



Justice and Reconciliation for the Victims of the Khmer Rouge?

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Victim Participation in Cambodia's Transitional Justice Process

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TABLE OF CONTENTS

List of Figures	5
Acknowledgments	6
Executive Summary	7
1. Introduction	13
1.1. Victim Participation at the ECCC	13
1.2. Research Questions	16
1.3. Research Approach	17
2. Methodology	19
2.1. Survey with 439 Victims of the Khmer Rouge	19
2.2. In-Depth Interviews with 65 Selected Victims of the Khmer Rouge	24
2.3. In-Depth Interviews with Transitional Justice Professionals	25
2.4. Research Ethics	25
2.5. Key Challenges and Limitations	26
Conclusions	27
3. Demographics	28
4. Perceptions of Justice	31
4.1. Definitions of Justice	32
4.2. Conceptions of Justice	35
4.3. Agents of Justice and Achievements	41
4.4. Limitations in the Quest for Justice	44
Conclusions	46
5. Perceptions of Reconciliation	47
5.1. Definitions of Reconciliation	47
5.2. Conceptions of Reconciliation	50
5.3. Agents of Reconciliation	52
5.4. Degree of Reconciliation	55
Conclusions	58
6. The ECCC – Knowledge, Experiences and Perceptions	59
6.1. Knowledge and Awareness of the ECCC	59
6.2. Perceptions of the ECCC	62
Conclusions	67
7. Participation in Transitional Justice	68
7.1. Participation of Civil Parties and Complainants	68
<i>The Application Process for Civil Parties and Complainants</i>	68
<i>Experiences of Participation as a Civil Party and a Complainant</i>	76
<i>Limitations of Civil Party Participation</i>	81
<i>Negative Impact of (Civil Party) Participation</i>	83
7.2. Experiences of Civil Parties who Testified at the ECCC	84
7.3. Experiences of Rejected Civil Party Applicants	86
7.4. Experiences of Participants in NGO Projects	88
Conclusions	89

8. Non-Participation in Transitional Justice	93
8.1. Involuntary Non-Participation	93
<i>Inadvertent Impediments</i>	93
<i>Incapacity</i>	95
<i>Insecurity</i>	95
8.2. Voluntary Non-Participation	96
<i>Uninterested</i>	96
<i>Principled Non-Participation</i>	97
<i>Rational Choice</i>	97
Conclusions	98
9. Empowerment	99
9.1. Society-Level Empowerment	100
9.2. Individual Empowerment through Transitional Justice	101
9.3. Contentious Individual Empowerment Against Transitional Justice	105
9.4. Limitations to Empowerment	106
Conclusions	108
10. Reparations and Hopes for the Future	109
10.1. Perceptions on Reparations	109
10.2. Types of Reparations	109
10.3. Expectations of Civil Parties for Reparations	114
10.4. Awareness and Perceptions of Reparation Projects of the ECCC	116
10.5. Hopes for The Future	118
Conclusions	120
11. Policy Recommendations	121
11.1. Recommendations for Other Contexts: Lessons Learned from Cambodia	121
<i>Provide the Necessary Pre-Conditions for Victim Participation</i>	121
<i>Outreach and Communication Before and Throughout the Process</i>	121
<i>Inclusion of Victims</i>	122
<i>Managing the Process of Victim Participation</i>	123
<i>Collaboration of Multiple Actors</i>	123
<i>Do No Harm Strategy</i>	124
11.2. Recommendations for Actors Involved in the Transitional Justice Process in Cambodia	125
<i>Recommendations to the ECCC</i>	125
<i>Recommendations to the Royal Government of Cambodia</i>	126
<i>Recommendations to Non-Governmental Organisations (NGOs)</i>	126
<i>Recommendation to Donors</i>	126
Bibliography	128
Authors	134

LIST OF FIGURES

- Figure 2.1: Survey Sampling
- Figure 2.3: In-depth Interviewee Sampling
- Figure 3.1: Overview of demographic data
- Figure 3.2: Map of survey respondents
- Figure 4.1: Which is more important: To focus on problems Cambodians face today or address crimes during the Khmer Rouge period?
- Figure 4.2: What does the notion of “justice” mean to you?
- Figure 4.3: Through which of these measures can justice mainly be reached for victims of crimes of the Khmer Rouge?
- Figure 4.4: Do you believe that victims of the Khmer Rouge regime experienced justice?
- Figure 4.5: Do you think that the ECCC has brought justice for the victims of the Khmer Rouge regime and their families?
- Figure 4.6: Does your status as a civil party/complainant/participation in this NGO project provide you with a sense of justice?
- Figure 5.1: What does the notion of “reconciliation” mean to you?
- Figure 5.2: Do you think that the ECCC/this NGO project has contributed to reconciliation in Cambodia?
- Figure 5.3: Degree of reconciliation
- Figure 5.4: Low-level former Khmer Rouge were just following orders and are also victims of *Ângkar*
- Figure 6.1: Knowledge about the ECCC
- Figure 6.2: Cases 003 and 004
- Figure 6.3: Independence of and trust in the ECCC
- Figure 6.4: Trust in ECCC staff members
- Figure 7.1: Through whom did you apply to become a civil party/complainant?
- Figure 7.2: How did your family react when they (first) heard that you had applied to become a civil party/complainant at the ECCC?
- Figure 7.3: What were your main motivations to apply as a civil party/complainant at the ECCC?
- Figure 7.4: Would you have preferred to apply as a civil party? Why and why not?
- Figure 7.5: Were you worried while applying?
- Figure 7.6: Why were you worried while applying as civil party?
- Figure 7.7: In your opinion, which of these experiences do you think is most important for civil parties at the ECCC?
- Figure 7.8: How satisfied are you generally with your participation as a civil party/ complainant?
- Figure 7.9: If you could choose again, with the experience you have today, would you want to participate as a civil party/complainant again?
- Figure 7.10: Have many people been envious of your participation as a civil party at the ECCC?
- Figure 8.1: Did you ever consider applying to participate as a civil party and/or complainant at the ECCC?
- Figure 8.2: Voluntary and Involuntary Non-Participation
- Figure 9.1: Contributions of the civil party / complainant experience
- Figure 9.2: Has the experience of being a civil party representative helped you to...
- Figure 10.1: What do you think should be done today as reparations for the victims of the Khmer Rouge regime?
- Figure 10.2: What form of reparation did you expect when you applied to be a civil party at the ECCC?
- Figure 10.3: In which of the following aspects should the ECCC provide for civil parties today?
- Figure 10.4: It would be more important that reparations are given to victims of human rights violations which are happening today, rather than to victims of the Khmer Rouge regime.
- Figure 10.5: Which of these measures would be most helpful/are most important to you to deal with the Khmer Rouge past?

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EXECUTIVE SUMMARY

This report is the outcome of a research project¹ that aimed to understand victims' perceptions of justice and reconciliation in post-conflict Cambodia and how their inclusion in the transitional justice process has influenced this. This is of particular interest as many resources and hopes have been invested in enabling victim participation to a large degree in the transitional justice process in Cambodia, both at the Extraordinary Chambers in the Courts of Cambodia (ECCC) as well as in broader civil society projects. As such, this report asks the question: *What effect does the inclusion of civil parties at the ECCC, moral and collective reparations, as well as broader civil societal dealing with the past have on the perception of justice and reconciliation in Cambodia?* By answering this question, the report provides a more nuanced perspective on various victims' understandings of justice and reconciliation, how they perceive the transitional justice process and its meaning for justice and reconciliation, what meaning their inclusion in the process has and how it has empowered them, as well as what this can mean for the future.

This report draws on a mixed method approach and presents the findings of research conducted across Cambodia from 29 January until 7 June 2018. The mixed method approach began with a survey between January and April 2018 with 439 victims of the Khmer Rouge, selected using stratified random sampling. Respondents included an array of different civil parties, who participated to various degrees in the ECCC proceedings: civil party representatives or focal points, civil parties who testified, civil parties who participated in reparation projects, civil parties from all Cases, and civil party applicants whose applications had been rejected. Furthermore, complainants at the ECCC, participants in NGO projects, as well as people who have not participated in the transitional justice process were included in the survey. In a second step in May and June 2018, we then conducted follow-up, in-depth interviews with 65 of these individuals based on their responses, in order to gain insights on a diverse spectrum of perspectives. This data was complemented by 21 interviews with transitional justice professionals in Phnom Penh between January and March 2018.

Justice

Victims of the Khmer Rouge defined justice in multifaceted ways and in both the survey and the in-depth interviews they placed a strong focus on "knowing who is right and wrong," "establishing the truth" or in relation to notions of fairness, honesty, transparency and impartiality.² When engaging more deeply with our interviewees, various conceptions of justice emerged. The most important justice

¹ This research, which ran in 2017 and 2018, has been generously funded by the German Federal Ministry for Economic Cooperation and Development (BMZ).

² However, 31.9% of respondents in the survey stated that they were not able to define justice, primarily individuals who had less involved roles or did not participate at all in the transitional justice process, suggesting that individuals also learned to think about these issues by participating or at least they learned the language of transitional justice.

conceptions that emerged in the in-depth interviews were punitive or retributive conceptions of justice, as well as a social justice conception that frames justice in terms of socio-economic support. Buddhist beliefs did not undermine these conceptions but complemented them, allowing interviewees to make sense of the legal and institutional aspects of criminal justice at the ECCC through their own Buddhist perspectives. This complementarity also helped overcome the limitations of the ECCC's limited personal jurisdiction, which focuses on the highest leaders and those most responsible, with 70.2% of respondents in the survey agreeing that it is not a problem that the ECCC has sentenced only very few people, because justice will come through karma.

Confirming the positive findings of previous studies, the survey showed that respondents had very positive assessments of whether justice had been achieved for the victims of the Khmer Rouge regime with 64.6% agreeing to varying degrees, with 31.5% saying "Yes a lot" and 33.1% "Yes a little". The in-depth interviews displayed slightly more critical views on whether justice had been achieved, with interviewees most often mentioning the lack of reparations as a stark limitation in the quest for justice. Other issues raised included political interference at the Court, a lack of acknowledgment of their responsibility by the accused and the length of the trial proceedings.

The ECCC's contribution to justice was also rated positively, with 65% of respondents agreeing that the ECCC had brought justice for the victims of the Khmer Rouge regime and their families, whilst 27.3% believed that the ECCC had brought justice, but that other factors had contributed, too. The ECCC, more precisely Cambodian and international judges at the ECCC, are seen as key providers of justice, but NGOs are also perceived as important actors. The in-depth interviews in particular demonstrated the perception of a complementarity and mutual reinforcement of ECCC and NGO activities.

Reconciliation

When asked what the notion of "reconciliation" means to them, almost half of our respondents referred to ideas of unity and living together (47.2%), while a further fifth defined reconciliation as the absence of violence and conflict (22.3%); in the interviews, not holding grudges and forgiveness featured prominently, tying into Buddhist conceptions. As such, our respondents expressed a "positive" interpretation of reconciliation as unity and harmony rather than reconciliation merely as the absence of "negative" conflict and violence. Reconciliation was perceived at different levels and in a multifaceted manner with national-level political reconciliation; interpersonal, community reconciliation; as well as intrapersonal, moral reconciliation being discussed.

Reconciliation was primarily perceived as an outcome that is achieved mostly by external intervention, rather than as a process between actors. As such, 91.5% of respondents agreed that the ECCC had contributed to reconciliation in Cambodia and even 94.9% attributed the same effect to NGOs, but the government, as

well as religion, were also perceived as key to reconciliation provision. In this sense, conventional transitional justice measures are important for providing reconciliation for victims of the Khmer Rouge, but Buddhist conceptions support and feed into this.

The depth of achieved reconciliation in Cambodia was mostly shallow within local communities, although with very mixed results: 75.6% of respondents still hated the Khmer Rouge responsible for violence, even though more than half our respondents (53.7%) agreed that low-level former Khmer Rouge were just following orders and were also victims. We argue that a post-conflict politics of shifting all culpability from low-level former Khmer Rouge to the Khmer Rouge leaders and the organisation abstractly, as well as the ECCC's personal jurisdiction that reinforces this, allows for shallow reconciliation in many communities with little open conflict. This is often facilitated by the absence today in the communities of those who committed violence there during the Khmer Rouge regime.

ECCC

In the survey 43.6% of respondents indicated that they had moderate or high knowledge of the ECCC, 42.5% little knowledge and 13.9% no knowledge at all. This is backed up by our data that revealed low levels of factual knowledge regarding the ECCC and Cases 001 and 002. There was, however, also a statistically significant impact of the degree of participation at the ECCC on individuals' knowledge: the more an individual had participated in the transitional justice process, the higher their knowledge tended to be, and also men had a higher degree of knowledge than women, although this did not hold true for civil parties, a possible reflection of gendered access to general education in the patriarchal Cambodian society.

Perceptions of the ECCC were very positive, with 76.3% stating they believed the ECCC to be independent and even 90.2% trusting the ECCC. In the survey Cambodian staff at the ECCC gained the most trust, while in the in-depth interviews victims more openly displayed mistrust of the national staff and higher trust for the internationals. These positive perceptions also manifested themselves in a broad desire for the ECCC's work to continue and 80.2% of respondents suggested that they want Cases 003 and 004 to be addressed, most often citing a desire for more justice.

Participation

The main motivation both civil parties and complainants expressed for participating in the ECCC was to obtain justice, have their suffering acknowledged, tell their story and know the truth. During the application process – in which NGOs played a key supporting role – almost one third of the civil parties and one sixth of the complainants surveyed indicated that they had been afraid of submission, mainly for fear of revenge or pressure from the accused or their families.

Nonetheless, a vast majority of the civil parties surveyed were either satisfied (65.9%) or very satisfied (26.8%) with their participation experiences, with meeting other civil parties, participating in civil party forums and visiting the ECCC

constituting their most important experiences. However, many civil parties in their in-depth interviews observed a strong decrease in opportunities for participation and information on the ECCC proceedings, which may threaten previous achievements of the Court and lead to a decrease in civil party engagement with and interest in the ECCC.

Complainants were also largely satisfied with their participation albeit to a significantly lower extent than civil parties, with 18.2% very satisfied and 45.5% satisfied. Only one in five complainants had the opportunity to attend a hearing or to visit the ECCC, exemplifying one of the many differences in opportunities for participation between complainants and civil parties. Whilst only 17.2% of the civil parties mentioned that, based on their experiences, they would not want to participate again in the same role, for complainants this was 65.4%.

The opportunity to testify was highly valued, with 80% of civil parties who testified in Court proceedings stating that this was a positive experience, mostly for the possibility to tell one's story in front of an audience (the judges, but also the accused or one's relatives) or to confront the accused. However, 20% of civil parties who testified indicated a mixed experience with the most negative aspects of testifying being an inability to tell their whole story, speaking in front of many people and sharing their story publicly before sharing it with relatives. Many civil parties who testified also reported how stressful the experience was, feeling scared to speak in front of a Court and being questioned by the judges or the lawyers of the accused.

Some rejected civil party applicants did not know about their status and those who did shared feelings of disappointment, hopelessness and distress at having had their applications rejected, even feeling that their victimhood was being questioned by this.

Whilst more than half of individuals who were selected for having participated in an NGO project could not remember their participation; those who did remember showed high levels of satisfaction with this experience.

Non-Participation

The survey includes insights on people who never participated in the ECCC proceedings as complainants or civil parties, both those who participated in NGO projects related to the Khmer Rouge regime or transitional justice ("NGO participants") and those who did not ("non-participants"). 79% of these respondents stated that they had never considered applying to participate as either civil parties or complainants.

Our findings suggest that non-participation at the ECCC was mostly involuntary rather than voluntary. As such, non-participation was mainly related to an absence of necessary pre-conditions for meaningful participation in the early stages of the transitional justice process, including a lack of information on the ECCC and not being aware of possibilities for participation. For example, 36.4% of respondents who were neither civil parties nor complainants indicated that they had not known

how to apply; 24.4% mentioned they had learned of the possibility for civil party applications too late and had missed the deadline; 24.3% mentioned they had not applied because they had not known whether they would qualify as a civil party or complainant. Furthermore, another important factor that led to non-participation is individual incapacity to participate, particularly a lack of time or the advanced age of the victims of the Khmer Rouge regime. Finally, respondents also mentioned prohibitive fears related to submitting a complaint or civil party application, or indeed participating in the ECCC.

The survey also provided evidence for voluntary non-participation, as respondents indicated non-participation as a rational choice with the costs outweighing the benefits or as a matter of principle as they do not approve of the ECCC. Most importantly, 30.3% of the non-participants and NGO participants explained their decision not to participate as civil parties or complainants with a disinterest in the ECCC.

Empowerment

Understanding empowerment as acquiring agency and the capacity to demand and exercise rights, we ascertain that – to a certain degree – victims of the Khmer Rouge have gained some empowerment through the transitional justice process. Prominently, participation helped many civil parties cope better with the loss of their loved ones, helped them feel mentally stronger and gave them more hope for the future, while at the same time also gave them self-confidence to speak out about their story. Also, participation facilitated gains in knowledge that allowed individuals more opportunities to take proactive roles in their communities, as well as participation making civil parties more articulate in formulating their grievances, ideas and demands.

While much of this empowerment is at the individual level, some individuals were also empowered in more contentious ways, challenging the transitional justice system itself. For example, some civil parties engaged in boycotts, demonstrations or signed petitions in order to convey their discontent at the rejection of fellow victims' applications for civil party applications or for the introduction of individual financial reparations.

However, there were also many limitations to empowerment within the victim participation system in the transitional justice process in Cambodia. First and foremost, the way some programmes – both VSS outreach and some more monologic NGO projects – were designed possibly led more to passive consumption than active engagement. Some participants in our research mentioned that they were chided when they were too vocal or critical. Furthermore, access to these programmes is not equal across all victims and some people are marginalised if they are outside certain patronage networks; further, a transitional justice professional suggested that others were marginalised due to their geographically 'backward' location.

Reparations

While reparations are allowed as part of the judicial process, what constitutes the appropriate form for these reparations for the victims is controversial. For example, 60.6% of survey respondents state that reparations should be given to the community as a whole, while 38.8% expect individual reparations. While 22.2% of survey respondents believed individual financial reparations were the most appropriate reparations for victims today, 93.9% agreed that it is necessary to provide symbolic reparations, such as memorials, health services, education or infrastructure. Of particular prominence in the in-depth interviews was the idea of individual financial reparations, which can be used to perform religious ceremonies for those loved ones lost during the Khmer Rouge regime, as well as collective reparations, such as the construction of stupas or memorials, provision of social services (health care and education) or the establishment of a foundation for victims.

66% of civil party respondents in the survey stated that they had been consulted on reparation projects, and of these 90.4% believed that their opinions had been taken into account for the decision on reparation projects by the ECCC. However, this general positive perception is strongly undermined by the fact that 81.4% of our respondents (including an overwhelming majority of civil parties) could not name a single reparation project and demonstrated little knowledge of what projects actually constituted reparations. Nonetheless, some civil parties were not satisfied with the forms of reparation provided by the ECCC, particularly the lack of financial reparations, while others even believed that the reparation measures were a myth.

When asked about their hopes for the future, respondents stated most often that they hoped for reparations, either individual or collective, with 64.7% of survey respondents reiterating that individual (financial) reparations would be the most helpful for them to deal with the Khmer Rouge past. Also frequently mentioned (61.3%) was the establishment of a truth commission. Other desires included more general references to peace and non-recurrence of the Khmer Rouge regime, justice and more prosecution.

1

INTRODUCTION

When the horror of mass atrocities ends, the physical violence itself may have finished, but the society will continue to be marked by the scars of this violence for years or decades to come. Similarly, the victims who have survived this ordeal, but lost loved ones and suffered themselves, must live on with the memory and consequences of what has happened. Given their experiences, victims should be central to any post-conflict attempts at dealing with the past. As such, it is a welcome development that over the past few years greater attention has been given to victims of mass atrocities in transitional justice processes by researchers, practitioners and policy-makers, and there have been increased calls to include victims in these processes. Pablo de Greiff, United Nations (UN) Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, has argued that victim participation has become a “mantra” in the field of transitional justice, but that this rhetorical commitment is not matched by actual practice, and that furthermore there is a lack of systematic analysis of the relevant experiences (Bonacker et al. 2013; de Greiff 2016).

The hitherto most far-reaching attempt to include victims in judicial transitional justice processes began at the Extraordinary Chambers in the Courts of Cambodia (ECCC) (Thomas and Chy 2009). The ECCC is a hybrid tribunal that was established by an agreement between the Royal Government of Cambodia and the United Nations in 2004 after protracted negotiations. Its mandate is to bring to justice the senior leaders and those most responsible for the crimes committed from 17 April 1975 to 6 January 1979 during Democratic Kampuchea, as the Khmer Rouge regime was known.

1.1. Victim Participation at the ECCC

At the ECCC a victim is defined as any “person or legal entity” who has “suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC.”³ Victims may participate in the proceedings as civil parties, complainants or witnesses.

Complainants are individuals or legal entities who have “useful information regarding the crimes of the Khmer Rouge” that fall under the ECCC’s jurisdiction,

³ ECCC Internal Rule 23 bis, Revision 9. Available at: <https://www.eccc.gov.kh/en/document/legal/internal-rules> (last accessed 18.10.2018).

and who, with the co-prosecutors, filed a complaint that may be used to support the investigations.⁴ Whilst they may be requested to give evidence or testify as witnesses, complainants are not a formal party to the proceedings like civil parties; their participation is therefore limited and more indirect. Altogether 3,998 individuals registered as complainants.

A similar number of victims applied to participate as civil parties at the ECCC. Civil party participation constitutes the most progressive, visible and direct form of participation amongst these options. For the first time in the history of international criminal justice, the ECCC indeed afforded victims the right to formally participate as parties within the justice-seeking process (Ciorciari and Heindel 2014; Studzinsky 2009; Werner and Rudy 2010). This possibility of legal participation is a consequence of the tribunal's hybrid nature, meaning not only that it draws personnel from both the UN and Cambodia and that it applies international and national law, but also that it is rooted in the Cambodian civil law system. Civil parties at the ECCC are also granted collective and moral reparations, albeit not individual or financial ones, a point of great dissatisfaction to many victims, as we will discuss in this report.

In Case 001, the ECCC tried Kaing Guek Eav, better known as Duch, the head of the infamous security centre S-21,⁵ and 94 individuals filed to be civil parties, of whom 76 were admitted. Case 002 against Nuon Chea, former Deputy Secretary of the Communist Party of Kampuchea, and Khieu Samphan, former Head of State,⁶ saw 4,128 individuals apply to be civil parties, of whom 276 applications were rejected. In an effort to expedite the trial in light of the advanced age of the accused, the case was divided into two parts: Case 002/1 and Case 002/2. Finally, a total of 645 and 2,008 civil party applications were submitted to the ECCC in Cases 003 and 004, respectively. These Cases currently concern charges against the accused Meas Muth, former commander of the Khmer Rouge navy (Case 003); Yim Tith, former Acting Secretary of the Northwest Zone (Case 004) and Ao An, former Deputy Secretary of the Central Zone (Case 004/2).⁷

Whilst heralded as unprecedented in the history of international criminal justice, civil party participation at the ECCC has also been the subject of much controversy. Scholars and practitioners have for instance questioned the meaning

⁴ See ECCC Website at: <https://www.eccc.gov.kh/en/victims-support/participation> (last accessed 18.10.2018)

⁵ In Case 001, Kaing Guek Eav, alias Duch, the former Chairman of S-21 Security Center, was tried and sentenced to life imprisonment by the Supreme Court Chamber reversing the Trial Chamber's judgement; the trial in Case 001 covered several thematic areas including S-21, Choeung Ek, S-24, M-13 and the Takmao prison (see Case 001 Judgement of 26 July 2010 and Appeal Judgement of 03 February 2012).

⁶ Case 002 against Nuon Chea and Khieu Samphan was severed into two trials, Case 002/01 for forced evacuation of population and alleged execution of former Khmer Republic soldiers and Case 002/02 for alleged genocide against Cham and Vietnamese, forced marriages and rape, purges, persecution of Buddhists and crimes against humanity at security centers, worksites and Tram Kak Cooperatives (see Severance Order of Case 002, 2011 and Closing Order of Case 002, 2010). Originally on the docket were also Ieng Sary, former Minister of Foreign Affairs, and Ieng Thirith, former Minister of Social Affairs, but their proceedings were terminated due to his death and her health issues leading to her being unfit to stand trial and her subsequent death in 2015, respectively.

⁷ The Case 004/1 against Im Chaem, former Khmer Rouge Secretary of Preah Net Preah District in the North-West Zone, was recently concluded after the Pre-Trial Chamber did not overrule, in its June 2018 Considerations, the Co-Investigating Judge's dismissal of the Case on the basis that the accused person was not subject to the personal jurisdiction of the Court.

of participation at the ECCC: participation is mediated by legal experts with civil parties' and individual victims' rights being exercised by their lawyers, individual civil parties are grouped into larger collectives, and victim participation is sometimes relegated to a trial management issue (see e.g. Elander 2012; Mohan 2009). Significant challenges arose during the implementation of civil party participation and broader victim participation at the ECCC. A lack of adequate structures, and of human and financial resources allocated to victim participation during the establishment of the ECCC led for instance to the belated set-up of the Victims Unit at the ECCC (see Jarvis 2014), in charge of facilitating the participation of victims at the ECCC and later renamed Victims Support Section (VSS). Other challenges included the divergent interpretations of victim participation by ECCC judicial staff with common vs. civil law backgrounds and concerns regarding how to balance fair trial rights and trial expediency with victim participation (Hoven 2014). Throughout the ECCC trial proceedings, the scope and form of civil party participation has therefore been significantly reshaped, with changes made regarding civil party eligibility, the rights granted to civil parties and legal representation (see e.g. Ciorciari and Heindel 2014; Killean 2018a; Studzinsky 2009; Werner and Rudy 2010). Most importantly, before the start of Case 002, and given the large number of civil parties in this Case, the judges amended the Internal Rules and streamlined legal representation. A system of two civil party lead co-lawyers was introduced and the new international and national lead co-lawyers were tasked with the strategy, advocacy and representation of civil parties in Court.⁸ In order to support the participation of the many civil parties in Case 002, a system of civil party representatives was also introduced by ADHOC, the Cambodian Human Rights and Development Association (see Kirchenbauer et al. 2013). A select number of civil parties were trained to become representatives and act as intermediaries between the ECCC, the lawyers and the civil parties. While the programme has since ceased to operate, some of the civil party representatives trained by ADHOC later continued to work directly with VSS, whilst VSS also works with 'focal points' who are non-civil parties.

As a result, the experiences of civil parties in the ECCC trial proceedings are very diverse. In Case 001, civil party applicants, significantly less numerous than in Case 002, were able to repeatedly attend Court hearings, as well as outreach activities offered by NGOs, whilst being represented by their lawyers in the Courtroom. They arguably had a much more intense experience of victim participation than civil parties in Case 002, who were much more numerous and did not participate as individual parties anymore but as part of a consolidated group represented by the lead co-lawyers. However, civil party applicants in Case 001 also had negative experiences, most notably when the applications of 23 civil party applicants, who had actively participated in the trial proceedings but were not informed of the provisional nature of their status, were rejected in the Trial Chamber Judgment; in the end, however, the status of ten civil party applicants was later restored by the Supreme Court Chamber in its Appeal Judgment.⁹

⁸ ECCC Internal Rule 12 ter, Revision 9.

⁹ See ECCC Trial Chamber Judgment in Case 001, Case of Kaing Guek Eav, alias Duch, 001/18-07-2007/ECCC/TC. ECCC Doc. No. E188. §647-649. Available at: www.eccc.gov.kh/sites/default/files/documents/court-doc/20100726_Judgement_Case_001_ENG_PUBLIC.pdf (last accessed 24-10.2018).

In addition to having different experiences depending on the specific Case in which they were involved, civil parties were also offered different opportunities for participation. A limited number of civil parties (22 in Case 001 and 31 in Case 002/01 and 63 in Case 002/02) for instance had the opportunity to testify in Court. Some civil parties also became active as civil party representatives or VSS focal points, thereby enjoying greater access to information on the ECCC proceedings.

1.2. Research Questions

The ECCC became operational in 2006 and NGOs have operated on these topics even longer. With Case 002/2 drawing to a close, it is possible now to draw some first conclusions on the inclusion of civil parties and to assess this engagement for the victims of the Khmer Rouge regime. In this context, it is significant to assess more systematically the “justice dividend” and “reconciliation dividend” of transitional justice processes and see how the various judicial and non-judicial interventions have impacted the victims and how these individuals – for whom transitional justice is purportedly implemented – perceive these. Most of all, it is important to analyse this inclusion of victims in a systematic way, in order, first, to contemplate how to continue to support victims in Cambodia in their search for justice and reconciliation even after the ECCC ends its work, and second, to draw lessons for future transitional justice processes, including tribunals, in other contexts. As such, this research project examines the following, general research question:

What effect does the inclusion of civil parties at the ECCC, moral and collective reparations, as well as broader civil societal dealing with the past have on the perception of justice and reconciliation in Cambodia?

Several sub-questions are derived from this research question that have guided the research in this project:

- 1. What is the understanding of justice and reconciliation of civil parties, other victims and relevant actors?*
- 2. How do these actors believe that justice and reconciliation can be reached?*
- 3. In their understandings of justice and reconciliation, what role do these actors give to the inclusion of civil parties at the ECCC, to reparations and other dealing with the past projects? And to what extent do they believe that their inclusion can contribute to a form of empowerment?*

By answering these questions, this report will contribute to the literature on how transitional justice actually impacts societies and will show how it – in its many forms – is perceived by the victims for whom it is conducted. In order to do so, it draws on the vast literature that has emerged on victim participation at the ECCC. Although initial debates amongst scholars and practitioners were focused on legal considerations of how to balance civil party participation with efficiency

and respect for the rights of the defence (Jasini and Phan 2011; McGonigle 2009; Studzinsky 2009; Werner and Rudy 2010; Yesberg 2009), significant empirical studies have been undertaken over the past ten years. This includes both qualitative (Herman 2014; Jasini 2016; Stover, Balthazard, and Koenig 2011) and large-n quantitative surveys (Kirchenbauer et al. 2013; Pham et al. 2009; Pham et al. 2011a; Stammel et al. 2010; Strasser et al. 2015). The main focus of most studies was laid on civil parties, including specific groups amongst civil parties such as civil party representatives (Kirchenbauer et al. 2013; Sperfeldt et al. 2016), civil parties admitted in Case 002 due to forced marriage under the Khmer Rouge regime (Strasser et al. 2015), or civil parties within the Cambodian diaspora in the US (Catalayud et al. 2011). However, some studies also addressed the experiences of complainants or of the broader population in Cambodia (Pham et al. 2009; Pham et al. 2011a; Stammel et al. 2010).

1.3. Research Approach

In our research, we consciously broaden the spectrum of what we understand as transitional justice beyond just the ECCC, in contrast to what was done in previous research on Cambodia,¹⁰ in order to pay homage to the experience of participating in NGO projects as part of dealing with the past in Cambodia. On the tailcoats of the ECCC, a wealth of civil society projects has indeed emerged that aim to deal with the Khmer Rouge past and cater to victims' and broader societal needs. Non-governmental Organisations (NGOs) have not only developed myriad own projects that aim at providing justice and reconciliation, but have also taken on various functions in support of the ECCC, such as documenting, monitoring the court proceedings, outreach, victim participation at the ECCC, legal representation, psychosocial support, and reparations (Sperfeldt 2012a). NGO projects are thus important both for civil parties and for broader victim participation and contribute to dealing with the past. By including civil society projects in this report, we go beyond the traditional legalistic focus of transitional justice research (McEvoy 2007) to embrace a victim-centred understanding of justice that incorporates forms of meaning-making beyond legal-judicial means and state-sanctioned processes.

We also include a systematic comparison between the perspectives of different groups of respondents participating to varying degrees in the transitional justice process, including civil parties from all Cases at the ECCC (including also Cases 003 and 004), rejected civil party applicants, complainants, participants of NGO projects and respondents who have not formally participated in either the ECCC proceedings or NGO projects.¹¹

At the same time, we recognise that being a victim participating in the proceedings can mean very different things for different people, as they have had strongly different degrees of opportunity to participate in different ways. For some,

¹⁰ This also reflects a general trend in the research on transitional justice processes, which does not systematically analyse the role of civil society in these processes in comparison to state-sanctioned processes (see Hovil and Okello 2011).

¹¹ While previous studies have also included systematic comparisons, this degree of diversity is new.

participation is little more than a tokenistic box-checking, for example complainants who have no further involvement after registering, while others who even testify before the tribunal have a more intense experience. Each form can still be deeply meaningful for the individuals themselves – as we will describe in this report – but this systematic comparison allows us to more closely understand precisely how the various forms of participation contribute to justice and reconciliation and which shortcomings some may have.

Finally, we use a mixed method approach that combines statistical analysis of a survey with in-depth interviews with both victims and transitional justice practitioners, allowing us the best of both the quantitative and qualitative worlds, showing broader trends within the survey data, but also being able to delve into what these processes really mean for the victims through our qualitative analysis of the interviews. While quantitative analysis allows such abstract generalisation, behind every statistic there are people's voices and stories, which we try to represent better through our qualitative data. To support the presentation of the data from these two distinct datasets, the term "respondents" is consistently used throughout this report to refer to survey data while the term "interviewee" refers to data from the in-depth qualitative interviews.

In this report, we first present the methodology underlying this study (chapter 2) and provide brief demographic information on our survey respondents (chapter 3). We then discuss our survey data and insights from the in-depth interviews on the conceptions of justice (chapter 4) and reconciliation (chapter 5), before moving on to a discussion of knowledge about, experiences of and perceptions of the ECCC (chapter 6). We then discuss the various forms of participation (chapter 7) and non-participation (chapter 8) that exist in transitional justice in Cambodia and victims' perceptions of these, before reflecting on what this means for empowerment of the victims (chapter 9). After discussing the perceptions of reparations and hopes for the future (chapter 10), the report ends with a brief conclusion and presentation of key policy recommendations (chapter 11).

All chapters in this report navigate between the different datasets of the large-scale survey and the follow-up qualitative interviews conducted for this research. They also all draw on the wealth of existing academic and grey literature on the general topic of victim participation in transitional justice, and more specifically in the context of Cambodia. Some chapters, however, attempt more explicitly to engage with broader and abstract academic debates and concepts (for instance chapters 4, 5 and 8), whilst others will be more focused on presenting the empirical data and its immediate implications.

Despite the length of this report, many subjects discussed with us in the survey and the interviews can only be touched on briefly but will not be able to pay full homage to the complex dynamics each of the 439 individuals who participated in this study have experienced. Nonetheless, we are confident that this report can provide insights to academics and practitioners alike as a representation of many victims' perceptions of justice and reconciliation in post-conflict Cambodia today.

2

METHODOLOGY

In order to adequately gain insight into both the broader distributions of victim perceptions regarding justice, reconciliation and empowerment, as well as to understand the precise nature of these perceptions, this study was conducted using a mixed methods approach which involves approaching the topic from various angles in order to understand it more fully. As such, a survey of 439 victims of the Khmer Rouge was conducted across all 25 provinces of Cambodia, followed by follow-up interviews with a selection of 65 survey respondents who were particularly representative for or particularly different from the broader trends of the survey. This research into the victims' perceptions is the cornerstone of this project, but it was complemented by interviews with practitioners in the field of transitional justice who had interacted with the victims as justice providers in the context of the ECCC and civil society projects.

2.1. Survey with 439 Victims of the Khmer Rouge

The survey was conducted with a broad variety of victims of the Khmer Rouge and aimed to include as much diversity as possible regarding the forms in which these victims had participated in the transitional justice process. As such, in a stratified random sampling process, 439 survey respondents were drawn from around the country, making sure to include various types of participants at the ECCC, in civil society projects, as well as people who had not participated in any of these activities. This section will detail the survey instrument itself, the chosen sampling strategy, give an overview of who the types of respondents were with whom we conducted the survey, some background on the training and pre-test processes, as well as details on data collection and analysis.

The Survey Instrument

When answering the survey questionnaire, no respondent answered all questions within the instrument as there are strong layers of filters to target specific questions only to relevant groups. On average, respondents received around 128 questions. Questions were drawn from previous surveys wherever possible, in order to use tested phrasings, as well as increase comparability of the survey. The survey began with basic demographic information (age, nationality, economic situation, education) before focusing on perceptions of justice and reconciliation, including items on expectations regarding justice and how the ECCC delivers on these. This was followed by a section on the ECCC and attitudes towards it, as well as several

items measuring the knowledge of respondents on the ECCC, its structure and processes. There were then a number of sets of questions specific to the individual's form of participation, always also including perceptions of and satisfaction with this participation: a) participation at the ECCC as a civil party; b) participation as a civil party representative; c) testifying before the court; d) participation in reparations projects and consultations; e) participation as a complainant; f) participation in NGO projects related to the Khmer Rouge regime. All respondents then received questions on their memory of the Khmer Rouge regime, including perceptions of memorials and their participation in commemoration events. Several items on the Khmer Rouge period itself and their experiences of it followed, before they discussed what the term genocide means to them. The survey closed with an outlook on what their aspirations for the future are and how they would like to be supported as victims of the Khmer Rouge regime.

These various items were measured using various types of questions. First, in multiple choice questions the respondents received all possible answers that they could select from, although often allowing for an 'other' option. In order to allow some opportunities for qualitative responses within the survey instrument, the survey included open questions, in which the enumerators coded the answers immediately into predefined categories that the respondents were not aware of (reducing biases), and very few completely open questions, in which the enumerators typed up the response. Further, there were also a lot of questions that required a yes/no response, as well as questions that had a scaled response. In all questions, respondents were given the option of saying that they did not know the answer or that they would prefer not to say; the percentages of those selecting 'don't know' or 'prefer not to say' are not specified throughout the report and are omitted from the reported frequencies, unless specifically delineated otherwise.

As a caveat it should be mentioned that we cannot know exactly how respondents interpreted the questions we posed to them; while we attempted to be as precise as possible in our phrasing and translation, we cannot eliminate the possibility of misinterpretation. The questionnaire was designed in English, translated into Khmer by the project team, discussed internally and then verified by an external translator.

Sampling

The survey is based on a stratified random sampling strategy in which participation constituted our theoretically core category. While we made some attempts for a proportionate stratification of the sample, in order that certain rare populations not be eliminated from the sample or represented by very few respondents, some of these theoretically relevant groups were oversampled, resulting in a slightly disproportionate stratification. Unless otherwise specified, lists from all theoretically relevant groups were stratified by provinces. A selection was drawn randomly from each province, the number being proportional to the provincial distribution within that theoretically relevant group.¹² Altogether we sampled 439 respondents.

¹² This also means that respondents who are registered as living outside Cambodia were not included in this selection.

