

Working Paper

How Do Donors Shape Transitional Justice in Cambodia?

Cambodia Working Paper Series

Somaly KUM

Abstract

The Extraordinary Chambers in the Courts of Cambodia (ECCC) were established in 2004 as a central transitional justice mechanism for addressing the crimes committed under the Khmer Rouge regime. NGOs have provided assistance for victim participation at the ECCC, conducted outreach to local communities and more recently supported and implemented reparation measures for civil parties.

Since the establishment of the ECCC, international donors have funded more than half of the ECCC's budget through voluntary donations, besides funding NGO projects. This paper asks what role international donors have played in Cambodia's transitional justice process. It explores how international donors have indirectly shaped the process.

This paper is based on qualitative, semi-structured interviews with current or former donor representatives. It discusses how respondents reflected on their support of and their role in shaping the transitional justice process in Cambodia.

Keywords: Donors, Khmer Rouge, Cambodia, ECCC, NGO

Imprint

Acknowledgments

The editors of this Working Paper series on Cambodia, Julie Bernath and Ratana Ly, would like to thank the Embassy of Switzerland in Thailand for their generous support to this publication project. They are also very grateful to Phalthy Hap, Christoph Sperfeldt, Rachel Killean, Natalia Szablewska and Kosal Path for providing important advice and support to authors, and to Alice Williams for proofreading this collection of papers. At the Center for the Study of Humanitarian Law, they warmly thank Champa Sy for her assistance. At swisspeace, they thank the team of the Working Paper series for their support of this project: Joschka Philipps, Elizabeth Mesok and Amélie Lustenberger.

Working Papers

In its working paper series, swisspeace publishes original contributions by staff members and international experts, covering current issues in peace research and peacebuilding. Please refer to our publication list at the end of this paper or on www.swisspeace.ch/publications.

The views expressed in this Working Paper are those of the author and do not necessarily reflect the swisspeace standpoint.

Series Editor

Joschka Philipps, Elisabeth Mesok

Publisher

swisspeace is a practice-oriented peace research institute. It analyses the causes of violent conflicts and develops strategies for their peaceful transformation. swisspeace aims to contribute to the improvement of conflict prevention and conflict transformation.

Guideline for authors of swisspeace Working Papers can be found at swisspeace.ch/publications.html

swisspeace
Steinengraben 22
4051 Basel
Sonnenbergstrasse 17
3013 Bern
Switzerland
www.swisspeace.ch
info@swisspeace.ch

ISBN 978-3-906841-19-9

© 2019 swisspeace

Table of Contents

Abstract	03
Foreword to the Working Paper Series on Cambodia	07
1 <u>Introduction</u>	13
2 <u>Transitional Justice in Cambodia</u>	16
3 <u>Overview of Donors' Support on TJ in Cambodia</u>	18
4 <u>Donors Role in Shaping TJ in Cambodia</u>	21
5 <u>Conclusion</u>	30
Bibliography of the Foreword	32
Bibliography	34
About the Authors	38
About swisspeace and the CSHL	39
swisspeace Publications	40

List of Acronyms

ADHOC	Cambodia Human Rights and Development Association
CPS	Civil Peace Service
ECCC	The Extraordinary Chambers in the Courts of Cambodia
EU	European Union
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
KR	Khmer Rouge
NGO	Non-Governmental Organization
ODA	Official Development Assistance
RGC	Royal Government of Cambodia
TJ	Transitional Justice
UK	United Kingdom
UN	United Nations
US	United States
USAID	United States Agency for International Agency for International Development

Foreword to the Working Paper Series on Cambodia

Julie Bernath and Ratana Ly, editors of the Cambodia series

The year 2019 was an important milestone for transitional justice in Cambodia. It marks both 40 years after the end of the Khmer Rouge regime in early 1979, and 15 years after the establishment in 2004 of the Extraordinary Chambers in the Courts of Cambodia (ECCC), also known as the Khmer Rouge tribunal.

On this occasion, this Working Paper series brings together a collection of papers by Cambodian early career researchers to reflect upon the transitional justice process in Cambodia. It is the result of a one-year publication project of the Center for the Study of Humanitarian Law at the Royal University of Law and Economics in Phnom Penh and swisspeace, supported by the Embassy of Switzerland in Thailand. This series aims to give more visibility to Cambodian researchers in academic writings on transitional justice. As such, it is an attempt at working against the problematic politics of knowledge production that exist in the field of transitional justice. Although transitional justice scholarship has increasingly questioned the marginalization of local voices and perspectives when it comes to policy-making and practices of transitional justice, researchers from contexts in the Global South in which transitional justice processes take place still have less visibility in, and access to, academic debates on transitional justice in comparison to their peers from the Global North.

