventually be depicted as *responsive* to victims' needs, interests and priorities as defined by victims themselves, rather than *decided upon on behalf* of them by NGOs or external actors according to own agendas and international discourse. The strong focus on reconciliation and reparations is indicative in this regard, as victims do not seem to consider these concepts as integral to justice, and exceptionally few respondents mentioned related aspects among their current priorities. This is not to claim that reconciliation and symbolic reparations are not at all important to victims, it merely shows that they enjoy a considerably low priority among Cambodians in their daily lives. In this regard, it is of paramount importance that reconciliation and symbolic reparations be not politicised, presented as trade-offs for prosecution or meant to silence victims in their demands for legal justice and fair and speedy proceedings free of political interference, in order to avoid that victims' primary concerns are subordinated to potentially political goals. Furthermore, the strong inclination for prosecutions complemented by restorative measures challenges the widely held assertion that restorative justice is inherently more victim-centred.

Furthermore, instead of being driven by the population, international donors take a significant lead not only in the promotion of a liberal form of civil society with NGOs engaging in the TJ process, but specifically also in the conception, design and benchmarking for evaluation of projects. In contrast, participation and influence of victims seems essentially restricted to the implementation phase, limiting their decision-making power to merely filling the predetermined framework of projects with substance rather than determining objectives and mechanisms of the TJ process themselves. Generally, victims' limited influence in the design stage risks their relegation to the position of passive recipients of the TJ process rather than active drivers. Furthermore, it exists the peril of instrumentalising victims merely a means to achieve broader goals such as enhanced democracy or the rule of law rather than centring on the satisfaction of victims as an end in itself. Against this background, it is almost cynical to portray civil society participation as bottom-up or free from external influence. In fact, the promotion of civil society as a driving force in the TJ process, to begin with, reflects international

discourse and ‘best practises’ in dealing with the past. Even where some local ownership might be claimed by NGOs, the assumption that civil society involvement will inherently counter elite control is deceiving where NGOs are chiefly led by local elites rather disconnected from and arguably not representative of the overall population. In this context, it therefore appears likewise problematic to talk about ‘real’ empowerment of victims to preponderantly drive their own process of coming to terms with the past.

Overall thus, NGOs do not seem entirely able to keep their promise of being representative of and responsive to the needs of victims. Therefore, rather than corresponding to a victim-centred approach to TJ based on needs and priorities as defined by victims themselves and involving them at all stages of the project cycle, NGO activities should, despite their considerable contributions, be considered as *only* placing a focus on victims and their understandings of concepts at the core of project implementation. Arguably, NGOs continue to speak on behalf of people rather than with the latter’s voice. However, in order to substantiate these findings, they would have to be complemented with deeper insights on the ground to be acquired through fieldwork.

With view to the TJ process in progress, it seems crucial that the ongoing trials are successfully completed to provide victims with a sense of justice, enhanced by education and restorative measures such as truth-telling initiatives and space for personal testimonies for those who consider this as crucial in their process of coming to terms with the past. While external influence and lacking local ownership are predominantly due to the still weak condition of civil society and overall dependence on international donors, the involvement of more community-based associations might counter elite-control and give victims a stronger voice. However, after all, it needs to be kept in mind that TJ will most likely continue to play a rather limited role in victims’ life as long as their material and basic needs are not met. Only by improving the latter might the focus on (legal) justice, as well as potentially reconciliation, loom larger on the Cambodian population’s agenda in the future.

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ANNEXES

Annex I: Vision, mission and selected project goals of NGOs

The following information is adopted literally from the respective NGOs' homepage sections on their vision, mission and goals, if not indicated otherwise (emphases in the original, all websites were consulted on 12 June 2013). Additional program and component goals are indicated where they provide added value with regard to the analysis in the thesis.

1. NGOs (predominantly retributive approach to TJ)

1.1. ADHOC [ADHOC, at <http://www.adhoc-cambodia.org/?cat=116>]

Vision	A society that respects human rights and law.
Mission	Strengthen the capacity of ordinary citizens, enable them to defend their own rights and lobby and advocate for better governance and full respect for human rights that every citizen can practice.
Goals of the organization	<ul style="list-style-type: none"> To strengthen the capacity of ordinary citizens to claim their rights and to assist victims of human rights abuses in their quest for justice. To help ordinary citizens to assert their human rights fully by lobbying and advocating for improvement and enhancement of laws, institutions and law enforcement.
Specific program or component goals	<ul style="list-style-type: none"> <i>Khmer Rouge Trials and International Criminal Court</i> (program goal): To ensure that the [ECCC] succeeds in delivering justice to the victims of the Khmer Rouge, and to seek safeguards that will prevent the perpetration of similar mass crimes in the future. [http://www.adhoc-cambodia.org/?p=1847] <i>Khmer Rouge Trials and ICC: Outreach</i> (component goal): To enhance and strengthen domestic capacities and build a sustainable base of legal and democratic knowledge. This is not only to raise awareness of the existence of the ECCC and its general mandate, but also to ensure that participants have a deeper understanding of the ECCC, as well as the legal values and principles that come with it. [Pham et al., 2011, p. 34] <i>Khmer Rouge Trials and International Criminal Court: Civil Party Representative Scheme</i> (component goal): Ultimately, it is hoped that [a better understanding of the legal principles that underline the work of the ECCC] could translate into a better understanding of the concepts of rule of law and democratic institutions. [Pham et al., 2011, p. 9]