The first and most complex category of respondents were **civil parties at the ECCC**. Altogether 255 respondents were sampled from this category.¹³ Sorted roughly in order of their degree of participation, these categories are:

- **Civil parties in Case 001** (16 respondents; population of 76); are presumed to be highly included due to their low number and the very high attention they were given during the proceedings.
- **Civil party representatives** (as instituted by ADHOC) or VSS civil party focal points in Case 002 (29 respondents; population of 168).
- Civil parties who had **testified** before the ECCC during the judicial proceedings (15, of whom 4 were also civil party representatives or civil parties in Case 001, reported above; population of 22 in Case 001, 31 in Case 002/01 and 63 in Case 002/02 testifiers).
- Civil parties who had been **consulted regarding reparations projects** in Case 002 (30 respondents; population of 182).
- Civil parties in Case 002 who had participated in a forum at some point or attended court proceedings but were not much more involved than this. This group constitutes the largest group of civil parties and this is most representative of what the experience of being a civil party meant (88 respondents; population of 2,801).
- Civil parties who had been **marginalised** within the group of civil parties in Case 002 as they had participated less at the ECCC. We defined this group as those civil parties who had not participated in an outreach forum since 2015, nor attended court proceedings, nor been consulted for reparations projects, nor participated in the implementation of any of these reparations projects (28 respondents; population of 591).
- **Civil party applicants in Cases 003 and 004** who had not been civil parties in the previous cases (29 respondents; population of 645 in 003, 2,008 in 004). These are presumed to have had limited opportunities for participation so far and a low degree of participation, as it is highly unlikely that their cases will ever be tried, ruling out their active roles as civil parties.
- Civil party applicants whose applications had been **rejected** in Cases 001 and 002 (24 respondents; population of 276).

Of these civil parties, 59 were ADHOC civil parties. The ADHOC civil parties constitute roughly half of the civil party population and have been the foundation of most previous surveys. In our approach we consciously also selected others who were recruited by and represented by other NGOs. Lists were garnered from the VSS under close supervision in order to ensure the confidentiality of other non-selected individuals.

The second major category of respondents were complainants at the ECCC. These are respondents who are registered with the ECCC but have no further formal interaction with the tribunal or the transitional justice process at all. Due to this

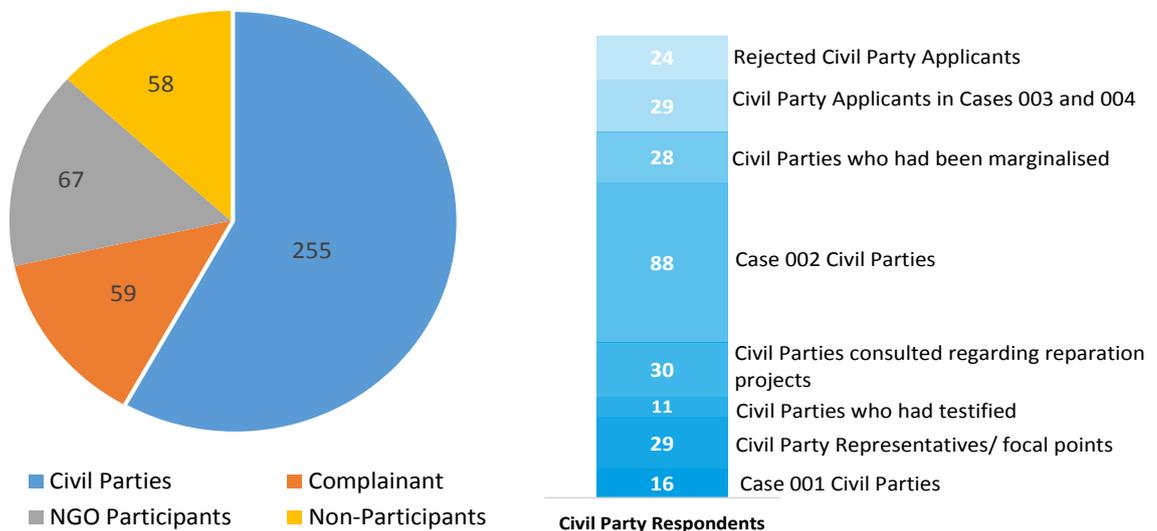
¹³ Out of a population of 94 applicants in Case 001, 4,128 applicants in Case 002, 645 applicants in Case 003, and 2,008 applicants in Case 004.

different role and the resultant different experiences, complainants are treated as a separate group, from which 59 respondents were selected (out of a population of 3,998), again drawing on VSS lists.

The third category of respondents were people who participated in NGO activities pertaining to the Khmer Rouge past. It is difficult to define the population of these participants, as it was not possible to acquire full lists from all relevant civil society actors;¹⁴ furthermore, we cannot guarantee here that respondents were alive during the Khmer Rouge regime, as this information was not available during sampling; in effect, almost all respondents did meet this age criterion. However, a randomised selection was made from the provided lists, resulting in 67 respondents.

The fourth and final category were people who did not participate in civil society or judicial transitional justice measures.¹⁵ This is the overwhelming majority of people in the population and their opinions on these topics are also important, not least as a control group for comparison with those who have come into contact with transitional justice. Here, 58 respondents were chosen, proportional to the general provincial population distribution in Cambodia. Specific respondents were selected by random according to a geographical approach in which 1) households were selected at random, before 2) within that household, a Kish grid was used to select at random one household member for the survey.

Figure 2.1: Survey Sampling



¹⁴ Lists of participants were drawn from ADHOC, Kdei Karuna, YFP and YRDP.

¹⁵ In effect, some randomly selected people had taken part in NGO activities, but this constitutes very few people from this group.

Within the entire sample, only 5 respondents refused to talk to us, except non-participants, where the random nature of requesting survey participation was alien to many and refusal rates were higher. A certain bias was introduced, however, by the fact that, of the people randomly selected from ECCC and NGO lists, 61 selected respondents had already died, meaning someone else from the list was randomly selected from the same category and province.

This sample diverges strongly from previous studies in several different ways. First, the inclusion of complainants and rejected civil party applicants in a study on victim participation is new;¹⁶ second, surveying NGO participants in comparison to civil parties had not been previously undertaken either; third, our theoretically-driven, strong differentiation within the civil party group is innovative; fourth, we include civil parties not just from the well-managed and easily accessible ADHOC group, but instead select civil parties randomly from all civil parties, even if access is more difficult, in order to give a better and more accurate representation of victims' perspectives on their participation. For an overview of geographic distribution, see Figure 2.2.

Data Collection and Analysis

Data collection ran from 29 January until 7 June 2018 and was conducted by a team of six enumerators, including the two Cambodian researchers in the project, across all 25 provinces of Cambodia. The survey questionnaire was programmed using the software KoboToolBox¹⁷ and was implemented using tablets, meaning that data could be input immediately, reducing the risk of mistakes in the transfer of responses from paper questionnaires to the dataset.

Pre-tests were conducted with 8 individuals drawn from a variety of the theoretically interesting respondent groups. The pre-tests were invaluable for verifying the comprehension of questions in the Cambodian cultural context, as well as for checking the functionality of the software. All pre-tests included an interviewer and one or more others observing, in order to pick up on non-verbal reactions and support in identifying potential problems. Prior to the pre-tests, feedback on the survey instrument had been gathered from Cambodian and international scholars.

Before data collection commenced, training was vital to ensure a high quality of data collection from all members of the team. The training lasted for eight full days and included an introduction to the topic of research, input and practical sessions on how to comport oneself as an interviewer in interaction with the respondent, technical training on how to use the app and psychosocial training provided by the Transcultural Psychosocial Organisation Cambodia (TPO) to ensure competence in dealing with possibly traumatised respondents and awareness regarding self-care. The training also included practical sessions with internal simulations of interviews, as well as practices on trial respondents. All training days included debriefings and intense feedback to ensure the well-being of the team. Furthermore, while in

¹⁶ Only Jasini (2016) has previously also included complainants, although her study did not include a survey, just in-depth interviews.

¹⁷ For more details on the software see <http://kobo.humanitarianresponse.info/>.

the field all team members participated in mandatory daily de-briefing sessions to ensure both the quality of the data, as well as the mental health and physical safety of each team member.

Data was subsequently uploaded from the tablets to a common database, any items that were coded as text in Khmer were coded numerically, and answers that had written text were transcribed and translated.

2.2. In-Depth Interviews with 65 Selected Victims of the Khmer Rouge

We also conducted 65 in-depth interviews with a selection of individuals who had participated in the survey. These interviews are important in order to delve into the topics enough to understand the real meanings that these concepts have for the individuals. Furthermore, it allows us to come into conversation with individuals who are less fluent in the terminology and concepts of transitional justice and thus feel more shy to respond to questions in the survey situation.

The individuals were selected according to their survey responses, and our aim was to speak with both people who fit the broader trends, as well as people who markedly depart from these, thus giving us a broad picture of victims’ perspectives. Again we aimed to achieve a diversity in terms of degree of participation, in order to be able to analyse the differences between various forms of participation, and selected for diversity within these categories (see table for overview). The interviews were all semi-structured with several topics common to all interviews, but with each interview supplemented by many additional questions specifically tailored to that individual’s responses in the survey. As such, in this report we do not report the absolute numbers of interviewees discussing various topics as it mostly varies according to how many people would have had the chance to discuss this and voice a certain opinion.

Figure 2.2: In-Depth Interviewee Sampling

Categories of Respondent	Number
Case 001 civil parties	4
Civil party representatives	6
Civil party who testified	4
Reparations projects participants	5
Case 002 civil parties	6
Marginalised civil parties in Case 002	6
Rejected civil party applicants	6
Civil parties in Cases 003 and 004	7
Complainants	6
NGO participants	10
Non-participants	5
Total	65

Interviews were conducted by either the first or second author, most often in collaboration with the third author acting as a co-interviewer and translator, sometimes with other partners acting as translators. All interviews were translated using summary translation, but audio recordings were made with the explicit approval of interviewees,¹⁸ from which a team of transcribers were able to create translated transcripts. These were then studied using qualitative data analysis, with the researchers employing the software MaxQDA in successive rounds of coding and iterative analysis processes.

2.3. In-Depth Interviews with Transitional Justice Professionals

In order to contextualise our findings and understand more about the intention of transitional justice measures regarding justice and reconciliation, we also conducted in-depth interviews with 21 transitional justice professionals. Again, we selected our interviewees according to the various sectors that were of interest to us in terms of victim participation, interviewing actors at the ECCC and in NGOs. Given the internationalised and hybrid nature of transitional justice in Cambodia, we interviewed 15 Cambodian-born individuals, as well as 6 internationals. These interviews were for the most part also recorded and transcribed; if not, then detailed notes were taken. Again the transcriptions were studied using qualitative data analysis by the researchers in successive rounds of coding and iterative analysis processes.

For the most part this report is designed to give voice to the victims themselves and thus we do not discuss the transitional justice professionals' interviews much. The only exception is the chapter on empowerment that draws on the transitional justice professionals for a nuanced account of empowerment that many of the victims do not discuss. The data from these interviews will, however, also feed into other publications.

2.4. Research Ethics

The project has sought to uphold the highest ethical standards, adhering to a 'Do No Harm' and conflict-sensitive approach (Gabriel and Goetschel 2017; Goodhand 2000). While no formal institutional review process exists at the Centre for Conflict Studies at Marburg University, reflections on the ethical dimensions of the project were taken very seriously by the entire team and were the subject of regular and intense reflection.

Of the highest importance was to ensure the physical and mental well-being of all participants in the research. Informed consent of the research subjects was sought during both the survey and the in-depth interviews in order to ensure ethical field research. Moreover, both the survey and the interview frameworks was devised in such a way that the explicit focus was on their experiences of remembering the past, participating as victims and transitional justice, not on

¹⁸ Only two interviewees refused. Here detailed notes were taken and compared by the two researchers conducting the interview.

their experiences under the Khmer Rouge. This was important in order to avoid re-traumatisation of the individuals. Nonetheless, some individuals wanted to talk about their pasts and all members of the survey team were trained professionally by TPO to deal with traumatised individuals. For the in-depth interviews, the researchers made sure to practice restraint and know when to stop during interviews, in order to prevent re-traumatisation of the interviewees (Wood 2006, 381). Moreover, the entire team was careful to avoid raising respondents' expectations and efforts were undertaken to clearly explain the purposes and limitations of this research.

Furthermore, in light of the tense political situation in the country, all questions regarding political trust, satisfaction and involvement were taken out of the survey questionnaire, even if they would have provided interesting insights, in order for all participants to avoid feeling that they may get into trouble for their responses, even though we also strongly emphasised the anonymity of the process. All collected data was saved securely and in an anonymised fashion.

The security of the researchers as interviewers and the enumerators was also of high priority, both in terms of physical danger working on sensitive issues in the field (see next section), but also in terms of the psychological burden of working on such difficult issues (Simic 2017). To mitigate the latter risk, there were daily debriefing sessions for the enumerators in which the team made frequent use of the opportunity to share their emotions and impressions of the day's work.

2.5. Key Challenges and Limitations

While overall data collection was successful, we did encounter some key challenges. First and foremost, the political situation in Cambodia during data collection provided a challenging climate: the pre-election period fomented suspicion of outsiders and made local authorities nervous of allowing the enumerators to survey people in their jurisdiction. They worried about negative repercussions for themselves in terms of being perceived as supporting opposition politics. This posed considerable challenges in every locality we approached at the beginning but was mitigated through a support letter from the German Embassy and the ECCC Administration, both expressing their support for the project. With these experiences of intimidation, compounded for some by an unfamiliarity with working in the provinces, the enumerator team's confidence had to be built up at the beginning; this was enabled by the daily debriefing sessions and detailed feedback.

The tense political situation also impacted how respondents answered during the survey, creating a certain degree of nervousness and facilitating passivity. As such, the survey has an uncharacteristically high degree of people responding 'Don't know' or 'Prefer not to say'. This is not problematic for the reported results, but does render it more difficult to find statistically significant results. This issue was less problematic in the in-depth interviews, as trust could be built up from the survey to the interview and, without being bound to standardised questions, it was easier to waylay fears.

When the survey or interview was conducted at the individual's home, often there were relatives or neighbours within earshot of the survey or interview situation, as is common in the Cambodian context. While the researchers and enumerators did their best to create as private an atmosphere as possible, this was not always possible; however, we do not expect this to have a fundamental impact on the data.

We excluded respondents registered as living outside Cambodia; although we acknowledge the importance of including diaspora members in transitional justice processes, our research focused on those living in the country. For insights on experiences of Cambodians abroad who have participated in the ECCC proceedings, see Catalayud et al. (2011).

Conclusions

- This project is based on a mixed method approach that combines quantitative and qualitative analysis that allows for broader trends to be identified in the quantitative parts, while at the same time diving deeper into the meanings of the transitional justice process for the interviewees that can only be tapped into through qualitative work.
- A survey was conducted with 439 respondents across all 25 provinces of Cambodia, using stratified random sampling that created a sample with a strong diversity of forms of participation in the transitional justice process. These data were analysed using descriptive and inferential statistical methods.
- In-depth qualitative interviews were conducted with a selection of 65 respondents from the survey to understand the meanings of justice and reconciliation in more depth as they are impacted by the individual's participation in transitional justice. The transcribed interviews were analysed using qualitative data analysis.
- In-depth qualitative interviews were conducted with 21 transitional justice professionals to understand the context of justice and reconciliation in Cambodia and provide insights into the perspectives regarding justice and reconciliation of those who design transitional justice in the country
- It should be noted that the frequencies of 'don't know' or 'prefer not to say' have not been reported throughout, unless otherwise specified; further, while we analysed differences between civil parties and those who were not civil parties, we only report the values if there are significant differences, while otherwise values were similar.

3

DEMOGRAPHICS

Our survey was conducted among 439 victims of the Khmer Rouge with an average age of 62.4 years, meaning the respondents were on average 23 years old when Democratic Kampuchea ended in January 1979. When asked whether they consider themselves victims of the Khmer Rouge all but 2 people responded affirmatively. Of these respondents, 63.6% were women and 36.4% were men; this gender distribution is less representative of the popular demographic (which is closer to parity between men and women), but instead reflects the higher percentage of women who decided to become civil parties at the ECCC (Guiraud 2012, 25). Much like the lack of ethnic diversity in the broader population, the overwhelming majority of our sample consisted of ethnic Khmer, although 16 Cham, 2 Vietnamese and 6 other ethnic minority individuals also participated. In terms of economic prosperity, around half of our respondents stated that they did not earn enough to make a living (52.6%). Furthermore, education levels in our sample were low (as is typical across this age cohort), with almost three quarters of respondents indicating that they had received only a couple of years in primary school or less (73.8%).

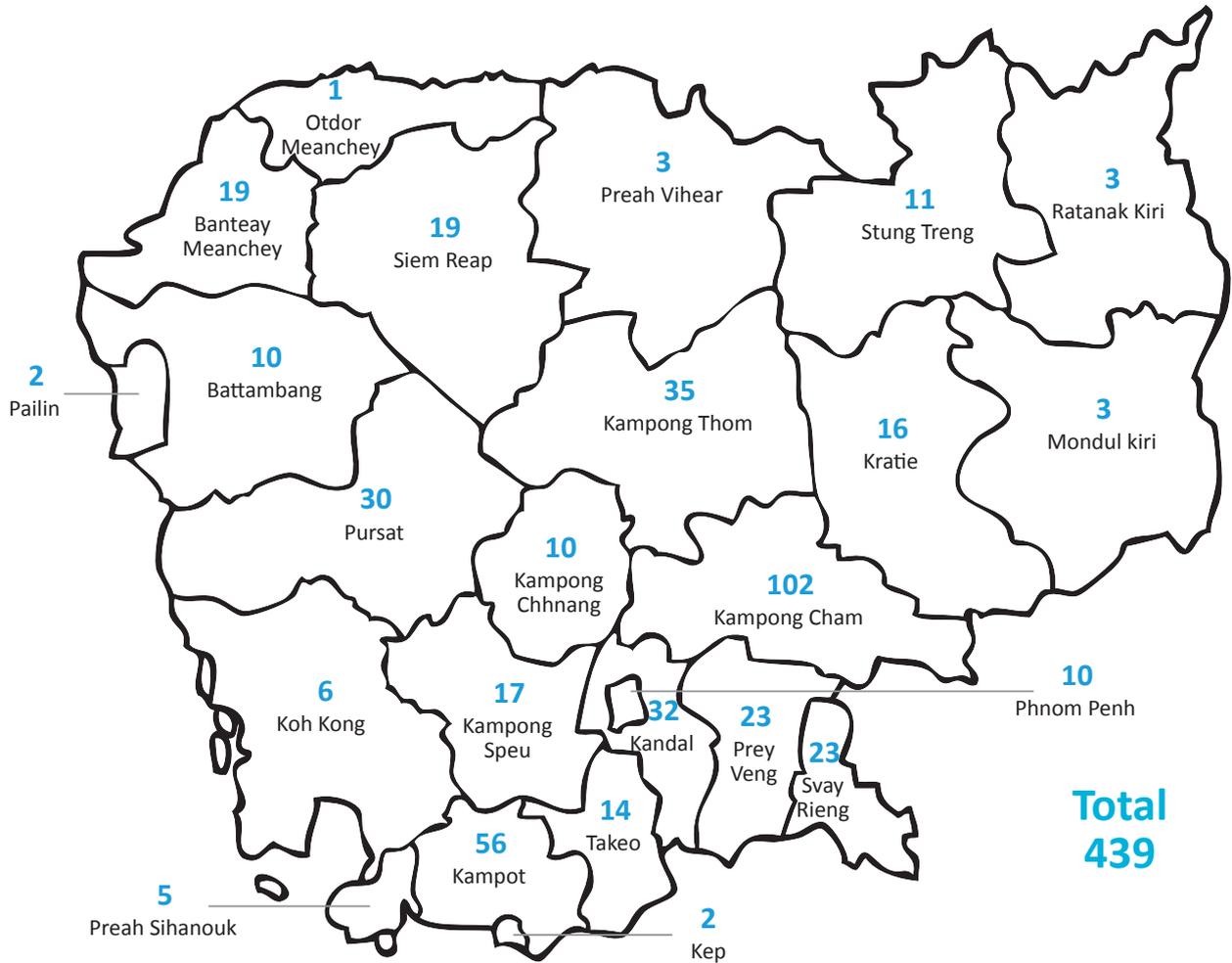
Geographically, we drew respondents from all 25 provinces, although not equally – depending on the group the proportion of respondents from that province was selected either according to the population or the distribution in the list from which we were selecting respondents. Interestingly, 55% of our sample indicated that they were classified as old people under the Khmer Rouge, that is people living in rural areas when the Khmer Rouge took power, while 41.4% claimed that they were new people at the time, members of the urban population.

While we have the most diverse sample in any survey of Khmer Rouge victims, there are some caveats that bear mentioning. First and foremost, we did not oversample ethnic or religious minority people. As the vast majority of the population are ethnic Khmer, this means that only very few ethnic minorities were sampled in the survey, although a stronger effort was made to approach proportionally more ethnic minorities in the subsequent in-depth interviews. Furthermore, it is important to emphasise that our focus has been on primary victims of the Khmer Rouge, so the overwhelming majority of our sample were alive during the Khmer Rouge period – a few respondents were younger, for example if they were civil parties on behalf of older relatives. This under-samples younger Cambodians who may also feel victimised by the Khmer Rouge regime through intergenerational trauma.

Figure 3.1: Overview of demographic data

Sample size (n)		439				
Female (%)		63.6%				
Mean age (S.D.)		62.4 (9.8)				
<i>Ethnicity (%)</i>						
Khmer		Cham		Vietnamese		Others
94.5%		3.6%		0.5%		1.4%
<i>Education (%)</i>						
No schooling	Studied at pagoda	A couple of years in primary school	Finished primary school	Some years of high school	High school graduate	University degree
30.7%	5.4%	37.7%	12.9%	7.5%	4.4%	1.4%
<i>Economic situation (%)</i>						
Not enough to earn a living		Enough to earn a living		Enough to save some money		
52.6%		43.9%		3.5%		
<i>Status during Khmer Rouge regime (%)</i>						
Old person			New Person			
55%			41.4%			
<i>Work during the Khmer Rouge regime (%)</i>						
Rice farming	Mobile team	Cook	Health worker	Solider	Construction work	Mobile unit chief
26.2%	49.9%	1.6%	2.1%	1.6%	3.6%	0.2%

Figure 3.2: Map of survey respondents



4

PERCEPTIONS OF JUSTICE

65

Participants of the in-depth interviews (referred to as “interviewees”)

439

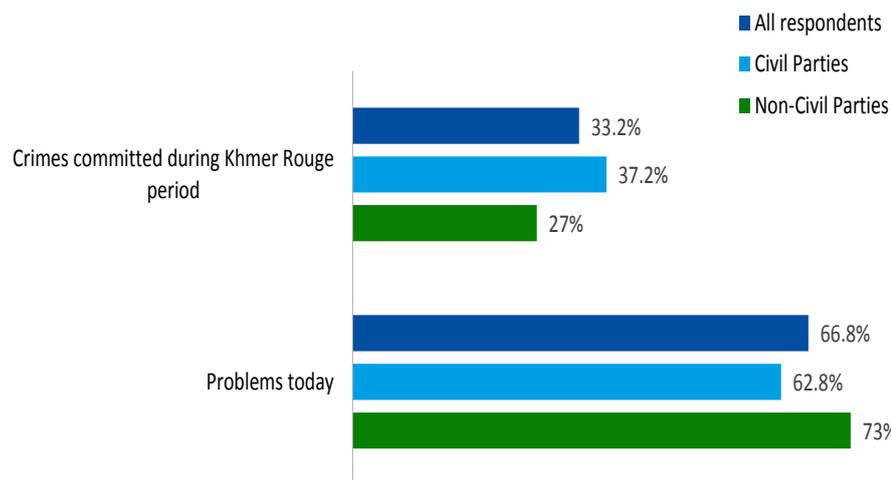
survey participants (referred to as “respondents”)

This section discusses the perceptions of justice amongst victims of the Khmer Rouge regime who we met for this research. It provides an overview of the diverse definitions of justice they provided, before analysing in more depth the conceptions of justice that emerge at a more abstract level. The section then discusses what level of justice is perceived to have been achieved for victims of the Khmer Rouge regime, by which actors, as well as the limitations they identify in the quest for justice. This chapter is – as the following one – written at a slightly more abstract level than just reporting the data in order to contextualise and interpret better the perspectives on justice that emerged in our research.

Before delving into these perspectives on justice, it is interesting to note that when asked what was most important, to focus on problems Cambodians face today or to address the crimes committed during the Khmer Rouge period, 66.8% of the respondents answered “focusing on problems today”, and 33.2% “addressing the crimes under the Khmer Rouge”. This finding reminds us how issues of justice and reconciliation are, from the perspectives of the participants of our research, always embedded within their lives and interconnected with other needs, hopes, realities and concerns in contemporary Cambodia. It does not necessarily disqualify the relevance of efforts to address the Khmer Rouge past, as this question was asked as an either-or question to respondents. Respondents were indeed asked to choose only one answer, when some may actually perceive questions of justice with regards to crimes committed under the Khmer Rouge to be deeply interlinked with the need to address problems they are facing today, or would like to have both addressed. Nonetheless, it is striking to see that a higher percentage of civil parties surveyed thinks that addressing the crimes under the Khmer Rouge regime is more important than non-civil parties (see graph below), something that could be observed across previous surveys.¹⁹

¹⁹ This question is based on the two population-based surveys conducted by Pham et al. (2009; 2011a), which found that only 22% and 16% of their respondents answered that addressing crimes committed under the Khmer Rouge regime was more important. The survey by Kirchenbauer et al. (2013) conducted with civil parties and civil party representatives found higher percentages, with respectively 41.8% and 59.2% finding it more important to focus on addressing Khmer Rouge crimes.

Figure 4.1: Which is more important: To focus on problems Cambodians face today or address crimes during the Khmer Rouge period?

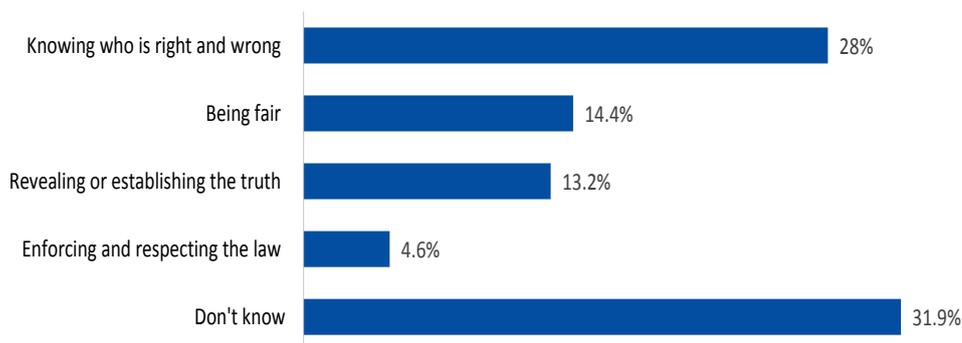


4.1. Definitions of Justice

A large majority of the respondents to the survey perceived justice conceptions to be subjective: 81.7% agreed that “each person perceives justice differently” (30.2% agreed completely). Related to this, almost half of our survey respondents (45.6%) agreed that foreigners perceive justice as something different than Cambodians, whilst 26.3% agreed with this statement completely.

In the survey, we asked respondents what the notion of justice means to them. This was framed as an open question: respondents used their own words to define justice. If the answers matched the pre-defined categories identified on the basis of previous studies, the enumerators categorised them as such. If the answers did not match a pre-defined category, the enumerators recorded them separately. When asked this open question, more than a quarter of the respondents of the survey defined justice as “knowing who is right and wrong” (28%). 14.4% of our respondents defined justice as “being fair”, and 13.2% as “revealing or establishing the truth”. Only a few identified justice as “enforcing and respecting the law” (4.6%). These findings show a diversity in understandings and definitions of justice, which is also reflected in previous surveys.

Figure 4.2: What does the notion of “justice” mean to you?



*Respondents were able to provide multiple answers to the open questions (with pre-defined answer categories).

In our in-depth interviews, interviewees similarly showed varied understandings of justice. Justice was mainly defined as a process, but also as an end-state or outcome such as unity or reconciliation, peace, peace of mind, truth and evidence, happiness, or rights and democracy. Around one seventh of the interviewees defined justice in anticipatory terms, i.e. as something that still needs to be secured in the future in terms of prevention and non-recurrence of war, violence, killings or deprivation. When reflected upon in direct opposition to the situation under the Khmer Rouge, interviewees also defined justice as something already achieved in Cambodia, equating justice with negative peace (i.e. the absence of physical violence and war), economic development or the ability to own private property. A male participant in an NGO project from Kampot province, for instance, defined justice in direct opposition to his experience of the Khmer Rouge regime as the “right to eat, to sleep, to work or not to work” (IN24).²⁰

Despite this diversity, it clearly emerged from the in-depth interviews that definitions of justice are often embedded in Buddhist understandings. The Khmer term for justice (យុត្តិធម៌ - yuttethor), a derivative of the term for Dharma,²¹ implies the ideas of **honesty, fairness, transparency and impartiality** (see Heng 2006). More than one third of the interviewees, across all categories, defined justice in reference to one or more of these ideas. One male civil party from Kampot province, for instance, argued:

“What does the word ‘Justice’ mean to me? The word justice always means impartiality [...]. We need honesty amongst each other, this is what justice means. Justice is the most powerful word. Nothing is more important than justice” (IN06).

Almost a third of the interviewees further identified justice in the in-depth interviews as the process of **finding right and wrong**. This process goes beyond having a personal moral compass; it implies the public or official acknowledgment of what is right and wrong, by an authoritative actor. One female participant of an NGO project from Kampot province, for instance, explained:

“Justice, [...] someone seeks justice for us. [...] If they don’t seek justice for us, we don’t have justice. [...] For example, when we did anything wrong or we have an argument, someone seeks for justice for us, when we are right, that someone will say that we are right, that means we have justice. But if we are right, and that someone said we are wrong, this means that we don’t have justice” (IN21).

A quarter of the interviewees who defined justice in such terms specifically highlighted the role of law. A male civil party from Pursat province who testified at the ECCC, for instance, explained that **the role of law** was to correctly determine what is right and wrong and truthfully identify *who* is right and wrong:

²⁰ Interviewees who mentioned this view were interestingly mostly participants of NGO projects or non-participants in the transitional justice process. This view was also closely associated with the perception that the government (or indeed the Prime Minister himself) has provided justice to the Cambodian people

²¹ Dharma (or dhamma) has several meanings (see Jacobsen 2005, 236-237). It refers to the nature of being and cosmic order, but also to the teachings of Buddha and the pursuit of individual morality through “right conduct”. See also Harvey (2000).

“The word justice means not to solve the problem by saying the wrong doer is right, like [for example] when the people who used to kill others [deny it and] said they didn’t. This [...] is the word justice and the characteristic of law in order to find justice is finding the wrongdoer and real perpetrator. [...] I just know that for me justice means doing good based on law; that what is wrong is wrong and what is right is right”
(IN240).

Not only interviewees actively participating in the ECCC proceedings highlighted the role of law in the process of finding justice; participants in NGO projects also provided this answer. A female participant of an NGO project from Kampot province, for instance, observed: “only the law [...] can find justice for victims” (IN21).

Another definition of justice provided by almost a third of the interviewees, across all categories, was **finding the truth and revealing evidence**. Whilst some directly equated justice with the truth (IN2263; IN2364; IN748; IN2064), others emphasised the process of revealing evidence and acknowledging what happened, which has a particular significance given the extent to which the Khmer Rouge regime was based on extreme secrecy (see e.g. Chandler 2000). In discussing this meaning of justice, some interviewees also specifically highlighted the necessity of sharing the experiences of the Khmer Rouge regime with the younger generations, thereby linking justice with acknowledgment, but also linking justice with education for the purposes of prevention. Some described the painful experiences of being faced with disbelief from their children, younger relatives or other youth with whom they had shared stories of the Khmer Rouge regime. The following quote from a male civil party in Case 001 from Kampong Thom province powerfully illustrates how being able to share his experiences with his children constituted an important part of finding justice for him:

“I am thankful because previously [...] they said I lied, [they didn’t believe me]. But now the students [...] mostly [...] believed what we said. And one of my sons, he knew how to ask me. Maybe the teacher taught him at school. Before, my two children never asked me about it. But this one was 3 years old when the Khmer Rouge tribunal was established and now he is 12 years old [...]. Then he randomly asked me how my life was during the Khmer Rouge regime. When he asked me this, I felt that there are people who want to know about my story and share my pain. They want to participate in my story and know our suffering in the past; then I feel relieved when I shared it with others”
(IN1153).

With regards to the **links between justice and reconciliation**, the in-depth interviews reveal some ambiguity. As discussed above, some interviewees equate justice with the negative peace achieved in Cambodia or with prevention and non-recurrence of war and violations in the future (one third of the interviewees). Very few interviewees also explicitly mentioned that justice is about letting go of anger, and not holding grudges anymore against the former Khmer Rouge and living in unity. One seventh of the interviewees, however, associated justice with either seeking revenge for those who have died under the Khmer Rouge regime or with expressing anger towards the former Khmer Rouge. One male participant of an NGO project from Kampot province, for instance, explained:

“ They are very cruel so they deserve to be prosecuted and should be tortured as well like what they did to us. I still have anger towards them. I will never forget that, even in the next 100 years or another lifetime. I hate them so much because they tortured so many people [...]. I got justice because we are brave and we have the anger. They mistreat us so bad, and when they are prosecuted, I’m very happy ”
(IN24).

A female civil party in Case 001 from Kampong Cham province also framed prosecutions at the ECCC in terms of revenge: “I felt happy when I heard about the ECCC [...]; it is for revenge for all victims to feel relieved and no longer feel so much pain. It is for my sister” (IN613).

Finally, amongst those who did not participate in the ECCC proceedings or were at the margins of victim participation at the ECCC, five interviewees assimilated justice with the **help or good leadership of Prime Minister Hun Sen**.

In the in-depth interviews, four interviewees also answered that they **did not know how to define justice**, explaining that this was because they were “illiterate” (IN1775), “uneducated” (IN2671) or had “stopped reading books” (IN864). It is striking that these interviewees are predominantly individuals who were less involved in ECCC proceedings, but instead participants of NGO projects, rejected civil party applicants or civil party applicants in Cases 003/004. This possibly suggests that individuals become more versed in speaking about justice, and framing their understandings and claims in accordance to the vocabulary or skills used in transitional justice processes, through their participation in these processes. In the survey, the proportion of respondents stating that they did not know what justice means to them was even higher: 31.9%. This is a higher percentage than in the previous survey by Pham et al. (2009).²² In our study, it appears that those who actively participate in the transitional justice process (as civil party representatives or focal points at the ECCC; participants in NGO projects, or admitted civil parties at the ECCC) were less numerous in giving the answer “don’t know.” Those who are less involved (such as complainants, non-participants, civil party applicants in Cases 003/004) or not included in the process (rejected civil party applicants) were more numerous in indicating in the survey that they did not know how to define justice.

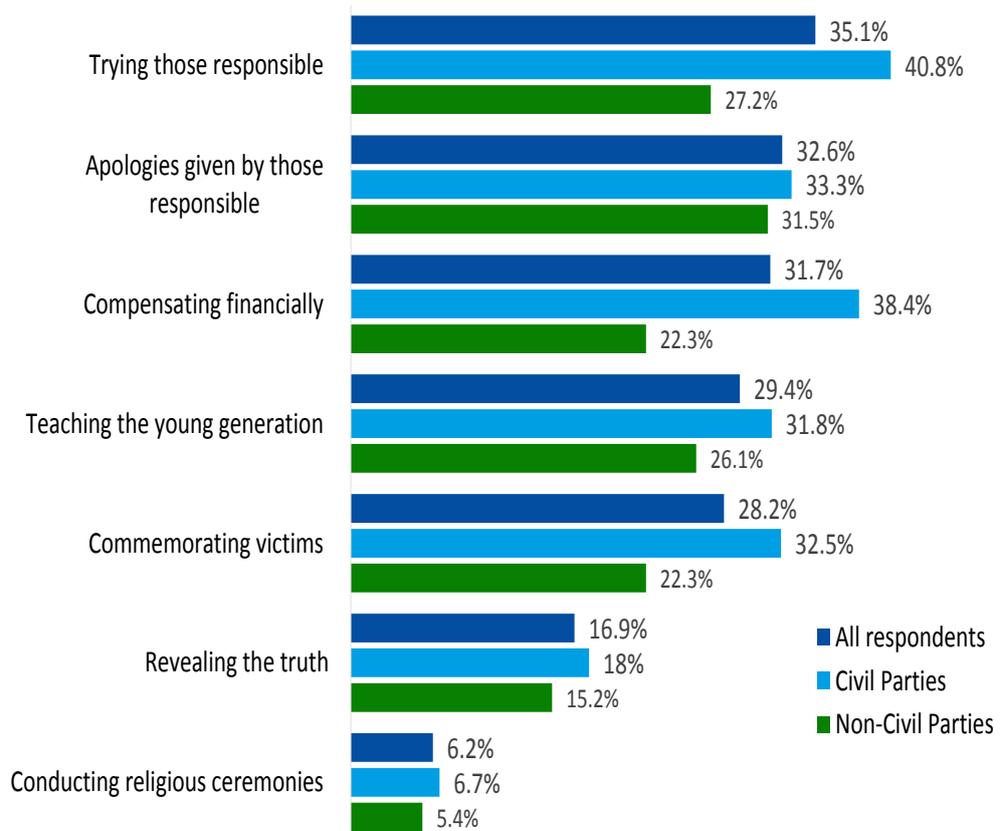
4.2. Conceptions of Justice

Discussing the empirical data more analytically, we can identify several conceptions of justice. In order of their prevalence in the in-depth interviews, these were retributive or punitive justice conceptions, conceptions related to social justice and socio-economic support, Buddhist or religious conceptions, criminal justice conceptions and technical conceptions of justice. Whilst these are discussed successively in this section, it is important to highlight that participants in our research understood justice in multidimensional terms. Criminal prosecutions at the ECCC for instance were only one of several elements identified as helping to find justice for Khmer Rouge victims. This **multidimensionality of justice conceptions**, which was already noted in previous research on Cambodia (see e.g. Ryan and McGrew 2016: 78), can be illustrated with one item of our survey. Asked what measures could mainly help to achieve justice for victims of the Khmer Rouge regime (with a multiple choice option), 35.1% of the respondents

²² Pham et al. (2009) reported that 13% of respondents could not define justice.

mentioned trying those responsible; 32.6% apologies given by those responsible; 31.7% compensating victims financially; 29.4% teaching the younger generation; 28.2% commemorating victims. Fewer respondents identified revealing the truth about what happened during the Khmer Rouge regime (16.9%) or conducting religious ceremonies as a measure for reaching justice for victims of the Khmer Rouge regime (6.2%). Interestingly, the civil parties surveyed were more numerous than non-civil parties in highlighting trials of those responsible, financial compensations for victims and commemorations of victims as important measures to achieve justice for victims of the Khmer Rouge regime.