This set of papers highlights the important achievements made in pursuing justice, accountability and reconciliation in Cambodia. It also illustrates the vast experiences that Cambodian practitioners and researchers alike have gained in the transitional justice field in the last decade and more. At the same time, the papers reflect the ways in which transitional justice inherently constitutes a long-term process. Fifteen years after the establishment of the Khmer Rouge tribunal, the authors discuss the many challenges that remain in order for the transitional justice process to truly unfold its emancipatory and transformative aspirations.

Taken together, this collection of papers speaks to key issues that, beyond the case study of Cambodia, have become central in transitional justice scholarship ever since it has taken a critical turn. The papers identify the difficulties for transitional justice processes to contribute to long-term socio-political change, at the structural level, in order to guarantee the non-recurrence of human rights violations. They highlight the need to attend to the specific socio-political contexts in which transitional justice processes unfold. The papers also point to the selectivity of formal, state-sanctioned transitional justice processes, which contrast with continuities of violence and discrimination across time that parts of the population may experience, for instance women. They shed light on the diversity of actors involved in transitional justice processes, which cannot neatly be captured by a binary distinction of international versus local, and which include not only state actors or legal professionals, but also civil society actors or donors.

Transitional Justice in Cambodia: Fifteen Years After the Establishment of the ECCC

The Khmer Rouge regime was arguably the most totalitarian of the 20th century (Bruneteau 1999). Between April 17, 1975 and January 6, 1979, the Communist Party of Kampuchea, known as the Khmer Rouge, held power over the national territory. The Khmer Rouge aimed at creating a new people and a communist agrarian utopia within the timeframe of a single generation, in a surpassing of Mao Tse Tung's policies in communist China (Ibid). Under the rule of the Khmer Rouge, an estimated 1.5 to 2.2 million people died from starvation, torture, execution, forced labour and malnutrition — at least one in five of the 1975 population (Kiernan 2003).

Given the geopolitical context of the Cold War, the involvement of foreign countries in the conflicts in Cambodia and the political interests of the regimes succeeding the Khmer Rouge, it was only in 1997 that negotiations started between the United Nations and the Royal Government of Cambodia regarding accountability for crimes committed under the Khmer Rouge regime. After protracted negotiations, the ECCC was established in 2004 with the mandate of trying the senior leaders and those most responsible for crimes committed between April 17, 1975 and January 6, 1979 in Cambodia.

Ever since its establishment, the ECCC has attracted a lot of international attention from researchers, policy-makers and practitioners. It displays unique features as a transitional justice process. First, it is a hybrid tribunal or mixed tribunal, i.e. a court of mixed staff, which applies international and Cambodian law. While several hybrid tribunals were established elsewhere, the ECCC arguably represents the most national of all (Petit 2010, 195). Second, although the scope and form of victim participation has been significantly reshaped over time at the ECCC, it grants victims the right to formally participate as parties — a first in the history of international criminal justice (Ciorciari and Heindel 2014). Victims can indeed participate at the ECCC not only as witnesses or complainants, but also as civil parties. Finally, the ECCC's mandate also includes the provision of moral and collective reparations. While the exclusion of individual and financial reparations led to frustrations from civil parties (see e.g. Williams et al. 2018, 109-120), the ECCC's provisions on reparations significantly expanded over time to include non-judicial measures developed and implemented by the ECCC's Victims Support Section with governmental and non-governmental partners.

At the time of writing, three accused persons have been tried and sentenced in separate legal proceedings at the ECCC. In Case 001, the Supreme Court Chamber sentenced Kaing Guek Eav alias Duch, the former deputy and chairman of the security centre S-21, to life imprisonment for crimes against humanity, grave violations of the Geneva Convention, murder and torture (see Soy 2016). Case 002 consists of charges against former senior Khmer Rouge leaders. In light of its complexity and the advanced age of the accused, the Case was split in two to expedite the trial proceedings. The first portion of the trial, Case 002/01, focused on a set of crimes committed during the early stages of the Khmer Rouge regime: forced transfers of the population and the

execution of soldiers of the regime preceding the Khmer Rouge. This Case was completed in November 2016, however two of the accused died prior to its completion: the former Minister of Foreign Affairs, Ieng Sary, and the former Minister of Social Affairs, Ieng Thirith. Case 002/02 examines far-ranging charges related to key policies of the Khmer Rouge, including forced labour, security centres, forced marriages and treatment of minorities. The Trial Chamber judgment handed in November 2018 is currently under appeal. One of the two remaining accused, Nuon Chea, died in August 2019 at the age of 93 before the pronouncement of the Supreme Court Chamber judgment (see Kum 2019). The former Head of State of the Khmer Rouge regime Khieu Samphan, born in 1931, is the only accused in Case 002 now still alive.