1.2. CDP [CDP, at <http://www.cdpcambodia.org/>]

Vision	Everybody needs JUSTICE . We do not believe that only the rich men and high rank officials need justice. The law must be implemented and applied equally. Everybody must be equal before the law.
Mission	We work with many of partners to promote the full range of human rights for all Cambodian people by providing legal representation to the poor and vulnerable, and by strengthening the institutions required for a liberal democracy and for the rule of law.
Specific program or component goals	<ul style="list-style-type: none"> • <i>Gender Based Violence Project</i> (program goal): Gender Based Violence Project is a project on Gender Based Violence during the Khmer Rouge Regime [sic] and is aimed at assisting the empowering survivors [of] gender-based violence during this period by providing legal representation before the ECCC and advocating [for] their interests. By conducting outreach activities, the project also aims to raise public awareness to enhance social support for these victims and change negative perceptions held in society. <p>[CDP, at http://www.cdpcambodia.org/content.php?id=43]</p>

1.3. CHRAC [CHRAC, at http://www.chrac.org/eng/index.php?page=vision_mission]

Vision	Cambodia as a peaceful and liberal democracy where development takes place in an environment where human rights are respected and protected.
Mission	To reduce the number of serious violations of human rights in Cambodia.
Specific program or component goals	<ul style="list-style-type: none"> • <i>Khmer Rouge Tribunal</i> (program goal): CHRAC envisions a court that not only brings justice to the millions of victims of the Khmer Rouge regime, but also one that sets an example of a model court and contributes to ending the longstanding culture of impunity in Cambodia. Accordingly, under the coordination of the Secretariat, CHRAC's [Khmer Rouge Tribunal] activities deal with three main areas: outreach, victim participation, and monitoring. <p>[CHRAC, at http://www.chrac.org/eng/index.php?page=khmer_rouge_tribunal]</p>

1.4. KID

<p>Visions (Fair Trial principles Project)</p>	<p>The vision of this project is that genocide, crimes against humanity and any other gross human rights violations will never happen again in Cambodia.</p> <p>Therefore KID strives for a Cambodia where the rule of law is respected and an independent and impartial judiciary observes the principles of fair trial for all Cambodians.</p> <p>KID wishes to contribute to an atmosphere of trust among Cambodians so the trauma of the Pol Pot times can heal and mutual understanding can grow.</p> <p>In our future Cambodia all citizen shall enjoy real peace after a national reconciliation process and shall enjoy their human rights for a democratic and better development of the country.</p> <p>[KID, at http://www3.online.com.kh/users/kid/legal_2.htm]</p>
<p>Goals of the organization</p>	<ul style="list-style-type: none"> • To train a competent team of young Cambodian law bachelors who later will observe and monitor properly the Khmer Rouge Tribunal to help to ensure proceedings which respect international standards. • To increase and deepen the knowledge of Cambodian citizens about <ul style="list-style-type: none"> - fair trial principles with respect to <ol style="list-style-type: none"> 1. the upcoming Khmer Rouge Tribunal 2. the current weak courts and their unfair proceedings and arbitrary jurisdiction - experiences in other countries with coping strategies of genocide like truth commissions, international trials, public apologies, etc. - Pol Pot's regime in general (historical, political and social backgrounds), because survivors of massive human rights abuses have the right to know the truth about what has happened. • To engage Cambodian citizens in the Khmer Rouge court process either as witnesses or as petitioner. • To provide opportunities for a dialogue among survivors. <p>[KID, at http://www3.online.com.kh/users/kid/legal_2.htm]</p>
<p>Specific program or component goals</p>	<ul style="list-style-type: none"> • <i>Khmer Rouge Tribunal Project</i> (project goal): <p>The program aims to strengthen the judicial reform process in Cambodia, with the ultimate goal of eliminating Cambodia's culture of impunity and ensuring respect for the rule of laws.</p> <p>[KID, at http://kidcambodia.org/index.php?option=com_content&task=view&id=8&Itemid=9]</p>

1.5. LAC [LAC, at http://lac.org.kh/en/?page_id=16]

Vision	A just and fair Cambodian society, where everyone enjoys equal rights before the law.
Mission	Provide quality legal aid, legal and human rights education/outreach and advocate for the poor in Cambodia in order to ensure access to justice, promote respect of law and human rights and advance legal and judicial reform.
Underlying assumptions of the organization	LAC believes that <ol style="list-style-type: none"> 1. Justice comes from respect of law 2. Delivering quality legal services contributes to the rule of law 3. Good governance gains greater trust from relevant stakeholders 4. Through staff commitment, LAC can provide its solidarity to the poor.