Figure 4.3: Through which of these measures can justice mainly be reached for victims of crimes of the Khmer Rouge?



*Respondents were able to provide multiple answers with a maximum of 3.

In the in-depth interviews, a **retributive or punitive conception of justice** was the conception that was most often displayed. Almost four out of ten interviewees, across all categories, equated justice with punishment for the wrong committed. The salience of a punitive conception of justice amongst Khmer Rouge victims has already been observed in previous studies (see e.g. Killean 2018a, 175; Pham et al. 2009, 32). Closely linked to this conception of justice is a **criminal conception of justice**. In the in-depth interviews, two out of ten interviewees also immediately assimilated finding justice for the Khmer Rouge victims with a criminal justice process, with prosecutions or indeed

directly with the ECCC. Asked what the limitations of finding justice for the Khmer Rouge victims were generally, many interviewees also immediately discussed the limitations of the ECCC's mandate or of its implementation. This shows that, although interviewees identify limitations at the ECCC, they nonetheless embrace this institution, or its legal foundation, as a legitimate platform for finding justice. A male civil party in Case 002 from Phnom Penh province (IN201), for instance, observed that despite the limitations of the Court's personal jurisdiction to the senior leaders and those most responsible, justice could not be found otherwise than through law and at the ECCC:

“The law [...] [gives the mandate to prosecute] the top leaders and the most responsible ones. If the law says so, we have to follow the law in order to have justice. If we did not follow the law, it is not justice. [...] the responsible ones include the direct perpetrator, meaning the one who committed, co-perpetrators, ... those who provide the means to commit the crime, and... the mastermind. They all shall be responsible. But... this law does not charge direct perpetrators, only the most responsible ones and top cadres. Thus, if the law says so, no matter whether we like it or not, even though I am not happy with it, I must follow it. My idea cannot be better than the law. Law is law [laughs]” (IN201).

This equation of finding justice for victims of the Khmer Rouge regime with the ECCC was mostly to be found amongst civil parties and complainants in our in-depth interviews, i.e. those most actively involved in the court proceedings, albeit to varying degrees. However, in the survey, not only those closely participating in the ECCC proceedings but a large majority of respondents across all categories (72.2%) actually agreed that justice for victims of the Khmer Rouge regime can mainly be delivered in the court system, compared to both inside and outside the court system (18.6%) or only outside the court system (6.9%).

The salience of both a punitive and a criminal justice conception was also shown in how participants of our research equated justice with life imprisonment. In the survey for instance, a large majority of respondents (81.3%) agreed that justice would be fully achieved for the victims of the Khmer Rouge regime if all accused at the ECCC were punished to life imprisonment.²³ Interestingly, the civil parties whom we surveyed were more numerous in agreeing with this (84.7%) than the non-civil parties in our sample (75.8%).

In the in-depth interviews, although not explicitly asked about life imprisonment, one fifth of interviewees also immediately equated justice for the victims of the Khmer Rouge regime with a life sentence at the ECCC. This view was again mainly displayed by civil parties, across various degrees of civil party participation. As for the interviewees who still asked only for the death penalty,²⁴ they were mainly participants of NGO activities or civil parties in Cases 003 and 004, i.e. interviewees who were much less involved in the ECCC proceedings.

²³ This finding speaks to Soy's (2016) analysis of the life sentence verdict of the Case 001 appeal judgment as enabling moral acceptance of international criminal justice in Cambodia.

²⁴ The death penalty was abolished in Cambodia in 1989; this prohibition was entrenched in the 1993 Constitution (article 32).

This suggests that civil parties may have come to accept, although at times reluctantly,²⁵ life sentences at the ECCC as a form of justice for them – both a minimum and a maximum form of justice. They would not accept a lower sentence but also do not demand the death penalty or other forms of punishments,²⁶ as they have realised that this is not possible in the context of the ECCC. This can be illustrated in the following quotes from two civil parties who testified from Takeo and Banteay Meanchey respectively:

“As they are the leaders [...] I want them to have a life sentence. To let the next generation know about it and not to commit [such crimes]. To prevent them from thinking that if they kill the people they will not be prosecuted. [...] If they are sentenced less than that, we will not be satisfied [...] since millions of people were killed and they are the leaders, so they must be responsible. [...] At first, I wanted them to be killed. To be beheaded [...] like in other countries. And then I think that in our country [...], we have only life sentences. We can accept it when they are sentenced to a life sentence”
(IN2508).

“If we talk about the law of nature, I really want to shoot them. But the real law, we cannot do it like that. [...] If the Constitutional Law had an article for death penalty, it would be excellent and clear. But we don't have a death penalty law, so only life imprisonment”
(IN2064).

A civil party applicant in Cases 003/004 from Kampot province also observed: “This case, I don't know how it should be [laughing]. [...] If I went according to my anger... however, according to my morality, they should only be imprisoned” (IN2671).

For a few interviewees (IN01; IN9999), a life sentence was not only important in terms of retribution: it was also valued as a confirmation that the justice-seeking process at the ECCC is genuine and fair. A civil party representative from Kampot province, for instance, argued:

“For me, as a civil party, the most important thing is [...] that there should always be justice; no matter what, it must be genuine. [...] Justice is very important. It means that the one who is wrong should be wrong, the one who is right should be right. For example, in the tribunal, Noun Chea and Khieu Samphan, they are sentenced to life imprisonment. This is the right decision as a good example for the younger generation”
(IN01).

This resonates with the study of Sperfeldt et al. (2016, 54) with civil parties and civil party representatives, which found that satisfaction with life sentences for the accused in Case 002/01 was strongly linked with the perception that a life sentence constituted a fair punishment for those responsible for crimes and killings under

²⁵ Other studies on victim participation at the ECCC also mention this ambiguity regarding life imprisonment as a form of retribution for the crimes committed under the Khmer Rouge regime. See e.g. Killean (2018a, 175).

²⁶ See e.g. Ryan and McGrew (2016, 80-81) on civil party reactions on the sentence of Duch in Case001.

the Khmer Rouge regime. A minority of civil parties and civil party representatives moreover perceived a life sentence as a confirmation of the independence or fairness of the ECCC, and therefore as a good example for the national judiciary, the young generations and leaders.

Taken together, the findings on the equation of justice with the ECCC proceedings or with life imprisonment suggest that victim participation can potentially lead to a certain **mainstreaming of the justice conceptions** that are displayed during a transitional justice process. Victims participating in the Court proceedings may thus come to understand justice in a certain way, or at least to speak of justice in reference to how it is framed in the ongoing transitional justice process. In their second population-based study on Cambodia, Pham et al. (2011a, 29) also observed that over time, Cambodians' definitions of justice had changed in ways possibly influenced by the ECCC. In their recent survey, Sperfeldt et al. (2016, 47) noted that the views of civil parties and civil party representatives on the justice process may have been influenced by their involvement in the ECCC proceedings.

Another perspective on justice emerging from our data is a **Buddhist or religious conception of justice**. This conception inherently ties the notion of justice to the concept of dharma, or the pursuit of individual morality through "right conduct" (Jacobsen 2005, 246), and the doctrine or law of karma, according to which beings are reborn depending on the quality and nature of their actions (Harvey 2000). From a Buddhist perspective, actions committed in the secular world, be they good or evil, will have moral and spiritual consequences transcending the secular world. Punishment for wrongdoing then occurs in a dual sequence: once in this world, e.g. through prevailing legal frameworks and civil traditions, and once during the cycle of birth and rebirth known as *samsara*, whereby evil acts will prevent perpetrators from advancing in *samsara* (Jacobsen 2005). This conception of justice is thus also closely linked to the punitive or retributive conception of justice discussed above, with punishment understood according to Buddhist beliefs.

In the in-depth interviews almost one quarter of the interviewees made explicit references to such understandings of justice. A few interviewees not participating in the ECCC proceedings, for instance, conceived of justice as retribution that will occur during the cycle of (re)birth. Such beliefs arguably constitute a resource for interviewees, since they are able to believe that justice is achievable regardless of the existence or achievements of the ECCC or of any other transitional justice process (see also Gray 2012). A rejected civil party applicant from Kampong Cham province, for instance, observed: "Those who did bad will receive bad. Those who did good will receive good. It helps me feel a little bit relieved" (IN752).

This scenario has led certain researchers to argue that, given the prevalence of Buddhist conceptions of justice in Cambodia, the ECCC would be irrelevant (see e.g. Dicklitch and Malik 2010). From our in-depth interviews, however, we cannot conclude that the fact that understandings of justice are embedded in these spiritual and ethical beliefs disqualifies the ECCC as a relevant justice-seeking process for Khmer Rouge victims. On the contrary, the ECCC and Buddhist beliefs seem to be working complementarily. For instance, Buddhist beliefs may help to overcome the limitations of the ECCC's personal jurisdiction. In the survey, we asked whether respondents (dis)agreed that it is not a problem that the ECCC has sentenced only very few people, because justice will come through karma. 70.2% of the respondents agreed to varying degrees, with 45.3% agreeing and 24.9% agreeing completely.

At the same time, the ECCC is conceived of as a way of securing punishment for wrongdoings in secular life, too. One civil party from Preah Vihear province, for instance, explained his application in the following terms:

“ No matter what would happen to me, [...] I filed the complaint because they were really wrong [and] destroyed people badly. [...] I would say it is maybe karma, as good people would receive good and bad people would receive bad ”
(IN1916).

Whilst actors working on transitional justice have not necessarily mobilised Buddhist concepts in their work, as civil society actors previously have in their human rights activities (Ledgerwood and Un 2003), a similar process of “glocalisation” arguably takes place, whereby global concepts of transitional justice are merged with Khmer cultural concepts. Interviewees may thereby make sense of the legal and institutional aspects of criminal justice at the ECCC through their own Buddhist perspectives, or provide philosophical justifications of the legal process through Theravada Buddhism. In our data, this transpired in how sometimes claims for reparations were framed according to Buddhist beliefs, or how Buddhist beliefs seemed to encourage participation in the ECCC. A male civil party from Preah Vihear province, for instance, explained how, unlike others in his village, he was not afraid to submit a civil party application and how his belief in karma, that those who did wrong would be punished, and those who did good would be rewarded, gave him strength to do so:

“ At that time when the proceeding began and when the lawyer asked about what we experienced, there were not many people who dared to talk about it. They were afraid that something bad might happen. For me, I decided to file a complaint; how could I not file a complaint when I was seriously mistreated. I had had more than enough. I don't know what else they would do to me. Some people lost family members, but they did not dare to file a complaint. [...] I was not afraid. No matter what happened to me, [...] I filed the complaint because they were really wrong and destroyed people. [...] I would say it is maybe karma as good people would receive good and bad people would receive bad ”
(IN1916).

Another important justice conception that emerged in the in-depth interviews was that of **social justice**, i.e. justice defined as a life free of poverty, marginalisation and discrimination, where people are able to exercise their rights and to live in equality and with dignity (see e.g. Sandoval 2017: 194). One male civil party from Kampong Chhnang province, for instance, observed:

“ Justice means we want to demand our rights. Why do we need justice? For example, they violate our rights, this is called justice. We don't have freedom. They limit our rights. It's like they violate our rights. That's why we need to demand back our justice ”
(IN9999).

Here, perceptions of justice were related to the availability of freedom and rights – not only economic and social rights, but also civil and political rights, including equal citizenship rights for ethnic minorities. This conception of justice emerged

most strongly when interviewees directly compared the Khmer Rouge regime with the situation today, thereby framing justice in opposition to the deprivations they experienced at that time. However, five of our interviewees also defined justice generally in view of current human rights violations, socio-economic inequalities, or land grabbing. Whilst some mentioned these challenges when speaking of justice generally, other interviewees mentioned these more specifically as challenges for attaining justice for victims of the Khmer Rouge regime in such a context.

Importantly, more than one third of interviewees explicitly defined justice in terms of **socio-economic support**, mentioning justice as money for religious ceremonies, support for the elderly, mental health support, infrastructure and schools, development, enough food, adequate and equal salaries. Interestingly, interviewees who are or have been participating in the ECCC proceedings explicitly framed this notion of justice in terms of demands for reparations that are to be provided by the ECCC (see chapter on Reparations), whilst the other interviewees make similar claims yet without referring to the ECCC's mandate on reparations.

Finally, we can also identify a **technical conception of justice**. This can be illustrated with the following quote from a male civil party applicant in Cases 003/004 from Kampong Cham province:

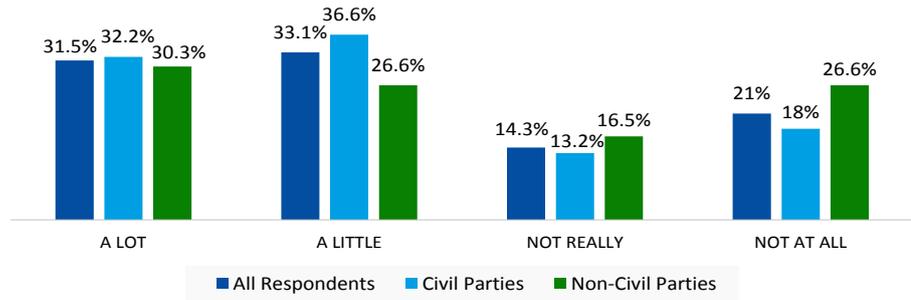
“ For the victims during the Khmer Rouge regime, like those arrested in Tuol Sleng, they are the victims and it's up to the government to do whatever they want. [...] It's up to the upper level. For me I don't know. And it's up to the government to provide justice for the people. For me, I do not quite understand ”
(IN2364).

As this quote shows, some interviewees – mainly those with less exposure to the ECCC – displayed a passive connotation of their own roles in the process of finding justice for victims of the Khmer Rouge regime. They highlighted that justice was to be delivered by, and therefore essentially depended on, external and powerful actors such as the ECCC, the government or the Prime Minister.

4.3. Agents of Justice and Achievements

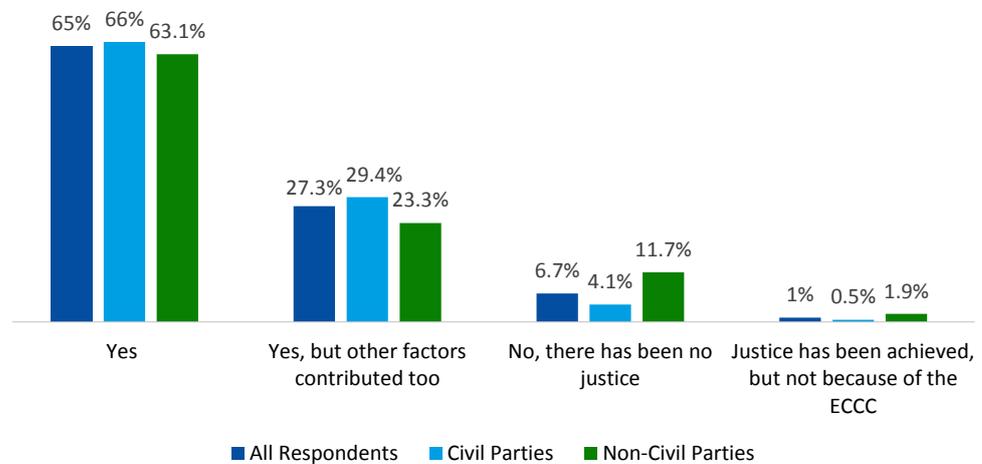
Our survey showed quite positive assessments of whether justice has been achieved for the victims of the Khmer Rouge regime. When asked whether victims of the Khmer Rouge regime have experienced justice, 64.6% affirmed this to varying degrees, with 31.5% saying “Yes a lot” and 33.1% “Yes a little.” Interestingly, the civil parties surveyed were more numerous in believing that justice had been achieved either a lot (32.2%) or a little (36.6%) than the non-civil parties (30.3% and 26.6%, respectively). Also, more non-civil parties surveyed answered don't know to this question (39.1%) than the civil parties (19.6%).

Figure 4.4: Do you believe that victims of the Khmer Rouge regime experienced justice?



Moreover, 65% of the respondents think that the ECCC has brought justice for the victims of the Khmer Rouge regime and their families, whilst 27.3% believe that the ECCC has brought justice, but that other factors have contributed, too.

Figure 4.5: Do you think that the ECCC has brought justice for the victims of the Khmer Rouge regime and their families?



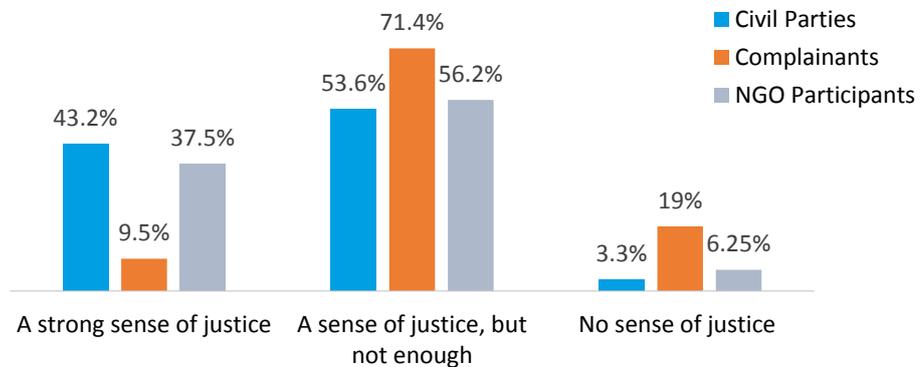
These positive numbers match results of 63% to 99% in previous surveys on expectations of the ECCC’s contribution to justice by the general population (Pham et al. 2009, 40; Pham et al. 2011a, 29), or by civil parties and civil party representatives (Kirchenbauer et al. 2013, 32; Sperfeldt et al. 2016, 47; Strasser et al. 2015). Interestingly, our survey thus suggests that our respondents’ expectations for the ECCC’s contribution to justice have been met. Moreover, it seems that a slightly more positive estimation of the ECCC’s contribution to justice has established itself over time. 41.2% of respondents said they were more convinced today that the ECCC would bring justice to victims of the Khmer Rouge and their families, compared to when the ECCC was established; 39.5% reported being convinced the same amount, and 19.3% were less convinced.

The survey also displays a positive assessment of the role of victim participation in the quest for justice, in particular direct, active or meaningful participation. 43.2% of the civil parties surveyed argued that their status as a civil party in itself provides them with a strong sense of justice, whilst 53.6% argued that it provided them with a sense of justice, but that this was not enough. Similar levels could be observed with those respondents who indicated that they had participated in NGO projects.²⁷ Complainants, who are much less involved in the ECCC proceedings, were strikingly less numerous in feeling that their status as a complainant in itself provided them with a strong sense of justice (9.5%). Victim participation was also

²⁷ See Figure 4.6 below.

generally valued in the process of finding justice by non-participants and NGO participants who were not involved in the ECCC proceedings. 80.8% of the non-participants and NGO participants surveyed agreed that civil party participation increased the chances for the ECCC to be able to deliver justice for the crimes committed during the Khmer Rouge regime.

Figure 4.6: Does your status as a civil party/complainant/participant in this NGO project provide you with a sense of justice?



The relevance of victim participation and outreach for achieving justice also emerged in the in-depth interviews: six of our interviewees placed great importance on seeing the ECCC proceedings first-hand, as well as seeing the faces of the accused directly, as a condition for feeling that justice is being delivered. A female civil party in Case 001 from Kampong Cham province, for instance, observed:

“People received a lot of justice nowadays. Because they care to prosecute and arrest those who killed the people during the Pol Pot regime in order to prosecute them and to let people go to see their face and to condemn them. And this is what the justice is, that is to let the people believe in the organisation [...]” (IN612).

The process of searching for justice needs to be visible and tangible to victims; victim participation and outreach therefore play a crucial role. Previous studies on victim participation in Cambodia similarly observed the importance for victims of “tangible justice” (Sperfeldt et al. 2016, 18) or of “witnessing justice”, i.e. of “translating the ECCC’s abstract discourse of justice into time, place and experience” (Herman 2014, 4).

The survey also sheds some light on what **actors are identified as providers of justice** for Khmer Rouge victims. Whilst respondents had the possibility to give multiple options, most respondents mentioned actors that were already involved with the ECCC. 34.9% of respondents think that Cambodian and international judges together are best positioned to deliver justice; before Cambodian judges at the ECCC (16.4%), international judges at the ECCC (13.4%) or the ECCC Victims Support Section (11.6%). The Cambodian government (32.8%) and the United Nations followed closely (31.9%), and were also considered as key providers of justice, ahead of NGOs (15.3%) and Buddhist monks or achars (8.2%).

The in-depth interviews also provided interesting insights into the perceptions of actors providing justice. Some interviewees indeed highlighted that their feeling that justice was being provided resulted from the existence of a **whole set of interventions** facilitated by diverse actors, including the court and several NGOs. They saw these processes and actors as working **in complementarity**, rather

than in isolation, and as reinforcing each other's achievements. Participants of NGO projects who were not involved in the Court proceedings perceived NGO projects as key to accessing information on the ongoing ECCC proceedings, and therefore to demonstrating that justice was being sought for Khmer Rouge victims (IN21; IN24; IN34; IN358). Two civil party representatives were more critical of the limitations of NGOs' work, since they are excluded from the key decision-making process at the Court or in the government (IN01; IN2411). Yet other civil parties valued NGO projects as part of a joint effort, alongside the ECCC, to help victims and "comfort them mentally" (IN240) and saw the work of NGOs as proving to victims that justice was being sought for them. A male civil party from Pursat province who had testified at the ECCC, for instance, observed:

“ Before, when I filed the complaint [...], it was silent [...]. There were no NGOs or anything coming to me. Then I felt lonely [...], there are many mixed feelings. I don't know what's going on. [...] I thought my application had no effect at all. Later on, there were NGO projects to help me mentally. Sometimes I was invited and sometimes they came to interview me like that, then I felt relieved. At first, I thought it was useless then there was a prosecution and imprisonment of Duch and the next leaders [...] then I thought they actually worked on it now ”
(IN240).

Another civil party in Case 001 from Siem Reap province argued that the work of NGOs was crucial in supporting victims:

“ I think if we only depend on the ECCC, the victims might face hardship since there is no support. Only when there is involvement of NGOs, there is encouragement and support for victims. If we depend on the ECCC alone, it might not be possible ”
(IN1150).

4.4. Limitations in the Quest for Justice

Whilst the survey results reported above are very positive in terms of whether justice has been achieved for the victims of the Khmer Rouge regime, and of the ECCC's contributions, the in-depth interviews paint a slightly more critical picture. Interviewees identify numerous limitations in the quest for justice. First, slightly less than one fifth of the interviewees observed that the justice that can be delivered by the ECCC or elsewhere will always be limited, since nothing can ever bring back those who died under the Khmer Rouge regime. A male civil party in Case 001 from Kampong Thom province, for example, argued:

“ But if we want a complete justice then where can we get it from? Since people died already, [...] the only way to receive a complete justice is to make them alive again ”
(IN1153).

Other limitations identified in the in-depth interviews were limitations that, according to the interviewees, could be acted upon and remedied. The most frequent limitation identified by interviewees is the **lack of reparations** being delivered by the ECCC, or, more precisely, the fact that victims did not receive

the reparations they wanted (e.g. mental health support, a home for the elderly, access to health care, financial individual reparations, including for conducting religious ceremonies). Almost one third of our interviewees raised this limitation, mainly civil parties. Interestingly, three civil parties who had actively participated in reparation projects also shared this view, and still argued that reparations had not been delivered to victims.

One seventh of the interviewees across various categories also mentioned **political interference at the ECCC**, and general problems in the national judiciary, as a limitation in the quest for justice. Political interference is mentioned in relation to the fact that some who were called as witnesses to Cases 003 and 004 refused to testify, but also to a lesser extent to corruption and recruitment of the ECCC national staff based on patronage. This speaks to the findings of Ryan and McGrew (2016, 72), who also found that many of their interviewees shared concerns of corruption and political interference at the ECCC.

Other interviewees also mentioned the **lack of acknowledgment by the accused** at the ECCC as a lack of justice. One tenth of the interviewees, mainly civil parties who have attended ECCC hearings, shared this view. Most interviewees here implied the lack of a general acknowledgment for being responsible for the crimes committed under the Khmer Rouge regime, whilst only very few interviewees mentioned more specifically a lack of acknowledgment of the responsibility for the death of one of their relatives. A dissatisfaction that the accused at the ECCC did not confess, tell the truth or apologise was also reported in other studies (see e.g. Ryan and McGrew 2016, 90).

Finally, one tenth of the interviewees also mentioned the **length of the trial proceedings** at the ECCC as an obstacle for achieving justice.²⁸ Only a few civil parties who participated very actively in the ECCC proceedings – either as a civil party in Case 001 or a civil party representative – showed understanding that the process is taking so long. At the same time, they still displayed high levels of frustration and/or disappointment given the old age not only of the accused, but also of the civil parties. A male civil party in Case 002 from Phnom Penh province observed:

“The trial procedure is too slow. Too slow. The victims are too old. During the regime, I was a child. Now I have already become old. If the Court is still slow, I might... die before receiving justice from the Court”
(IN201)

²⁸ This has been repeatedly observed in previous studies, see Killean (2018a, 165-6), Ryan and McGrew (2016, 80) or Herman (2014, 4).

Conclusions

- In the survey and in interviews, victims of the Khmer Rouge defined justice in various ways but with a strong focus on “knowing who is right and wrong”, “establishing the truth” or relating to notions of fairness, honesty, transparency and impartiality.
- Justice is perceived in a multidimensional manner and interviewees display diverse conceptions of justice, most importantly a punitive or retributive justice conception and social justice conception. Other conceptions were related to Buddhist beliefs or criminal justice. Rather than disqualifying the ECCC as a relevant justice-seeking process, it seems that Buddhist beliefs and the ECCC are working in complementarity.
- Those most closely involved in the ECCC proceedings are those who in the in-depth interviews speak of justice more frequently in terms of the existing transitional justice process at the ECCC (e.g. in terms of criminal justice and life sentences).
- The ECCC, more precisely Cambodian and international judges at the ECCC, are seen as key providers of justice, but NGOs are perceived as important actors here too. The in-depth interviews in particular demonstrate the perception of a complementarity and mutual reinforcement of ECCC and NGO activities. Victim participation is also perceived as a central element of the justice-seeking process.
- The survey findings show that respondents have very positive assessments of whether justice has been achieved for the victims of the Khmer Rouge regime, and of the ECCC’s contributions to this, confirming the positive findings of previous studies. The in-depth interviews display slightly more critical views, with interviewees most often mentioning the lack of reparations as a limitation in the quest for justice.

5

PERCEPTIONS OF RECONCILIATION

65

Participants of the
in-depth interviews
(referred to as
“interviewees”)

439

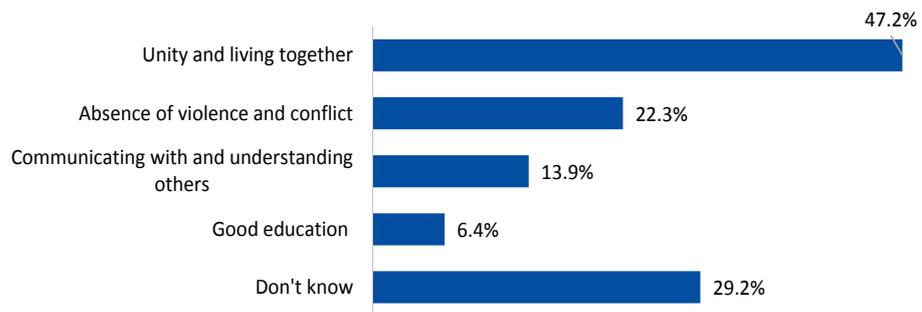
survey participants
(referred to as
“respondents”)

This section looks into the perceptions of reconciliation that individual victims of the Khmer Rouge hold today. First, we will detail the definitions of reconciliation as held by our respondents, before studying in more depth the various conceptions of reconciliation that emerge at a more abstract level. We then discuss what degree of reconciliation is perceived by respondents in Cambodia today, as well as assessing which actors have what kind of influence on reconciliation. This chapter is – similarly to the previous one – written at a slightly more abstract level than just reporting the data in order to contextualise and interpret better what the respondents’ and interviewees’ perspectives mean.

5.1. Definitions of Reconciliation

In the survey, we asked respondents what the notion of reconciliation means to them. This was framed as an open question: respondents used their own words to define reconciliation. If the answers matched the pre-defined categories identified on the basis of previous studies, the enumerators categorised them as such. If the answers did not match a pre-defined category, the enumerators recorded them separately. When asked this open question, almost half of the 439 survey respondents referred to ideas of unity and living together (47.2%), while a further fifth defined reconciliation as the absence of violence and conflict (22.3%); communicating with and understanding others (13.9%) and good education (6.4%), as well as being back on good terms, and forgiving others or letting go were less frequent definitions expressed by respondents. As such, our respondents expressed a ‘positive’ interpretation of reconciliation as unity and harmony rather than reconciliation merely as the absence of ‘negative’ conflict and violence. These numbers reflect responses in the more recent study by Phuong Pham and others, in which unity and living together was also the most frequent response, and corresponds to the trend from the first survey in October 2008 to the second survey in December 2010 that saw fewer responses focusing on the absence of violence and conflict (Pham et al. 2009, 28; Pham et al. 2011a, 33).

Figure 5.1: What does the notion of “reconciliation” mean to you?



*Respondents were able to provide multiple answers to the open questions (with pre-defined answer categories)

These understandings of reconciliation are articulated in similar ways in the in-depth interviews, as well: Around half of interviewees in the in-depth interviews defined reconciliation as **unity and living together** or similar concepts. For example, one female NGO participant from Kampot province explained that “reconciliation means we get back together and are not separated” (IN21). Similarly, another male NGO participant from Pursat province stated:

“ In our village, reconciliation is to make us unified, to love each other, no discrimination like when you see the former Khmer Rouge, you would just discriminate them but no, it teaches you to love each other (IN358). ”

Those respondents who defined reconciliation in terms of an **absence of violence and conflict** in the survey tended to have been less involved in the transitional justice process, possibly suggesting that participants in transitional justice projects come to understand, or at least come to formulate reconciliation in certain ways through their participation. Given the successive decline in respondents who indicate absence of violence and conflict as reconciliation within previous surveys (Pham et al. 2009, 28; Pham et al. 2011a, 33) that is continued in our data, this would constitute a form of mainstreaming over time that denotes reconciliation as the positive existence of unity, rather than just the absence of negatively connoted violence and conflict.²⁹ This also holds for NGO participants who generally discussed positive conceptions of reconciliation, as would be expected from the programmes they participate in. Nonetheless, a female complainant from Phnom Penh province also stated that “reconciliation means to ask for not fighting each other, not arguing with each other and not minding each other from today on” (IN165).

Going beyond these understandings, interviewees from across our various victim groups conceived of reconciliation in the in-depth interviews as **not holding grudges and forgiving**, and in this sense constructed reconciliation as the opposite of taking revenge on other people. Individuals tie these ideas of forgiveness and not holding grudges into Buddhist conceptions of letting go and karma, arguing that reconciliation means to not hold grudges in order to break out of a cycle of karma. This was explained by one female complainant from Banteay Meanchey province in the following terms:

²⁹ It is possible that it is those with more positive conceptions of reconciliation who decide to participate more, but it seems unlikely that the causality is this way around as other factors seem more prevalent (see chapter on participation).

“ If we are still angry and killing each other, the karma will keep growing. It will pass from me to my children and more. So the karma keeps passing [...] and we will keep killing each other and that’s why I think calming down is what I did. Let them be and we are Khmer, one nationality, we should love each other ”
(IN1958).

In definitions of reconciliation along these lines, a key tenet in in-depth interviews was that to reconcile meant to forget the past and in this context an important step was to “eras[e] all of it [the past] and think [...] only from now on,” as suggested by one female complainant from Kratie province (IN3010). One rationale underlying this is explained by a male NGO participant from Kandal province:

“ Too much remembering can be difficult, like for those who live near each other, those who used to work in the Khmer Rouge regime. It could be hard to face each other. I just think that it is better to let it go. [...] We should not remember the past but the present, in order to not make it too difficult ”
(IN1805).

There were also multiple further definitions mentioned in interviews and the survey. In several interviews, the idea of **societal peace** was mentioned when defining reconciliation; fewer people also discussed that for them reconciliation meant achieving peace of mind. Also along these lines, about one in ten interviewees spoke of peace of mind and how reconciliation was meant as a healing process and the reduction of pain. Other interviewees suggested that **reparation** could be seen as a partial prerequisite for reconciliation, as expressed by a male civil party representative from Siem Reap province: “But in our case, when we sue, the tribunal told us to reconcile and stop holding any grudges; this is impossible because we don’t get anything in return” (IN1452). Others emphasised how **participation** in the transitional justice process at the ECCC itself constituted reconciliation; in the words of a man from Kampong Cham province whose application as a civil party was rejected:

“ For those who went there [to the ECCC] and listened, they might cool down their minds and be relieved like the word reconciliation. But for those who have never been there, they didn’t know or hear and are still the same; they don’t know about reconciliation ”
(IN739).

It is noteworthy that 29.2% of survey respondents stated that they **did not know** what reconciliation means to them. And also in the interviews, a similar proportion of interviewees could not tell us what they believed reconciliation to be or struggled to talk about how much reconciliation exists in Cambodia today. It is striking that these survey respondents were predominantly individuals who were not as involved at the ECCC, with more than 40% non-participants, complainants, rejected civil party applicants and civil parties in Cases 003 and 004 not knowing, suggesting that individuals learn more about the idea of reconciliation, or at least about how to talk about reconciliation, through their participation itself. In this context a couple of interviewees who had participated in NGO projects referred to reconciliation as something they should know about (implicitly due to the NGO

projects), but that they had not understood it or could not hear due to their old age (IN24; IN34; IN1809).

5.2. Conceptions of Reconciliation

There were, however, differences between the answers elicited when individuals were asked to define what reconciliation means to them and what they referred to when discussing the topic more generally during the in-depth interviews. As such, when discussing reconciliation explicitly, interviewees often mentioned the ECCC or the NGO interventions in which they had participated. But other topics also emerged when we talked to interviewees about what various practices mean to them and how they deal with their past. As such, for many individuals, reconciliation was embedded in broader understandings, including religious understandings already alluded to in the chapter on justice. In the interviews we were able to differentiate between three different levels at which reconciliation occurs: the national level, within interpersonal relationships at the community level and at the personal, individual level.³⁰

First, reconciliation was perceived by some interviewees across all groups in terms of **political reconciliation at the national level**. This conception places a certain focus on unity within society with an appeal to nationalist arguments. One example of this was provided by a male civil party in Case 001 from Kampong Cham province: “We have to understand that Khmer Rouge are also Khmer, and we all are Khmer, so we need to reconcile” (IN1150). Furthermore, reconciliation was from time to time tied into broader government policies such as Hun Sen’s ‘win-win policy’ or efforts for political education; this reflects the government’s attempts to use the concept of reconciliation for its political gain (Chandler 2008; Manning 2015; Manning 2017; McGrew 2011a, 233), although it is unclear whether this means that people are accepting the government role in reconciliation or have learned to present it as such.

Less prominent were conceptions of **interpersonal reconciliation at the community level** that emphasise more strongly societal harmony and mutual understanding with people in the community, as well as not holding a grudge. In this context, a male civil party representative from Kampot province explained:

“Reconciliation is to negotiate with each other, so there would be no grudge. Everyone does not hold any grudge toward each other and forgives each other. [...] Nowadays, even if we know that this person or that person used to do something bad during the Khmer Rouge, we still don’t hate them much, the anger is already released. It doesn’t do any good even if we take revenge on each other. Yeah, so there is a reconciliation” (IN01).

As such, the emphasis is on the social relations between individuals within a community. Many Khmer Rouge were not located in their home villages during the regime, so that interpersonal reconciliation is not needed as they no longer see each other. However, some former Khmer Rouge do live in the communities where they were active and this form of interpersonal reconciliation is particularly pertinent for those who know that these former Khmer Rouge killed or harmed their loved ones or our interviewees themselves.

³⁰ These levels were not assumed from the outset but emerged from our data.

Tying into the above discussion of religious connotations in reconciliation definitions and conceptions of justice, there were also strong ideas of **intrapersonal reconciliation**, that is reconciliation within oneself. While it would go beyond the scope of this report to discuss the foundations of these Buddhist understandings (for an overview see Harris 2015; Harvey 2000), various facets tie into religious practices and provide a form of moral reconciliation. For example, one female civil party from Pursat province whose application was rejected explained: “I just perform only religious ceremonies. I just reconcile inside my mind” (IN283). A different rejected civil party applicant, a woman from Kampong Cham province, focused more on moral precepts:

“ I went to learn moral precepts. I was so upset. Earlier you asked me whether I hold a grudge against the one who killed my husband. I meant I hold a grudge against them, but I was just so angry in my mind that I had so many hardships. Then I started learning moral precepts and praying to make me feel relieved. [...] It helped some ” (IN752).

In these conceptions, religious ideas provided the mechanism through which reconciliation can be achieved and reconciliation is understood as a sense of moral peace and inner quiet that resonates strongly with Buddhist conceptions of the divine abidings (ព្រហ្មវិហារធម៌ *brahma-vihāras*) that emphasise loving-kindness, compassion, empathetic joy, and equanimity (see Harvey 2000, 104). Most people who referred to reconciliation in these religious, intrapersonal terms tended to be interviewees who are less involved in the judicial transitional justice process, particularly rejected civil party applicants, civil parties in cases 003 and 004, marginalised civil parties and NGO participants.

Finally, some interviewees demonstrated a conception of **reconciliation as a technical process**. In this sense, some interviewees explained how they are reconciled when people have come and trained them on reconciliation, as elaborated on by one man from Pursat province who testified at the tribunal (IN240); by contrast, some interviewees argued that if no-one trains them, then there can be no reconciliation. For some interviewees, even if no active training was needed, there was a strong sense that a third party needed to be the agent of reconciliation, as explained by a male NGO participant from Kampot province: “If we have an argument, there is someone to reconcile us, to get us together so that we don’t argue anymore” (IN24). These understandings of reconciliation as a ‘skill’ in which one needs to be trained or the necessity of a third party imply a relatively passive subjectivity of the victim and externalise the agency for reconciliation to third parties, as will be discussed in more depth in the next section as well as on the chapter on empowerment. This conception also suggests that reconciliation is understood primarily as an outcome to be achieved rather than as a process.

What we also see across these different conceptions is that the idea of reconciliation is used to refer to the different levels: national-level reconciliation across the country particularly with reference to peace and political unity, community-level reconciliation within the locality either generally or between the victims and specific other individuals, and individual-level reconciliation in terms of individual healing. In line with this, it is often not entirely clear who was being conceptualised as being reconciled with whom. Implicitly for most interviewees, former Khmer Rouge were constructed as ‘the other’ in the reconciliation process.