Four suspects have additionally been indicted in Cases 003 and 004. However, the national and international side of the ECCC mostly disagreed on whether these cases should move to trial, with the national side arguing that the accused do not fall under the category of 'most responsible' of the ECCC's mandate (see e.g. Naidu 2018). Since the Cambodian ruling party has repeatedly voiced their opposition to these cases (Ciorciari & Heindel 2014, 177), they have become the focus of allegations of political interference (see e.g. OSJI 2010).

Besides the ECCC, civil society actors have significantly shaped the transitional justice process in Cambodia. Their work has been complementary to the ECCC, in particular when it came to victim participation, legal services, psychosocial support and outreach, as civil society organisations provided many key services for the ECCC due to the tribunal's limited funding or mandate in this field (Ryan and McGrew 2016; Sperfeldt 2012). Civil society organisations have also been key in designing and implementing reparations and non-judicial measures. Over time, many creative and artistic initiatives have emerged. NGOs were able to make use of the attention of the international donor community on transitional justice in Cambodia that arose with the establishment of the ECCC (Un 2013), although they have now for the past few years faced significant 'donor fatigue' (Sperfeldt 2012).

The establishment of the ECCC thus initiated a diverse process of transitional justice in Cambodia focusing on the Khmer Rouge regime. This process is also characterized by a significant transnational circulation of practices, since the ECCC was established in a time during which transitional justice had become institutionalized and professionalized as a field of policy-making, research and practice (see e.g. Sharp 2013; Rubli 2012). Several cohorts of international practitioners sojourned in Cambodia, including not only international criminal justice professionals — some of whom Kent (2013) described as 'tribunal hoppers', given their high mobility across internationalized tribunals — but also practitioners from the fields of civilian peacebuilding, media, arts and memory work.

Today, a rich and increasingly diverse body of scholarship also exists on transitional justice in Cambodia, with works from various disciplinary perspectives. This includes not only the dominant field of law (e.g. Werner and Rudy 2010; McGonigle 2009) but also socio-legal studies (e.g. Killean 2018; Ly

2017; Manning 2012), political science (e.g. Path 2017; McCargo 2015), anthropology (e.g. Hinton 2014; Kent 2013), geography (Sirik 2016; Hughes 2015), psychiatry (Chhim 2014) or history (Gidley 2019). As elsewhere in the field of transitional justice, this scholarship is also characterized by numerous publications of authors who have themselves been closely involved in the transitional justice process in various functions (e.g. Jarvis 2014, Lemonde 2013, Studzinsky 2011, Mohan 2009).

Ever since the establishment of the ECCC, the literature has discussed its relevance as a transitional justice institution. Some analysts highlighted that the tribunal was important and better than none (see e.g. OSJI 2006). Others argued that given the political context, and most importantly the political control of the national judiciary in Cambodia, a hybrid tribunal would only lead to a flawed accountability process (see e.g. Human Rights Watch 2014). The ECCC's extremely limited temporal scope has also been subject to much discussion. The tribunal's mandate only focuses on the Khmer Rouge regime, although this period is embedded in decades of political violence, war and authoritarian rule. Civil society organisations, while complementing the ECCC's limitations in diverse ways, arguably reproduced to an important extent the focus on the Khmer Rouge period in their transitional justice work.

Today, given current political developments in Cambodia, reflecting upon the transitional justice process and its long-term, transformative potential is of particular relevance. With the dissolution of Cambodia's main political opposition party in 2017 and its exclusion from the 2018 election (see e.g. KOFF 2018), the country has moved further away from its scheduled trajectory towards democracy. In an increasingly authoritarian context, civil society organisations, journalists but also researchers working on human rights advocacy face significant difficulties to conduct their work in an independent manner, free from political pressure. Debates over the impact of international interventions in Cambodia have thus re-emerged, most notably over the UN peacebuilding mission of 1992-93. But the political situation in contemporary Cambodia also raises questions regarding the legacies of the ECCC and the transitional justice process.

Overview on the Collection of Working Papers on Cambodia

This collection of papers contributes to these discussions. It brings together the perspectives of eight authors with various disciplinary backgrounds, including law, social sciences, development studies and international affairs. Many of these authors also draw from their previous experiences and insights as practitioners in Cambodia's transitional justice process.