2. NGOs (predominantly restorative approaches to TJ)**2.1. CSD/CJR/CIVICUS****2.1.1.CSD** (*involved in TJ until mid-2009*) (*vision/mission/goals reflected as of 2006/2007*)

Vision	CSD is a non-profit, non-governmental organization, which seeks to promote democratic values and improve the quality of life of the Cambodian people through practical research, training, advocacy, awareness-raising and public debate. CSD envisions a prosperous, peaceful and harmonious Cambodia – the kind of society that will support moral values and technological and social modernization. [CSD, 2006, p. 31]
Mission	The mission of CSD is to encourage broad participation (at both national and local levels) in public affairs, develop a respect for human rights and the rule of law, enhance transparency and accountability in the public sphere, and raise awareness of issues of national concern through all forms of media. [CSD, Press release, 28 May 2007]
Goals of the organization	<ul style="list-style-type: none"> • To promote public accountability and transparency • To monitor the development and implementation of the electoral process • To build citizens' participation in the democratic process • To advocate for good governance through the institutionalization of democratic values and principles • To strengthen the implementation of human rights • To act as a neutral forum for open and candid debates and discussions on issues of concern to society. [CSD, 2006, p. 31]

Specific program or component goals	<ul style="list-style-type: none"> • <i>Public Forum Program: “Justice & National Reconciliation” (2000-2009)</i> <ul style="list-style-type: none"> - To disseminate information regarding the KR years, the ECCC, processes of just peace, healing, reconciliation - To help manage the expectations of the participants as to what the ECCC can achieve in terms of peace, justice and reconciliation, and ultimately - To create a multiplier effect in these participants as ambassadors to their families and neighbors. <p>[CSD, Press release, 28 May 2007]</p>
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2.1.2. *CJR (mid-2009 - 2010), incorporating work of CSD [CJR, 2010, p. ii]*

Vision	The Center for Justice and Reconciliation (CJR) is a not-for-profit non-governmental organization that promotes peace-building, justice, reconciliation, and democratic values in Cambodia.
Mission	The mission of CJR is to empower Cambodians through trainings, seminars, research and publications, broadcastings and other media outlets; build partnerships with like-minded institutions; and improve the quality of life of the Cambodian people.

2.1.3. *CIVICUS (since 2010), incorporating CJR as major component*

Vision/ Mission	<p>CIVICUS: Center for Cambodian Civic Education ("CIVICUS Cambodia") is a nonprofit, nonpartisan educational, non-governmental organization registered with the Cambodian Ministry of Interior dedicated to promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy and reconciliation in Cambodia and the larger, globalized world.</p> <p>[CIVICUS, at http://www.civicus-cam.org/about-us/history/75.]</p>
Goals of the organization	<p>The principal goals of CIVICUS Cambodia are to help Cambodian citizens develop:</p> <ul style="list-style-type: none"> • an increased understanding of the institutions of Cambodian constitutional democracy and the fundamental principles and values upon which they are founded; • a dialogue as a normal means of communication, especially for peace-building and reconciliation; • the skills necessary to participate as effective and responsible citizens; and • the willingness and ease to use democratic procedures for making decisions and managing conflicts. <p>[CIVICUS, at http://www.civicus-cam.org/about-us/history/75.]</p>

Specific program or component goals	<ul style="list-style-type: none"> • <i>Public forums</i> (project goal): The principal goal of these public forums is to provide a secure space for conversations on topics many years overdue and highly sensitive and emotional, and in the process to broaden this conversational space. [CIVICUS, at http://www.civicus-cam.org/programs/reconciliation-peacebuilding-kr-legacy/59] • <i>Provincial Learning Centers/Memorials</i> (project goal): The project works toward the continued education of, access to, and relief from Cambodia's history surrounding the Khmer Rouge era for those members of the population outside of Phnom Penh. [...] The projects seeks to give Cambodians opportunities to (i) honor loved ones, (ii) receive education on the Khmer Rouge era and human rights issues, (iii) continue the legacy of the ECCC; and (iv) provide an outlet and voice to be shared with the rest of the country, and the world on issues of justice, peace, reconciliation, human rights, democracy, and personal experience with the Khmer Rouge. [CIVICUS, at http://www.civicus-cam.org/programs/reconciliation-peacebuilding-kr-legacy/61]
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2.2. ICfC/Kdei Karuna [Kdei Karuna, at <http://www.kdei-karuna.org/who-we-are/>]

Vision	Kdei Karuna contributes to sustainable peace efforts by enabling individuals to live together with dignity, tolerance, and harmony.
Mission	Kdei Karuna aims to strengthen peace-building capacities to actively engage different elements of society in non-violent conflict processes.
Values of the organization	<ul style="list-style-type: none"> • Kdei Karuna staff believe that teamwork and compassion are the keys to empowering local Cambodians to take control of their own healing. Through empathy and an endless curiosity to learn new things, Kdei Karuna staff are able to approach situations from the bottom up, seeking to understand situations through the perspectives of villagers so that positive change can happen effectively.
Specific program or component goals	<ul style="list-style-type: none"> • <i>Justice & History Outreach program</i> (project approach): Kdei Karuna focuses on empowering villagers through a participatory approach that encourages the local production of creative ideas to promote healing and conciliation. This approach has been utilized in all its work, including within the Justice & History Outreach program, which has thus far implemented work in 14 different villages. The selection of these villages focuses efforts toward filling the knowledge gap of understanding how different identities – regional, ethnic, and class – affected individual experiences during the Khmer Rouge period.