However, for almost half of the interviewees, little need for reconciliation was seen, most often because they did not perceive that there were any Khmer Rouge to be reconciled with any longer; interviewees referred to the fact that some former Khmer Rouge had died and others had moved away, but this also suggests that other demobilised former Khmer Rouge are no longer perceived by some as Khmer Rouge with whom one must reconcile. Very few interviewees discussed reconciliation primarily as something that should occur between the government and the political opposition, which would refer more to a lack of reconciliation in current conflicts than for the Khmer Rouge past, or to victims having to reconcile with each other.

5.3. Agents of Reconciliation

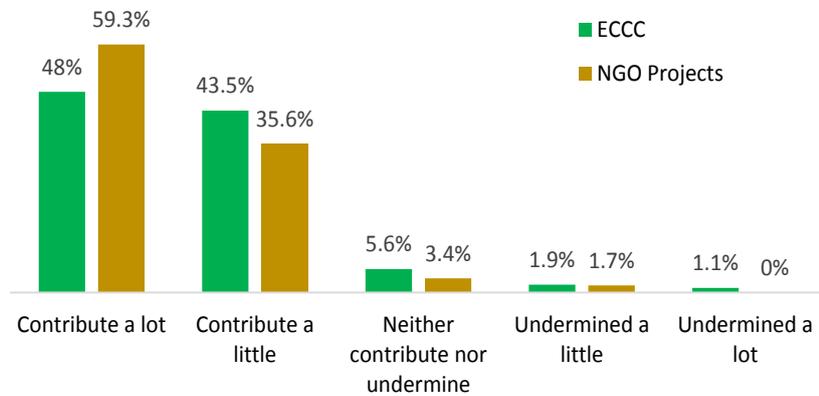
Both the survey and the in-depth interviews revealed differing understandings of who can contribute to reconciliation. This is of pivotal essence to understanding what transitional justice mechanisms are perceived to be able to (and not able to) provide for victims in terms of reconciliation.

When asked whether the **ECCC** has contributed to reconciliation in Cambodia, 91.5% affirmed this to varying degrees, with 48.0% saying “Yes, a lot” and 43.5% “Yes, a little;” only 3% perceived the ECCC to undermine reconciliation a lot or a little and the remaining 5.6% perceived the ECCC to have neither contributed to nor undermined reconciliation in Cambodia. This was evocatively put by one male civil party in Case 001 from Kampong Thom province: “The Khmer Rouge Tribunal is the medicine to heal our mental health and reconcile our nation with no more revenge” (IN1153). It is striking that perceptions were so positive despite a significant degree of people specified not knowing what reconciliation is; this could be explained by reconciliation having taken on the character of a ‘buzzword’ that has positive connotations and is tightly connected with the ECCC. These extremely positive numbers match results of over 80% or 90% in previous surveys on expectations or perceptions of ECCC contributions to national or community reconciliation (Kirchenbauer et al. 2013, 33; Sperfeldt et al. 2016, 47; Stammel et al. 2010, 34, 53; Strasser et al. 2015, 52). Studies pre-dating the hearings before the Trial Chamber in Case 001 found that estimations of the ECCC’s expected contribution to reconciliation were also high, as “more than 75% of respondents believed that the trials would help promote reconciliation” in one study (Sonis et al. 2009, 533), or 66.9% of respondents expected the ECCC to help promote national reconciliation in another (Pham et al. 2009, 40). Interestingly, thus, our survey suggests that our respondents’ expectations for the ECCC’s contribution have been met or exceeded and a positive estimation of its contributions has established itself during the trials. A change of opinion was also reflected in our survey, as 40.7% of respondents stated that they had become more convinced today that the ECCC can bring reconciliation to the victims of the Khmer Rouge and their families compared to when the ECCC was first established, in contrast to one in five respondents who were less convinced (18.2%) and two in five who were unchanged (41.1%). While the ECCC’s contribution was assessed positively across the board, there is indeed also a statistically highly significant correlation between the degree of participation within the transitional justice process in Cambodia and positive attitudes towards the ECCC’s contribution to reconciliation.³¹ While this could be interpreted to mean that those who believe more in the ECCC are more likely to participate, we would make the case that the more people participating the more likely they were to say that the ECCC contributes positively to reconciliation. We would argue that this is

³¹ Tau = 0.129, p < 0.01.

because they see the positive effects of it first-hand or, alternatively, are exposed more strongly to the discourse that the ECCC is contributing to reconciliation and learn to reproduce this discourse. In the in-depth interviews, the ECCC was also the actor mentioned most as contributing to reconciliation, with half of the interviewees emphasising this. The only two interviewees who explicitly argued against the ECCC’s contribution were individuals whose applications as civil parties had been rejected.

Figure 5.2: Do you think that the ECCC/this NGO project has contributed to reconciliation in Cambodia?



In the survey, 94.9% of respondents who stated that they had participated in NGO projects saw a contribution of **NGOs** to reconciliation,³² with 59.3% of respondents indicating that they believe NGOs contributed a lot to reconciliation and 35.6% a little, while only 3.4% of respondents believed that NGOs neither contributed nor undermined reconciliation and 1.7% believed they undermined reconciliation a little. This puts NGOs a little higher in terms of their contribution to reconciliation than the ECCC, although both had high rates of over 90%. Contrasting this, about one quarter of participants in the in-depth interviews mentioned NGOs as key contributors to reconciliation, although again two ruled them out as being ineffective. In in-depth interviews, NGOs were afforded various roles in helping provide reconciliation, such as providing a space in which the victims’ stories could be told, counselling that enabled healing, training that helped community relations or other forms of projects. In effect, the role of NGOs in the context of transitional justice is complementary to the ECCC as their work overlaps with activities of the ECCC with the NGOs providing many key services for the tribunal. This complementary system has emerged over the duration of the ECCC, with civil society actors performing tasks the VSS could not due to its mandate or funding (Ryan and McGrew 2016; Sperfeldt 2012a). Particularly as NGOs provide legal services, outreach and counselling, as well as designing, funding and implementing reparations and non-judicial measures, it is often unclear to interviewees which of their interactions with NGOs are for ECCC-related matters that are part of the international criminal justice process and which are broader NGO interventions (see also Ryan and McGrew 2016, 92).

Similarly, about one quarter of interviewees mentioned the **government** or local authorities as providers of reconciliation in the in-depth interviews. Half of these mentioned Prime Minister Hun Sen specifically as the person who contributed to reconciliation, although this happens most prominently when people define reconciliation in the context of peace. Given the government’s prominent usage of national ‘reconciliation’ in public discourse and its self-legitimation, particularly in the context of the win-win policies, it is unsurprising that the government

³² These are not just those respondents who we sampled as NGO participants but all who indicated themselves to have had participated in NGO projects.

is associated with the term. Furthermore, Prime Minister Hun Sen routinely capitalises on the threat of war to legitimise his role in power and to silence critique of his resistance to further cases at the tribunal which would undermine reconciliation (Manning 2017, 52).

As above, **religion** was also important in terms of its contribution to reconciliation, although it is not religious actors who were named explicitly, but instead religion was constructed as important for reconciliation across various narratives. Predominantly, Buddhism was central, but one interviewee also referred to her Christian faith.³³ For example, one woman, an NGO participant from Kampong Cham province, told us: “Before I did the merit [good deeds] at the pagoda, I still held anger in myself. But when I did the merit, the merit helped to prevent me from feeling angry and to be more tolerant” (IN824). In this sense, Buddhism was clearly labelled as the mechanism through which reconciliation could be achieved, particularly feeding into intrapersonal reconciliation.

When discussing which actors are key to reconciliation, several interviewees referred to multiple actors in the in-depth interviews, but when only one actor was mentioned it was most often the ECCC or the government, whereas NGOs, religion or any other actors, such as the international community or the royal family, were normally mentioned in parallel to either the ECCC or the government. While this could indeed serve as a confirmation that interviewees identify these actors as those who can (and do) deliver reconciliation, these assertions could also reflect more basically the fact that the terminology regarding reconciliation was used more explicitly by these actors, thus associating themselves more strongly with the concept.

It is noteworthy that reconciliation was strongly perceived to be provided by external actors, be it the ECCC, NGOs, the government, but not as something that could be acquired through the victims’ own volition with the exception of those individuals who discussed reconciliation in religious terms. This also tied into the technical conceptions that some interviewees demonstrated when talking about reconciliation related to how it was provided as a positive good by these third parties. Again, this plays on the idea of reconciliation being an outcome that is provided, rather than the process of achieving something.

Overall, reconciliation was unquestioningly presented as something that is positive and should be strived toward (even if not all agreed that full reconciliation already exists in Cambodia today). As it would be understandable for victims to be uncomfortable with reconciliation given their ongoing anger, hatred and feelings of discomfort or even thoughts of revenge amongst the victims of the Khmer Rouge, we might have expected that reconciliation was not necessarily seen as positive. Therefore, this positivity suggested a certain degree of mainstreaming. This is possibly due to the marginalisation of victim voices during the designing phase of transitional justice in which alternative concepts could have been articulated that do not highlight reconciliation but more anger-orientated perspectives. Instead, during implementation reconciliation was unequivocally accepted as the worthy goal.

³³ No Muslim was interviewed in the in-depth interviews, so the Muslim faith cannot be discussed here.

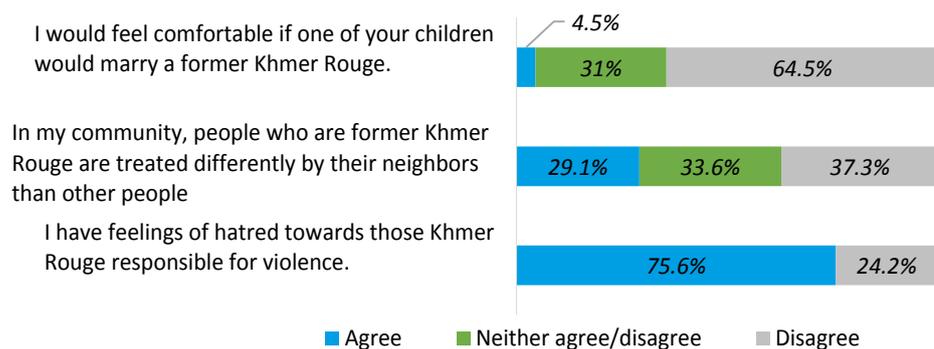
5.4. Degree of Reconciliation

What degree of reconciliation has been achieved within Cambodia as a whole and at the community level, is a matter of some contention. Although little open hostility was attested to in the interviews or the survey responses, results on reconciliation were mixed. A couple of interviewees referred to what Laura McGrew terms ‘shallow reconciliation’ (McGrew 2011a; 2011b). For example, a woman from Kandal province who testified at the ECCC explained:

“ Yes, I hate them and I don’t like them at all. But I don’t do anything and I just don’t communicate with them often, because when I see them, it reminds me of my deceased parents and relatives ” (IN1907).

29.1% of respondents claimed that in their community people who are former Khmer Rouge are treated differently by their neighbours, while more respondents did not perceive different treatment of former Khmer Rouge (37.3%). However, at the same time, around two thirds of respondents (64.5%) indicated that they would be uncomfortable if one of their children would marry a former Khmer Rouge, and only 4.5% said they would feel comfortable; these values are considerably more critical than previous surveys that saw less than 50% of respondents indicating uncomfortable and higher rates of comfortable respondents (Pham et al. 2009, 28; Pham et al. 2011a, 33; see also, albeit to a lesser degree, Sperfeldt et al. 2016, 66). Going further, three quarters of respondents reported having feelings of hatred towards those Khmer Rouge responsible for violence (75.6%). Past surveys report comparably high statistics on hatred of 82.9% in 2009 and 81% in 2011 (Pham et al. 2009, 29; Pham et al. 2011a, 30; see also Sperfeldt et al. 2016, 65) and the desire for revenge or wanting to see them suffer (Sonis et al. 2009, 532; Stammel et al. 2010, 30; Sperfeldt et al. 2016, 65). In our in-depth interviews, hatred and anger, tensions, a desire for revenge and fear were topics mentioned by some interviewees, an attitude that is understandable given the experiences of these victims.

Figure 5.3: Degree of reconciliation



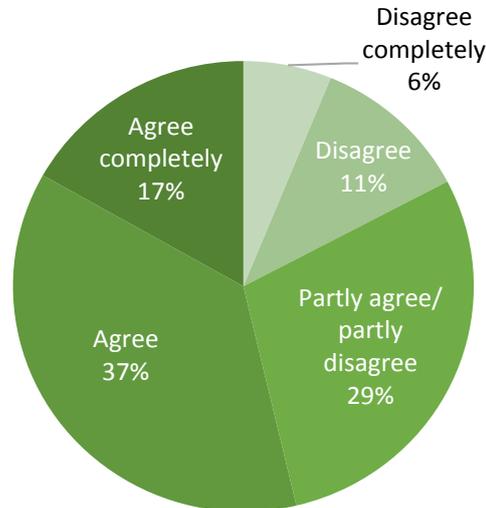
This discrepancy between most people feeling hatred towards the Khmer Rouge and only a minority seeing tensions in their community could be due to fragmented perceptions of low-level former Khmer Rouge and former leaders. In our interpretation hatred is targeted in general at the Khmer Rouge as an abstract organisation and at the leaders, while low-level former Khmer Rouge are not seen in a hostile manner generally. However, more personal relations within the community with specific individuals whose previous acts of violence are known or suspected would be more tense. To a certain degree this speaks

to an individualisation of guilt with not all former Khmer Rouge being attributed blame. The ECCC likely contributed to this through its narrow focus on the highest leaders, while the widespread lack of tensions with former Khmer Rouge in general is supported by government policy (Williams 2018), although not to the degree that it would overshadow experiences with specific individuals who had victimised someone’s family or someone themselves. In in-depth interviews, people talking about anger and hatred often spoke about this not in the context of their interpersonal relations within their communities, but more in terms of their own feelings of hatred or anger towards specific former Khmer Rouge that they do not act upon or show in public. For example, a female civil party in case 003 or 004 from Kampot province stated that:

“ They [other victims] get along with them, but the anger inside does not go away completely. But we don’t know what to do. That’s why we just get along. We cannot take them away to be killed like during the Khmer Rouge [regime] ”
(IN2654).

Furthermore, the statement “Low-level former Khmer Rouge were just following orders and are also victims of *Ângkar*,” with which only 17.3% of respondents disagreed (of which 6.2% completely), while over half agreed (53.7%, of which 16.8% completely), suggests that respondents perceive low-level cadres as less responsible for the violence of the regime than their superiors and even see them as victims of it. As such they channel their hatred towards the leaders in the higher echelons of power, who are perceived as ultimately responsible; this perception also resonated with Khmer Rouge cadres’ perceptions of themselves (IN739; IN748; IN2233; Williams forthcoming).

Figure 5.4: Low-level former Khmer Rouge were just following orders and are also victims of *Ângkar*



It is also important that in the in-depth interviews, about one quarter of interviewees referred to some degree of agency exerted by low-level former Khmer Rouge. For example, an ethnic Vietnamese civil party explained:

“ Because, for example, the above [his superiors] only ordered to take one away, but when they came to take [him/her], they took two instead. This is why it is also wrong. If they only took one, they are right [as they could not refuse orders. But for the second, we cannot just blame the [superiors] above, the [cadre] below also needs to be blamed ”
(IN9999).

Some of the victims in our in-depth interviews stated that there was a lot less anger towards the Khmer Rouge today than previously, and some emphasised the presence of mutual understanding and respect in their communities today. Also, as stated above, almost half of the interviewees saw little need for reconciliation, arguing most often that there were no longer any Khmer Rouge left. This was quite often the case as in many communities Khmer Rouge cadres at the end of the regime left the communities they had been posted to and either fled to the Thai border or returned to their previous homes. This is testified to by the fact that in in-depth interviews one third of the interviewees spoke about all former Khmer Rouge having moved away or died and therefore not needing reconciliation. Thus, in some communities it may become known that these individuals are former Khmer Rouge but often not precisely what actions they were involved in. More importantly, their actions did not affect the individuals in their home community directly, consequently removing much potential for tension. The dynamics in each specific community vary according to the composition of the local population, how many former Khmer Rouge live there and whether they worked in the same area under the Khmer Rouge regime or – more commonly – were posted to other places and therefore are no longer in direct everyday contact with their victims.

As such, our findings provide mixed evidence on the degree of reconciliation in Cambodia but suggest that most communities are experiencing at least some degree of “shallow reconciliation,” maybe even deeper forms of reconciliation. Tensions do not appear to be acute or widespread, particularly given the vast amount of former Khmer Rouge in the country. Our results suggest that the majority of victims perceives low-level former Khmer Rouge cadres as having been following orders and as victims, too. This could ultimately mean for many individuals that the hatred they feel towards the Khmer Rouge is projected more at the Khmer Rouge as an abstract group and at the leadership, as well as specific individuals whom they know to have committed atrocities, while any other former Khmer Rouge who were in action elsewhere are viewed somewhat differently. This would suggest that the developments towards reintegration and shallow reconciliation identified by McGrew have continued and relations are continuing to improve (McGrew 2011a).

Conclusions

- In the survey and in interviews, victims of the Khmer Rouge defined reconciliation in a diverse manner but with a strong focus on unity and living together, an absence of violence and conflict, as well as not holding grudges and forgiveness that ties into Buddhist conceptions.
- Reconciliation was perceived at different levels and in a multifaceted manner with national-level political reconciliation; interpersonal, community reconciliation; as well as intrapersonal, moral reconciliation all perceived as important. Intrapersonal conceptions of reconciliation suggested by our interviewees add a facet to most understandings in the literature that focus on national and interpersonal reconciliation.
- Reconciliation was primarily perceived as an outcome that is achieved mostly by external intervention, rather than as a process between actors.
- The ECCC was seen as a key provider of reconciliation by half of our interviewees and respondents, but the government and NGOs, as well as religion are perceived as key to reconciliation provision, too.
- Thus, conventional transitional justice mechanisms are important for providing reconciliation for victims of the Khmer Rouge, but Buddhist conceptions support and feed into this.
- The depth of achieved reconciliation in Cambodia is not uniform. We argue that a post-conflict politics of shifting all culpability from low-level former Khmer Rouge to the Khmer Rouge leaders and the organisation abstractly, as well as the ECCC's personal jurisdiction that reinforces this, allows for shallow reconciliation in many communities with little open conflict. This is often facilitated by the absence today in the communities of those who committed violence there during the Khmer Rouge regime.

6

THE ECCC – KNOWLEDGE, EXPERIENCES AND PERCEPTIONS

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Participants of the in-depth interviews (referred to as “interviewees”)

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survey participants (referred to as “respondents”)

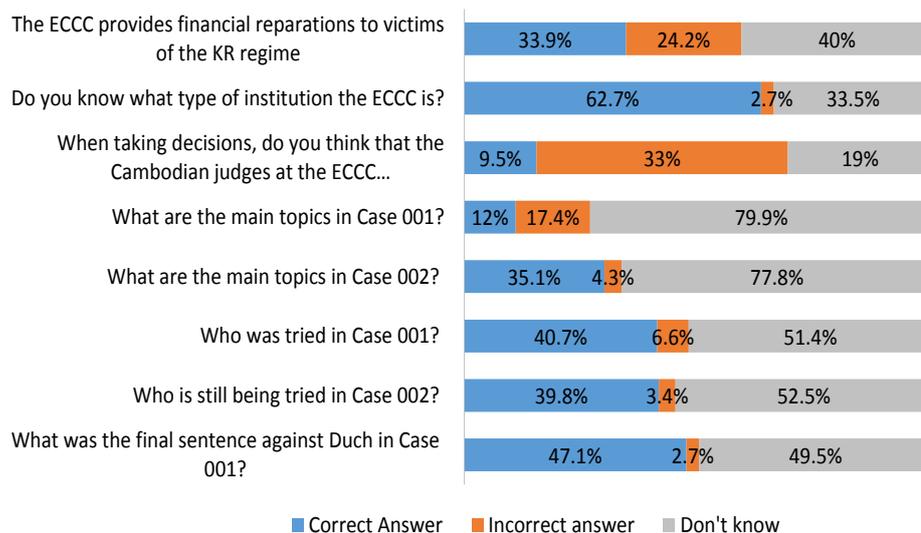
In order to assess their knowledge of the ECCC and its trials, the respondents of the survey were asked a series of questions on factual knowledge of the ECCC and of its trials. This section will explore the level of knowledge concerning the ECCC and its trials by assessing the respondents’ factual knowledge of the ECCC, Case 001 and Case 002. The perception of the ECCC and its transitional justice actors will then be examined by assessing the independence, trust, and satisfaction of the ECCC and those actors.

6.1. Knowledge and Awareness of the ECCC

The vast majority of survey respondents believed they had some knowledge of the ECCC, albeit to varying degrees. Two out of five survey respondents believed that they had moderate or high knowledge of the ECCC (43.6%) of which a majority were those who participated in the proceedings of the ECCC, namely civil parties and civil party representatives. Another two out of five respondents expressed that they had little knowledge of the ECCC (42.5%), while about one in eight respondents identified themselves as having no knowledge of the ECCC at all (13.9%); those who indicated not having any knowledge had limited or no interaction with the ECCC as they were primarily non-participants, NGO participants, complainants, and rejected civil party applicants.

To assess factual knowledge and understanding of the ECCC, survey respondents across all categories were asked a series of questions about the ECCC and its trials. There were three questions on factual information of the ECCC (reparations, type of institution and decision-making process), three questions on Case 001 (main topics, accused person, and sentence of Duch), and two questions on Case 002 (main topics and accused person). It is important to note that in this block of knowledge questions the answer ‘don’t know’ was considered as not having knowledge and was therefore included in the analysis of survey respondents’ level of knowledge of the ECCC accordingly.

Figure 6.1: Knowledge about the ECCC



The result of the survey indicated little knowledge of the ECCC and its trials: a high number of survey respondents opted for the 'don't know' answer (55% on average). When asked about the ECCC, respondents displayed a relatively low level of factual knowledge. Three out of five respondents correctly identified the ECCC as a **mixed system** with both Cambodian and international judges and staff (62.7%), indicating similar or slightly lower levels of knowledge in comparison with previous research (see e.g. Pham et al. 2011a, 23), while one-third of the respondents said they did not know (33.5%). Despite being well-informed about the hybrid nature of the ECCC, there was a mixed response when further asked about the decision-making process at the ECCC. More than half assumed that a decision at the ECCC could only be reached if all the judges, both Cambodian and international, agreed or that Cambodian judges could decide alone (52.7%); of those responding correctly, a large majority were civil parties, albeit with varying degrees of participation. Only 15% correctly understood that Cambodian judges could not make decisions on their own unless at least one international judge agreed with them. Nearly one-third of the respondents with limited involvement with the ECCC said they did not know about the details of the decision-making process (30.3%). One-third of the respondents correctly stated that the ECCC did not provide **financial reparations** to victims of the Khmer Rouge regime (34%) while two out of five respondents (one quarter were non-participants) did not know whether the statement was true or false (40%). More interestingly, about a quarter of the respondents believed that the ECCC provided financial reparation to the Khmer Rouge victims (24.2%), of which a large majority was involved in the proceedings at the ECCC, i.e. civil parties. Such belief, beyond the factual knowledge, possibly reflected perception of the reparations anticipated by the respondents (see more in the chapter on reparations).

The factual knowledge of the trials at the ECCC was largely moderate. When asked about main topics in **Case 001**, only one out of eight respondents identified S-21 (12.1%); this proportion was not higher for civil parties in Case 001. Almost all non-participants, complainants, rejected civil party applicants, NGO participants, and, surprisingly, also some civil parties in Case 001 stated they did not know the main topics of Case 001 (79.9%).³⁴ Two in five respondents correctly identified that Duch was tried in Case 001 (40.7%), marking a decrease compared to the recorded awareness during the Duch trial itself (see Pham et al. 2011a, 23); more than half said they did not know the accused in Case 001 (51.4%). Nearly

³⁴ Other answers given were killing (5.5%), Choeng Ek (5.2%) and genocide (2.3%).

half correctly stated that Duch was sentenced to life imprisonment (47.1%) and another half said they did not know about the sentence (49.5%) while only three respondents indicated the death penalty as the sentence Duch had been handed down. This level of factual knowledge regarding Case 001 is not unexpected as the ECCC officially concluded the case upon its final judgement in 2012, meaning that knowledge will have been lost to a certain degree over the years.

Likewise, the level of knowledge concerning the main topics of **Case 002** was not very high among survey respondents. Only a small number of respondents were able to specify one or more main topics of Case 002, i.e. forced marriage (9.6%), forced transfer of population (8%) and genocide (7.1%), while more than three quarters of the respondents said they did not know of any topic, irrespective of their participation at the ECCC (78.4%).³⁵ The genocide charges related to the Cham and Vietnamese minorities under the Khmer Rouge regime were rarely mentioned or not mentioned at all by Cham or Vietnamese civil party respondents.³⁶ More than a third correctly identified, either one or both, Nuon Chea (38.5%) and Khieu Samphan (41%) as the accused person in Case 002, while half was not aware of the accused persons in Case 002 (52.5%). The marked decrease in outreach activities and attention of the stakeholders, i.e. support of the government in broadcasting the trial hearings via the media, compared to Case 001 could explain the lower level of knowledge regarding Case 002 (see e.g. Ryan and McGrew 2016, 80-82).

The result of the survey revealed that the level of knowledge of the respondents strongly and positively correlated with their degree of participation at the ECCC; those who participated more in the proceedings of the ECCC were statistically significantly more likely to have higher knowledge whereas those who participated less or did not participate at all would have less or no knowledge of the ECCC, as similarly demonstrated in previous research (see Pham et al. 2011a, 21; Sperfeldt et al. 2016, 45).³⁷ The survey results also demonstrated that men are significantly more knowledgeable about the ECCC, as similarly indicated in the previous study (see e.g. Sperfeldt et al. 2016, 50). Based on the odds ratio, the chances of men having high general knowledge on the ECCC is almost eleven times higher than the chances of women having high general knowledge.³⁸ This may be more of a reflection on the general access to education for men within the patriarchal context of Cambodia.³⁹ This gender effect is not statistically significant when one studies just civil parties, meaning that transitional justice learning settings such as outreach forums provide equalising opportunities for gaining new knowledge. This discrepancy clearly highlights the need for a gender-sensitive and -empowering approach to transitional justice.

³⁵ Other answers given were sexual violence (3%), the execution of Khmer Republic soldiers (1.8%), crimes at certain worksites (1.4%) or detention centres (1.4%), internal purges (1.1%), the genocide against the Cham and Vietnamese (0.9%), Killing or targeting the Cham and Vietnamese (0.7%), the targeting of former Khmer Republic officials (0.5%).

³⁶ The number of Cham and Vietnamese respondents was, however, relatively few in comparison with the majority Khmer respondents (Cham: 3.6%; Vietnamese: 0.45%).

³⁷ $r = 0.524$, $p < 0.01$.

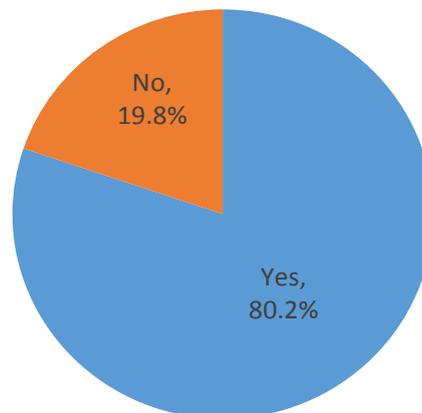
³⁸ For men, significantly fewer had no general knowledge than expected. For the other groups, the standard residuals are not significant as they are smaller than 1.96 [absolute]. This tells us that as many men as expected did have knowledge and as many women as expected did and did not have knowledge about the ECCC. Hence, the association between gender and ECCC knowledge is mainly driven by the men without knowledge of the ECCC.

³⁹ Cambodia's 2017 Gender Inequality Index (GII) under the framework of the Human Development Index (HDI) showed that only 15.1% of the female population, compared with 28.1% of the male, had at least some secondary education whilst 80.9% of females participated in the labour force compared with 88.7% of males (see United Nations Development Programme (UNDP) Briefing Note on Cambodia's 2018 HDI Statistical Update).

6.2. Perceptions of the ECCC

Perceptions of the ECCC were mostly positive in all aspects among the respondents of the survey. Almost all respondents across all categories believed that the ECCC contributed to general positive changes in Cambodia (90.8%) as well as to justice (92.3%) and reconciliation (91.5%), either a little or a lot, as mentioned in previous chapters. As Case 002 is approaching an end, it is interesting to discuss the perceptions or expectations of the ECCC with regard to **Cases 003 and 004**. Four out of five survey respondents believed the ECCC should address Cases 003 and 004 (80.2%). One quarter of respondents who support Cases 003 and 004 mentioned that it would provide them with a sense of justice (26.4%) or justice for the victims (25.1%) and it would mean that Khmer Rouge leaders could not escape justice (24.7%).⁴⁰ On the other hand, the respondents who expressed their disapproval of Cases 003 and 004 firmly questioned the significance of the cases and the process undertaken by the ECCC. One in five respondents who were against Cases 003 and 004 stated that it would not make a difference in prosecuting those cases (21.1%) and they were not or no longer interested in the case as they were getting older (15.8%), whereas some stated that the process was too slow (17.5%) and too expensive or was a waste of money (15.8%).⁴¹ Some respondents were even concerned that Cases 003 and 004 could lead to conflict (14%) which could be attributed to the adamant rhetoric of the government expressing no intention to support additional cases of the ECCC beyond 002 (see e.g. Ciorciari and Heindel 2014, 174; Ryan and McGrew 2011, 11).

Figure 6.2: Do you want Cases 003 and 004 to be addressed by the ECCC?



Our in-depth interviews further affirmed the motivation for having Cases 003 and 004 addressed for the pursuit of justice,⁴² in particular a genuine justice, in which right and wrong was clear and ‘the wrong one should be brought to justice for the victims,’ as stated by a male civil party from Kampot province (IN01). Furthermore, a few interviewees explicitly indicated that they believed further prosecution would provide justice for them, meaning there would be no justice if there were no Cases 003 and 004 or a limitation of justice if the remaining cases were dropped without taking into account thousands of pending civil party applications. Several civil parties expressed their expectations in the court by suggesting the ECCC hold Cases 003 and 004, as one male civil party from Siem Reap province stated:

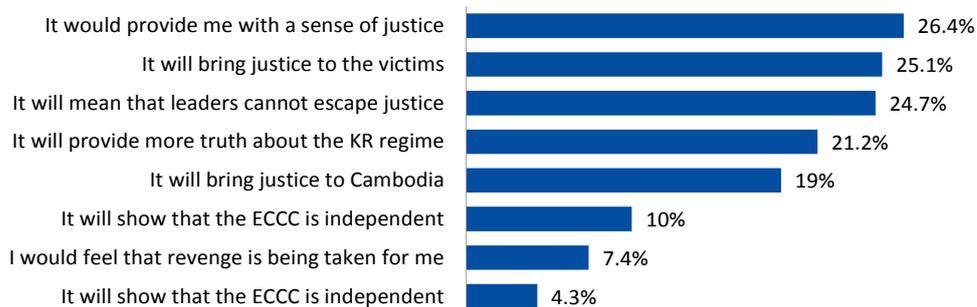
⁴⁰ Respondents could choose multiple answers from pre-defined categories.

⁴¹ Respondents could choose multiple answers from pre-defined categories.

⁴² Mainly stated by civil parties across various categories.

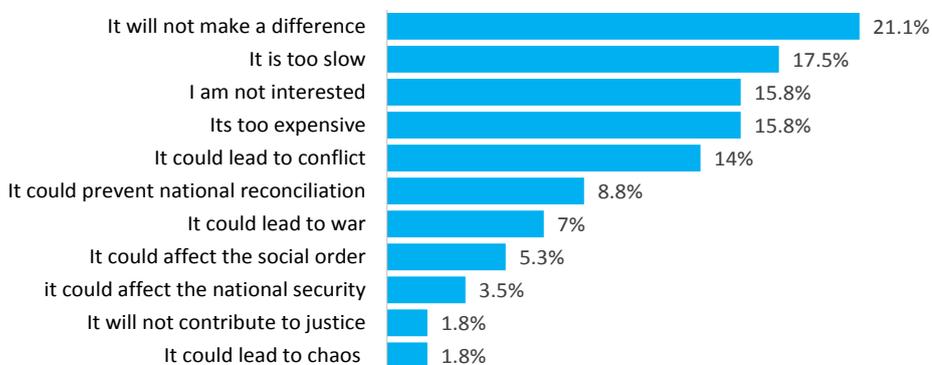
“ For 003 and 004, it is not over and it is on-going. Please protect the justice for the victims. Do not let black become white and vice versa. I would be very happy if it [the ECCC] continues to work well in the future (IN1150). ”

Could you please specify why you want Cases 003 and 004 to be addressed?



*Respondents were able to provide multiple answers.

Could you please specify why you do not want Case 003 and 004 to be addressed?



*Respondents were able to provide multiple answers.

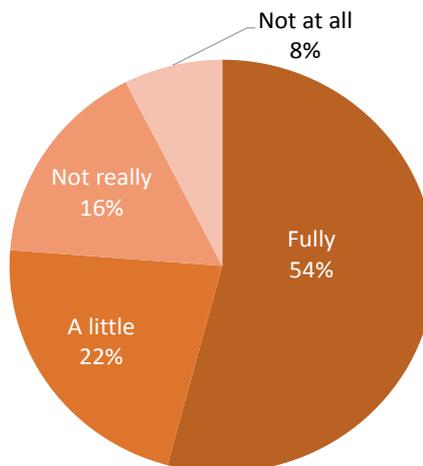
Only a few interviewees in the in-depth interviews were not in favour of having Cases 003 and 004 addressed by the ECCC. Those individuals who did not favour trials in Cases 003 and 004 expressed satisfaction with the current cases of the ECCC and little or no interest in the remaining cases or were influenced by external factors such as the old age of the Khmer Rouge leaders as well as civil parties, and the anticipated negative impact on peace, unity and development in Cambodia as asserted by the government.

A critical assessment of the ECCC regarding independence, trust, and satisfaction was also present in the survey and in-depth interviews. When asked about the **independence** of the ECCC, three-quarters of the survey respondents believed that the ECCC was independent, either entirely or a little (76.3%), indicating a similar positive assessment presented in previous research (see e.g. Kirchenbauer et al. 2013, 32; Pham et al. 2011a, 26; Sperfeldt et al. 2016, 62). Almost all respondents expressed their **trust** in the ECCC, either fully or a little (90.2%). One of the variables for the level of trust in the ECCC was the degree of participation at the ECCC. Within the survey data there is a statistically significant positive correlation between trust for the ECCC and participation, demonstrating that the more someone participated the higher their trust is, albeit without this suggesting that the causation could be the opposite way around with those with higher trust being more likely to have participated.⁴³ As such, respondents with limited or

⁴³ Tau = 0.077, p<0.1.

no interaction with the ECCC tended to have less trust or no trust at all in the ECCC, including non-participants, NGO participants, complainants and rejected civil party applicants.

Figure 6.3: Do you believe that the ECCC is independent?

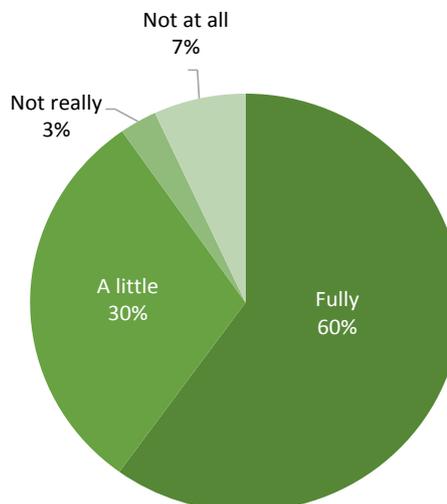


About a third of interviewees in the in-depth interviews, across all categories except non-participants, also expressed their trust in the ECCC. Notwithstanding the lengthy proceedings, the interviewees expressed their understanding and appreciation of the intricate legal proceedings of the ECCC vis-à-vis finding justice for the victims of the Khmer Rouge regime and therefore established their trust in the ECCC. One male complainant from Kampot province despite limited involvement with the ECCC clearly expressed that:

“ I feel that the tribunal already looked through the case and examined it very clearly before they decided to sentence. They already know clearly what they [the accused persons] have done ”
(IN13).

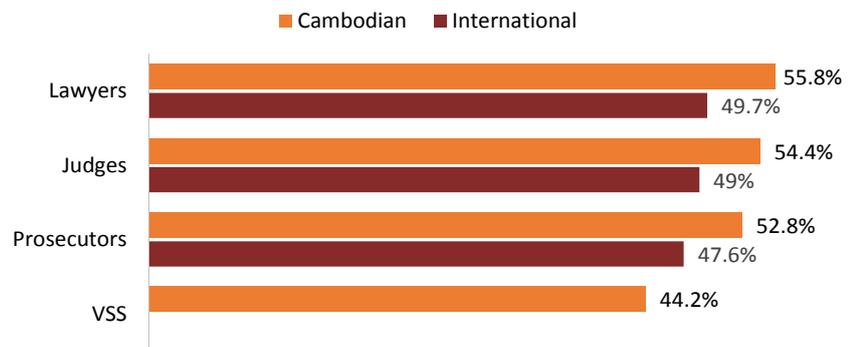
The lengthy proceedings of the ECCC raised doubts regarding its independence, transparency and credibility in pursuing justice for the victims, and therefore greatly undermined the trust of some interviewees (IN82; IN1638; IN1907; IN1629; IN1452; IN3010; IN165). The proceedings of the ECCC were seen as “mysterious and not comprehensive” (IN82) or even “like children fighting with each other, which could not help Cambodians, and therefore it is even better not to have it [the tribunal]” (IN1452).

Do you trust the ECCC?



The hybrid nature of the tribunal with its **national and international staff members** results in different degrees of trust among the survey respondents and the in-depth interviewees. National staff earned more trust than the international staff among the survey respondents, with lawyers earning the most trust (55.8% for Cambodian lawyers; 49.7% for international lawyers), followed by the judges (54.4% for Cambodian judges, 49.0% for international judges) and the prosecutors (52.8% for Cambodian prosecutors, 44.1% for international prosecutors); slightly less trusted is the VSS (44.2%).⁴⁴ Regarding specific transitional justice actors at the ECCC, the in-depth interviews also showed diverse perceptions and levels of trust. Many civil parties in the in-depth interviews trusted lawyers at the ECCC and acknowledged the lawyers’ commitment to providing technical assistance as well as psychological support, e.g. by “trying their best in helping” and “made them have more courage” (see e.g. IN612; IN613; IN1629). A few interviewees mentioned their trust in the judges owing to “their efforts in finding justice” (see e.g. IN508) through the trials and similarly in the VSS for its support for the victims. A few interviewees were, however, particularly dissatisfied with their personal experiences with the VSS, reporting that they were e.g. not able to express their opinions freely during the meetings or that the per diems provided to cover transportation or accommodation were insufficient, and consequently doubted the independence and their trust of the VSS.

Figure 6.4: At the ECCC, do you trust...



*Respondents were able to provide multiple answers.