A first group of authors discusses how far the transitional justice process has gone in Cambodia, and what has been achieved in terms of the goals initially set for this process.

In their paper, Kimsan Soy and Vandanet Hing examine how the ECCC has contributed to improving fair trial rights in the national judiciary. One of the main hopes associated with hybrid tribunals has been that these tribunals

would contribute to strengthening the national judiciary, as they are set in the country where the crimes have taken place and employ national staff. This was also one of the strong aspirations shared by actors involved in the establishment of the ECCC. Fifteen years later, Soy and Hing ask how defense counsels and experiences of legal representation at the ECCC have contributed to developments in the national justice system. Drawing from qualitative interviews conducted with Cambodian legal professionals, they argue that although the ECCC clearly demonstrates international fair trial standards, in particular the right to effective legal representation, the greatest challenge standing in the way of positive legacies for the domestic judicial system remains political control of the judiciary.

In her paper, Sotheary You also reflects on the impact of transitional justice on contemporary Cambodia, but with a focus on sexual and gender-based violence against women. In order to do so, she draws from the concept of guarantees of non-recurrence and from feminist scholarship on gender justice. You discusses how the ECCC has addressed sexual and gender-based violence so far, in the legal proceedings and in the reparations projects endorsed by the ECCC. She also examines measures taken by the Cambodian government to address the non-recurrence of sexual and gender-based violence. She argues that in light of the ongoing discrimination against women in Cambodia, the transitional justice process has failed to effectively address the issue. She proposes policy recommendations and the adoption of a comprehensive approach, beyond the remit of the ECCC, to ensure the non-recurrence of sexual and gender-based violence against women.

In his paper, Sovann Mam reflects on to what degree reconciliation has been achieved in Cambodia after the Khmer Rouge regime. Drawing from qualitative interviews conducted in Anlong Veng, the former Khmer Rouge stronghold in the North-West of Cambodia, he argues that reconciliation is still missing at the community level. Mam thereby questions the prevalent political narrative in Cambodia that reconciliation has been fully achieved since the end of the 1990s. He shows that while the policies of the Cambodian government in the 1990s secured stability and negative peace, they also delayed the quest for justice and the establishment of the ECCC. Based on his field research in Anlong Veng and interviews with civil society actors working on reconciliation, Mam suggests that more attention should be paid to facilitating processes of acknowledgment and empathy between victims and perpetrators.

In addition to these three papers reflecting on the achievements and limitations of the transitional justice process in Cambodia, the second group of authors focuses on the roles and views of various actors.

In her paper, Samphoas Huy reflects upon the role of intermediary organisations in facilitating, implementing and shaping victim participation at the ECCC. She conceptualizes the role of Cambodian civil society organisations as 'vernacularizers', or actors intimately involved in the translation of international transitional justice norms into the Cambodian context. She analyses this process of vernacularization in various, rich examples of outreach

and inreach that have taken place around the ECCC over the past years. Huy argues that through this process of translation and appropriation, which similarly to previous human rights work in Cambodia significantly draws upon Buddhist understandings, local actors created a transnational space that allowed for meaningful victim participation. But her paper also shows that this process was not without creating ‘frictions’: actors involved faced challenges in translation but also difficulties related to questions of representation, agency and voice in victim participation.

In her paper, Somaly Kum focuses on donors – a group of actors that is not researched enough in the field of transitional justice, although being key in shaping transitional justice interventions. She provides an overview of the various types of donors that have been funding transitional justice in Cambodia – state donors; non-state donors; multilateral donors. She asks what their role has been in shaping the transitional justice process, both directly and indirectly, through funding the ECCC and civil society projects. Kum draws from qualitative semi-structured interviews conducted with current and former donor representatives, as well as transitional justice practitioners. She discusses how donors reflect upon their roles and societal impact 15 years after the establishment of the ECCC, and shows that one of the main motivations mentioned by her respondents for funding transitional justice, besides contributing to justice and accountability, was to contribute to the rule of law and capacity building.

Finally, Boravin Tann and Khuochsopheaktra Tim discuss the perspectives of an important segment of the Cambodian population: the younger generations born after the Khmer Rouge regime. Although representing the majority of the population today, this group has been rather sidelined in transitional justice discussions in comparison to the elder generations of direct victims. Drawing from rich empirical data, including a recent quantitative survey and focus group discussion, Tann and Tim describe how their respondents, keen to learn more about the Khmer Rouge past, deplored the limitations of information on this matter. They analyse how they view the memorialization processes on the Khmer Rouge regime. They also discuss the existing scope for youth participation in Cambodia’s transitional justice process and the intersections between memorialization, the ECCC and the non-recurrence of human rights violations.