2.3. TPO [TPO, at <http://tpocambodia.org/index.php?id=6>]

Vision	Cambodian people live with good mental health and achieve a satisfactory quality of life.
Mission	To improve the well-being of Cambodian people with psychosocial and mental health problems, thereby increasing their ability to function effectively within their work, family and community lives.
Approach of the organization	<ul style="list-style-type: none"> • Recognizing the social, legal, cultural, political and medical dimensions of psychosocial work, TPO aims for a holistic approach seeking for partnerships with national and international organizations whenever deemed necessary to complement its activities. • As the major local NGO dedicated to mental health in Cambodia and with its extensive network contacts to other local NGOs, TPO Cambodia is deeply rooted in Cambodian society. Working with mentally ill people, rather than just for them, TPO is committed to a strong participatory and community-based approach integrating wherever possible beneficiaries in project design and implementation. Thus, community mobilization strategies are at the core of TPO's response. • As a community based non-government organization dealing with major social problems such as domestic violence and alcohol abuse, peace-building and conflict resolution in Cambodian communities are at the heart of TPO's engagement and provide a major cross-cutting issue in all of its projects. <p>TPO further contributes to research in the psychosocial field. Research activities aim to identify psychosocial needs and to develop appropriate assessment measures, to evaluate outcomes of psychosocial intervention approaches, and to assess the experience of program beneficiaries.</p>

2.4. YFP [YFP, at <http://www.yfpcambodia.org/>, About Us]

Vision	Youth for Peace envisions a society where people are committed to practice the balance of spiritual and material value that leads to a culture of peace.
Mission	<p>The missions of YFP are:</p> <ul style="list-style-type: none"> • To develop critical thinking skills and qualified leadership. • To encourage and empower youth to take an active role in resolving community issues. • To provide mental and technical support for youth groups.
Goals of the organization	<ul style="list-style-type: none"> • Youth for Peace aims to bring about a society of peace and social justice in Cambodia, through the development of good role models and active citizenship of youth who understand and practice a culture of peace. • Through the YFP program:

	<ul style="list-style-type: none"> - Youth are equipped with peacebuilding tools and skills and are empowered to be agents of social change - Civil society is challenged and impacted for change through education and awareness of peaceful solutions to problems of social injustice
Specific program or component goals	<ul style="list-style-type: none"> • <i>Voice of Former Khmer Rouge (VFKR) Project</i> (project goal): <p>Until today the former Khmer Rouge don't dare to speak out as fear is still amongst them. YFP is addressing their problems by the radio program "You Also Have a Chance". This radio program is an outreach program which caters to the forgotten needs of the former KR and their child soldiers. It aims to promote the understanding between the former KR, victims and youth in order to prevent violence to be passed on to the future generations.</p> <p>The radio program "You Also Have a Chance", which is broadcasted once a week, and rebroadcast one more time in the next day a week assists to understand all sides of the complex KR history. The program encourages the former KR members to tell their hidden stories on air.</p> <p>[YFP, at http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=41]</p> • <i>Healing Through Buddhism project</i> (project goal): <p>Around 90% of the Cambodian believes in Buddhism, so the monks play a key role as the mediators between victims and perpetrators. The most important aspect of "Healing through Buddhism" is the idea to involve young monks in the process of getting the former KR to talk about their past experience. Many of the former KR still hesitate to talk openly and give testimonies.</p> <p>[YFP, at http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=42]</p> • <i>Youth for Justice and Reconciliation (YJR) Project</i> (project goal): <p>To contribute to the justice process in Cambodia in the context of the proceedings of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the YJR project has been implementing its activities since 2007. In Cambodia the knowledge about the Khmer Rouge (KR) time among youth is low as the subject is not taught in schools and the information that is transferred within families varies in contents and truth.</p> <p>As an outreach program, YJR project is providing trainings, conducting community dialogues, art workshops, public exhibitions, theater, trips to former local mass killing places, visits to memory sites in Phnom Penh and water ceremonies.</p> <p>[YFP, at http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=36]</p>

2.5. YRDP [YRDP, at <http://www.yrdp.org/website/about.php?lang=en>]

Vision	YRDP envisions a just, peaceful and democratic society where youth are constructively playing a role as leaders in the development that is equitable and sustainable.
Mission	To strengthen Cambodian youth by developing their social conscience and enabling them to take responsibility for their own future and the future of their family, society and country.
Goal of the organization	<ul style="list-style-type: none"> Youth are committed and active citizens who take concrete initiative that sensitize other people for promoting peaceful, justice and democratic community development.
Specific program or component goals	<ul style="list-style-type: none"> <i>II Youth Empowerment Unit (YEU) / E. Youth Engagement in Inter-ethnic and History for Peace and Justice</i> Objective: To engage youth in analyzing and choosing appropriate alternative ways to live in inter-ethnic and complex history that partly contributes to promote a peaceful and just society for their country. [YRDP, at http://www.yrdp.org/website/work.php?lang=en]

3. DC-Cam (both retributive and restorative approach to TJ)

Vision	Through scholarly research, the Institute seeks to promote accountability and encourage a greater understanding of the history of Cambodia and other places torn by conflict and tragedy. [DC-Cam, at http://www.dccam.org/#/ourvision/researchcenter]
Mission	<ul style="list-style-type: none"> Purpose: We aim to help Cambodians heal the wounds of the past by documenting, researching, and sharing the history of the Khmer Rouge period. We seek to contribute to a stronger rule of law and to prevent future human rights abuses, in Cambodia and beyond, by assisting in accountability efforts and teaching principles of law and justice. [http://www.dccam.org/#/our_mission/purpose] [...] Successfully achieving our two primary objectives of <i>memory</i> and <i>justice</i> will help build a foundation for the rule of law and genuine national reconciliation in Cambodia. [...] [DC-Cam, at http://www.d.dccam.org/Abouts/History/Histories.htm]
Goals of the organization	<ul style="list-style-type: none"> The two main objectives of DC-Cam are memory and justice. By researching and documenting the atrocities of Democratic Kampuchea, the Center hopes to preserve the memory of the genocide in honor of those who died and for future generations. The enormous amount of data collected and