The in-depth interviews, however, most clearly differed from the survey regarding the trust and perception of national vs. international staff at the ECCC. In contrast to the survey, in the in-depth interviews, nearly half of the interviewees across all categories either expressed their predominant trust of international staff, either entirely or expressing higher trust in international than national staff, or expressed equal trust in both international and national staff at the ECCC. Very few interviewees, however, confirmed their trust in the ECCC’s national staff. Many interviewees were disappointed by the lack of professionalism, legal qualifications or commitment in finding justice of the national staff, in comparison to the international staff at the ECCC who were perceived as more professional and committed. One interviewee, a male civil party from Banteay Meanchey province, who testified in Case 002, nonetheless implied that external involvement for resolving disputes was always valuable in itself, notwithstanding aforementioned problems:

“ If we work with only Cambodians, we would not be able to find justice. When foreign staff come to help us, we will find justice for sure. For example, my family and some relatives live in the same house but we have arguments with each other, how about all Cambodians work together without foreigners? It would be difficult ”
 (IN2508).

⁴⁴ Respondents were able to choose multiple answers for this question.

The differences between findings of the survey and of the in-depth interviews with regards to trust of national and international ECCC staff members can be ascribed to various factors, including, but not limited to, the identity of the interviewers and dynamics of perception of the interviewees. The presence of a foreign researcher along with a Cambodian researcher during the in-depth interviews (unlike the Cambodian-only research team during the survey) could possibly have influenced the answers of the interviewees, who might present an answer that appeared more favourable to the international interviewer. There is, of course, also the possibility that the interviewees changed their mind between the survey and the in-depth interviews, as the survey was conducted a few months before the in-depth interviews. Another possibility is that some respondents were afraid to express their dissatisfaction of the national staff at the ECCC in the survey given the difficult political context during which the survey was conducted. This was explicitly mentioned by two interviewees when asked about their shift in the answer provided (e.g. IN1805; IN2654).

The in-depth interviews also showed confusion in identifying transitional justice actors. Our in-depth interviews surprisingly revealed that one third of interviewees across all categories, except non-participants, were confused about which transitional justice actors were supposed to deliver justice to them. Several interviewees expressed their gratitude to the government or NGOs for finding justice for them, including attributing the trials to them as actors, as a female civil party from Kandal province stated:

“ I just want to thank some NGOs that helped us to find justice without thinking of different nationalities, they help in sharing the suffering with us. [...] I appreciate their help in bringing the person who committed bad things to trial and to let the next generation know that they should not follow that or remind the next leaders not to do like that or they will be prosecuted the same ”
(IN1694).

Furthermore, about a quarter of interviewees, including civil parties, actually perceived us researchers as one of the transitional justice actors who could hopefully deliver outcomes for them, i.e. justice, reconciliation, reparations or other types of support.⁴⁵ One third of the interviewees also firmly stated that they had no known interaction with any NGOs working on the Khmer Rouge regime or the ECCC— albeit having participated at the ECCC as complainants or in NGO activities.⁴⁶ Such confusion was possibly linked to the limited and decreasing outreach programme of the ECCC and the VSS, as well as the ‘almost exclusive’ nature and the quality of NGO projects on victim assistance and implementation of various ECCC projects (Elander 2012, 18-19).

⁴⁵ The research team both in the survey and in-depth interviews were carefully trained to avoid raising expectations that could not be delivered and to thoroughly explain, during the interviews, their position as independent researcher(s) without any affiliation to the ECCC or any NGOs.

⁴⁶ 10 civil parties, 5 NGO participants, 2 rejected civil party applicants, 2 non-participants, and 2 complainants.

Conclusions

- The survey results showed a certain degree of knowledge of the ECCC of the respondents, yet knowledge was mainly low with regards to the factual knowledge of the ECCC and knowledge of its trials, Case 001 and Case 002. There was, however, also a statistically significant impact of the degree of participation at the ECCC on individuals' knowledge.
- Surprisingly, male respondents demonstrated higher knowledge of the ECCC than female respondents among all survey respondents; yet there was no statistical difference among male and female respondents who were civil parties regardless of the fact that a higher number of women participated in the official proceedings at the ECCC as a civil party or complainant.
- Perceptions of the ECCC remained positive in terms of its independence and contribution to justice, reconciliation, and general positive changes in Cambodia, although the survey also shows several persistent concerns stated by the respondents, i.e. lengthy proceedings and political interference of the government.
- The survey and in-depth interviews showed contradictory results concerning perceptions of the national vs. international staff at the ECCC. Whilst respondents showed a high percentage of trust towards the national staff members in the survey, interviewees largely displayed mistrust of the national staff at the ECCC. Nonetheless, the respondents and interviewees shared a mainly positive perception of the ECCC as a whole and acknowledged the importance of the involvement of both international and national staff in the proceedings of the ECCC, especially in the collective efforts to find justice for the victims of the Khmer Rouge regime.
- The victims included in this research displayed some degree of confusion vis-à-vis the identity of transitional justice actors delivering justice; this is possibly the result of miscommunication or limited sharing of information by transitional justice actors. Such a split between victims' and transitional justice professions' perceptions could pose a challenge in the implementation of inclusive and meaningful participation of victims in the transitional justice, i.e. disappointment or dissatisfaction with the actors perceived to deliver justice.

7

PARTICIPATION IN TRANSITIONAL JUSTICE

This chapter discusses the experiences of participation in the transitional justice process. It first provides an overview of the experiences of civil parties and complainants, in particular during the application process, but also the levels of satisfaction and the limitations of civil party participation. The chapter further discusses the specific experiences of civil parties who testified at the ECCC; of rejected civil party applicants and of participants of NGO projects on the Khmer Rouge regime and the ECCC.

7.1. Participation of Civil Parties and Complainants

255

Civil parties, civil party applicants in Cases 003 and 004 and rejected civil party applicants

59

Complainants (referred to as "respondents")

The survey and in-depth interviews provided some insights on the experiences of civil parties and complainants participating in the ECCC proceedings. This section presents the results from the survey with 255 civil parties, civil party applicants in Cases 003 and 004 and rejected civil party applicants; and 59 complainants. It is also based on the analysis of the in-depth interviews conducted with 44 civil parties, civil party applicants in Cases 003 and 004 and rejected civil party applicants, and with six complainants.

The Application Process for Civil Parties and Complainants

44

Civil parties, civil party applicants in Cases 003 and 004 and rejected civil party applicants

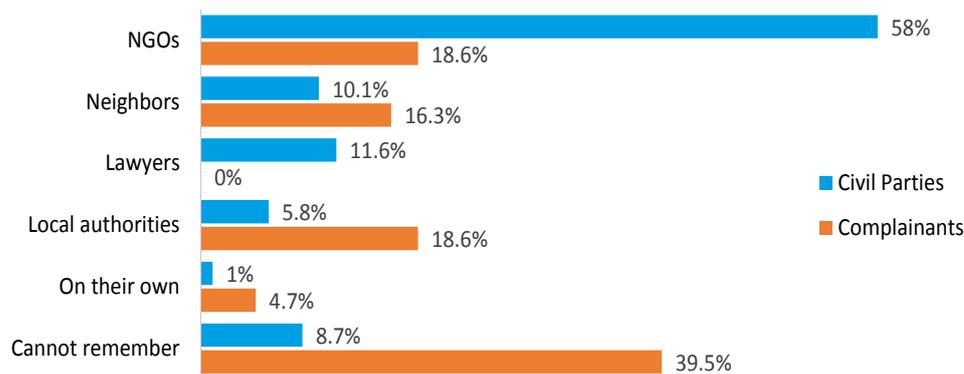
6

Complainants (referred to as "interviewees")

Support Received During the Application Process

The civil parties and complainants surveyed were asked about their experiences of applying at the ECCC, and how they initially applied to participate in the ECCC proceedings.

Figure 7.1: Through whom did you apply to become a civil party/complainant?



58% of the civil parties and 18.6% of the complainants surveyed applied with the support of **NGOs**. This highlights the importance of the outreach conducted by NGOs for victim participation, as has been previously observed (Bates 2010; Sperfeldt 2012a). **Neighbours** also played a significant role in assisting victims: 10.1% of the civil parties and 16.3% of the complainants applied through their neighbour. This suggests the existence of a **multiplier effect in victim participation**, whereby those who have already received assistance with applying, or are already participating in the transitional justice process, will help their immediate neighbours. However, this phenomenon may also **reinforce geographic concentrations** of victim participation in certain areas.

Interestingly, whilst **lawyers** played an important role in gathering civil party applications, **local authorities** played an important role for the applications of complainants. 11.6% of the civil parties surveyed applied through a lawyer (in contrast to none of the complainants), whilst 18.6% of the complainants surveyed applied through the village or community chief (as opposed to 5.8% of the civil parties). This suggests that, whilst lawyers preferred direct forms of civil party participation, local authorities, when active in the process, supported less direct forms of participation; either because they were not aware of opportunities of more active and direct forms of participation, or were not in favour of these or directed their help to those who had not received more proactive help by lawyers.

Only an extreme minority of respondents said that they applied on **their own** to participate as a civil party (1%) or a complainant (4.7%). This shows that victim participation requires significant external support and the necessary human and financial resources in the initial phases, since only very few victims have the capacity to apply on their own. This investment is even more important given how the logistical challenges of outreach can possibly lead to an over-reliance on pre-existing networks and infrastructures. Whilst these certainly help to facilitate access when working under pressure towards application deadlines, they possibly also reproduce or reinforce the marginalisation of certain groups in their access to justice.

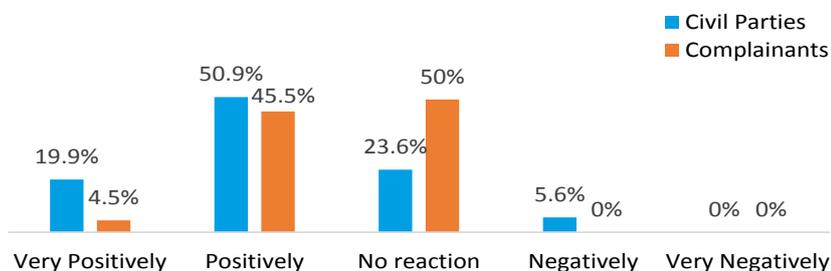
Finally, more than one third of the complainants surveyed cannot remember through whom they applied (39.5%), in comparison to 8.7% of the civil parties surveyed. This finding is not necessarily surprising, since these applications date back several years. Nonetheless, it raises questions about the meaning of participation for complainants, since submitting a complaint is one of the main aspects and central moments of their participation.

The survey also provides insights into **the support received from families and villagers** during the application phase. The findings show that more complainants

surveyed indicated that their family members (37.8%) or fellow villagers (30.3%) did not know about their status as complainants, compared to civil parties (23.6% and 8.8% respectively). This is possibly linked to the fact that the participation as a complainant is very limited, compared to participation as a civil party; it is therefore less visible and may not necessarily elicit any reactions.

Many of those civil parties and complainants surveyed whose family members and fellow villagers knew about their application encountered positive reactions. A larger number of the complainants, however, indicated that family members (50%) and other villagers (52.4%) did not react at all, either positively or negatively, in comparison to the civil parties (23.6% and 29.1% respectively). Again, this may be linked to the limitations of participation as a complainant in the ECCC proceedings but could also point to the fact that community members may not see this form of participation – or indeed the ECCC itself – as very interesting. This then suggests a further limitation of the participation of complainants, namely the absence of a social dimension of their participation, as it is not often a performative act at the community level.

Figure 7.2: How did your family react when they (first) heard that you had applied to become a civil party/complainant at the ECCC?



Motivations to Apply

To better understand the reasons for participation in the ECCC proceedings, respondents were asked about their motivations to apply as either a civil party or a complainant. This question was framed as an open question in the survey with multiple possible answers. The main motivation mentioned by respondents was the desire to obtain justice. This desire was mainly framed in personal or intrinsic terms, as “obtaining justice for my relatives” (36.9% civil parties; 16.4% complainants), but also simply as “obtaining justice” (20.7% civil parties; 9.1% complainants). However, some also mentioned the motivation of obtaining justice more generally for the victims of the Khmer Rouge and their families (16.7% civil parties; 9.1% complainants). Previous studies already highlighted the individual and collective dimension of the desire to obtain justice (see Jasini 2016, 30-31; Stover et al. 2011, 520). Besides the desire for obtaining justice, the main motivations mentioned by respondents were to have their suffering acknowledged (42.8% civil parties, 32.7% complainants); to tell their story (33.8% civil parties, 25.5% complainants); to know the truth specifically about their relatives (14.9% civil parties; 10.9% complainants) or to know the truth generally (11.3% civil parties; 3.6% complainants). Other motivations that were less prominently voiced in our survey by civil parties and complainants were the desire to heal physical or mental harm, to convict the Khmer Rouge leaders, to prevent something like the Khmer Rouge regime from happening again, or to take revenge (see figure below).

Figure 7.3: What were your main motivations to apply as a civil party/complainant at the ECCC?



*Respondents were able to provide multiple answers.

These findings resonated with the previous survey conducted by Kirchenbauer et al. (2013) with civil parties and civil party representatives. They differ in one aspect, however: the civil parties and civil party representatives surveyed by Kirchenbauer et al. (2013) were more numerous in stating that they wanted to receive individual reparations (36.7%). Respondents in our survey stated this motivation much less often (7.7% civil parties; 3.6% complainants). Several interpretations could explain this discrepancy. Through their participation, the civil parties and complainants surveyed may have come to realise, for instance, that receiving individual reparations was not possible and exceeds the mandate of the ECCC. At the time of our survey, they therefore retrospectively did not mention this motivation anymore. The survey by Kirchenbauer et al. (2013) was conducted much earlier, in May 2011, prior to the start of the initial hearing in Case 002: civil parties may have not been as aware at that time of the limitation of the reparations regime of the ECCC. Another possible reason that respondents did not mention individual reparations as a motivation in this survey, although it could have played an important role at the time of their application, is that they may feel that making such claims could be perceived as unethical (see Moon 2012; Bernath 2017).

Finally, it is interesting to note that 10.9% of the complainants surveyed indicated that they simply followed others (e.g. a village chief) or were asked to apply without necessarily understanding it, suggesting a certain passivity in the application process.

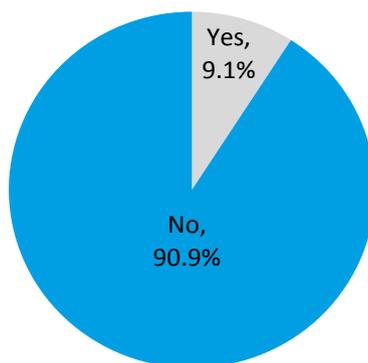
Confusion About the Status of Complainants

Both our in-depth interviews and findings from the survey showed that the differences between the status of civil parties and that of complainants were not widely understood, including during the application process. These findings confirmed earlier observations of a “disarray” regarding different legal categories for participation at the ECCC (Pham et al. 2011b, 271; see also Elander 2012; Catalayud et al. 2011, 31).

In the in-depth interviews, most civil parties and complainants, but also civil party representatives, were not able to explain the differences between civil parties and

complainants. This is probably linked to how the term in Khmer for “civil parties” (ដើមបណ្តឹងរដ្ឋប្បវេណី; *doeum banding rathappa veni*) is a legal and technical term, and most respondents used the expression of “submitting a complainant” or “complainant” (អ្នកប្តឹងធម្មតា; *nakpding dhammata*) to refer to civil party applications. In the survey, we asked the complainants whether at the time of their application they knew that they were applying to participate as a complainant and not a civil party. Almost half of the respondents stated that they did not know (41.2%). Asked how they made the decision to apply as a complainant, the majority mentioned that they chose themselves to apply as a complainant (65.5%). The other respondents stated that they followed the advice of a neighbour or family member (10.3%); a commune or village chief (10.3%) or of an NGO representative (6.9%).

Figure 7.4: Would you have preferred to apply as a civil party?



When asked whether they would have preferred to apply as a civil party, almost all the surveyed complainants (90.9%) nonetheless answered no. The main reason given by respondents for not preferring to apply as a civil party was an incapacity to fully and directly participate as civil parties. 33.3% explained that participation as a civil party requires too much time and that they are too busy to participate as a civil party, whilst 10% answered that being a civil party requires too much travel. In their research on the Cambodian diaspora in the US, Catalayud et al. (2011) similarly found that the three complainants they interviewed had decided not to apply as a civil party because they (mistakenly) believed that this would require them to hire a lawyer on their own and travel to Cambodia and would therefore cost money. In our survey, another 10% explained that they would not have preferred to have applied as a civil party because they were afraid to be too closely involved in the ECCC proceedings; whilst 3.3% stated that they did not want to be too involved in the ECCC proceedings. Other minor reasons seem to be linked to specific conceptions of Buddhism and how civil party participation can sometimes be perceived as a form of revenge. 3.3% mentioned that participating as a civil party does not reflect their Buddhist values; and 3.3% that participating as a civil party is about taking revenge, and they did not want to do so.

33.3% of those who stated that they would have preferred to apply as a civil party explained that they would have liked to ask for, and receive collective and moral reparations, like other civil parties.⁴⁷ This suggests again that creating different opportunities for participation can have problematic effects if some are excluded from receiving visible benefits.

⁴⁷ This was framed as an open question, with multiple answers possible.

Worries whilst Applying

Almost a third of the civil parties surveyed (30.4%), and considerably fewer complainants (17.6%) mentioned that they were worried when submitting their application. The majority of the civil parties who were worried explained that they were afraid of facing pressure or revenge from the Khmer Rouge leaders, that is the accused, or their families (41.3%). This was also the main reason indicated by the complainants who were worried when submitting their complaint (33.3%). The civil parties who were worried also mentioned having had other types of concerns related to the fear of the former Khmer Rouge, e.g. the fear of being threatened by former Khmer Rouge still in government today (7.9%) and by low-level former Khmer Rouge cadres (4.8%) or being afraid because the accused “are government officials” (3.2%). Other civil parties indicated that they were concerned because they didn’t know where their application was being taken to or didn’t know the ECCC (14.3%). Other concerns expressed in the survey related to the political and human rights situation in contemporary Cambodia, although to a lesser extent. 11.1% mentioned the fear of being accused of disinformation (11.1%) or political involvement (9.5%). Some also mentioned that they were afraid whilst applying because they were involved in opposition politics (6.3%), or human rights activities (1.6%).

Figure 7.5: Were you worried while applying?

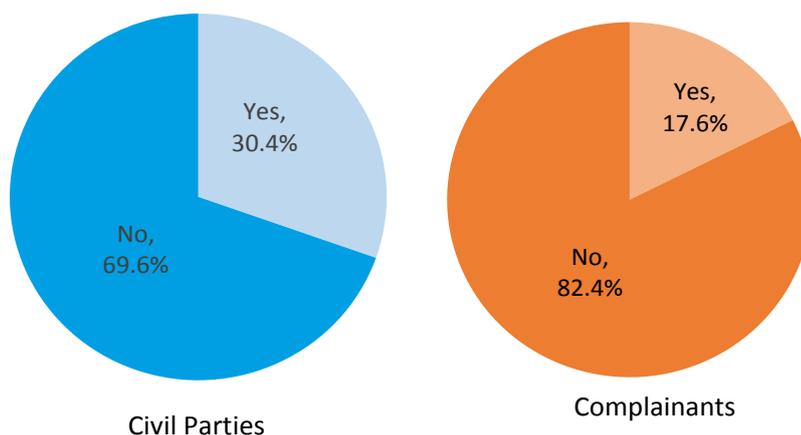
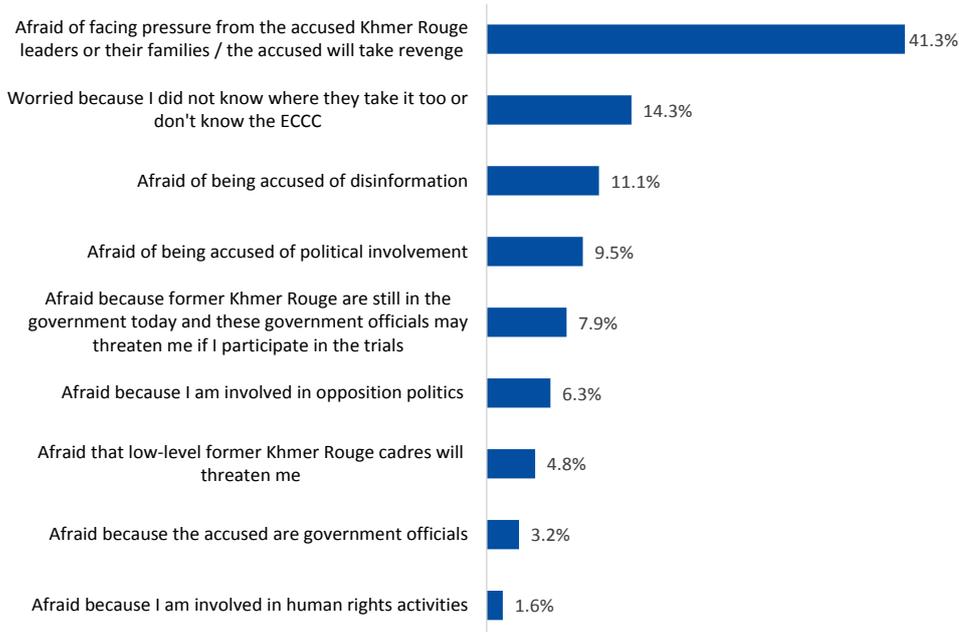


Figure 7.6: Why were you worried while applying as a civil party?



*Respondents were able to provide multiple answers.

The in-depth interviews also suggested the prevalence of fear amongst civil party applicants and complainants at the initial stages of the transitional justice process. Only a few civil parties and one complainant explicitly mentioned not having been afraid, since there were no more Khmer Rouge (IN13), since victims should have nothing to fear (IN1629); or because Cambodia is “already liberated” (IN1775). One fourth of interviewees, however, did mention being afraid whilst applying, or noticing that many others who did not apply were. Three civil parties, for instance, mentioned that they had been afraid of being associated with opposition politics in their village and of subsequently facing problems with the local authorities.⁴⁸ One of them found himself monitored when he applied to participate at the ECCC. He explained: “When the ECCC was first created, the officials did not understand it clearly. They were afraid that there would be movement to join other parties.”⁴⁹

Most interviewees, however, explained that their fear was that the former Khmer Rouge would take revenge against them if they applied, and that they or their families would be harmed, killed or would disappear. A female civil party from Kandal province observed that this fear is the result of *baksbat* (បាក់ស្បែក),⁵⁰ or broken courage, amongst survivors:

“[...] people didn’t dare to do that [filing an application]. They’re still afraid due to broken courage from the Khmer Rouge regime. So when they came to do interviews like that, we didn’t trust them; some people dared to apply while some didn’t because they were afraid that it was not the real Khmer Rouge tribunal but other institutions and they would come to mistreat them. That’s why at that time, there were still a lot of people who didn’t file complaints because they were scared” (IN1694).

Regardless of whether this fear of revenge is realistic or not, it is very real to those considering whether to apply and participate in the process. Whilst some interviewees mentioned that NGO or ECCC staff members had reassured them (IN513; IN457), others demonstrated a significant amount of courage in deciding to participate under such circumstances. A female civil party from Kampong Chhnang for instance observed:

“I thought that until this present day, if I were to die, that’s ok. Then I agreed to file the complaint” (IN513).

The findings from both the in-depth interviews and the survey thus reaffirmed the importance of **ensuring security as a basic and general pre-condition of successful victim participation**. This was also emphasised by Pablo de Greiff (2016, 16-17) in his report on victim participation. Yet whilst the report recommends that thorough and independent security assessments are carried out to ensure successful victim participation, our data also shows that **risks assessments need to take seriously and indiscriminately all concerns and fears of victims**, whether they are the result of real danger or not. Our findings moreover stress the **need for psychosocial support** at the early stages of a transitional justice process. Previous studies already highlighted this in the

⁴⁸ Material anonymised.

⁴⁹ Material anonymised.

⁵⁰ This refers to trauma as it is experienced according to the etymological, cultural and historical specificities of the Cambodian context. For a discussion of *baksbat* as a Cambodian idiom of distress and formal cultural trauma syndrome, see Chhim (2013). See also chapter 9 on Empowerment.

context of Cambodia (Herman 2014). In his report, de Greiff also argued that psychosocial support is an integral part of the structural and contextual pre-conditions of victim participation:

“The willingness and capacity of individual victims to even consider participating, as well as the nature of that participation, could be significantly enhanced by the provision of effective and much more sustained and long-term psychosocial support”
(de Greiff 2016, 17, §68).

Not providing these structural and contextual pre-conditions may prevent the participation of many victims. A female civil party from Takeo province, who later testified at the ECCC, recalled how she used to pretend to have to leave her house when NGO staff members conducted initial outreach in her village:

“They came and interviewed us [...] [W]e were afraid. [...] when DC-Cam came, I was afraid and thought why did they come here. Where did they come from? [...] [T]hey interviewed whose siblings or parents died, and I didn't want to meet them and went somewhere else, like to the market. [...] Everyone said when you filed the complaint, if the Khmer Rouge came here again, you would die. [...] I thought they would kill everyone in my family and I was afraid”
(IN2508).

In such a context, fear may also lead to **higher levels of indirect rather than direct participation**.⁵¹ A civil party for instance noticed that fellow villagers had decided to file an “indirect complaint” to participate as a complainant,⁵² rather than as a civil party, because they were afraid of participating directly in court proceedings, or of meeting people and having to talk in front of the Court (IN2508). Suspicion or fear may therefore also be linked to how people do not trust the court system or do not feel protected by the law. Sustained efforts to build trust and encourage participation are therefore required. Whilst these efforts take time, **civil party applicants can have a multiplier effect** and encourage others to overcome their fear and apply, as the following quote of a male civil party from Kampong Cham province suggests:

“At first we came, it seemed we had no one to depend on. There was no one, no court system, no law, no tribunal or something to be exact, since we hadn't visited the tribunal yet and what we saw is the normal place for accepting the application. Therefore, I didn't quite trust yet. But when I met the lawyers and did an interview [...] and saw many United Nations staffs and the internationals came to meet us, then we felt trust because they seemed to help that court system. After that, I came to inform our villagers to file more complaints. At first, there was only me who applied without hope; I just filed a complaint for the sake of it. I thought there was no court that brought that to trial and it was just for show, something like that. But when I applied and I was interviewed [...], I realised it actually worked. Then I tried to encourage our villagers to go. Those who believed me, they went but for those who didn't, they didn't go at first [...]” (IN733).

⁵¹ This is also confirmed by the finding discussed above that amongst the complainants who would not have preferred to apply as a civil party, 10% explained that they were afraid of being too closely involved in the ECCC proceedings.

⁵² Some interviewees also referred to complaints as “distant complaints,” as opposed to civil party applications.

Another civil party suggests that this multiplier effect could have been even stronger if members of **local authorities** had themselves participated in the ECCC proceedings:

“ [I]t was strange, in [my] city, the local authorities, like the [commune chief and] village chief who still hold anger towards the Khmer Rouge Regime, they still didn’t file a complaint [...]. I was the one who told them to file a complaint, but they didn’t. But during that time, the government didn’t seem to bother about the Khmer Rouge Tribunal at all. [...] If there is also participation from the government, there would be so many civil parties participating. Not just thousands but maybe it would have reached millions.⁵³ ”

However, fear and concerns may not only limit participation at the early stages of the transitional justice process by preventing some from applying to participate. Even after having taken the decision to participate, the extent of participation and engagement in the initial stages of the process can be affected by such fears (IN1153). Some civil parties indeed mentioned that they continued to worry after having applied or after they had testified at the ECCC (IN612; IN1907) and did not tell their whole stories or participate very actively at first during meetings. The efforts to build trust and encourage victims to participate in the transitional justice process therefore needs to continue **even after the process has started**.

The results from the survey with 29 civil party applicants in Cases 003 and 004 can confirm this. Although they applied years after the establishment of the ECCC, 16.7% of civil party applicants in these Cases mentioned having been worried whilst recently submitting their civil party application. The in-depth interviews with 7 civil party applicants in Cases 003 and 004 also showed that concerns and fear can remain despite the existence of the Court and the potential multiplier effect of civil party participation. Whilst one civil party applicant noticed that she had never heard that anyone wanted to target civil parties and that this helped her to overcome her fear of applying (IN2663), others remained fearful (IN2366; IN2673). This fear may be fueled at the local level: one civil party applicant for instance mentioned that she was not really afraid but only because she remained as quiet as possible so that her neighbour – a former Khmer Rouge cadre – would not know about her application (IN2654). Concerns of civil party applicants in Cases 003 and 004 may also be linked to the repeated opposition of the government against these Cases.

Experiences of Participation as a Civil party and a Complainant

Civil Parties’ Legal Representation and Lawyer-Client Relationship

A very large majority of the civil parties surveyed indicated that they felt well-represented by their lawyer at the ECCC (93.7%). Almost four fifths of the civil parties surveyed knew who their national lawyers was (78.6%), and almost all of them mentioned having met their national lawyer since their civil party application was accepted (96.2%). A large majority also described the contact to their national lawyer as very good (15.2%) or good (80.8%). Asked what topics they generally

⁵³ Material anonymised.

discuss with their Cambodian lawyer,⁵⁴ respondents mainly mentioned the ECCC (63.3%), the trials (59.5%), civil party projects (48.7%) or reparations (44.9%). 38.6% of respondents also mentioned that they discussed topics regarding their personal life (and 13.9% topics regarding community life), suggesting the existence of trust between lawyers and their clients. A minority of respondents mentioned general legal matters (15.2%) and human rights questions (7%).

Regarding the international lawyers, less than half of the civil parties surveyed knew who their international lawyer was (42.6%).⁵⁵ The survey therefore reflects the two-tiered legal representation system at the ECCC, and especially the changes made in Case 002 where international civil party lawyers have been less present, especially after the streamlining of legal representation and the introduction of the lead co-lawyer system.

Satisfaction of Civil Parties and Meaning of Civil Party Participation

A large majority of the civil parties surveyed were either satisfied (65.9%) or very satisfied (26.8%) with their experiences as civil parties. Only 6.1% were partly satisfied and partly unsatisfied; 0.6% unsatisfied and another 0.6% very unsatisfied (see Figure 7.8). Four fifths of the respondents also answered that they would choose to participate again as a civil party in the ECCC proceedings, with the experiences they have had today (82.8%).

Reflecting the theoretically-driven choices made for our sampling (see chapter on Methodology), 77.8% of the civil parties surveyed have participated in a civil party meeting organised by VSS or a similar civil party event, and 84.7% have visited the ECCC at least once. When asked which experiences were most important for civil parties at the ECCC (see figure below) almost two fifths of the civil parties surveyed mentioned meeting other civil parties (37.4%), closely followed by the participation in civil party forums (34.7%) and visits to the ECCC (34.2%).⁵⁶ In comparison, only 18% of the civil parties surveyed mentioned that learning about the verdict against the accused was an important experience of civil party participation. This suggests that civil parties value the process of seeking justice, rather than merely the outcome of the process. The relevance for Cambodian civil parties of both procedural and substantive justice has also been noted in previous research (Killean 2018b).

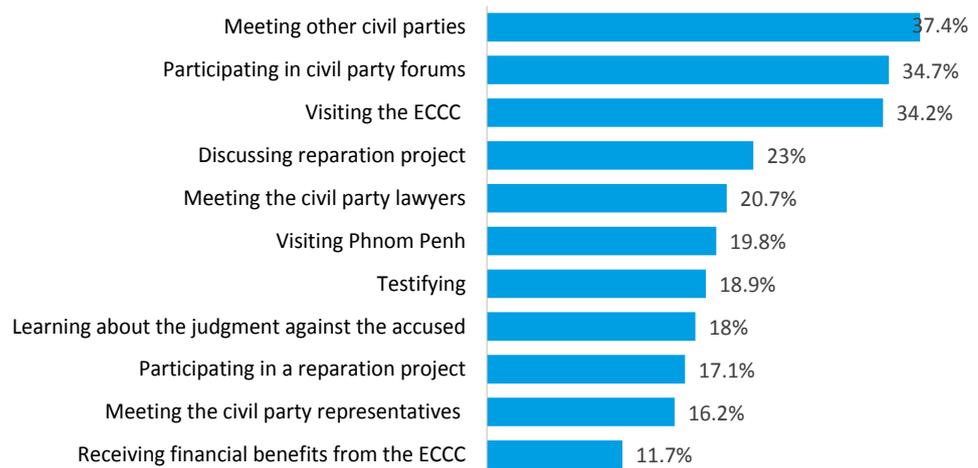
⁵⁴ Respondents could give multiple answers here.

⁵⁵ The previous study of Kirchenbauer et al. (2013, 21) also found differences between civil parties' familiarity with their national vs. international lawyers.

⁵⁶ Respondents had the option of giving multiple answers here.

Participation

Figure 7.7: In your opinion, which of these experiences do you think is most important for civil parties at the ECCC?



*Civil Party Respondents were able to provide multiple answers with a maximum of 3.

Thus, the most important experience mentioned by civil parties was meeting other civil parties. This highlights the importance of the **social nature of criminal justice processes** (see Herman 2014, 5). Indeed, participation allows civil parties to share their suffering, to overcome feelings of isolation and to meet other victims who have endured similar hardships. This emerged clearly in the in-depth interviews as well. A civil party representative from Kandal province, for instance, mentioned:

“ I got to meet many friends from the whole province who are also victims. I was very happy when I met them. [...] Because normally, I think a lot. Not just now, but since a long time already. [...] I don't feel good. So, when I got to go somewhere far away and got to meet my friends, I felt relieved. Especially, every Khmer New Year, [...] I was stuck. I see the others go to reunions with their parents and relatives, but for me, I have no one. [...] I was very happy not because of money but because I get to meet others, so that I could feel relieved and reduce my stress ”
(IN1629).

A civil party in Case 001 from Kampong Thom province, who became an orphan in the Khmer Rouge regime, also highlighted this:

“ People said I had no family [...]. That's why I went to the Khmer Rouge tribunal in order to know how many people were the same as me [...]. We thought our story was very sad but there were people who were sadder than we were and they weren't supposed to be alive [...]. So this made me try so hard to be alive. Then we thought that our story was simple and we should bear it [...]. They were more unfortunate than us. [...] When we went to the tribunal and met other civil parties who had similar stories like us, we were able to understand each other. Therefore, we understood that there were many people who suffered ”
(IN1153).

Besides the social dimension of civil party participation, the in-depth interviews underlined other aspects that were less prominent in the survey. Whilst only 11.7% of the civil parties surveyed mentioned that receiving financial benefits from the ECCC was an important element of their participation, almost one fifth of the interviewees emphasised in the qualitative interviews the **significance of the material or financial benefits** of participation. One very poor female civil party in Case 001 from Kampong Cham province explained how grateful she was for the solidarity of other civil parties (including civil parties “from abroad”) who had donated money for her to build a proper house, seeing this as an integral part of the justice that had been provided to her through the ECCC (IN613). Most interviewees here, however, emphasised the importance of the per diems they had received from the Court. They explained that they would try to save these as much as possible, e.g. by “not eating anything” (IN1638) or only “eating cyclo rice” (IN1153), so that they would have some money left to take back home, to share with their children or families, or to conduct religious ceremonies. Interestingly, interviewees often made these observations when asked whether they had received any reparations, suggesting that they tend to equate reparations with individual, financial reparations. It also shows that civil parties may perceive the allowances they receive for participating as a form of individual, financial reparations in themselves, or rather as a compromise given the limitations of the ECCC’s mandate on this matter.

The financial or material benefits of civil party participation also include the unprecedented opportunity of staying in a guesthouse (IN1066), having at once “many things to eat” (IN1638), or visiting different provinces (IN1629). Importantly, these benefits in terms of accommodation and meals, new experiences of relative comfort and travels, were seen as an integral part of the tribunal’s responsibility. They are perceived as a form of “paying attention to the victims” (IN612), which makes civil parties feel “safe” that justice is being sought for them (IN1066). These efforts are therefore not only valued in terms of whether transitional justice professionals display benevolence and respect towards victims. They also play into assessments of whether justice is actually being delivered to them. This can be illustrated with the following quote from a civil party from Siem Reap province:

“Talking about victims going to the ECCC, the responsibility of meals and accommodation is good. They acknowledge all victims. The trial is also equal, no discrimination between the accused and victims [...]. The proceeding is fair, not demanding for revenge or killing of each other. We find it peaceful and correct. Good justice” (IN1150).

As previously observed,⁵⁷ the quality and process of victim participation matters therefore not only for the satisfaction of civil parties and their perceptions of the legitimacy of the ECCC, but also for their perception that justice is being provided to them.

Finally, besides the financial and material benefits of participation, interviewees also emphasised several other aspects of civil party participation during the in-depth interviews, including the possibility of seeing the trial or the accused firsthand; the ability to tell one’s story; or finding some element of “truth.”⁵⁸

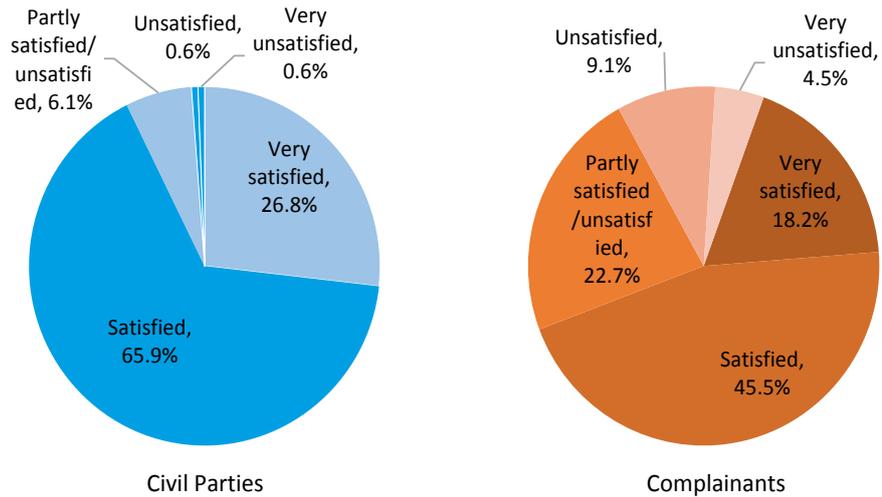
⁵⁷ Killean (2018a, 167-174) refers to this as the “quality of interpersonal treatment.”

⁵⁸ Some civil parties mentioned that they found out that relatives had died at the Khmer Rouge Security Center known as S-21 when participating in an outreach tour in Phnom Penh. However, this may also have been a painful experience. One civil party indeed mentioned that it was worse for her to know that her sister had been tortured and killed at S-21, as she had always hoped that she had died from a quick and painless death (IN612).