Taken together, these papers show avenues for further research and initiatives on transitional justice in Cambodia, from the perspective of Cambodian authors. They also illustrate the relevance of the Cambodian case study for the broader field of transitional justice today. Fifteen years after the establishment of the ECCC, these papers examine from various academic perspectives whether, how and to what extent the transitional justice endeavors in Cambodia have created change. They thereby speak to questions of agency, power and representation that are at the core of critical transitional justice scholarship, and to the long-term emancipatory and transformative aspirations that continue to shape the field.

1 Introduction¹

When considering transitional justice (TJ) in the Cambodian context, a key question is what it means and how it comes about. In Cambodia, TJ is translated into Khmer as យុត្តិធម៌អន្តរកាល (yuthethor antraka). This term has been introduced into the Khmer language as a literal translation of the English term ‘transitional justice’. It was not used in Cambodia before the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and therefore is not spontaneously understood by the broader Cambodian population. TJ is usually defined as a response to massive and systematic human rights violations. It not only addresses violations of human rights but also the atrocities and other wrongs perpetrated during times of armed conflict, under repressive regimes or during the time of transition (see e.g. Elster 2004). In Cambodia, it is estimated that more than 2 million people died during the Khmer Rouge (KR) regime (see Sharp n.d.). This was a reason for establishing the ECCC in 2004,² with the mandate of putting on trial the senior leaders and those most responsible for crimes committed during the KR regime from 17 April 1975 until 6 January 1979.

The ECCC has been the central TJ mechanism in Cambodia so far. It is a hybrid tribunal, as it applies both international and national law and employs personnel from both the United Nations (UN) and Cambodia. But it is also hybrid from the perspective of its funding scheme. Between its establishment and 2019, the ECCC had spent a total of 354.9 million USD (ECCC 2019a) – in 2008, it had estimated that the Court’s total budget would be 170 million USD (Kinetz 2008). The UN is responsible for the funding of the ECCC’s international staff members, witness protection measures, the defense support section and the Court’s security measures (Ciorciari and Heindel 2014, 74). Of the 354.9 million USD spent by 2019, the international component of the ECCC cost 259.7 million (73%) (ECCC 2019a). This budget relies on voluntary funding from various international donor countries such as Japan, the United States (US), Australia and the European Union (EU). The Royal Government of Cambodia (RGC) is responsible for funding the ECCC’s national component and Cambodian staff members, which has provided a good opportunity to build capacity in Cambodia’s justice sector. But the government can also rely on voluntary funds from donor countries, international institutions and Non-Government Organizations (NGOs) for these expenses, which is an option it has mainly relied upon (Ciorciari and Heindel 2014, 74). In 2019, the RGC funded 11% of the total budget with little difference from the previous year in 2018 when they covered only 10% of the total budget (ECCC 2019).

Since its establishment, the ECCC has faced much criticism, including of the large budget that it has required for its work, with some arguing that the funding could have been better spent on development projects.³ Brad Adams, the director of Human Rights Watch’s Asia Division since 2002 has for instance been an outspoken critic of the ECCC. In 2014, he argued that the ECCC’s convictions of Nuon Chea and Khieu Samphan, the two senior leaders of the KR accused in Case 002, were ‘too little and too late to save the KR Tribunal from being regarded as a failure’ (Human Rights Watch 2014). Adams further observed that the budget was disproportionate for the small number of accused at the ECCC.

- 1 I am very grateful to all the respondents who agreed to meet me for an interview for this paper and I would like to thank Ms. HOK Sovanvotey, who supported me during my fieldwork and with transcriptions.
- 2 2004 refers to the date when the amended ECCC law was promulgated in Cambodia, after the UN and the Cambodian government had signed an agreement in 2003.
- 3 See <https://www.ushmm.org/genocide-prevention/countries/cambodia/case-study/justice/eccc> (accessed September 10, 2019).

Fifteen years after the establishment of the ECCC, a lot has been written on various aspects of the TJ process in Cambodia, such as victim participation (see e.g. Williams et al. 2018) or media and outreach at the ECCC (Sperfeldt 2014). There are, however, only a few writings focusing on the role of donors in Cambodia's TJ process. The publications by McGrew (2018), Ryan and McGrew (2016) and Sperfeldt (2012) constitute important exceptions; they discuss why and how donors supported TJ in Cambodia. Drawing from this existing literature, this paper proposes to further explore this topic. It asks what role international donors have played in shaping Cambodia's TJ process after they chose to donate to TJ.