	<p>analyzed can also serve as evidentiary material in the prosecution of Khmer Rouge leaders thereby allowing victims a sense of justice.</p> <p>[DC-Cam, Brochure 2008]</p>
Specific program or component goals	<ul style="list-style-type: none">• <i>Living Documents</i> (project goal): <p>Since 2006, the Living Documents Project has promoted community participation and understanding of the rule of law, human rights, and democracy through trainings and forums on the Khmer Rouge Tribunal and the related topics of genocide, reconciliation, and transitional justice in Cambodia. The Project seeks to increase the participation of ordinary citizens in Cambodia's political life (and in particular, their legal system), and to encourage them to work for a more open and just society. The Project plays a crucial role in building the groundwork for a democracy at the grass-roots level.</p> <p>[DC-Cam, Strategic Plan 2012-2014]</p>

Annex II: Overview – NGO involvement in the TJ process

This overview is not exhaustive in terms of civil society organisations involved in the TJ process, nor does it aim at presenting a meticulous list of all projects or initiatives existing on the ground. Rather, it attempts to provide a representative excerpt of activities in the punitive and restorative field.

	“Moving forward through justice” via the ECCC			Going beyond the ECCC: embracing a restorative approach to TJ		
	Representation and Advocacy	Collaboration, facilitation and consultation	Research	Education	Services targeting transformation on the community level	Acknowledgement and reparations
ADHOC	Advocacy: e.g. inclusion of victim-participation, independence of the Court, reparation program, etc. Monitoring of the ECCC	Outreach (since 2006): workshops, print materials, radio Victim-participation (since 2007): e.g. support in filing applications & ensuring legal representation / facilitating encounters between civil parties and their lawyers, Civil Party Representative scheme, logistic support for attending trials, ...)				Commemoration ceremonies (e.g. in context of opening of Case 002)
CDP	Advocacy: especially regarding for the inclusion of gender-based violence under the Khmer Rouge regime in the investigations, and against negative perceptions held in society; independence of the ECCC etc.	Outreach Victim-participation: collecting civil party applications and complaints, providing <i>pro bono</i> lawyers for legal representation Gender-based Violence Project (collaboration with TPO, since 2011): outreach, victim-participation (filing applications and legal representation) with a focus on victims of gender-based violence			Truth-telling: <i>Women’s Hearing</i> (2011)	Commemoration ceremonies (e.g. in context of opening of Case 002)
CHRA	Advocacy: coordinating advocacy of member organisations & own advocacy (reparations, independence of the Court) Monitoring of the ECCC proceedings (joint press releases of member organisations through CHRA, e.g. on victim-participation, political interference etc.)	Outreach: ‘KRT Watch’ radio call-in show and monthly newsletters; coordination of outreach activities of members organizations victim-participation: coordination of activities of member organisations; compiling complaints and applications, channeling them to the ECCC’s VU/VSS; ensuring legal representation through CDP and LAC Legacy: e.g. co-organisation of workshops, mapping of best practices				Commemoration ceremonies (e.g. in context of opening of Case 002)

CSD/CJR/ CIVICUS		<p>Outreach (since 2007): fair trial rights seminars, general information on ECCC proceedings in forums, encouraging participation in the ECCC as civil parties (CSD)</p> <p>Victim-participation: support in filing applications (CSD)</p>		<p>Trauma/counselling: Handbook (2008): <i>Understanding Trauma in Cambodia: Basic Psychological Concepts</i>, adopted by the Royal University of Phnom Penh as authoritative textbook for Master psychology students</p> <p>Provincial Learning Centres/Memorials (CJR/CIVICUS)</p>	<p>Justice and Reconciliation Forums (CSD/CJR, 2006-2009): forums to offer space for testimonies, arrange for dialogue between surviving victims and perpetrators (first NGO to involve former Khmer Rouge in debates on the past), encourage intergenerational dialogue on the violent past, emotional support in forums</p> <p>[(re-)broadcastet on local television and radio stations]</p> <p>Provincial Learning Centres/ Memorials in 6 provinces as a pilot project, on Khmer Rouge era and human rights issues (CJR/CIVICUS, since 2009)</p> <p>Voice of Justice & Reconciliation: radio program (CJR/CIVICUS)</p>	<p>Provincial Learning Centres/ Memorials in 6 provinces as a pilot project, on Khmer Rouge era and human rights issues (CJR/CIVICUS, since 2009)</p>
DC-Cam	<p>Monitoring (since 2007): Cambodia Tribunal Monitor – website with video excerpts, expert commentaries, assessments etc. (together with Northwestern University School of Law)</p>	<p>Outreach: e.g. through the <i>Living Documents Project</i> aimed at educating Cambodians on the work of the ECCC via court visits and village forums, <i>Public Information Room</i>, <i>Searching for the Truth</i> - monthly magazine, radio projects, student outreach</p> <p>Victim-participation: support in filing applications (since 2007)</p> <p>Provision of evidentiary material via the <i>Legal Response Team</i> (since 2005/2006): compiling documents and legal materials for ECCC, locating potential informants and witnesses (through e.g. <i>Promoting Accountability Project</i>)etc. (no formal legal advise to ECCC personnel)</p> <p>Data collection: vast collection of primary and secondary documents, mapping of e.g. mass graves, forensic investigations...</p> <p>Legacy: legal training to law students, facilitating internships in the ECCC</p>		<p>Genocide Education Project (since 2004): textbook, training to teachers - provision of material and recommendations on curricula</p> <p>Radio projects: famine (since 2013), Diary of Anne Frank, ...</p> <p>Education related to the ECCC, see outreach activities and legal training</p>	<p>Truth-telling: e.g. <i>Cham Muslim Oral History Project</i>, <i>Living Documents Project</i>(focus on victims), <i>Promoting Accountability Project</i> (focus on former Khmer Rouge), etc.</p> <p>Victims of Torture Project: mental health (collaboration with TPO)</p> <p>Family tracing/Book of Memories (with requests through various avenues such as the magazine <i>Searching for the Truth</i>, <i>Public Information Room</i> etc.)</p>	<p>Book of Memories (current project)</p> <p>Memorials in schools in the context of the <i>Genocide Education Project</i></p>