Satisfaction of Complainants

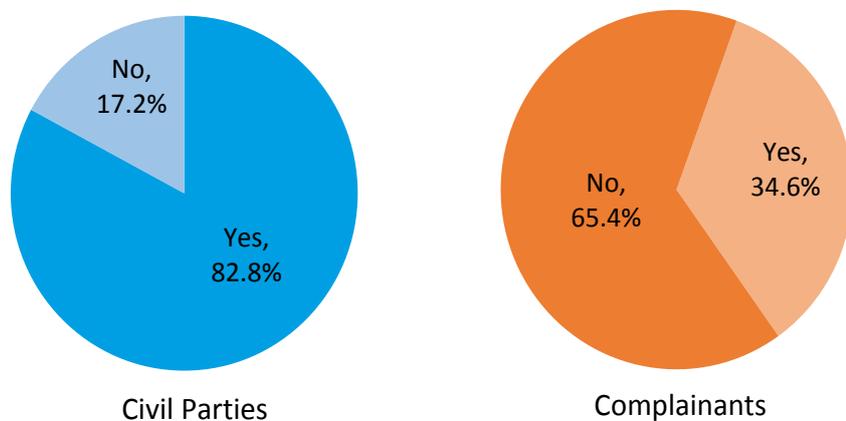
Within our sample, only 21.3% of the complainants surveyed have visited the ECCC, and 20.8% have attended a public hearing. Asked to assess their satisfaction with their experience as a complainant, more than half of the complainants surveyed nonetheless mentioned that they were either very satisfied (18.2%) or satisfied (45.5%) with their participation as a complainant. Although this constitutes a high level of satisfaction, it is significantly lower than that of civil parties. In comparison to civil parties, the complainants surveyed were also more numerous in being partly (un)satisfied (22.7%), unsatisfied (9.1%) and very unsatisfied (4.5%).

Figure 7.8: How satisfied are you generally with your participation as a civil party/complainant?



The lower levels of satisfaction with participation as a complainant, compared to civil parties, can also be seen in another element from the survey. Whilst only 17.2% of the civil parties mentioned that with the experience they had they would not want to participate as a civil party again, a total of 65.4% of the complainants answered that based on their experience they would not want to participate as complainants again.

Figure 7.9: If you could choose again, with the experience you have today, would you want to participate as a civil party/complainant again?



When asked which part of their experiences as a complainant they preferred most, the complainants equally mentioned meeting and exchanging with other civil parties or complainants (7.3%); visiting the ECCC (7.3%); having the possibility to go to Phnom Penh (7.3%) or following the news about the ECCC (7.3%).⁵⁹ Discussing the ECCC with others (5.5%) and receiving financial benefits from the ECCC (5.5%) were also mentioned, although to a lesser extent. Interestingly, none of the complainants surveyed mentioned learning about the judgment against the accused as most important in their experience as complainant.

Limitations of Civil Party Participation

Whilst the participation of complainants is very limited from the outset, as their participation is limited to submitting a complaint with the rare possibility of being invited to testify as a witness in the proceedings, we also observed in our in-depth interviews several limitations with regards to civil party participation specifically.

In the in-depth interviews, civil parties identified a number of limitations in their participation. Almost one ninth of the civil parties interviewed mentioned that they did not have the opportunity to join ECCC activities very often because many other civil parties also participated. They understood and to some extent came to accept these limitations, observing that the rotation system for participation was fair. Two civil parties from Kampong Cham and Prey Veng provinces, for instance, observed:

“As a civil party, I don't have the right to require to join every section of the hearing because there are other victims also. In a village, there can be only 2-3 people in each section, step by step”
(IN1066).

“I also went there but not often like them. I'm not disappointed because there are a lot of people. Whenever they call, I will go. I'm not disappointed that sometimes I can't go”
(IN2263).

Some interviewees nonetheless remained very eager to participate and shared their hope that they would not be forgotten by the ECCC (IN2233). The in-depth interviews, however, also provided an indication of possible nepotism within the focal point system for victim participation. Four interviewees observed that the selection of civil parties for participation was unfair, indicating e.g. that it is only “those who have network” with the village chief who are chosen to attend a hearing at the ECCC, or suggesting that civil parties may have to pay the focal point when they are invited to the Court. Two of these interviewees were rejected civil party applicants who were unaware that the Court had declared their application inadmissible. In their case, it is therefore possible that they perceived nepotism to be the reason why they had less opportunities than others to participate, when in fact it is possibly linked to their application having been rejected by the Court.

The limitations in terms of participation may sometimes not only be the result of limited opportunities offered by the ECCC, but also of the **incapacity of civil parties to participate**. A few civil parties who had attended significantly less hearings or civil party forums than other civil parties⁶⁰ indeed mentioned during the in-depth interviews that they had to turn down invitations from the Court to

⁵⁹ Respondents chose from pre-defined categories but could give multiple answers here.

⁶⁰ These civil parties appear in our sampling under the category of “marginalised.” See Chapter 2 on Methodology.

participate because they were either too busy with their work, or because they were unable to travel given their old age (e.g. IN1671). The in-depth interviews also showed some decreased interest in the ECCC proceedings amongst civil parties (but also complainants), especially given their old age and their increasing preoccupations with religion and conducting good deeds towards the end of their lives.

Some civil parties may also choose not to participate in ECCC proceedings anymore because the transitional justice process has disappointed them. For instance, a female civil party from Phnom Penh who had been consulted in reparation projects mentioned:

“ I do not have any more trust. I don't want to think about it. There is nothing more to respond. I don't want to think about it anymore. I give up. I am no longer interested. All I am thinking about is earning money to do religious ceremony for my parents. I don't think about anything else because there is no result of what I wanted ”
(IN82).

A female civil party from Kandal province who had testified and joined civil party protests for individual, financial reparations also observed that other civil parties who had protested had become disengaged and did not participate in any ECCC events anymore:

“ Now, those people never joined any events; they hate that they just came to serve people like you and only you got the money for buying a car or house not them ”
(IN1907).

Almost one fourth of the interviewees furthermore regretted that **opportunities for participation, or the frequency of participation, had decreased over time**. Many observed that for a very long time – between one to four years – they had neither been contacted by the ECCC nor received any news. A civil party representative even asked us during the in-depth interview whether the ECCC was still ongoing or had already been closed. He noted that he had difficulties knowing what to answer to civil parties since he himself did not have any information on the Court. It is important to underline here that such experiences of a decrease in opportunities for participation are not mere comparisons made by civil parties when reflecting on their participation and access to information on the ECCC over time. They can actually also threaten the previous achievements reached by the Court and lead to decreased interest and engagement. A civil party representative observed:

“ We can see that nearly half of the civil parties already passed away since the creation of the tribunal, but we still don't get any justice. When I asked them about the tribunal, they always said they don't know. And now they don't even want to know about the tribunal anymore, what has the tribunal done or whether they are able to find justice for the civil parties. We now don't know anything about the tribunal anymore. Most of the civil parties in [this] province, even I, myself always follow nearly every news about the tribunal. I don't want to know anymore because the tribunal lacks information. They don't announce anything on the radio, so we don't know how to get the information.⁶¹ ”

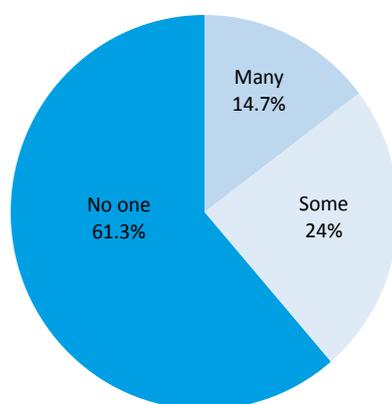
⁶¹ Material anonymised.

This shows that sustained outreach and a long-term system of victim participation is important over time, and that a lack of funding or of engagement for such activities towards the end of a transitional justice process can potentially **threaten the achievements reached earlier** in the process and **lead to disengagement** of civil parties and possibly other members of the population.

Negative Impact of (Civil Party) Participation

The system of victim participation at the ECCC offers victims different opportunities for participation and may thereby create hierarchies of victims, which can also have some negative impacts. 24% of the civil parties surveyed mentioned that some people had been envious of their participation as a civil party at the ECCC and 14.7% mentioned many people had been envious. In comparison, none of the complainants surveyed mentioned that people were envious of their participation, reflecting the fact that complainants have much less opportunities for direct participation at the ECCC than civil parties.

Figure 7.10: Have many people been envious of your participation as a civil party at the ECCC?



In the in-depth interviews, some civil parties also observed that other villagers were jealous of their participation (in particular the resulting material or financial benefits), or that there was some jealousy amongst civil parties given differences in opportunities for participation. Two civil parties from Kandal and Pursat provinces respectively stated:

“I was the one who wasn’t afraid, [...] I applied. [...] When I came back [...], some were jealous: ‘my parents also died; why didn’t [they] call me to interview’... [...] [But] [w]hen they were interviewed, they didn’t dare. [...] some people will be angry. [...] Yes. That’s right. Jealousy is like that. [...] when [I went] to the tribunal, I was given 20-30 USD. If we didn’t eat anything, we only had 15 USD left to come back. [...] some people [in the village] were jealous [...] when we brought that and we were often called [...] and got money like that. They said they regretted it so: ‘if I knew that I would have applied too”
(IN1638).

“People are envious but I don’t know what to do. I just said no one stopped you, why didn’t you apply like others. They said I often go there, then I said yes I go there because I need to. I just said it like that because I don’t really know how to talk much. [...] Now, they aren’t envious anymore. [...] before they saw that I travelled a lot, I went to Phnom Penh too often. When they asked me where I went, I said I went to Phnom Penh because I didn’t know how to hide it. Then they said I always went to Phnom Penh, again and again. Then I said why are you envious, why didn’t you apply as well. I just said it like that”
(IN457).

These findings on the existence of envy towards civil parties contradict Jasini's observation (2016, 36) of the absence of resentment resulting from the exclusion of some from participating more directly in the ECCC proceedings. Given that this is a sensitive issue to raise, with interviewees worried to be perceived as unethical in interview situations, it is fair to expect that this issue will tend to be underestimated.

These results show that transitional justice actors need to pro-actively develop **do no harm strategies** from the outset, and later reflect on them and update them throughout the process, in order to avoid negative repercussions of the creation of new or the reinforcement of pre-existing hierarchies of victims through the transitional justice process.

7.2. Experiences of Civil Parties who Testified at the ECCC

15

Civil parties who had testified in Cases 001 and 002 (referred to as "respondents")

This section now turns to the specific experience of civil parties who had the opportunity to testify at the ECCC. In the survey, the civil parties who had testified in Court were first asked to assess their experience of testifying. 73.3% answered that it was "very positive;" 6.7% that it was "a little positive" whilst the remaining 20% reported a "mixed experience." This echoes the findings of the qualitative research conducted by Stover et al. (2011) with 21 civil parties who testified in Case 001. All civil parties surveyed also stated they would encourage other civil parties to testify if given the chance.

9

Civil parties who had testified at the ECCC (referred to as "interviewees")

The 15 civil parties were then asked what the most positive aspects of their experiences of testifying in front of the Court were. This was framed as an open question with the possibility for multiple answers in the survey. Respondents seemed mostly to value the opportunity of telling their story in front of an audience. Indeed, most respondents mentioned being able to tell their story in front of the judges (73.3%) or in front of the accused (46.7%) as one of the most positive aspects of their experience. 26.7% also highlighted the ability of sharing their stories publicly, with their relatives listening, when they had never been able to share it with them previously.⁶² These findings again resonate with the study of Stover et al. (2011: 521-522), which highlighted that the need to tell one's story was a key motivation for testifying; civil parties hoped that their testimonies would be both acts of acknowledgment of their suffering and acts of remembrance of their deceased relatives. Respondents also mentioned as one of the most positive elements the possibility to confront the accused (40%), and, to a lesser extent, the possibility to testify for their relatives who have died (20%).

In addition to these findings from the survey, some of the civil parties interviewed also shared a sense of psychological relief through the act of testifying.⁶³ One female civil party from Takeo province and one civil party representative from Kampot province, respectively, observed:

⁶² Stover et al. (2011, 517) also found that some respondents had never shared parts of their experiences under the Khmer Rouge with their spouses or children, some of whom then discovered this during the testimonies that were broadcast live on television in Cambodia.

⁶³ This was also observed by Killean (2018a, 169).

“It’s important to testify since after I testified, I feel free to tell my story to thousands of people. I think that I myself am very brave to do the testimony. After the testimony I felt happy even until I arrived home. Even though I was sick, it was healed”
(IN2508).

“I feel relieved as I was given a chance to give testimony about what I’ve been through during a very cruel regime, I feel relieved that I can show the younger generation to not allow this type of regime to happen again. In the end, the court gave me a chance to speak, and I said that this will be an example for this generation as well as for the next generation to not allow this regime to happen again in Cambodia”
(IN01).

Coming back to the survey results, respondents were also asked about the most negative aspects of their experiences of testifying at the ECCC. This was again framed as an open question, with the possibility for multiple answers. Here, respondents mainly mentioned the inability to tell their whole story (13.3%); speaking in public in front of many people (13.3%); and sharing their story publicly when they had never shared it with their relatives before (13.3%).⁶⁴ These results really illustrate the mitigated or ambiguous nature of testifying in front of a Court for victims, since some of the experiences mentioned as negative were also mentioned as positive, namely to share one’s story publicly despite never having shared it with one’s relatives.

In the in-depth interviews, the civil parties who had the opportunity to testify in front of the Court also shared how speaking in front of the accused, the judges, the public came with a lot of stress and mixed emotions. One civil party from Prey Veng province, for instance, observed:

“When I testified, the stress hit my neck. When I sat in front of the judge, it was like a thread penetrated my neck. I almost collapsed and fell down from the chair. But I tried to hold on. When the judge asked, I always cried”
(IN2233).

Other civil parties mentioned in the in-depth interviews how they felt afraid and disoriented when asked questions by the judges or the defence lawyers, but also angry to be in the same room as the accused. A civil party in Case 001 from Kampong Cham province and a civil party from Pursat province, respectively, recalled:

“I was so afraid that I could not speak after a few words. I was shaking after greeting the judge. Asked back and forth, I could not find words to say. I could not speak at all. [...] I got confused when they asked back and forth”
(IN1150).

⁶⁴ The frustrations caused by the curtailment of speech in testimonies, or by being questioned in the Court-room, has also been observed in ad hoc international war trials, although for victims/witnesses more generally and not civil parties (see e.g. Dembour and Haslam 2004).

“[...] you know I was tearful the whole time and almost unable to talk because I saw them in person, then I felt very shocked and I felt as if I were going to choke. [...] I was really angry [because Khieu Samphan and Nuon Chea were in front of me] but I didn't know what to do. [...] I felt a bit scared too since I've never been to a place like that [...]. The lawyer of the Pol Pot leaders, he asked me in depth and back and forth, back and forth in order to make us feel scared and unable to talk [...]. They questioned our lawyer about choosing the person who had an unclear background to give testimony [...]”
(IN240).

Testifying will be an even more distressing experience for those who feel a power divide between them and the judicial officials and members of the Court, in particular for those who are illiterate or do not feel at ease with speaking in Khmer. An ethnic Vietnamese civil party from Kampong Chhnang province mentioned:

“ I was very nervous because I'm just a normal citizen. I never had a chance to meet with high position people. So, when I got to talk in front of them, I was very nervous [...] and it always felt like my parents were in front of me, so I always wanted to cry. But when I got to tell them more, I felt more relieved. [...] I felt like, when I was outside, I was with a hundred other people, but when I went inside, I was alone, so I was very nervous because they were high position people, and the way I speak was not clear. I cannot speak Khmer clearly because I live in a place where there are many Vietnamese people. Each day, I only speak Vietnam, so it was quite difficult for me to speak Khmer”
(IN9998).

Whilst highlighting the positive experiences and the value of testifying in formal transitional justice processes, these findings also confirm the conclusions of Stover et al. (2011, 530) that testifying is “a multifaceted experience, fraught with unexpected challenges and emotional swings, rather than one that is wholly cathartic.” The necessary support, including the provision of psychological support, thus needs to be guaranteed in order to prevent harm and ensure that testifying can be as positive an experience as possible for victims.

7.3. Experiences of Rejected Civil Party Applicants

This section examines the specific experiences of rejection of civil party applicants. At the ECCC, 15 were rejected amongst the 94 civil party applications in Case 001,⁶⁵ and 261 were rejected amongst the 4,128 applicants in Case 002.

In order to ensure ethical research and not to harm any of the civil parties we met for this research, we did not inform those who were unaware of their status that their application had been rejected. This then obviously limits our possibility for analysing the consequences of this experience. However, both our findings from the survey and the in-depth interviews show that such an experience is very difficult for civil party applicants and can lead to great distress, feelings of disappointment, hopelessness or guilt. We asked those survey respondents who were aware of their rejection how they felt when they had learned about the

⁶⁵ Three civil party applications of the 94 initially submitted in Case 001 were later withdrawn.

24
Rejected civil party applicants surveyed

6
In-depth interviews with rejected civil party applicants

2
In-depth interviews with civil parties initially rejected in Case 001

rejection of their civil party application: two mentioned feeling “indifferent,” yet two said that they felt “bad” about it. One also observed that other people would see her less as a victim of the Khmer Rouge regime because of the rejection of her application.

Surprisingly, those who were unaware of their rejected status were more numerous in our in-depth interviews: only one out of the 6 civil party applicants interviewed was aware of this decision.⁶⁶ This female interviewee from Pursat province shared feelings of strong disappointment, observing that her relatives’ death had been useless and that no one had found justice for them:

“It [the CP application] has disappeared for a long time already. I thought maybe it was rejected a long time ago. I just recall it now when you came here twice. [...] I thought that it was not useful. I lost trust in that because I’ve never heard of it for many years. [...]. There was someone [...] who often went there [to the ECCC], he said that it was eliminated. The case is useless and they no longer called me for years now. [...] I felt sad because my relatives’ death became useless. No one finds justice for them”
(IN283).

One of the civil parties whose application had initially been declared inadmissible, from Kampong Cham province, similarly observed:

“It was somehow wrong. It made victims hopeless. At first, I was hopeful. When they said so, I was hopeless. When the judge said so, my heart dropped. I thought it was over. [...] Our heart dropped. I was imprisoned, but they said we were lying. I felt hopeless. [...] I felt exhausted. I felt disappointed that many relatives were killed and I was squeezed there and I was not accepted. I thought where is the justice. There was no justice that the victims made efforts to file complaints, but they did not accept [these]. [...] Nowadays, I feel better. I receive justice, so I feel better. Before I felt no justice since they did not accept me and it was like abandoning me. It made me feel not good at all and I thought of many bad things. When they accepted me, I felt better. TPO always asked me how I felt too and I said I felt better now”
(IN1150).

Stover et al. (2011, 538) also reported strong feelings of distress, anger, disappointment, helplessness, guilt for “having failed their deceased loved ones,” or shame to face one’s neighbours after the rejection of one’s civil party application. This shows that rejections of civil party applications will not be understood in a limited, technical sense as intended by the ECCC, namely that the civil party application is not part of the scope of the investigations, or that not enough evidence was submitted to support the application. Rather, rejected civil party applicants may feel that their victimhood is not being recognised in the transitional justice process, or is being questioned in some way. These findings thus demonstrate that significant efforts need to be made in order to avoid such misbeliefs and to avoid that these decisions cause harm, including psychological support. In addition, other avenues for the acknowledgment of the

⁶⁶ One civil party applicant from Kandal province did not know about the rejection because she actually did not know (or at least remember at the moment of the interview) ever having applied with the ECCC, only having been interviewed about her story under the Khmer Rouge regime, which in itself raises another problem (IN1775).

applicants' victimisation and suffering under the Khmer Rouge regime and for their participation in the transitional justice process should also be explored and offered.

7.4. Experiences of Participants in NGO Projects

67
Participants of NGO projects surveyed (referred to as "respondents")

10
In-depth interviews with NGO participants (referred to as "interviewees")

This final section now turns to the experience of NGO participants who had not participated in the ECCC trial proceedings as either civil parties or complainants.

Interestingly, although all respondents were sampled on the basis of their participation in an NGO project regarding the Khmer Rouge period or the ECCC, only 58.3% mentioned having been personally involved in such a project at the time of the survey. This suggests that the remaining respondents (41.7%) either do not remember their participation in these projects or have not been able to identify the NGO actors as such because of a confusion towards actors involved in the transitional justice process.⁶⁷

The respondents who do remember having participated in an NGO project on the Khmer Rouge period or the ECCC then indicated that they have participated in more than one NGO project or activity (18.8%: two projects/activities; 12.5%: three; 6.3%: four; 9.4%: five or more). A large majority of them was either very satisfied (33.3%) or satisfied (63.3%) with these projects, and only 3.3% indicated that they were partly satisfied and partly unsatisfied.

The in-depth interviews also show varied assessments of participation in the NGO projects. NGO projects were, for instance, very valued for their focus on education and remembrance of the Khmer Rouge regime in order to prevent recurrence (IN864); or for providing access to information on the Khmer Rouge tribunal. Asked how he felt when joining the NGO project, a male participant from Kampot province, for instance, observed:

“ I felt very happy that I could join the event related to the Khmer Rouge. I am very happy and excited about the prosecution of the Khmer Rouge because they tortured Cambodian people a lot. [...] I'm very excited and very happy. It's not like I always get a chance to participate. There must be an invitation. So, when I got a chance to be invited, I'm very excited and very happy. I'm very happy. [...] I got a chance to participate and share the joyful moment with others. [...] it means that I got justice because we are brave and we have the anger. They mistreat us so badly, and when they are prosecuted, I'm very happy ”
(IN24).

However, at the same time, he also shared difficulties of participating in the NGO project:

“ I participated but I didn't really know how to talk, and I already forgot about it. I participated in the activity related to the Pol Pot, but I already forgot because I didn't really understand what they were talking about. They didn't talk loud enough and it's not like we are talking so close with each other, so I couldn't hear. I only see Pol Pot's photos and Ta Mok's photos, but I couldn't see the words on it. If they talked closed to me, I could hear, when I can answer, I will answer. So, I don't know ”
(IN24).

⁶⁷ See Chapter 6 on perceptions of the ECCC, and in particular of actors delivering transitional justice, for similar observations.

In another interview, a male participant from Pursat province observed the limited impact of the NGO activity, given its very selective nature, although he still expressed his general satisfaction:

“ It was just for a morning [...]. It is nothing just they asked us to see something and the time was up. They asked us to see the photo. [...] [after the program] nothing is changed [in the community]. [...] It's fine. I like it since they came to explain to me and made me understand about how their projects proceed ”
(IN358).

Conclusions

- Several actors (yet mainly NGOs) played a role in supporting the application process of **complainants and civil parties**, with only very few having applied on their own. Almost one third of the civil parties surveyed, and almost one sixth of the complainants surveyed, were afraid to submit their application or complaint, mainly fearing revenge or pressure from the accused or their families. Whilst our findings show the existence of a **multiplier effect of victim participation** (whereby those who had already registered and started to trust the process will both technically help but also encourage others to apply), concerns with applying to participate in the process remain, even after several years of the ECCC's existence. One sixth of the surveyed civil party applicants in Cases 003 and 004 reported having been worried whilst registering.
- The survey and in-depth interviews also showed a strong confusion amongst civil parties and complainants about the differences between these two statuses.
- The main motivation mentioned by civil parties and complainants for participating in the ECCC was to obtain justice, to have their suffering acknowledged, tell their story and know the truth.
- **Civil parties**, by a large majority, were satisfied with their participation. The most important experiences mentioned in civil party participation were meeting other civil parties, participating in civil party forums and visiting the ECCC. The importance of the social nature of victim participation also strongly emerged in in-depth interviews, however the financial and material benefits which victims gain through civil party participation are not to be underestimated. In the in-depth interviews, many civil parties observed a strong decrease in opportunities for participation; the data suggests that this perception may threaten previous achievements of the Court and lead to a possible decrease in civil party engagement with and interest in the ECCC.
- **Complainants** were also largely satisfied, although to a significantly lower extent than civil parties. Only one in five of the complainants surveyed had the opportunity to attend a hearing or to visit the ECCC, exemplifying one of the many differences in opportunities for participation between complainants and civil parties.

- By introducing these different opportunities for participation, transitional justice processes may have **negative effects**. Civil party participation can in fact lead to jealousy, with one in four civil parties reporting that others have been envious of their participation.
- The opportunity to testify was highly valued by most **civil parties who testified in Court proceedings**, mostly for the opportunity to tell one's story in front of an audience. However, some also reported that it was a mixed experience, the most negative aspects being the inability to tell one's story entirely, speaking in public in front of many people, and sharing one's story publicly when one had never shared it with relatives before. Many civil parties also reported how stressful an experience it was, especially for those who are not literate, feel a large power divide and are intimidated to speak in front of a Court, or were questioned by the judges or the lawyers of the accused.
- Several **rejected civil party applicants** still did not know about their status; and the few who did share feelings of disappointment, hopelessness and distress.
- Whilst more than half of the **NGO participants** did not remember participating in an NGO activity related to the ECCC or the Khmer Rouge regime, those who did remember showed high levels of satisfaction with this experience.

8

NON-PARTICIPATION IN TRANSITIONAL JUSTICE

58

Persons who did not participate as complainants or civil parties at the ECCC or in any NGO project (referred to as “non-participants”)

67

Participants of NGO projects who did not participate in the ECCC proceedings (referred to as “NGO participants”)

5

In-depth interviews with non-participants

10

In-depth interviews with NGO participants

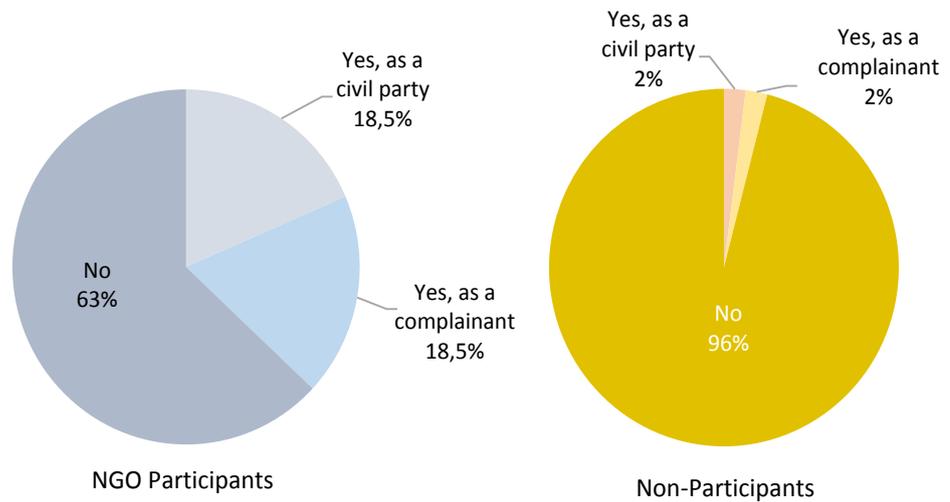
This chapter discusses non-participation in the ECCC proceedings. Focusing not only on instances of participation but also of non-participation helps to understand the perspectives of the broader population on the transitional justice process, and also the necessary preconditions for meaningful victim participation.

This chapter presents the findings from the research with people who did not participate as complainants or civil parties at the ECCC or in any NGO project related to the Khmer Rouge regime or the ECCC (referred to as “non-participants”) and participants of NGO projects on the ECCC or the Khmer Rouge regime who did not participate in the ECCC proceedings (referred to as “NGO participants”). It discusses the multiple reasons given for non-participation at the ECCC by the 58 non-participants and 67 NGO participants surveyed, and the 5 non-participants and 10 NGO participants met for in-depth interviews. For its analysis, this chapter draws on the typology of non-participation in peacebuilding elaborated by Roger MacGinty (2012),⁶⁸ which differentiates between involuntary and voluntary non-participation. Whilst this typology is helpful to identify different types of non-participation, it is important to stress that individual respondents gave multiple reasons when discussing their reasons for not participating in the ECCC proceedings, and that differences between the types of non-participation are fluid.

Amongst the respondents, 42.6% mentioned having watched or followed an ECCC trial hearing. Surveyed NGO participants watched or followed a hearing to a significantly higher percentage (57.1) than non-participants (26.9%). Nonetheless, 79% of the respondents mentioned that they had never considered applying to participate as either civil parties or complainants. A higher percentage of non-participants stated never having considered to apply (96.1%) as opposed to NGO participants (63%).

⁶⁸ In addition to the categories listed here that were relevant for our findings, MacGinty also mentions tactical non-participation, acculturation and displacement. The category of “inadvertent impediments” is not included in MacGinty’s typology but was significant in our empirical data.

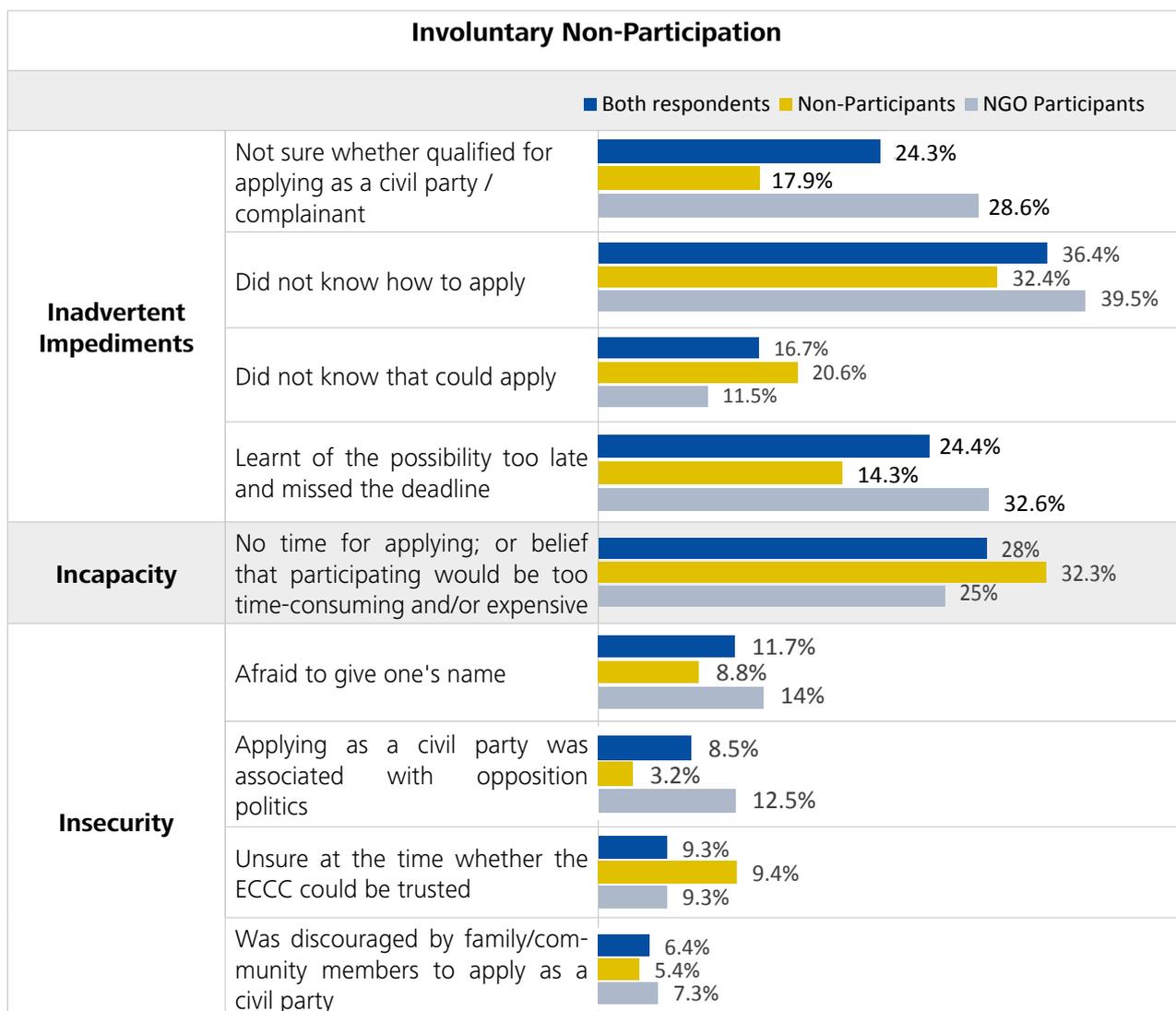
Figure 8.1: Did you ever consider applying to participate as a civil party and/or complainant at the ECCC?



Almost half of the NGO participants surveyed indicated that they would apply today to participate as a civil party or complainant at the ECCC, if given the chance (44.7%), while only a minority of the non-participants surveyed affirmed (4.7%). The respondents who said they would apply today, if given the chance, explained that they now trusted the ECCC more than they used to (26.1%), that they would now know how to actually apply (21.7%) or that they were not afraid anymore to apply (21.7%). Other reasons given for their interest in applying were that they would have more time today to participate (17.4%); that they saw that victims receive concrete benefits from their participation (17.4%) or that they would also like to have the opportunity to go to Phnom Penh (13%).

Figure 8.2: Voluntary and Involuntary Non-Participation

		Voluntary Non-Participation		
		Both respondents	Non-Participants	NGO Participants
Uninterested	Not interested in the ECCC	30.3%	27%	34.5%
	Rational Choice	Did not think that participating would bring any benefits	15.3%	12.5%
Learnt that civil parties cannot receive financial reparations		6.8%	3.1%	9.5%
Principled Non-Participation	Did not believe the ECCC would bring justice to victims of the Khmer Rouge regime and their families	9.5%	6.3%	11.9%



8.1. Involuntary Non-Participation

Our data shows that non-participation at the ECCC is mostly involuntary rather than voluntary. Non-participation seems mainly related to how the necessary pre-conditions for meaningful participation were not always provided in the early stages of the transitional justice process. Respondents predominantly mentioned a lack of information on the ECCC and the possibilities for participation as the main factor for their non-participation. The incapacity to participate is, however, also a very important aspect of non-participation. Many respondents reported not having the time that is required for participation, but the age of the victims of the Khmer Rouge regime also plays a role. Finally, fears related to submitting a complaint or civil party participation, or indeed participating in the ECCC, were also mentioned; these are discussed under the category of “insecurity.”

Inadvertent Impediments

Respondents mainly indicated a lack of access to knowledge and information about how to participate in the ECCC proceedings. More than a third of the respondents indicated that they did not know how to apply (36.4%). Almost

a quarter of the respondents further mentioned that they had learned of the possibility for civil party applications too late and had missed the deadline (24.4%). Interestingly, NGO participants had a significantly higher percentage here (32.6%) than non-participants (14.3%), suggesting that they had greater exposure to information on the existence of the ECCC and possibilities for victim participation, even though they learnt about these opportunities too late to be able to join themselves.

Amongst those respondents in the survey who had never considered applying, one sixth even explained that they had not known that they could have applied (16.7%). Interestingly, a higher degree of non-participants provided this answer (20.6%) in comparison to NGO participants (11.5%).

In the in-depth interviews, NGO participants from Kampot and Kandal provinces also mentioned not having known at the time that they could have applied (IN24; IN1809). The male NGO participant from Kampot province explained that no organisation informed the villagers about possibilities of participation at the ECCC, whilst the local authorities also did not communicate this:

“ I am very disappointed because I did not get to file a complaint. [...] There might be some people who live in Kampot who filed a complaint too [...] but not for us who live in the rural area. [...] I don't know how to write, so I don't know how to file a complaint. [...] During the time when they filed a complaint, I didn't know about that. I only got to know it when I watched the TV at my neighbours' house. I saw it on the news. [...] There weren't any organisations that came and talked about filing a complaint against the Khmer Rouge. [...] The [village], district and commune chiefs didn't talk about it.
That's why the villagers didn't know ”
(IN24).

This quote also shows that not knowing how to apply possibly includes both a lack of knowledge with regards to the process of application, but also a lack of the necessary skills to apply (e.g. knowing how to read and write). Closely linked to a lack of knowledge about the opportunity and the means for applying is the uncertainty regarding one's eligibility to participate formally in the ECCC proceedings, which also played a role in non-participation. Almost a fourth of the respondents mentioned that they did not apply because they did not know whether they would qualify as a civil party or complainant (24.3%). Interestingly, more NGO participants (28.6%) than non-participants (17.9%) gave this answer.

The in-depth interviews also demonstrated the importance of outreach conducted in person by the ECCC or NGOs, especially in the rural areas where villagers do not have regular access to news channels on the radio or TV.⁶⁹ Indeed, access to sporadic information about the legal proceedings is not enough for people to be able to understand fully what it means. This can be illustrated with following quote from a male participant of an NGO project from Pursat province:

“ I have heard about [the ECCC] a few years ago. Two or three years ago, but I don't really understand about the court, on how they proceed with the case ”
(IN358).

⁶⁹ NGO participants from Kampot and Kampong Cham provinces, for instance, explained that they do not have access to the news (IN834; IN824).

But it is not only about access to information about participation: there is a need for sustainable support and assistance for victims for them to be able to participate in the proceedings. This emerged during an interview with a female villager from Sihanouk province, who had seen her three brothers and parents die from hunger and disease, one after the other, during the Khmer Rouge regime (IN1059). She explained that she had submitted a civil party application with the help of a villager, who had connections to the capital city, but that after his sudden death all documents were lost and she did not know how to file a new application:

“ In my village, there was a leader [...] at the beginning. He came to ask as well. [...] I also filed the complaint, but since he died, we don't know where they are. There was no system of leader or sub-leader at that time. He did it alone. When he died, everything was gone. [...] At first, I hoped that it would work. But later, I don't have any more hope. Plus he died, so all the documents were lost ”
(IN1059).

Incapacity

Non-participation also results from what can be analysed as the “incapacity to participate.” More than a quarter of the respondents mentioned that they did not apply because they either did not have time to apply, or thought that participating as a civil party or complainant would be too time-consuming and/or expensive (28%). A higher percentage of non-participants (32.3%) than NGO participants (25%) provided this explanation.

The in-depth interviews also show that incapacity is strongly linked to the old age of Khmer Rouge victims but also to the necessity of caring for others. These findings illustrate the importance of taking into consideration the hidden costs of victim participation in transitional justice.

Insecurity

To a lesser degree, non-participants also indicated concerns related to insecurity as a reason for not having applied to participate in the ECCC proceedings as either complainants or civil parties. 11.7% of the respondents indicated that they did not apply because they were afraid of “giving their name;” whilst 9.3% of the respondents mentioned that they were not sure they could trust the ECCC. 8.5% of the respondents mentioned not applying because submitting a civil party application was associated with opposition politics, suggesting that they feared reprisal from local authorities who confused the activities linked with submitting a civil party application to the ECCC with political mobilisation against the ruling party (see also Bernath 2016). NGO participants were significantly more numerous in giving this answer (12.5%) than non-participants (3.2%). Finally, very few respondents mentioned that family or community members had discouraged them to apply (6.4%). A possible reason for this is that relatives or neighbours were afraid that those who applied would face reprisals from former Khmer Rouge: this was indeed a recurrent observation made in the in-depth interviews.⁷⁰

Although only a few respondents mentioned insecurity in the survey, it appeared from the in-depth interviews that, amongst those who knew about the tribunal and the possibility to apply as a civil party, fear of reprisal from the former Khmer Rouge prevented many from applying and participating in the ECCC proceedings.