In order to do so, it is important to take into account the role of donors not only in funding the ECCC but also in funding local civil society organizations. The local NGOs have significantly contributed to facilitating the participation of victims of the KR regime at the ECCC and to conducting outreach on the ECCC proceedings. They have also played an important role in complementing the TJ process at the ECCC. These NGOs, as implementing actors of TJ in Cambodia, have also received funding from various international donors for their projects.

Besides looking at the different TJ actors who received donor funding in Cambodia, it is also important when analyzing the role of donors in TJ to reflect upon the temporal dimension of donors' engagement. While Cambodia saw strong international donor support in the early phases of the ECCC, for the past three to four years there has been donor fatigue (see Karnavas 2017). The concomitant lack of funding has been a real concern for the sustainability of the TJ process in Cambodia since it has limited outreach activities informing the population of the ongoing proceedings.

This paper is based on 11 qualitative interviews with current and former representatives from donor countries and funding agencies, former TJ consultants and researchers on TJ and human rights in Cambodia. I conducted interviews with seven international donor representatives, including two former donor representatives, two former international advisors on TJ in Cambodia and two former national program officers from local NGOs working on TJ. The donor representatives whom I met for this paper were from the British Embassy to Cambodia, the EU, Japan, the German Civil Peace Service and the German Heinrich Böll Foundation.

Conducting empirical research on donors in TJ is quite challenging and it was difficult to access the experiences of people who were directly involved in donor support to TJ in Cambodia. Diplomatic and donor staff rotate a lot, and there is often little institutional memory about past activities after diplomatic and donor staff members leave. Moreover, once diplomatic or donor staff leave, their knowledge is limited to a certain period and they have not followed more recent developments regarding Cambodia's TJ process. In order to address this challenge, I have contacted not only current donor representatives, but also representatives who have since moved out of Cambodia and are now working in various responsibilities in other contexts.

Regarding the interview method, I chose to conduct semi-structured interviews to provide respondents with sufficient space to answer, and to be able to ask follow-up questions accordingly. In the interviews, I asked not only about information about donors' policies and their approach to working on TJ in Cambodia but also about their perceptions, views and attitudes towards this work and their role. In addition to these interviews, I also draw in this paper on my experience working as a practitioner for outreach programs on TJ in Cambodia since 2010.

This paper is divided into three parts. The first part presents the ECCC's and NGOs' work on TJ in Cambodia. The second part provides an overview of the main donors active in Cambodia, and the views of donor representatives interviewed for this paper. The third part turns to a discussion of the role of donors in supporting TJ in Cambodia, either through funding the ECCC or funding the work of NGOs.

Interestingly, most of the donor representatives interviewed for this paper did not perceive themselves as having played a role in shaping the TJ process in Cambodia. This probably relates to how international donors generally present themselves as neutral and tend to be particularly careful and diplomatic in interviews. It may also point to how those interviewed for this paper have not necessarily been present in Cambodia since the beginning of the TJ process. One donor representative, for example, mentioned that only those who were part of the negotiations for establishing the ECCC would know how donors shaped the TJ process, since they are the ones who could have designed indicators to measure the current situation with their initial purpose of establishing the ECCC.

Although international donors present themselves as neutral, they did play a crucial role in enabling the establishment of the ECCC (see e.g. Ciorciari and Heindel 2014). Indeed, many in Cambodia feel that prosecuting the senior leaders of the KR regime would not have happened without the donors' support in the first place. International donors also played an important role in later funding most of the TJ process. Reflecting upon the role of donors in Cambodia's TJ process therefore connects to assessing the entire TJ process, which clearly exceeds the scope of this paper. Instead, I suggest exploring some aspects of the role of international donors. I critically discuss how donors connected funding the ECCC with the ambition of improving the rule of law in Cambodia – a goal that is not yet reached today. Regarding funding NGO's TJ work, I argue that this enabled not only a broadening of the TJ process beyond the criminal justice process but also building the capacity of NGO staff.

2 Transitional Justice in Cambodia

- 4 See overview of Case 001 at: <https://www.eccc.gov.kh/en/case/topic/90>.
- 5 Severance Order Pursuant to Internal rule 89 TER, Nuon Chea and Khieu Samphan, Ieng Thirith and Ieng Sary (case No.002/19/09-2017), office of Co-Investigating Judges, 15 September 2010.
- 6 See overview of the ECCC proceedings against Ieng Sary: <https://www.eccc.gov.kh/en/indicted-person/ieng-sary-former-accused>.
- 7 See overview of the ECCC proceedings against Ieng Thirith: <https://www.eccc.gov.kh/en/indicted-person/ieng-thirith-former-accused>.