	“Moving forward through justice” via the ECCC			Going beyond the ECCC: embracing a restorative approach to TJ		
	Representation and Advocacy	Collaboration, facilitation and consultation	Research	Education	Services targeting transformation on the community level	Acknowledgement and reparations
ICfC/Kdei Karuna		Outreach in the framework of the <i>Justice and History Outreach Project</i>			<p>Dialogues: community-led dialogues (since 2007) to preserve memories and past experiences</p> <p>Victim-Former Khmer Rouge Project (in collaboration with TPO, 2011) - aiming at transformation of relationship between victims and direct perpetrators</p> <p>Training: e.g. <i>Training of Trainer Project</i> (since 2010): conflict resolution, dialogue facilitation; <i>Community Memory Initiatives Training</i></p> <p>We Want (U) To Know (in collaboration with KID and TPO, 2009): participatory documentary film to work for collective memory</p>	Community Memory Initiatives Project: building of stupas, information plaques, local oral history book
KID	Advocacy: especially regarding independence of the ECCC and compliance with international standards of justice	<p>Outreach (since 2007): through regional Citizen Advisor networks in 9 provinces - on history, ECCC and updates on legal proceedings, fair trial principles etc.; via explanatory books and video documentaries</p> <p>Victim-participation: filing applications, encouraging participation in the ECCC as witnesses, complainants or civil parties</p> <p>Training: Police training, related to victim and witness protection according to international standards</p>			We Want (U) To Know (in collaboration with ICfC and TPO, 2009): participatory documentary film to work for collective memory	Commemoration ceremonies (e.g. in context of opening of Case 002)
LAC	Advocacy on independence of Court etc.	<p>Outreach: communication with victims, assessment of desires for reparations in the ECCC, updates on legal proceedings, facilitate encounters between lawyers and victims, encouraging participation etc.</p> <p>Victim-participation (since 2008): legal representation / provision of <i>pro bono</i> lawyers in the framework of its <i>General Legal Aid Program</i>; special focus on Minority Victims</p>				Commemoration ceremonies (e.g. in context of opening of Case 002)

TPO		<p>Victim-participation (in cooperation with the ECCC VSS and WESU): psychological support to civil parties on-site at all stages of the legal proceedings; follow-up telephone monitoring</p> <p>Training provided to ECCC staff members on mental health and gender-based violence</p> <p>Gender-based Violence Project (collaboration with CDP, since 2011): outreach, victim-participation (filing applications and legal representation) with a focus on victims of gender-based violence</p>	Research on victim-participation in the ECCC;	Trauma/counselling: public awareness raising and education on trauma through call-in show	<p>Trauma/counseling: public awareness-raising on trauma and mental health through radio call-in show (on ECCC and mental health in general), <i>Testimonial Therapy</i> - individual trauma treatment</p> <p>Truth-telling: "IWitness" - book, recording testimonies and portraits of survivors, interactive theatre-plays and support in large-scale national women's forums</p> <p>Training to partner organizations on mental health issues and gender-based violence</p> <p>Victims of Torture Project: mental health (collaboration with DC-Cam)</p> <p>We Want (U) To Know (in collaboration with KID and ICfC, 2009): participatory documentary film to work for collective memory</p> <p>Victim-Former Khmer Rouge Project (in collaboration with ICfC/Kdei Karuna, 2011) - aiming at transformation of relationship between victims and direct perpetrators</p>	Commemoration ceremonies (e.g. in context of opening of Case 002)
YFP		Outreach via the <i>Youth for Justice and Reconciliation Project</i> - including study trip to Phnom Penh, and village dialogues		Youth for Justice and Reconciliation Project (since 2007): critical educational workshops and exposure to a variety of narratives; Peace Youth Conferences: exchange with youth from other countries that underwent a TJ process; Study trip to Phnom Penh historical sites and ECCC	<p>Dialogue: village dialogues to encourage intergenerational exchange and exchange between victims and former Khmer Rouge</p> <p>Truth-telling: <i>Voice of Former Khmer Rouge Project</i> - radio program, film (focus on former Khmer Rouge, aiming for them to take responsibility and acknowledge wrongdoing); "Behind The Darkness – Taking Responsibility or Acting Under Orders?" – book (focus on former Khmer Rouge); "Eyes on Darkness" (focus on survivors, Art Memory book); "Picturing Moral Courage: The Rescuers" – book.</p> <p>training: <i>Healing Through Buddhism Project</i> - training of monks as mediators</p>	Memorialization through Art Workshops, memory calendars, Art Memory Book "Eyes on Darkness", local mapping of historical crime sites, memory initiatives by youth, symbolic reparations by youth
YRDP				Youth Engagement in Inter-ethnic and History for Peace and Justice Project: teaching critical reflection on history and actively involve youth with the past, e.g. through discussions		