⁷⁰ See also Chapter 7 on Participation, which discusses the extent of fear and concerns experienced by civil parties and complainants in the application process.

A civil party in Case 001 from Kampong Thom province, for instance, strongly observed this in his village:

“ At first, when I applied there were people, who lived in the countryside [...], saying that [...] beware they will investigate and kill you again [...]. Sometimes, in this village there are people who were the chiefs during the Khmer Rouge regime too. [...] Because of these problems, they asked me why did I apply, beware they will come back again and they will clear those who filed complaints first. But we just took the risk. [...] [T]here are 4,000 civil parties, what about other people across Cambodia who didn't apply? [...] Nowadays there are still some people who want to file complaints since they suffered too much. [...] They were afraid and they didn't receive clear information. [...] but now they understand when the radio broadcast about the tribunal and we encouraged them after we participated with the tribunal [...] They are disappointed that they cannot join but when they meet me they always ask me whether the applications are still accepted. [...] if the applications were still accepted now, there would be many people [who would] want to apply ”
(IN1153).

8.2. Voluntary Non-Participation

Our empirical data also shows cases of voluntary non-participation, although these were less prominent.

Uninterested

One possible reason for non-participation, which is possibly often ignored in the field, is that people may simply be uninterested in the transitional justice process. This may be for various reasons, including being generally uninterested in formal, official or state-sanctioned transitional justice processes; having other priorities; or having moved on and rebuilt one's life since the end of the Khmer Rouge regime and wanting to avoid remembering that time.

Asked whether they are generally interested in the ECCC, more than one third of the non-participants and NGO participants surveyed mentioned that they are not interested (38.8%), with a significantly lower percentage of NGO participants being uninterested in the ECCC (23.6%) in comparison to non-participants (58.1%). Such disinterest in the ECCC then played a role in the decision of some not to participate in the ECCC proceedings. 30.3% of the non-participants and NGO participants who mentioned never having considered applying as either civil parties or complainants indeed explained that this was because they were not interested in the ECCC. A higher percentage of NGO participants (34.5%) indicated this answer compared to non-participants (27%).

Several reasons can lead to a lack of interest towards the ECCC. A female participant of an NGO project in Kampong Cham, for instance, explained why nowadays she does not really follow the news on the ECCC:

“ I always go to do the merit at this place and that place. So, I don't have time to listen. Also, I don't have a television to watch. Sometimes when I go to the other people's houses, I watch the television there. So it's like once in a while that I get to watch. It cannot be very often. [...] I cannot ride in a car, I can only just ride a motorbike. I am not really well, so I cannot ride a car. [...] I rarely go anywhere far, only to somewhere that is nearby. My children drop me at the place by motorbike to do the merit ”
(IN824).

A lack of interest in the ECCC proceedings may thus be linked not only to the lack of access to relevant news outlets. It can also result from the old age of victims of the Khmer Rouge regime, their poor health and increasing preoccupation with religion, doing merits and good deeds towards the end of their lives.⁷¹

Principled Non-Participation

Our data also indicates a few cases of what can be analysed as “principled non-participation,” that is cases where non-participants decide to withhold their participation in transitional justice out of principle. Almost one tenth of the respondents mentioned that they did not apply because they did not believe that the ECCC could bring justice to the victims of the Khmer Rouge regime and their families (9.5%).

In comparison to other reasons for non-participation, this explanation was thus mentioned less often by respondents in our survey than other reasons. However, it is important to note that this type of non-participation actually pre-supposes that non-participants have had the necessary information before being able to decide, out of principle, to opt out of the process. It is therefore possible that this form of non-participation would increase with an increase in outreach and in opportunities to apply.

Rational Choice

Non-participation can also be based on a rational calculation that participation will bring too few benefits in comparison to the effort it requires. This was also a reason mentioned by the non-participants surveyed, although to a small extent. 6.8% of the respondents indicated that they did not apply because they learnt that civil parties cannot receive financial reparations. 15.3% of the respondents who had indicated in the survey that they had never considered applying further explained that they did not consider applying because they didn't think that participating as a civil party or complainant would bring any benefits.

An in-depth interview with a female NGO participant from Kampot province illustrates this form of non-participation. Asked whether she would want to file a civil party application with the ECCC, she answered:

“ I don't see why I should file a complaint because our country is this peaceful. I just want to have peace. We are citizens, we just want independence like nowadays. I don't need to file a complaint anymore because there is already a prosecution ”
(IN21).

⁷¹ See also interview IN2951 with a complainant from Kratie province.

Given that this form of non-participation depends on both access to information and the opportunity to apply, in order to be able to decide to withhold one's participation, we could expect that non-participation based on rational choice would increase along with an increase in outreach and opportunities to apply in the early stages of a transitional justice process.

Conclusions

- Analysing non-participation provides insights on the transitional justice perspectives of the broader population, but also on the necessary preconditions for meaningful victim participation and the hidden costs of participation in transitional justice.
- Our data suggests that non-participation at the ECCC was mainly involuntary rather than voluntary, although a lack of interest in the ECCC was also mentioned by some respondents as a reason for their non-participation.
- The main reasons provided by the respondents for their non-participation relate to the absence of the necessary pre-conditions for participation in transitional justice, i.e. the absence of necessary information and outreach. Other important aspects of non-participation include worries about submitting an application to participate in the criminal justice process, as well as the incapacity to participate, given the old age of victims of the Khmer Rouge regime and the time required for participation.

9

EMPOWERMENT

439

Survey participants
(referred to as
"respondents")

65

Participants of the
in-depth interviews
(referred to as
"interviewees")

21

Transitional
justice
professionals

This section seeks to answer the question of what consequences the participation in transitional justice has for victims both individually and collectively in terms of empowering them. We did not ask our respondents what their understanding of empowerment was, but instead work here with a concept of empowerment that highlights gains in agency. For the most part empowerment is not defined in the transitional justice literature but used intuitively as an abstract, positive idea; but where attempts to make it more graspable are made, the focus lies predominantly on victims being able to take control of their situation and "control their own destiny and influence the decisions that affect their lives" (Kilroe 2009, quoted in Madlingozi 2010, 218). As such, we understand empowerment as a broader concept rather than just 'legal empowerment,' which has a more legalistic and rights-oriented focus (Kurze et al. 2015), particularly defining agency as individuals' capacity to demand and exercise their rights (Goodwin and Maru 2017). Empowerment implies "giving to previously powerless and repressed individuals the possibility of reclaiming their lives and understanding the nature of their subjugation" (Brito et al. 2001, 27). In a similar vein, David Taylor emphasises the importance of power for full empowerment, which he understands to be that "victims would participate at each stage of a TJ [transitional justice] mechanism – from conception to design to implementation – as decision-makers, with real decision-making power. Powers are thus conferred on victims" (Taylor 2014, 24). As such, participation and empowerment are not equal per se, but full empowerment goes beyond collaboration, providing information, incidental expression and various forms of indirect participation (Taylor 2014, 25-27). On a slightly more conceptual level, Tshepo Madlingozi (2010, 213) focuses on empowerment with regard to agency, that is enabling victims to "wage the struggle by and for themselves" and how this can be undermined by trusteeship, "the idea that others must 'represent' or 'take up the cause on behalf' of 'victims.'" This ties into a report by former Special Rapporteur on the promotion of truth, justice, reparations and the guarantees of non-recurrence, Pablo de Greiff (2016), on victim participation in transitional justice, where he argues that the necessary conditions for participation (i.e. security, psychosocial support and capacity, including access to knowledge) need to be secured before any meaningful participation can take place. We take from this literature a focus on empowerment as acquiring agency and the capacity to demand and exercise rights. It is from this perspective that we sought to analyse whether and how transitional justice in Cambodia has contributed to the empowerment of victims and through which we read the statistical data and interview material to understand what forms of empowerment can be seen. This chapter also draws on interviews with 21 professionals working in the transitional justice process in Cambodia, either at the ECCC or in civil society organisations. And indeed, this

perspective on empowerment is supported by transitional justice actors, such as Cambodian civil party lead co-lawyer Pich Ang. In our interview he argued that empowerment is about victims having “the right to say [what they want],” even if it means demanding things that exceed the mandate of the transitional justice process, as in the case of demanding individual financial reparations.⁷²

Few of the interviewees spoke directly about how the ECCC had contributed to their more empowered lives, neither in terms of specifically discussing empowerment, nor more indirectly in reference to feelings of empowerment or specific actions that would suggest some perception of being empowered. Nonetheless, even if this is not a topic raised by interviewees, individuals do profit from their participation in terms of becoming more empowered in various ways. It is also noticeable that those individuals who are more involved in the transitional justice process tend to be more empowered by it, meaning that victims who had participated as civil party representatives, had testified in court or were civil parties in Case 001 told us about various empowering experiences – albeit not framed in these terms – while non-participants, NGO participants, complainants or more marginalised civil parties were less likely to have had such experiences.

Empowerment occurred both at the individual and the societal level, albeit the former more prominently. As we cannot speak strongly to the community level of empowerment with our data, this section will be short and discuss only briefly perceptions of this form of empowerment. At the more individual level, we identify two main forms of empowerment for victims of the Khmer Rouge through the transitional justice process: empowerment as the result of an outcome of participation in the transitional justice mechanism and empowerment that counters the transitional justice mechanism itself. This chapter will end with a discussion of the limitations of empowerment in the transitional justice process.

9.1. Society-Level Empowerment

At the community or societal level, a sense of collective victimhood has emerged in Cambodia, demonstrating to a certain degree collective agency and interests. This has, for example, also led to the foundation of Ksaem Ksan, a victim association, even if this appears to be relatively dormant (IN1629). While several of the interviewees criticised the poor management of the association and its lack of actual impact or projects, its creation in and of itself was an act of empowerment for the victims who participated. Also, at a systemic level, the ECCC was envisaged to provide a positive impact on the court system or even more broadly the functioning of the state itself; however, there is little empirical evidence that actually suggests such a positive impact on the court system or the broader state. Hang Vannak, chief of the VSS, also articulated the hope that the tribunal process had had an empowering effect on the work of NGOs in the country.⁷³ Given the focus of this report on individual victims and their perceptions and empowerment, it is unsurprising that this level of empowerment is not discussed frequently in the interviews and we will not go into any more detail of society-level empowerment here.

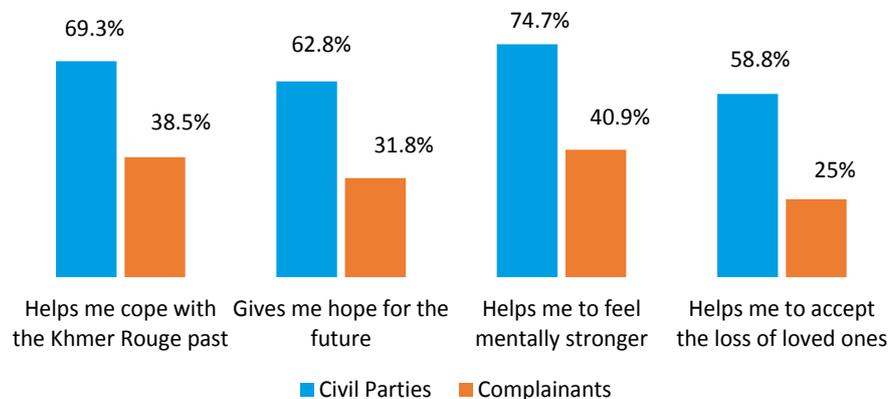
⁷² Personal interview conducted in Kampong Cham province on 13.02.2018.

⁷³ Personal interview conducted in Phnom Penh on 16.03.2018.

9.2. Individual Empowerment through Transitional Justice

One of the most prominent forms of individual empowerment is that the individuals participating in transitional justice experience improvements to their **mental health** and attain a feeling of relief through their participation. Mental health is not empowering in and of itself, but we argue that it is a prerequisite for developing agency and being empowered. Indeed, of the transitional justice professionals we interviewed, improved mental health was the factor in terms of empowerment that was most frequently emphasised across both NGOs and the ECCC setting, Cambodians and internationals. In the survey civil party respondents had considerably higher assessments of how their participation and status as civil parties positively affected their dealing with the past than complainants with considerably less actual participation. For example, 69.3% of civil party respondents agreed⁷⁴ that their participation helps them cope with the Khmer Rouge past (compared with 38.5% of complainants), 62.8% of civil parties agreed that being a civil party gives them hope for the future (complainants: 31.8%), 74.7% of civil party respondents agreed that being a civil party helps them to feel mentally stronger (complainants: 40.9%), and 58.8% of civil party respondents agreed that being a civil party helps them to accept the loss of loved ones who died under the Khmer Rouge regime (complainants: 25%). Only a small amount of the victim population suffers from Post-Traumatic Stress Disorder (PTSD) (Sonis et al. 2009, 532), but this is more due to the Western bias inherent in measuring PTSD. Indeed, there are high levels of psychological suffering in Cambodia, but more specific concepts such as *baksbat* can be more helpful in capturing the specific psychological suffering of Cambodian people during and since the Khmer Rouge regime (Chhim 2013).

Figure 9.1: Being a civil party/complainant...



As such it is of great importance that it is not just participation or not that makes a difference, but that deeper participation is more impactful on positive mental health and dealing with the past. It is not clear from interviews, however, whether it is primarily the work of the tribunal itself that effects mental relief or whether it is more strongly the NGOs, particularly TPO, and their counselling, or indeed other factors such as individuals engaging in religious practices.⁷⁵

⁷⁴ Choosing the answer category agree or agree completely.

⁷⁵ The various effects are also difficult to divide up as it is within the context of the ECCC’s work that NGOs such as TPO have gained a much stronger presence with their projects (Ryan and McGrew 2016, 92).

Another form of empowerment is providing people with opportunities to develop the **self-confidence in speaking out about their story**. As such, the act of testifying at the court is of particular cathartic value, albeit laced with great stress, nerves and emotions (Stover et al. 2011, 525, 530). In the words of one male civil party from Kampong Cham province: “It makes me feel relieved. If I did not tell my story, I would still keep it in my stomach. After I told my story, I got rid of it completely from my body” (IN1150). But also more broadly NGO projects or civil party forums that allowed people to share their experiences contributed to this by providing spaces in which people felt safe to share their stories. Of particular prominence is sharing stories with members of the younger generation. A female reparations project participant from Kampong Chhnang province explained:

“Before, I had no courage to speak like right now. As long as I spoke, my tears dropped and I could not continue talking, until I met with the teachers from TPO; I became brave and dared to talk about things, I can talk without crying” (IN513).

This rise in confidence in telling their stories applies also for topics that are even considered taboo, such as those who used to be ashamed of having been forced to marry gaining the confidence to speak out about the experience and feeling better because of this (IN457; see also Strasser et al. 2015). The benefits are even greater for civil party representatives, 64.3% of whom in the survey stated that they felt more comfortable speaking in front of groups or speaking in public as a result of being a civil party representative.⁷⁶ It also resonates with our participant observation, which for some team members stretches back to the first years of the ECCC, that individual civil parties over time have come to be more confident, previously always breaking down when talking about their past, but today feeling comfortable sharing their stories with others, particularly the younger generations. This capacity to comfortably tell their own story can be seen as a form of empowerment as it allows individuals to tell others about their experiences of the past, providing them with the opportunity to contribute to a collective narration of the past, albeit within the strictures of whichever format they are engaged in. In general, interviewees who had participated to a lesser degree in transitional justice processes appeared less articulate and less able to insert their stories into broader discourses.

Another form of empowerment concerns higher degrees of **knowledge**, as also discussed in the section on the ECCC. In some cases, civil parties were actively trained by NGOs such as ADHOC to understand the processes and laws that govern the tribunal, while in other cases their participation led to a gradual deeper understanding, as evidenced by a male civil party from Kampong Thom province from Case 001:

“for Case 001, I participated every day; so the negotiation between the lawyers were based on law and for us as stupid people we just listened to them. However, it seems that like when water drops on the rock it will be wet, so we understood many legal terminologies as our life experience” (IN1153).

⁷⁶ The question was multiple choice and allowed several answers.

Finally, civil party representatives gained first access to new information about the trials and were asked to distribute these, giving them and then their civil parties early access to information and news. Furthermore, of the civil party representative respondents, half of civil party representatives said that being a civil party representative helped them understand the ECCC proceedings better (53.6%), while half said that it helped them gain experience in training and educating others (53.6%).⁷⁷ The latter is particularly empowering as it provides agency that allows the individuals to take on a proactive role within their community. Overall, the beneficial experience is demonstrated through the fact that 88.9% of civil party representatives indicated that, were they given the choice, they would be civil party representatives again.

Figure 9.2: Has the experience of being a civil party representative helped you to...



Related to this is also an idea suggested by Hang Vannak of the VSS and Anna Christophersen, ZFD consultant at YRDP, who both argue that empowerment through participation in transitional justice also involves learning democratic rights,⁷⁸ and is augmented in arguments by Tim Minea of KdK and government advisor Helen Jarvis that participants learn various forms of democratic activism.⁷⁹ Helen Jarvis explains that “knowledge is power to a certain extent. So, the more people know the more potential they have for action.”⁸⁰ Marie Guiraud, international civil party lead co-lawyer, argues that while being empowered first works through being informed this presents a significant logistical challenge, and also bears the danger that being informed leads to the cultivation of expectations that can potentially be disappointed when they are not delivered.⁸¹ Nonetheless, it is precisely empowered individuals who can then articulate these disappointments and demand changes to be made, in essence facilitating empowerment, as is discussed below.

Related to this, as explained in the chapters on reconciliation and justice, individuals with a lower degree of participation were more likely to not be able to define reconciliation and justice, showing that participation provides people with ways to think and talk about the justice and reconciliation processes. This **articulation** is empowering as it provides people with the agency to own their stories and decide how these should be told and to whom. Having said this, such articulation is empowering only to a certain degree: the ideas that individuals who have participated more can articulate are learned through the template of transitional justice. This, in turn, renders other ideas unintelligible or not articulable with the vocabulary they have learned. This does not mean that only conformist ideas

⁷⁷ One male civil party representative from Siem Reap province contradicted this by arguing that disseminating information and such tasks did not help him learn anything useful for his everyday life (IN1452).

⁷⁸ Personal interviews conducted in Phnom Penh on 16.03.2018 and 06.02.2018, respectively.

⁷⁹ Personal interviews conducted in Phnom Penh on 08.02.2018 and 05.02.2018, respectively. In another report, NGO interviewees also emphasised the empowerment of civil parties through knowledge and access to information (Ryan and McGrew 2016, 94).

⁸⁰ Personal interview conducted in Phnom Penh on 05.02.2018.

⁸¹ Personal interview conducted in Phnom Penh on 01.02.2018.

can be articulated, and this becomes quite visible in the contentious individual empowerment *against* transitional justice discussed below, but it means that people will be *more likely* to articulate ideas within the framework.

A further form of empowerment is provided through being able to **meet other civil parties** and the community spirit that this creates, particularly through providing a realisation that one is not alone in one's experiences of the past (see also participation chapter). Furthermore, this sense of community allows for collective action to be taken, as discussed in the next section. Some interviewees discussed the possibility of establishing a foundation to support victims, a suggestion which goes beyond the idea of individual financial reparations and suggests a degree of empowered collectivity.

Several further facets of empowerment are also mentioned across some interviews, such as possible **closure** that participation in transitional justice is posited to be able to provide for some people. A pertinent example here is provided by a male civil party in Case 001 from Kampong Thom province who told us about another civil party:

“ They lost children, husband, wife, then they went to Tuol Sleng and saw their photos. Then they cried so hard [...]. At that time, I wasn't happy over others' sadness but I felt relieved that their lost children were found, so they would no longer worry, even though they saw their children's photos that they died like that, but they knew that their children were really dead. They didn't know for 30-40 years where their children went without returning back to their mothers, they're still suffering but when they knew their children were dead, then they would be sad for once, then they would be relieved ”
(IN1153).

Another facet mentioned across many transitional justice professionals' interviews is that the **participation in and of itself** can be seen as a form of empowerment. For example, Latt Ky, former head of the Khmer Rouge Trial project at ADHOC stressed that active participation of victims is key to meaningful justice and empowerment as they themselves are actually part of this search for justice.⁸² This reflects the argument that from a processual perspective on justice the opportunity to participate in the process constitutes an empowerment to justice (Herman 2014, 5), as it is not just the outcome of transitional justice that matters but also the process, in this case the participation and active engagement in the process. A different idea shared by a German consultant to an NGO and a staff member of the German embassy in Cambodia emphasises more strongly that empowerment is provided through the **visibility** that participation provides, particularly in juridical terms through the ECCC statutes, as this provides victims with rights that they can exercise and through which they can develop their agency.⁸³

⁸² Personal interview conducted in Phnom Penh on 05.02.2018.

⁸³ Personal interviews conducted in Phnom Penh on 07.02.2018 and by telephone on 28.03.2018, respectively.

9.3. Contentious Individual Empowerment Against Transitional Justice

Some forms of empowerment, however, are not envisaged by the transitional justice actors when they create the mechanisms by which to include the victims. Victim participants were able to voice their discontent with various ways in which transitional justice was not performing to their desires by boycotting the proceedings or protesting actively. The first major bone of contention between the civil parties and the ECCC was the non-recognition of 24 applicants as civil parties after they had already been participating in the procedure for the duration of the trial in Case 001. This led some of the individuals whose applications were rejected to feel “shame and guilt for having failed their deceased loved ones” (Stover et al. 2011, 538) and for many of the accepted to **boycott** the next session, as was explained in detail by a man from Kampong Cham province, who had been a civil party in Case 001 (IN1150).

Furthermore, the civil parties have also organised **protests** outside the tribunal to campaign for or against topics that were close to their hearts (IN1452; IN1629). The first protest was after the judgment in Case 001 in which Duch had been sentenced to a 35-year sentence, reduced for time served unduly, while the civil parties demanded life imprisonment. Another topic was that of individual financial reparations that were demanded as reparations to replace the collective and moral reparations projects. In this context they demonstrated outside the tribunal (IN1629; IN1907), as well as submitting petitions to several international embassies in Phnom Penh (IN1805; IN1638). These various forms of protest are good examples of how participation in the transitional justice process has also led to forms of empowerment that are contentious to the transitional justice process itself.

However, not all people who participated in such protests felt empowered themselves. One female civil party from Kandal province who testified before the ECCC stated that she did not really want to join in: “They said let’s go to the meeting then I saw they did a demonstration that they wanted monetary reparations not *Sdop* [memorial statues] or anything else, they wanted money for individuals. Then I didn’t dare to say anything and let those who were good at talking do the talking” (IN1907). This situation shows that sometimes empowerment is merely performative – it seemed as if she had gained agency, but at the same time she actually felt very uncomfortable.

While such empowerment that is directed against the transitional justice system itself may be perceived as a challenge to their work by some transitional justice professionals, others also perceive it positively as a form of emancipation. In this context, this empowerment has democratic and liberal potential, particularly in the context of Cambodia, where open contestation is uncommon due to the constrained political climate and the importance of maintaining positions within patronage networks.⁸⁴

⁸⁴ References anonymised.

9.4. Limitations to Empowerment

In some stories reported to us, empowerment of individuals was actively undermined by the transitional justice processes themselves. We differentiate here between structural and practical limitations.

Structural Limitations

First, there are some structural limitations imposed by the societal context or the *modus operandi* of judicial proceedings. Some interviewees felt that some functionalities at the court in outreach sessions **expected passive or submissive behaviour**. As such, there was a tacit expectation that civil parties ‘participate’ through their presence only, as such performing the role of an empowered individual without actually expecting this to lead to agency or the capacity to demand one’s rights. Transitional justice professionals have specific expectations about types of empowerment they endorse, while true agency may actually develop when individuals develop the capacity to supersede these expectations and act contentiously within the system (see previous section). This expectation of passivity is expressed by one woman from Kampong Cham province whose application to be a civil party has since been rejected: “They only talk amongst themselves. We only sit there and listen. That’s it, to be honest” (IN752). More than this even, some civil parties claimed that it was clear that they should not ask too many questions, particularly critical ones (IN1452; IN1629; IN733; IN752). A male civil party representative explained:

“Those who ask a lot, they will be hated. Those who don’t ask a lot of questions, the court will like them. [...] They [the other civil parties] knew that if they ask too many questions, the court wouldn’t like them. So, they said that they would just say yes and no, yes and no, until they come back home.⁸⁵”

Along these lines, we also noted during participant observation of outreach meetings with civil parties, reparation projects as well as NGO projects that certain societal power relations were reproduced, calling into question how empowering the participation actually was. An indicator of this from the survey is that there is a clear statistical correlation between higher degrees of knowledge and being a man across all forms of participation, suggesting that men have learned more from the process or enter with higher knowledge. We also observed that older or less educated participants were less likely and felt less able to meaningfully engage. This reproduction of hierarchies in the transitional justice process has important consequences for who is empowered and who is not and who thus has access to meaningful justice. As such, the transitional justice process has possibly not done enough to combat traditional societal power imbalances according to gender, education, economic prosperity and political status, even though systematically balancing these societal hierarchies is certainly not easy.

While outreach meetings may primarily have been intended to convey information about the trials, reparation projects and NGO projects certainly have more empowering potential.

As briefly discussed in the chapters on justice and reconciliation, some of the victims we interviewed demonstrated a certain technocratic understanding of these concepts that assumed that justice and reconciliation could only be achieved

⁸⁵ Reference anonymised.

through the intervention of third parties. For example, a male civil party from Pursat province elaborated that when people come and train them on reconciliation, then they can be reconciled (IN240), while others even claim that there can be no reconciliation if no-one trains them (IN1671; IN739; IN2951). While this can be interpreted as demonstrating a certain passivity of the individuals, a more positive interpretation would be that this allows the interviewees to place the responsibility for reconciliation on third parties. This places the burden on having to reconcile away from the victims, removing a lot of the implicit or explicit pressure built on victims to reconcile during transitional justice processes.

Some civil parties have been **quite disappointed with the degree to which they can actually participate**. A transitional justice professional posited that being a civil party was “extremely powerful,” “potentially revolutionary,” but also extremely limited and as such can even raise more questions or problems to civil parties than without participation.⁸⁶ For example, a civil party representative expressed that “I thought that I would get justice. I would have guaranteed the right to express my thoughts. But in the end, I don’t have full rights to express my thoughts, receive information, nor request anything.”⁸⁷ While some people do indeed gain voice through the projects – albeit to tell their story, less to critically engage with the transitional justice process – others only become aware of their own limitations as an individual. One male Vietnamese ethnic minority civil party from Kampong Chhnang province stated that in order for him to voice any demands, he needed the support of an organisation because he could not himself directly approach, as an ordinary citizen, those who hold the power to address his concerns (IN9999).

Very much related to the last point, some actors seem to **marginalise victims** implicitly in some transitional justice projects. For example, a male civil party representative told us about the opening at Tuol Sleng Genocide Museum of a memorial *sdop* dedicated to the victims at Choeung Ek killing fields:

“ We knew that there would be a religious ceremony after the launch, but the organiser, the VSS, did not invite us to participate or perform the ceremony, like offering some money for the monk. We already prepared everything, but they did not allow us to participate. Everyone was so disappointed since I had prepared everything for the ceremony and they did not allow us or invite us to participate. [...] They made us sit on the stage, but they did not allow us to [go to] the *sdop* [stupa]. [...] I was disappointed. I didn’t know why we were invited. We were just sitting there like puppets.”⁸⁸ ”

Practical Limitations

Furthermore, there are also some more practical limitations to victim participation. While empowerment is certainly used as a buzzword, one Cambodian NGO staff member suggested that most projects in transitional justice did not actually empower the victims, even civil party participation at the ECCC. Instead, he suggests that there is actually a **strong focus on their suffering** that disempowers people and focuses on their passive victimisation; also there is a focus on very specific issues that are relevant to the court.⁸⁹ This would imply a certain silencing of other kinds of victimisation and thus disempowerment of those who have suffered from these.

⁸⁶ Reference anonymised.

⁸⁷ Reference anonymised.

⁸⁸ Reference anonymised.

⁸⁹ Reference anonymised.

Furthermore, an international consultant to a local NGO suggested that there is also a **geographical disempowerment**, as only victims of certain regions will be offered projects because NGOs will not work in areas that are perceived as too 'backward' as it is uncomfortable for the staff.⁹⁰ While this is certainly not the case for all NGOs, it demonstrates well how victims are afforded differing opportunities according to arbitrary criteria such as their location, which in turn affects their access to justice.

Finally, the actual **sustainability** of empowerment processes is not always thought about in project design, according to the same international consultant; this means that individuals may be empowered in the moment, but it remains questionable how this empowerment can last and what kind of long-term effects it may have.⁹¹ Relating to this, an international consultant to a local NGO questioned whether it was even possible to empower other people at all, or if this was a process they needed to go through themselves.⁹²

Conclusions

- As a prominent buzzword, empowerment is a key aim of victim participation in transitional justice. Indeed, empowerment occurs both at the community level as well as in many ways at the individual level, both in ways designed by transitional justice professionals and in more contentious ways that challenge the system itself.
- The most prominent ways in which victims were empowered through transitional justice projects were by having their mental health strengthened, gaining self-confidence in speaking about their own stories, acquiring higher knowledge on the processes they were participating in, and becoming more articulate in how to discuss these issues in ways expected within the transitional justice process.
- Furthermore, there were forms of more contentious empowerment in which victims of the Khmer Rouge gained enough confidence and competence to articulate their demands against the transitional justice institutions which were supporting their participation. These included submitting petitions, organising protests or boycotting the proceedings if civil parties felt they were not in the interests of justice for them. While this may be perceived as a challenge to their work by some transitional justice professionals, some also perceived it positively as a form of emancipation, particularly in the Cambodian context in which confrontation tends to be avoided.
- Severe limitations also existed regarding empowerment as some victims perceived that there are tacit or explicit expectations by some transitional justice professionals that victim participation should passively participate, rendering their voices silent in some situations, marginalising them in some processes and prohibiting the empowering effects of participation to unfold in others.
- The more strongly people participated in the transitional justice processes, the more they also became empowered by them, but also the more aptly they could vocalise their critiques of the system.

⁹⁰ Reference anonymised.

⁹¹ Reference anonymised.

⁹² Reference anonymised.

10

REPARATIONS AND HOPES FOR THE FUTURE

439

Survey participants
(referred to as
“respondents”)

This section explores the perceptions of victims of Khmer Rouge concerning reparations. First, the desired or expected form(s) of reparations vis-à-vis the reparation regime at the ECCC will be discussed along with the satisfaction or lack thereof. Second, the knowledge or awareness of the reparations projects of the ECCC in Case 001 and 002/01 will be discussed followed by victims’ perceptions of and satisfaction with those projects. Finally, the victims’ hopes for the future regarding reparations and other issues will be presented.

10.1. Perceptions on Reparations

65

Participants of the
in-depth interviews
(referred to as
“interviewees”)

In a more victims-oriented transitional justice process, reparations are viewed, in line with the United Nations Basic Principles on the Right to Remedy and Reparation, as a core element to redress mass human rights violations and to deter from future violations (Sperfeldt 2012b: 458; Gillard 2003: 530). The view was shared by most of our respondents and interviewees that reparations were essential to compensate for their experience during the Khmer Rouge regime. The perception on the forms of reparations was varied, however, among the survey respondents and interviewees. According to the Internal Rules of the ECCC, civil parties have the right to claim for moral and collective reparations⁹³ in which “moral reparations mean to repair moral damages rather than material ones and collective as confirming the unavailability of individual financial awards” (see Case 002/01 Judgement §1115). The VSS was assigned to be in charge of identifying, designing and implementing the judicial reparation projects and non-judicial measures in cooperation with the lead co-Lawyers and civil party lawyers and external partners, i.e. donors and NGOs (see ECCC, Internal Rule 23(3)(b), Revision 9 and Rule 12 bis). The non-judicial programmes and measures were introduced after a revision of the Internal Rules in February 2010, after the Court’s first reparations decision in Case 001, and were conceived to address the broader interests of victims of Khmer Rouge beyond the scope of civil parties at the ECCC (see ECCC, Internal Rule 12bis(4), Revision 9).

10.2. Types of Reparations

The survey and in-depth interviews provide insights into the perspectives on different types of reparations. First, almost all survey respondents agreed that it was important to provide **symbolic (moral) reparations** to Khmer Rouge victims (93.9%), reiterating the emphasis of addressing the interests of all Khmer Rouge

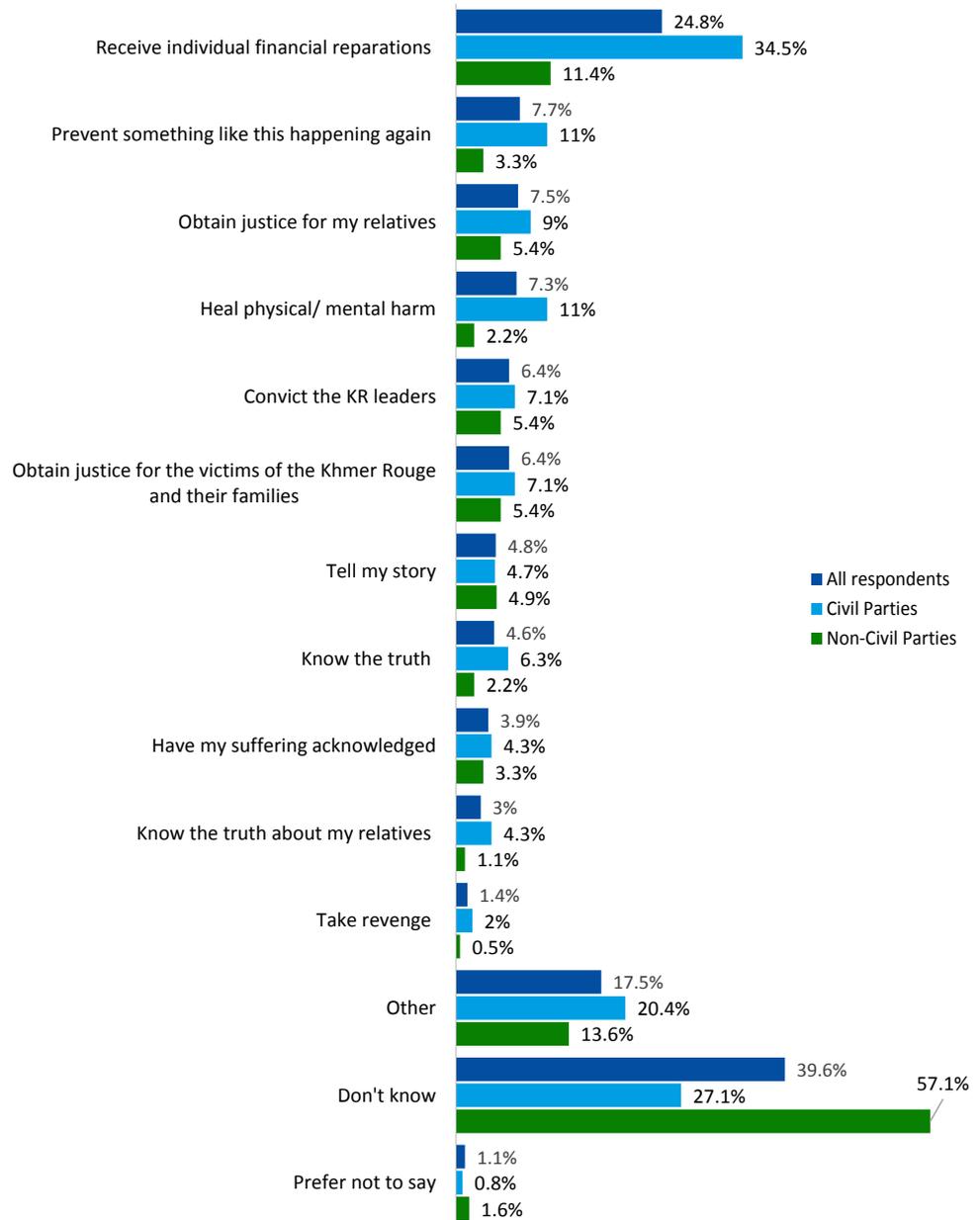
⁹³ ECCC Internal Rule 23 (1), Revision 9. Available at: <https://www.eccc.gov.kh/en/document/legal/internal-rules> (last accessed 18.10.2018).

victims beyond the scope of a civil party role at the ECCC. Respondents were also asked what should be done today as reparations for the victims of Khmer Rouge victims. This was framed as an open question, which allowed respondents to use their own words to express what they wanted as reparations and enumerators categorised them as such. When asked in general what should be done today as reparations for the victims of the Khmer Rouge, nearly a quarter of the survey respondents indicated **individual financial reparations** as their desired measure (24.8%). It was striking that 34.5% of civil party respondents agreed to this, compared to only 11.4% of non-civil party respondents. Individual financial reparations were similarly reported as the most or one of the most appropriate measures indicated by the victims in previous research (see e.g. Kirchenbauer et al. 2013, 38; Pham et al. 2011a, 35; Stammel et al. 2010, 35). One out of five survey respondents also stated **other forms of reparations** (19.9%), i.e. symbolic reparations (*sdop* and memorials), and welfare services (hospitals, schools, elderly care and infrastructure such as roads and bridges). Two out of five respondents notably could not suggest what they wanted as reparations for themselves today (39.6%), predominantly those who were less involved at the ECCC, namely civil party applicants in Cases 003 and 004, complainants, rejected civil party applicants, NGO participants and non-participants.

On the other hand, more than half of the respondents considered financial reparations to be inappropriate for victims because the loss of life could not be compensated with money (57.1%) and nearly two-thirds believed that individual reparations were not realistic since there were too many victims (62.9%). Several interviewees from in-depth interviews reaffirmed that the harm caused by mass crimes could not be repaired or compensated (i.e. the loss of their family members) and they sometimes could not even think of an “appropriate form of reparations” for their experiences during the regime (IN2365). Some even believed that reparation, regardless of its form, did not offer any concrete meaning or was no longer necessary for them as they “did not want anything” and observed “just let it be.”⁹⁴

⁹⁴ Recorded open questions of the survey (12 respondents).

Figure 10.1: What do you think should be done today as reparations for the victims of the Khmer Rouge regime? Reparations to...



*Respondents were able to provide multiple answers.

Across all categories, the survey showed that the economic situation of the survey respondents was not the sole determining factor but did indeed play a significant role in making a decision to seek for individual financial reparation. Respondents who felt that they did not earn enough to make a living were statistically significantly more likely to mention individual reparations when asked in an open question what they think should be done today as reparations for the victims of the Khmer Rouge regime than those who indicated in the survey that they earned enough for a living and/or earned enough to save some money.⁹⁵

These findings on the types of reparations desired by victims of the Khmer Rouge regime are also reflected in the in-depth interviews. Regardless of the collective and moral reparations granted by the ECCC, more than one third of interviewees from in-depth interviews reiterated their desire to have **individual financial**

⁹⁵ Chi² = 7.635115, p < 0.05.

reparations as a redress for their experiences, i.e. deprivation of rights or their losses during the Khmer Rouge regime. Civil parties persistently aspired to receive individual financial reparations, not necessarily only out of the motivation for economic prosperity and regardless of the amount possibly provided. This is what a male civil party representative from Kandal province said:

“The truth is that the civil parties want individual reparation. It doesn't matter how much as long as it is an individual reparation. [...] Not that we want that money to become rich. But the tribunal said there will be no individual reparation”
(IN1629).