The formal TJ process in Cambodia regarding the KR period only started very late. After long negotiations, the RGC and the UN established the ECCC in 2004 and it became operational in 2006. By then, many senior KR leaders, whom we have heard of from our studies or from direct survivors of the regime, had already died, such as Pol Pot who died in 1998, and Ta Mok, another key figure of the KR, who died in 2006.

At the ECCC, there are a total of six cases. In Case 001, Kaing Guek Eav alias Duch, the former Chairman of the KR Security center S-21, was convicted for crimes against humanity and grave breaches of the Geneva Conventions and sentenced to life imprisonment in 2012.⁴

Case 002 originally included four accused persons. The Trial Chamber, concerned about the health conditions and age of the accused persons, as well as the size and scope of the case, announced in September 2011 that they would separate the charges in Case 002 and break them into a series of smaller trials (Cohen, Hyde and Van Tuyl 2015, 3).⁵

Despite this severance of Case 002 to expedite the legal proceedings, several accused persons died before completion of the trials. Ieng Sary, the former Minister for Foreign Affairs, died in 2013 aged 87.⁶ His wife Ieng Thirith, the former Minister of Social Affairs, was found unfit to stand trial due to dementia in 2012.⁷ She later died in 2015.

The other two accused, Nuon Chea, the former deputy secretary of the Communist Party of Kampuchea, and Khieu Samphan, the former Head of State of the KR regime, were found guilty of crimes against humanity in Case 002/1 and sentenced to life imprisonment in November 2016 (Cohen, Mattes and McCaffrie 2017, 3).

In Case 002/2, the Trial Chamber released its full judgment in March 2019. Yet, Nuon Chea died in August 2019 before the end of the appeal proceedings before the Supreme Court Chamber, which are still ongoing (see Kum 2019).

Cases 003 and 004 concern charges against four additional suspects: Meas Muth, the former commander of the KR navy; Ao An, a former Zone Deputy Secretary; Im Chaem, a former District Secretary; and Yim Tith, a former Zone Secretary. It is not clear whether it will be possible for these cases to continue since they seem to be subject to political interference.

In addition to trying the accused persons, the ECCC provides for victim participation at the ECCC. Most importantly, victims can participate as civil parties. The ECCC received 94 civil party applications in Case 001, 4128 in Case 002, 645 in Case 003 and 2008 in Case 004 (see ECCC 2019b). Through its outreach, the ECCC aims to inform the civil parties of updates of the legal proceedings and to provide opportunities for civil parties to meet their lawyer (ECCC 2018). According to the ECCC's Internal Rules, victims are also entitled to moral and collective reparations. The ECCC, through its Public Affairs Section, has also provided the broader population with access to the legal proceedings.

Beside the ECCC's work to promote TJ in Cambodia, NGOs have played an important role in the process (Sperfeldt 2012). In the early phase of the ECCC, they stepped in to provide services in outreach and to facilitate victim participation, when the ECCC's capacities for this were limited, but later they also significantly broadened the TJ process. Important NGOs that have been active in this field include the Khmer Institute for Democracy, Cambodian Human Rights and Development Association (ADHOC), Youth for Peace,⁸ the Transcultural Psychosocial Organization⁹, Kdei Karuna¹⁰ and the Minority Rights Organization (Miro).¹¹ These NGOs have worked closely with survivors with a focus on capacity building and raising awareness regarding their rights and empowerment. NGOs have also engaged with villagers, survivors and the younger generations through various outreach projects. They have also proposed and implemented reparation projects in close collaboration with the ECCC.

After this brief overview of the TJ process in Cambodia, the next section turns to an overview of donor support for this process.

- 8 See <http://www.yfpcambodia.org/index.php?p=submenu.php&menuId=3&subMenuId=41#> (accessed September 15, 2019).
- 9 See <https://tpocambodia.org/> (accessed December 23, 2019).
- 10 See <https://www.kdei-karuna.org/new-page-1> (accessed December 23, 2019).
- 11 See <http://mirocambodia.org/?p=1142> (accessed September 15, 2019).

3 Overview of Donors' Support on TJ in Cambodia

12 See <https://www.usaid.gov/who-we-are/mission-vision-values> (accessed September 13, 2019).

13 See https://www.eccc.gov.kh/sites/default/files/articles/legacybrochure_englisch_final.pdf (accessed September 13, 2019).