Annex III: Selected data from surveys

The following summary of data is based on the surveys "So We Will Never Forget" (Pham et al., 2009), "After the First Trial" (Pham et al., 2011(a)) and "Victims Participation before the ECCC" (Kirchenbauer et al., 2013; percentages are recalculated to represent both Civil Parties and Civil Party Representatives).

Data is not always equally provided in all three original surveys.

a) Statistical data of interviewees

(Pham et al., 2009, pp. 22, 24; Pham et al., 2011(a), pp. 18, 35.)

	2008 (general population)			2010 (general population)			2012 (ADHOC-supported Civil Parties only)
background of interviewees	lived under KR (69%)	did not live under KR (31%)	overall	lived under KR (72%)	did not live under KR (28%)	overall	all CP interviewed lived under KR
background of interviewees	93%	51%	80%	91%	53%	80%	(victim status as precondition for CP status)

b) Current individual priorities

(Pham et al., 2009, pp. 34-35; Pham et al., 2011(a), pp. 19-20; Kirchenbauer et al., 2013, pp. 16, 32.)

	2008 (general population)			2010 (general population)			2012 (ADHOC-supported Civil Parties only)
	lived under KR	did not live under KR	overall	lived under KR	did not live under KR	overall	
overall current priorities	83% Economy, job, poverty 20% Health 17% Food, food security 10% Agriculture 10% Infrastructure 9% Land issue 7% Education 8% Peace and security 2% Governance, democracy, rule of law 1% Justice 5% Other			98% Economy and jobs 35% Health 13% Land issues 13% Infrastructure 10% Agriculture 9% Food, food security 7% Education 6% Family, relatives 6% Peace and security 3% Justice, rule of law, governance 5% Other			56% Employment 41% Health 23% Basic needs (food and shelter) 22% Decrease cost/prices 21% Peace (including border issues) 12% Justice, rule of law, governance, ECCC 10% Family 7% Safety issues (theft, drugs, ...) 6% Infrastructure 6% Land issues 4% Economic investments 4% Education 3% Immigration (e.g., flow of immigrants) 3% Agriculture (livestock, etc.) 1% Other
It is more important to focus on problems Cambodians face today than to address crimes committed during the Khmer Rouge period.	73%	83%	76%	81%	86%	83%	53%
If you could choose, would you spend money on the ECCC or would you spend it on something else? (Something else %)	51%	56%	53%	61%	67%	63%	26%

c) **Justice, accountability and the ECCC**

(Pham et al., 2009, pp. 31-33, 40-41; Pham et al., 2011(a), pp. 29-30; Kirchenbauer et al., 2013, pp. 17-19-20, 33.)

	2008 (general population)	2010 (general population)	2012 (ADHOC-supported Civil Parties only)
justice =	43% Revealing/establishing the truth 37% Being fair 15% Enforcing and respecting existing laws 9% Knowing who is right and wrong 13% Do n't know	71% Being fair 25% Knowing who is right and who is wrong 24% Appying the law	61% Being fair 27% Knowing who is right and wrong 19% Applying the law 18% Being equal 18% Being hoenst and transparent 17% Absence of corruption 9% Finding the truth
acc o untability =	49% Trial 23% P unishment 12% P rison 12% Kill 6% Torture 5% Confess crimes 5% Tell the truth 3% Apo logize	/	93%: trial, pris on, punis h, to rtu re, kill (measures associated with retributive justice) 23% truth, confession or apo logies , justice or co mpensation for the victims (measures associated with restorative justice)
important to hold the responsible acc o untable	91%	94%	/
expected impact of ECCC (closed questions: yes %)	74% Justice (according to own definition) 71% Help rebuild trust in Cambodia 67% Help promote national reconciliation	76% Justice (according to own definition) 82% Help rebuild trust in Cambodia 81% Help promote national reconciliation	95% Justice (according to own definition) 93% Help rebuild trust in Cambodia 92% Help promote national reconciliation
expected impact of ECCC (open question) / motivation to participate as Civil Party in Case 002	68 % positive (25%: punishment; 24%: truth; 7%: reduce suffering of victims, 1%: bring justice/trials, 1% end returning of KR regime, 1% bring national reconciliation, 1% Arrested KR leaders who committed crimes, 3% Other, 6% Do n't know) 11% negative (2% will not bring justice for victims, 2% too slow/leaders will die, 1% reminds victims of the past, 2% will bring no achievement/ will affect next generation of KR/ corrupt/ revenge/ too few leaders arrested and awaiting trials/ will defame families of KR leaders/ cannot reduce suffering of the victims, 4% Do n't know)	76 % positive (incl. 28% bring justice; 24% punishment through prison sentence; 19% mental health) 9 % negative (incl. 2% remind victims too much of their past, 3% negative outcome of Duch trial: sentence too short and did not bring justice to victims)	76% Receive justice for relatives who died 43% Tell their personal story and receive acknowledgement for their suffering 37% Receive individual reparations 12% Know the (private) truth 9% Conviction for KR leaders 9% Prevent next generation from committing such atrocities 3% Heal physical and mental harm

d) Truth-seeking, historical record and knowledge of the Khmer Rouge Regime

(Pham et al., 2009, pp. 26-27; Pham et al., 2011(a), p. 31.)