Related to the concept of social justice, reparations, in conjunction with economic, social and cultural rights, aim “to redress the past harms and to transform life in the future” (Roht-Arriaza 2014, 11). In a more rights-based approach to transitional justice, victims should not only be recognised as victims, but also as rights-holders, especially with regards to economic, social and cultural rights (de Greiff 2016, 19). A few interviewees demanded individual financial reparations specifically for their private material loss during the regime, i.e. to build a new house, whilst others resorted to a more abstract meaning of individual financial reparation. One in five interviewees reiterated the significant role of Buddhism in restoring their inner peace through performing **religious ceremonies** for their deceased family members. Religious ceremonies are particularly crucial in accordance with religion and tradition to send off the spirit of the deceased, even more for the wandering souls of their deceased family members. The religious persecution and total abandonment of traditions during the Khmer Rouge made the necessary traditional ceremonies impossible. As such, their culturally prescribed demands of religious ceremonies to be performed by the surviving family members must be performed today. One male civil party from Phnom Penh province, who lost both of his parents, elaborated:

“Our tradition is that the one who is alive always needs to perform religious ceremony for the deceased. Thus, money is very important. We cannot perform religious ceremony without money. When we said something like this, it seems like it is all about money, money, money. It does not mean that I want that money to be rich. I just want to pay respect for the deceased, for them to feel at ease”
(IN201).

On the other hand, half of the interviewees across all categories, except non-participants, advocated for **collective reparations**, which were beneficial to all victims across the country, i.e. stupa or memorials, health care services or hospitals, schools, infrastructure (bridges, roads, canals, etc.) and retirement homes or elderly care. Among many forms of collective reparations, the construction of **stupa or memorial** (or known as *sdop* ស្តុប)⁹⁶ assumed a meaningful and symbolic role for victims, in particular civil parties, in light of the acceptance of the limited reparation scheme provided by the ECCC. The appeal of the construction of stupas or memorials ties in closely with strong religious and cultural beliefs in Cambodian society, which could serve as “a focal point of ceremony and social life” (Jasini 2016, 45). A number of interviewees in the in-depth interviews considered stupas

⁹⁶ In Buddhism, stupa is a mound-like structure, mainly used to store the remains, the ash, and for the families to pray to the spirit of the deceased; *sdop* is dedicated to the same purpose, but more for community practices.

to be an appropriate form of moral reparation and memorialisation, as a male civil party representative from Kampong Chhnang addressed:

“Normally, when we talk about reparations, they want reparations for their respective family like money. But I would not think so. I would share the information that there is no individual reparation, but only collective and moral reparation. The reparation is for building roads, schools and *sdop* [stupa] as such. There is one *sdop* in my area here. It can also be a statue and that we can request. Moral reparations are to make us feel at ease” (IN508).

Others dissented, with some interviewees arguing that stupas or memorials did not respond to their expectations and did not in any way contribute to achieving justice for them. One male civil party representative from Siem Reap province stated:

“They give reparations by building a *sdop* [stupa] and told us to go to do a religious celebration. Every time there is any memorable ceremony for those who passed away, it costs us money to do so. Thus, we lost benefits from this kind of reparation” (IN1452).

With regards to the link between the past harms and the transformation of the future, several interviewees firmly appeal for socio-economic support, particularly **health care services** that would be available, accessible and “free of charge” (see e.g. IN733; IN1638; IN2673). More importantly, interviewees claim this as a compensation for their health “which was destroyed by the Khmer Rouge regime due to the lack of food and medical care” and the effects on their mental health, resulting in displays of fear or of the *baksbat* symptom (see e.g. IN1064; IN2508). Interviewees also valued reparations for their possible deterrence effect and their contribution to non-recurrence of human rights violations through the **education** of younger generations. Interviewees, for instance, argued that education would help “to prevent them from committing such things in the future or from leading the country in the wrong direction again in case they have a chance to lead the country” (IN240) and thus “they would not have to experience the same thing again” (IN1958).

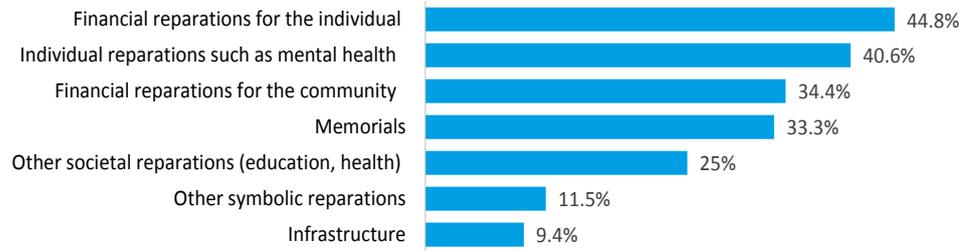
When asked about who the beneficiaries of reparations should be, the survey respondents predominantly believed that reparations should be provided to the **community as whole** (60.6%) whilst about a third advocated for **individuals** (38.3%). These numbers reflected a similar trend of prioritising the community as beneficiaries of reparations to that observed in previous surveys (see e.g. Kirchenbauer et al. 2013, 39; Pham et al. 2011a, 36; Sperfeldt et al. 2016, 59). Our in-depth interviews also confirmed the notion of “collective harm or injury,” a nationwide victimhood during the regime (Sperfeldt 2012b, 472), whereby many interviewees believed that reparations should be given to all victims across the country instead of only to civil parties at the ECCC. A few interviewees, however, contended the different levels of suffering or victimhood of their exclusive community of civil parties, observing that some suffered more than others and therefore they should be entitled to be compensated accordingly. This was raised, for instance, by a male civil party from Phnom Penh:

“There are millions of victims. It is very hard to solve. But the VSS selected those with priority who suffered more than others. Then, all the civil parties should be prioritised. I don’t mean for personal benefit, but in principle, it should be this way” (IN201).

10.3. Expectations of Civil Parties for Reparations

In the particular context of civil parties at the ECCC, one imperative reason, amongst others, for joining as a civil party at the ECCC is arguably to obtain redress and seek reparations (Jasini 2016, 24). Among civil party survey respondents, three-quarters revealed that they expected the ECCC to grant them reparations for their suffering during the regime when they first applied to be civil parties at the ECCC (77.3%) and individual or collective financial reparation was the main form of reparation they first expected (individual: 44.8%; collective: 34.4%). Memorials as a form of reparation was also among their expectations (33.3%).

Figure 10.2: What form of reparation did you expect when you applied to be a civil party at the ECCC?



*Civil Party Respondents were able to provide multiple answers.

A few interviewees in the in-depth interviews viewed reparations as more than compensation for their experiences during the regime, something with special meaning for them. Some perceived reparations as something that the ECCC should “leave behind” or establish as a **legacy** of the ECCC for Cambodia as a whole. After expressing his disappointment with the empty promise of the court on collective reparations for civil parties at the ECCC, one male civil party representative from Kampot province stated that his “last hope” was to request the creation of a **foundation** that could benefit all victims:

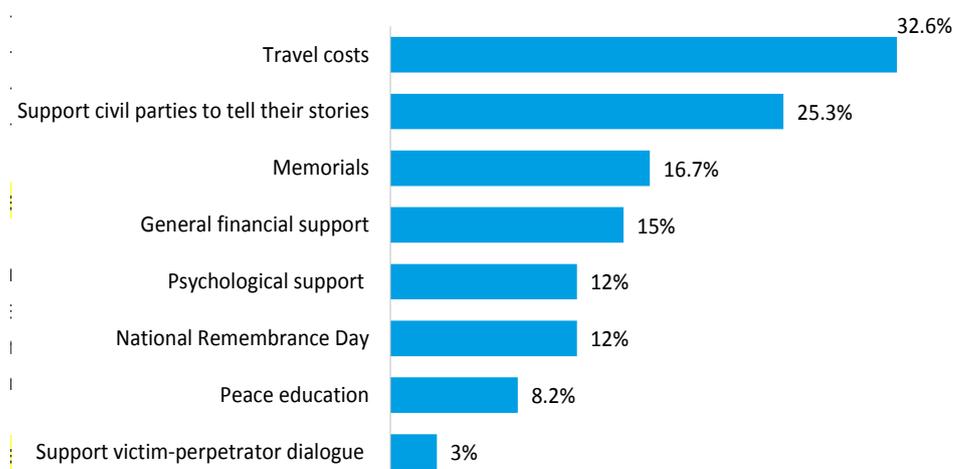
“This is my last hope. [...] I requested the court to establish a foundation for the victims and civil parties. It is very important; if there is no individual reparation, at least there should be a foundation that will be sponsored by both national and international organisations with the government. This foundation package, if possible, should be established at the court and it should be the government’s responsibility. [...] If this foundation is established, it would be a legacy for the future generation” (IN01).

Victim participation per se, as civil parties and/or civil party representatives, was considered by a few civil party interviewees to be an *effort* or “**struggle**” for more than a decade (see e.g. IN2411; IN1638; IN508); therefore, they believed that such undertakings should be recognised and/or compensated accordingly by providing

the reparations requested. Furthermore, reparations were also perceived to be one of the main factors in determining whether justice and/or reconciliation had been achieved fully or to a certain extent for the victims, namely civil parties. A number of interviewees perceived that justice could only be achieved through the provision of reparations; otherwise, with no reparations, or a mismatch between their expectations and the reparations granted by the ECCC, there would be no justice. Such perceptions were equally applied to the achievement of reconciliation, in which the absence of reparations was considered to be a limitation of reconciliation. The results from the survey and in-depth interviews reflected dissatisfaction with the “too restrictive reparations” measures provided by the ECCC, i.e. collective and moral reparations, and its lack of creativity and flexibility for reparations for victims of mass atrocities (see e.g. Jasini 2016, 24-25; Sperfeldt 2012b, 464).

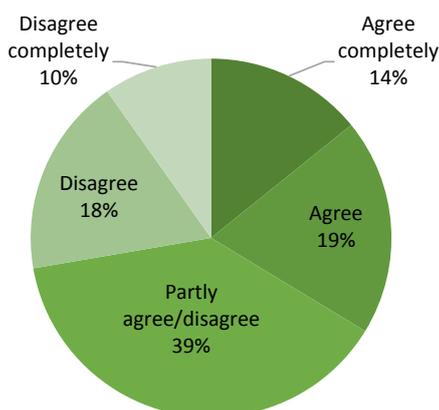
In the survey, we asked the civil parties specifically in our sample with which aspects the ECCC should provide for civil parties today. Almost half of the civil parties surveyed mentioned financial support, in general and for travel costs (47.6%) followed by support with telling their stories (25.3%) and symbolic support such as memorials and a national remembrance day (28.7%). Another survey item related to whether it was more important to provide reparations for victims of the Khmer Rouge regime or for victims of human rights violations that are happening today. This question was asked to all survey respondents, not only civil parties. One-third of the survey respondents stated that it would be more important that reparations are given to victims of current human rights violations, rather than to victims of the Khmer Rouge regime (33.8%), while more than a quarter disagreed, either completely or a little, with this statement (28%). More than a third partly believed that the reparations should be given to both (38.7%).

Figure 10.3: In which of the following aspects should the ECCC provide for civil parties today?



*Civil Party Respondents were able to provide multiple answers.

Figure 10.4: It would be more important that reparations are given to victims of human rights violations which are happening today, rather than to victims of the Khmer Rouge regime.



10.4. Awareness and Perceptions of Reparation Projects of the ECCC

Civil parties are direct and indirect beneficiaries of various judicial reparation projects and non-judicial measures of the ECCC. Civil parties under the Internal Rules of the ECCC have the right to seek collective and moral reparation through expressing their opinions on proposed reparation projects (see ECCC, Internal Rule 23(1), Revision 9). In Case 001, the ECCC granted 2 reparation projects to the civil parties and 11 reparation projects in Case 002/01 (see Case 001 Judgement 2010; Case 002/01 Judgement 2014).

Despite the consultation and implementation of the reparation projects of the ECCC by the VSS, the awareness of reparation projects of the ECCC was low among the respondents of our survey, including among civil party respondents. Of all thirteen reparation projects of the ECCC in Cases 001 and 002/01, one out of ten survey respondents was aware of the project to **construct a memorial in Phnom Penh to honour the victims of forced evacuation** in Case 002/01 (10.5%). The implementation of this reparation project, the display of the statue, was conducted during the time of the survey and therefore could arguably have influenced the answer of the respondents in this regard. Only very few respondents were aware of the twelve other projects provided by the ECCC. Four in five survey respondents said they did not know about any reparation projects of the ECCC (81.4%), including 60% of the civil parties who had participated in one or more reparation projects recorded by the VSS. Such a result is not strikingly uncommon as more than 90% of civil parties were not aware of the reparation projects in previous research (see Sperfeldt et al. 2016: 57). Furthermore, 3.2% of the civil parties we surveyed were aware of the **National Remembrance Day** that was recently established on May 20th by the ECCC and the government.⁹⁷ One male civil party representative observed:

“ How could I say it is important when they [the ECCC] never informed me! They said it is important for civil parties. Since the creation of 20th May, the judges decided that it was the day to pay respect to those deceased during the Khmer Rouge, have they ever informed us about that and gathered [us] together for the event? Even as the ECCC exists now, they never told the civil parties to join the 20th May ”
(IN2411).

The survey also provides insights into the perception of and satisfaction with reparation projects aiming to redress past harms. Among those who were identified

⁹⁷ As of September 2018, National Remembrance Day, May 20th, was declared by the Royal Government of Cambodia to be a national holiday across Cambodia in remembrance of the Khmer Rouge regime; see ECCC, Nuon Chea & Khieu Samphan, Case 002/01 Judgement, 7 August 2014, ¶1126.

Other reparation projects were named to an even lesser degree: inclusion of a chapter on forced population movement and executions at Tuol Po Chrey within the Cambodian school curriculum (0.7%); construction of a peace learning centre in Battambang province (0.7%); inclusion of the names of the Civil Parties in Case 001 in the final judgment, and their deceased family members (0.7%); publication of a booklet explaining the judicial process before the ECCC, with a focus on documenting the crimes in Case 002/01 and an explanation of civil party participation (0.7%); publication and distribution of Khmer-language editions of the Case 002/01 verdict (0.7%); compilation and dissemination of statements of apology made by Duch throughout the trial acknowledging the suffering of victims (0.5%); permanent public exhibitions of photographs and other documents of civil parties and other survivors (0.5%); mobile exhibition and education projects to inform survivors and post-war generations about crimes committed during the Khmer Rouge era (0.5%); inclusion of civil party names on the ECCC website (0.5%); testimonial therapy for the victims of crimes in Case 002 (0.2%); and facilitation of self-help groups for victims of forced transfer (0.2%).

as being aware of any reparation projects of the ECCC, two-third stated that they were satisfied with the mentioned forms of reparation (66.7%), including 17.2% who were very satisfied. When all respondents were further asked whether they had participated in any reparation projects or the project they mentioned, nearly half said they had not participated in any of the projects (46.7%) and one quarter did not remember whether they had participated in any reparations projects (26.1%). Among those reported to have participated in a reparation project (27.3%), the majority mentioned the construction of a *sdop* at Tuol Sleng. Of those who are known to have participated in reparation projects from the participation lists, 56.4% indicated themselves that they had participated in reparation projects, while about a quarter of these participants indicated that they had not (25.6%) and a further fifth could not remember (17.9%). This could hint at the difficulty many individuals seemed to have with differentiating between reparation projects and other events. Of the respondents who had participated in reparations projects and realised this, many had positive impressions of the reparation projects. A large majority believed that it helped improve their life (70%) and nearly three quarters thought that it contributed to positive changes in their community (73.7%).

For meaningful victim participation in a transitional justice process, especially in reparations, victims should be included not only in the implementation, but also in the design phase of the process (Sperfeldt 2012b: 475; Suhkova 2011, 2-3). When asked about the **consultation for reparation projects**, two-thirds of civil party respondents in our survey said they were consulted on reparation projects (66%) and almost all of these believed that their opinions were taken into account for the decision on reparation projects by the ECCC (90.4%). Nevertheless, in the in-depth interviews, many civil parties showed discontent towards the ECCC concerning consultation and implementation of the reparation projects. Several civil parties asserted there was a discrepancy between their expected reparations and the reparation measures provided by the ECCC, i.e. between individual reparations and collective reparations, respectively. A male civil party representative from Kandal province explained his disappointment:

“All the things civil parties requested were not provided. For me, as a civil party, when I request anything, there is no one to support me. In the past, there used to be ADHOC that always helped us as we know nothing about the law, but now ADHOC already stopped working on that. So, I have no one now. That’s why I said there is no justice for me”
(IN1629).

He further highlighted a certain trend towards **“NGOisation,”** or a sense of bias that the ECCC as well as donors exhibited toward certain NGOs at the expense of the victims with regards to the reparation projects:

“Among all the proposals that we requested, the tribunal granted nothing. If that organisation [NGO] requested any reparation, the tribunal would agree with it. But for us, I want to emphasise that not even one out of 10 or 15 requests we made was accepted; this is what I want to say. The civil parties have no power. We are just a toy of others, in short. [...] I want to meet the donors and tell them to reconsider their intention carefully before they give donation to any organisation. There should be some benefits for the civil parties. If there aren’t any benefits for the civil parties, there wouldn’t be any justice”
(IN1629).

The critical, arguably predominant role of the NGOs in the implementation of the reparation projects of the ECCC produces this impression of “NGOisation” of remedial measures supported by the ECCC and donor countries. The limited outreach and quality of information provided to the victims and civil parties concerning the reparation measures and the agents of implementation could account for prompting such resentment. This suggests that the adoption of an outcome-oriented transitional justice process could undermine the credibility of the victim-centred and victim-sensitive approach of transitional justice in the context of Cambodia.

The quality of inclusive and meaningful victim participation in reparation projects was thus questioned in light of growing dissatisfaction of the beneficiaries vis-à-vis efforts to avoid unrealistic expectations and unnecessary expectations of the victims within the limits of transitional justice process (see e.g. de Greiff 2016, 13; Sperfeldt 2012b, 488). Reiterating the nexus of reparations and justice, the mismatch of the reparation expectations and reparation schemes of the ECCC triggered serious doubts in the in-depth interviews regarding the credibility of the ECCC in delivering justice for the victims of the Khmer Rouge. A number of interviewees at this point arrived at a conclusion that the reparations within the framework of the ECCC were a myth, nothing beyond mere talk and empty promises. A male civil party from Kampong Chhnang province explained:

“ They [the ECCC] said that they will give us reparations. They said there will be this kind of reparation, that kind of reparation, but there isn't any. [...] They will not give an individual reparation but they will give us collective reparation like building *sdop* to commemorate the spirit, build the schools and roads, for example. They can only talk like that. But I don't see any progress. When they talked about it, it seemed like they were finding justice for us. But there are no actions. They could just talk. Speaking is always right, but there isn't any progress yet. This is all ”
(IN9999).

10.5. Hopes for the Future

In an effort to deal with the past, it is essential to go beyond a backwards-looking approach to transitional justice, and embrace a forwards-looking approach to transformation (Gready and Robins 2014, 340). When asked in general in an open-question what could be done to support them in dealing with the Khmer Rouge past, many survey respondents stated **reparations**, either individual financial reparations or collective reparations such as infrastructure, hospitals, education, and memorials.⁹⁸The importance of peace and guarantees of non-recurrence of violence along with the pursuit of justice and more prosecutions were also mentioned by a number of respondents.⁹⁹ When discussed their hopes for the future, reparations once again were considered to be the most prominent measure in dealing with the past. When asked to choose from a pre-given set of answers (see graph below) which measures were most helpful or most important to deal with the Khmer Rouge past, 64.7% of survey respondents chose individual (financial) reparations as an answer while 70.6% of civil party respondents also reiterated the significance of individual reparations. Surprisingly, three out of five

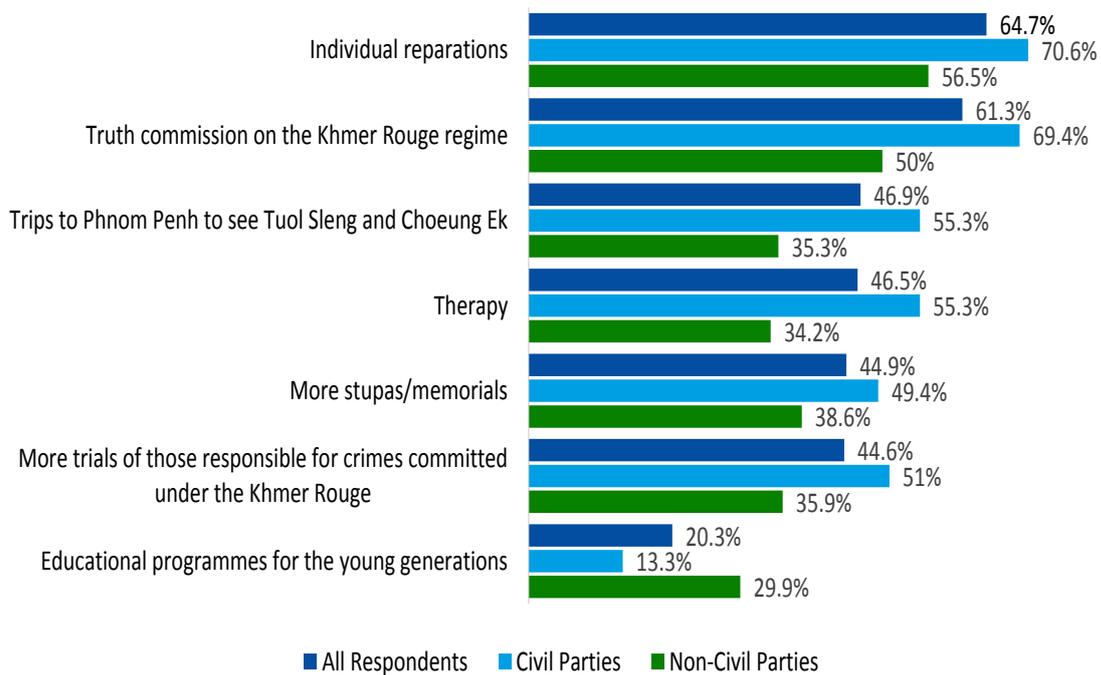
⁹⁸ Recorded open questions of the survey (106 out of 213 respondents).

⁹⁹ Recorded open questions of the survey (63 out of 213 respondents; 22 out of 213 respondents).

Reparations

respondents underscored the role of a **truth commission** on the Khmer Rouge regime (61.3%), underscoring the understanding of the Khmer Rouge regime as extremely secret (see e.g. Chandler 2000). More importantly, more than two-third of civil party respondents strongly believed in the truth commission to deal with the Khmer Rouge past (69.4%), thereby possibly questioning the role of the ECCC in ascertaining the truth in a way that was satisfactory for them. Many respondents also requested trips to Phnom Penh to see Tuol Sleng and Choeung Ek, therapy, more memorials and more trials to help them deal with the past and, to a lesser extent, educational programmes for the younger generation.

Figure 10.5: Which of these measures would be most helpful/are most important to you to deal with the Khmer Rouge past?



*Respondents were able to provide multiple answers.

Conclusions

- Reparations were generally believed to play an essential role to redress mass atrocities, although some believed the harm could not be repaired; yet the perception on the forms of reparations deemed appropriate to address such issues were diverse among survey respondents and in-depth interviewees.
- At the core, the demand for individual versus collective reparations remains controversial. Individual financial reparations were viewed as a way to compensate the experiences and economic loss during the Khmer Rouge regime; more importantly, they were aimed at addressing the religious belief of the need to send off the spirits or memories of the deceased family memories through religious ceremonies. Collective reparations were also perceived to be a significant remedy for collective harm of the victims, with many participants of this research demanding e.g. stupa/ memorials, schools, hospitals, elderly care and infrastructure.
- Conceptions of reparations and so-called appropriate forms of reparations after mass violence were subjective, and the provisions of reparations (or lack thereof) were closely associated with the perceived achievements of justice and reconciliation in the transitional justice process or its specific meanings for civil parties.
- Despite being consulted on reparations projects, the level of knowledge about reparation projects in Cases 001 and 002/01 was very low among civil party survey respondents; the civil parties who were aware of the reparation projects were, however, satisfied with them and their positive impact on their community, as they believed their opinions were taken into consideration, whilst civil parties from the in-depth interviews were more critical of the efforts of the ECCC in responding to their expectations of reparations.
- Yet, the research showed a mismatch between the forms of reparation provided by the ECCC and the expectations of the victims, mainly civil parties at the ECCC, resulting in dissatisfaction and disappointment as well as unintended limited awareness/interest of the ECCC reparation projects already implemented or being implemented.
- When discussing their hopes for the future, our respondents and interviewees also emphasised reparations, both individual and collective, as the most important measures for dealing with the past; other hopes included a truth commission, peace and non-recurrence measures.

11

POLICY RECOMMENDATIONS

This report has presented and discussed the perceptions and opinions that our sample of victims of the Khmer Rouge have regarding justice and reconciliation, the transitional justice process and the ECCC specifically. Rather than restate the arguments made throughout the report, already briefly summarised at the end of each chapter, we here turn to what we believe can be learned from our research findings for other contexts, as well as for various actors in Cambodia, the ECCC, the government, NGOs and donors.

11.1. Recommendations for Other Contexts: Lessons Learned from Cambodia

Provide the Necessary Pre-Conditions for Victim Participation

- Transitional justice actors should **provide conditions for meaningful participation from the beginning of the design stage**. Adequate attention and funding has to be dedicated to building **trust** and guaranteeing the **security** of victims to enable their participation, particularly assuaging any fears that victims may have about participating, no matter how realistic these are. This includes **outreach that is accessible to and understandable for victims** to explain what participation means in terms that are appropriate to their educational background, assistance throughout the application process as well as **psychosocial support**. These efforts need to be implemented before the start of a transitional justice process, but also continued throughout the process in a regular and frequent manner.
- Transitional justice actors should not **rely only or extensively 1) on pre-existing networks of lawyers, NGOs or other transitional justice actors** invested in outreach for victim participation, nor **2) on the multiplier effect of victim participation**, recruiting victims through other victims' social networks. Whilst both of these forms of recruitment can support outreach efforts, they can also exacerbate pre-existing forms of privileged access to victim participation as well as introduce or reinforce the marginalisation of certain groups in their access to justice.

Outreach and Communication Before and Throughout the Process

- Meaningful outreach is at the centre of victim participation and transitional justice actors should **ensure that outreach systematically reaches all potential beneficiaries**, irrespective of geographic or technological barriers.

- **Outreach must be tailored to its target audience**, occurring in accessible locations, drawing on formats and language that are familiar and understandable, and finding the right balance of comprehensive provision of information and meaningful understanding, in order to encourage victims to take a continued interest. Taking into account the challenges of victims' old age and bad health, as well as diverging education backgrounds, cultural expectations and experiences with political or civil society events, it may be difficult to find formats that are suitable for all victims; however, efforts at a tailored programming should be made, e.g. also utilising media such as television and radio, as well as – in an increasingly digitalised world – social media.
- **Awareness about the transitional justice process should be raised not only with the victims but also in the broader population, particularly the younger generations.** This outreach should go beyond information and provide understanding and awareness, as well as recognition across society for victims' experiences in the past. This awareness should foster dialogue and a critical reflection of what these processes can mean for society today. Other relevant stakeholders to be sensitised include the government, donors, academics and civil society organisations.
- **Victim participation requires sustained engagement over time.** A decrease in outreach activities and opportunities for victim participation towards the end of a transitional justice process, due to a lack of funding caused by donor fatigue or for any other reasons, can retroactively threaten the achievements of a transitional justice process and lead to significant disengagement of the supposed beneficiaries of the process.

Inclusion of Victims

- **Access to transitional justice should be as inclusive as possible**, not marginalising anyone due to their geographic location, gender, ethnicity, crime suffered, access to patronage networks, political party connections or any other reason.
- **Victims should be consulted from the beginning, already in the transitional justice design phase**, not merely in the implementation phase, in order to guarantee meaningful participation. Including victims can lead to more creative approaches that break out of the mainstream transitional justice templates. Failure to include victims in designing transitional justice, however, can lead to disappointment later in the process, when certain forms of participation or reparation are not possible within the system that is in place, or to a possible marginalisation of other perspectives that may be rendered invisible.
- **Involvement of civil parties in reparations consultation process.** A more inclusive and informed consultation process is needed, especially when addressing concerns regarding reparations. As such, all civil parties must have equal opportunity and ability to voice their claims for reparations, again avoiding privileging any groups systematically and avoiding making unintentional empty promises to the civil parties.
- **A gender-sensitive approach to victim participation is essential** for ensuring meaningful, inclusive and equal engagement and opportunities, particularly in contexts with patriarchal structures that otherwise marginalise

women. Furthermore, projects can support victims in gaining agency as survivors or even provide them new roles in society, particularly for those acting as intermediaries.

- **Victims' perceptions of their victimhood should be taken seriously, acknowledging also violations of economic, social or cultural rights and conceptualisations of justice linked to social justice, cultural and religious beliefs.** It is important to acknowledge the socio-economic and cultural nature of some of the crimes committed, including those crimes addressed in the transitional justice process; as such, socio-economic and cultural remedies should also be proposed to address these violations. Furthermore, remedies of a socio-economic or cultural nature should be considered also for violations that are not necessarily of social, economic or cultural rights, but that could nonetheless provide a more adequate remedy than conventional approaches.

Managing the Process of Victim Participation

- Working with **intermediaries (e.g. civil party representatives or focal points)** is not only efficient but is also valued by victims. Intermediaries can be involved in **relaying information** from the tribunal, but also provide **important support to victims during new and possibly confusing experiences** (e.g. travelling to the capital city, being in an air-conditioned room, etc.). Furthermore, being an intermediary can have an empowering effect.
- Systems of communication, e.g. through intermediaries or NGOs, which may be entangled in pre-existing or new patronage systems, should not lead to the exclusion of certain victims from participation. A follow-up is therefore necessary to ensure that victims are treated fairly and provided with equal opportunities for participation in the transitional justice process.
- **Approaches aimed at empowering victims should embrace more contentious participatory practices**, such as instances of victim contestation or protests, and of claims-making beyond the naturally limited mandate of existing transitional justice processes. These practices can be interpreted as a **positive sign of empowerment** of victims in (post)conflict contexts and should not be dismissed as merely disruptive of the process.

Collaboration of Multiple Actors

- A **division of labour between the tribunal and NGOs with complementary roles** can be helpful and mutually beneficial, but a **clear demarcation of respective responsibilities** is important in order to avoid confusion between transitional justice actors and ensure that all information is passed reliably to the participants.
- Further, a **continued and clear funding structure for long-term NGO engagement should be secured**. Only with sustained funding can NGOs provide the long-term support needed for the civil parties for the entire duration of the transitional justice process.
- As with outreach, **NGO projects on transitional justice need to be tailored to the specific needs of the victims**, ensuring they are geographically and pedagogically accessible, as well as meaningful.

- To ensure the collaboration and complementary engagement of multiple actors involved in the transitional justice process (donors, government representatives, civil society, etc.), it is important that the **space for regular contact and exchange** is provided throughout the process. This will promote mutual understanding of the others' work, enhance constructive engagement and contribute to better overall support for the victims.

Do No Harm Strategy

- **A do no harm strategy needs to be designed, regularly updated and thoroughly implemented.**
- A do no harm strategy is important in terms of **avoiding different opportunities to victims** through victim participation in transitional justice processes, particularly when this creates envy between victims. Such a strategy is also important to identify the unintended and possibly harmful consequences for victims of **decisions on who will be recognised and included as a victim in the transitional justice process, and who will not**. Rejections of victim applications to participate in the process should occur at the outset and be communicated transparently and extensively, in order to avoid that the rejection of applications for participation is understood as a delegitimisation of victim identities. Alternative possibilities for, and forms of, participation for those victims who are not formally recognised in the process should be explored.
- A do no harm strategy is important in terms of **avoiding hierarchies of victims**. This approach would necessitate 1) minimising differences between victims who are legally and formally recognised in the transitional justice process and those who are not, 2) avoiding any groups receiving distinct or privileged treatment that is not strictly necessary for the transitional justice process, 3) ensuring more transparency and fairness regarding which victims are selected for participation in the transitional justice process and making sure that intermediaries cannot abuse their positions and favour their own personal networks.
- A do no harm strategy is important in terms of **managing expectations from the very beginning about what the transitional justice process can and cannot accomplish**. A transparent communication and management of expectations can help avoid the entire process being rejected purely because unrealistic expectations were cultivated. Inclusion of victims in the design stage could mitigate these problems.
- A do no harm strategy is also important in terms of **managing expectations regarding the consultation of victims and its potential for impact**. This was particularly the case regarding reparations in our study as the consultation process created significant expectations that services and infrastructure could be delivered as a form of collective reparations, which led to disappointment as these were not provided.

11.2. Recommendations for Actors Involved in the Transitional Justice Process in Cambodia

- To solidify cooperation and enhance synergies, **representatives of the government, the ECCC, NGOs and donors should regularly meet.** This will cultivate mutual understanding of each other's work, enhance constructive engagement and lead to better overall support for the victims during the final stages of the ECCC proceedings.

Recommendations to the ECCC

- The ECCC or collaborating NGOs should continue to **provide regular and frequent outreach programmes** to allow civil parties to understand more about the ECCC, its proceedings, and its progress as well as about the reparation projects in which they are the beneficiaries. Otherwise, positive perceptions of previous achievements of the ECCC may be threatened. Outreach through television and radio appears to be relatively well received, both for victims and the younger generations.
- The ECCC should be **more transparent** in their work, especially to the civil parties who are at the core of the ECCC by explaining to the civil parties the rationale behind processes, in order to avoid negative perceptions of the international or national staff or the VSS that could question the credibility of the ECCC and undermine the trust of the civil parties in the justice process.
- The ECCC should seriously **take into consideration the ideas and expectations of civil parties in the reparation projects**, and also engage with the claims that were not addressed given the limitations of the ECCC's mandate. The ECCC should support ideas of civil parties, such as the establishment of a foundation or fund to allow victims to conduct religious ceremonies for their departed loved ones, and to cover other expenses such as health care, accident or funeral expenses.
- The ECCC should engage in **more regular contact with civil party representatives and focal points**, as their role in facilitating and disseminating information of the ECCC to civil parties is important and meaningful to the other civil parties.
- The **work of civil party representatives and focal points must be monitored and assessed** more carefully in order to avoid any irregularities or misuse of their positions, as these intermediaries can serve as a strong and meaningful facilitators of victim participation in the ECCC proceedings, yet the abuse of such a role will create a significant hindrance to meaningful and equal participation of victims.
- The ECCC should **re-think its policy on informing rejected civil party applicants about their status in terms of do no harm.** Many rejected civil party applicants have not been informed of their status and are confused and should be informed in an appropriate and respectful manner.
- The ECCC should **develop a strategy for how to deal with Cases 003/004 in a victim-sensitive way.** Many victims would like the cases to go forward and these opinions should be considered when making the decision. Should Cases 003/004 not go forward, the ECCC must communicate this sensitively and understandably to those victims who have already applied for civil party status and find some way of alternative victim participation.

- The ECCC should **issue letters of acknowledgement** to civil parties and complainants at the end of the proceedings for their contribution to the transitional justice process, as these would constitute a meaningful symbol of recognition for their engagement.
- The ECCC should take all the necessary measures to guarantee that its archives in their entirety are described and archived according to international standards and to prepare their long-term preservation and access.

Recommendations to the Royal Government of Cambodia

- The government should **take a more proactive role in supporting the ECCC**, particularly in implementing the collective reparation projects of the ECCC and providing other logistical or administrative support.
- The government should **devise educational programmes that connect students to the ECCC, as well as promote intergenerational dialogues**. These programmes should focus not only on historical and judicial facts, but much more on critical understanding and reflection of what the Khmer Rouge regime means today. Again, traditional media (such as television and radio) could be helpful, as could social media and smartphone-based interventions.
- The government should **institutionalise the legacy of the ECCC** beyond awareness raising or information sharing sessions in formal education adopted by the Ministry of Education in cooperation with the Ministry of Justice, in particular the **inclusion of compulsory study of the ECCC for students of law and other subjects, including the jurisprudence produced**.
- The government should take a proactive role in ensuring the necessary conditions for the preservation of the ECCC archives, as well as the public access to these archives after the closure of the ECCC, within the limits necessary for the respect of confidentiality and privacy. The archives of the ECCC will be central to further truth-seeking processes after the closure of the Court, and will thereby help to address the claims for truth on the Khmer Rouge regime that have strongly been put forward by the respondents in our research, including civil parties.

Recommendations to Non-governmental Organisations (NGOs)

- NGOs should **continue and expand their outreach activities regarding the ECCC**. Although trial proceedings at the ECCC are nearing their end, it is crucial that civil parties and the general population remain informed about the activities of the Court and that NGOs continue to provide opportunities for participation.
- NGOs should **expand their projects to support victims of the Khmer Rouge more broadly and continue their engagement in a sustainable way**. Victims should be considered not just as beneficiaries but as partners in order to avoid reproduction of mainstream transitional justice approaches. Counselling, Intergenerational dialogues and religious ceremonies appear to be the most meaningful projects to the victims in our sample.
- NGOs should **strive to create opportunities to improve their own capacity, particularly training younger generations in effective participation in transitional justice processes**. This is pivotal from a non-recurrence perspective, as well as for broader strengthening of civil society.

Recommendations to Donors

- Donors should **continue their financial support for ECCC outreach and victim participation programmes, as well as for NGO projects throughout the duration of the ECCC**. A sustained funding of programmes for victim participation until the end of the ECCC will increase the chances of a positive legacy of the justice process for the involved victims.
- Donors should **ensure financial sustainability of ECCC legacy projects**, as specified above in recommendations to the ECCC.
- Donors should **extend their financial support of victim programmes beyond the end of the ECCC**. This would enable NGOs to sustainably support victims in a meaningful way, particularly allowing victims to tell their stories. It appears from our study that the following programmes would be of particular value:
 - Testimonial therapy that allow victims to tell their stories in the context of counselling.
 - Intergenerational dialogues that allow victims to tell their stories to the younger generations, creating stories that their descendants can learn from.
 - Larger story-telling formats, similar to the women’s hearings, that allow victims to tell their stories to a larger audience.
- Donors should **support the establishment of a foundation or fund** to allow victims to conduct religious ceremonies for their departed loved ones, and to cover other expenses such as health care, accident or funeral expenses. This type of programme goes beyond the remit of the ECCC, but would hold particular significance for many victims.
- The donors should support efforts towards the preservation of the ECCC archives and their public access after the closure of the Court.

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