	2008 (general population)	2010 (general population)	2012 (ADHOC-supported Civil Parties only)
It is necessary to find the truth about what happened during the KR regime (Agree %)	86%	93%	/
People cannot reconcile without knowing the truth of what happened during the KR regime (Agree %)	64%	81%	/
People cannot feel better if they do not know what happened to their loved ones (Agree %)	64%	83%	/
A written historical record of what happened in KR is NOT necessary (Disagree %)	81%	86%	/
Which mechanisms are appropriate to establish the truth?	45% Don't know 14% Trials 12% Dialogues with victims 8% Truth commission 7% Talk freely	/	/
I want to know more about the KR regime	85% (did not live under KR) 74% (lived under KR)	85% (did not live under KR) 67% (lived under KR)	/

e) Reconciliation

(Pham et al., 2009, pp. 28, 29; Pham et al., 2011(a), p. 33.)

	2008 (general population)			2010 (general population)			2012 (ADHOC-supported Civil Parties only)
	lived under KR	did not live under KR	overall	lived under KR	did not live under KR	overall	
Reconciliation =	56% Absence of violence and conflict 33% Unity and living together 9% Communicating and understanding each other 5% Good education			54% Unity and living together 38% Communicating and understanding each other 27% Compassion 15% Absence of violence and conflict 8% Forgiveness 5% 'No revenge'			/
Feelings of hatred towards KR members responsible for violent acts (yes %)	85%	79%	83%	83%	75%	81%	/
Have forgiven the KR top leaders? (yes %)	33%	42%	36%	36%	37%	36%	/
Level of uncomfortableness (% uncomfortable)							
*living in the same community	47%			49%			/
*living as household members	47%			49%			
*children married to former KR	46%			49%			
*living as close neighbour	43%			46%			
*sharing a drink (alcohol) together	43%			42%			
*sharing meals in your home	41%			44%			
*working together	40%			42%			
*going to the same market	36%			37%			
*children attending school together	31%			33%			
*going to the same pagoda	31%			31%			
After the trial, I am more ready to reconcile with Duch	/			41% Agree 30% Disagree 16% Neutral 13% No opinion			/

f) Reparations

(Pham et al., 2009, pp. 43-44; Pham et al., 2011(a), p. 35-37 ; Kirchenbauer et al., 2013, pp. 38-44.)

	2008 (general population)	2010 (general population)	2012 (ADHOC-supported Civil Parties only)
what should be done for victims? (regardless of the Court's definition of reparations)	26% Support farming 23% Social services (e.g. health, counseling) 22% Money 17% Punish those responsible 3% Infrastructure 3% Apologies/acknowledgement 2% Provide justice 5% Other compensation 3% Other 19% Don't know 6% Nothing	33% Social services (e.g. health, education) 31% Justice (trials and punishment) 25% Support farming 25% Money 14% Infrastructure 5% Public ceremonies for the dead 3% Apologies/acknowledgement 1% Build memorials 3% Other 11% Don't know 4% Nothing	33% Money 27% Punish those responsible 16% Basic needs (e.g. housing, food, clothing) 18% Health services 12% Justice for the victims 12% Mental health services
Are collective and moral reparations important?	88% yes (only 26% would accept no reparation to victims and their family)	91% yes (only 20% would accept no reparation to victims and their family)	98% yes (only 20% would accept no reparation to victims and their family)
reparations to whom?	11% individual 68% community 21% both	8% individual 73% community 19% both	13% individuals 67% community 20% both
what reparations?	20% Social services (e.g. health, education, psychological counseling) 15% Infrastructure 12% Ec. Dev. Programs 10% Memorial (statue) 5% Day of commemoration 5% Housing and land 5% Public event (ceremonies or burial ceremonies) 4% Justice (timely and fair trial) 4% Museum 3% Movie, song, or books 1% Livestock, food, and agricultural tools 0,4% Confession and apology from perpetrators 0,1% Perpetrators go to pagoda and confess wrongdoing 16% Don't know	47% Memorial 34% Public ceremonies 27% Social services (e.g. health, education, psychological counseling) 10% Movies, songs, books 8% Infrastructure 6% Day of commemoration 4% Monetary compensation 2% Apology 1% justice 2% Other compensations 15% Don't know	62% Memorial/Stupa in each province 28% Health incl. mental health services 24% Museum 23% Ceremony or public event for victims or the dead 15% Almshouse, Rest hall, retirement home in village 9% Historical records 7% Statue at S-21 7% Education services for children and victims 6% Infrastructure improvements 4% Don't know 3% Ec. Development programs 2% Other 1% Day of commemoration