Cambodia is a developing country and it is expected to keep the status of a Least Developed Country until at least 2025 (see de Gaudemar 2016). Ever since the UN peacebuilding mission in the early 1990s, Cambodia has seen a strong donor presence and significant amounts of international aid. Between 1992 and 2007, more than USD 7 billion of international aid has been spent in Cambodia (Hughes 2009, 136). Scholars suggest that the donor community affected change in the following dimensions of governance: political stability, voice and accountability, government effectiveness, regulatory quality, rule of law and control of corruption (Ear 2007, 72).

It is in this context that TJ is being funded in Cambodia. There are different types of donors funding the TJ process: (1) bilateral state donors such as the US, Germany or the UK, who operate alongside (2) non-state donors such as the Open Society Justice Foundation and (3) multilateral funding agencies such as the EU and the UN Trust Fund to End Violence Against Women.

These different types of donors also have a different focus in their funding. The bilateral state donors such as USAID or the EU often support both NGOs and the ECCC. The state donors such as Japan, the US, Germany, the UK, Australia or France often support the ECCC through the ECCC's voluntary funding scheme. The non-state donors often donate funds to local NGOs' work on TJ.

In order to illustrate the different approaches and the different types of donors who fund the ECCC and local NGOs, this section provides a brief overview of some of the key donors to TJ in Cambodia. This overview also corresponds with the donors that I had a chance to interview for this paper.

The US Agency for International Development (USAID) represents a bilateral donor to TJ in Cambodia. According to its mission statement, USAID 'promote[s] and demonstrate[s] democratic values abroad, and advance[s] a free, peaceful, and prosperous world'.¹² USAID has a specific funding facility, the 'Reconciliation Program Fund', which funds TJ initiatives across the world. In Cambodia, for instance, USAID funded a large outreach project called 'Voices for Reconciliation' from 2013-2015 through its 'Reconciliation Program Fund. This project was implemented by four organizations: ADHOC, the Cambodian Defenders Project, the Asian International Justice Initiative and Khmer Mekong Film. The project aimed to empower civil parties, build networks, increase awareness and provide information about the legal proceedings regarding the accused persons and victims by creating outreach material.

The Federal Republic of Germany has significantly supported the TJ process in Cambodia. It has supported the ECCC since its establishment and has been unique amongst all ECCC donors because it has earmarked its contribution to the ECCC's Victims Support Section (Sperfeldt and Oeung 2019: 89). There are also different German organizations funding TJ in Cambodia. The Federal Ministry for Economic Cooperation and Development is a cabinet-level ministry of the Federal Republic of Germany. It provides ODA funding for bilateral, multilateral and, to a substantial extent, non-state cooperation.¹³ The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) is a

federally owned enterprise supporting the German Government in achieving its objectives in the field of international cooperation for sustainable development.¹⁴

The Civil Peace Service (CPS) supports projects in conflict transformation and peacebuilding.¹⁵ It has conducted outreach on the ECCC through civil society projects since 2007, and supported complementary civil society TJ initiatives, most importantly through deploying advisors to selected local NGO partners (CDC n.d.). It has for instance often supported various projects to link new generations and survivors, so that the younger generations can learn more about the KR history and from survivors' life stories and direct experiences, including the experiences of ethnic minorities. TJ initiatives funded under this program have developed various creative tools such as mobile exhibitions or oral histories of victims, opened space for survivors to break the silence on what happened during the KR regime and facilitated meetings between civil parties and their lawyers.

As an International Non-Governmental Organization (NGO) founded in 1996, ForumZFD also started to implement programs in Cambodia in 2015.¹⁶ Its work focuses on issues of dealing with the past, in particular the KR past, through facilitating dialogue, disseminating conflict transformation and conflict sensitivity methods and capacity building.¹⁷

The Heinrich Böll Foundation is another German actor playing a role in TJ in Cambodia. This foundation supports projects collecting the history of survivors and promotes dance or art performances about the life of victims during KR regime. The foundation for instance supported the production of an illustrated civil party story book by the Cambodian Human Rights Action Committee in 2015 to 2016. It also supported the NGO Kdei Karuna for a project promoting gender equality and sustainable peace through story-telling by women considered to have been victims of the KR regime. This project organizes dialogue meetings between female victims of the KR regime and university students from various disciplines such as history, sociology and law.

In addition to Germany, donor countries, such as the UK and Japan, and multilateral organizations, such as the EU, have played an important role in funding TJ in Cambodia.

The UK has provided direct funding to the ECCC, including an estimated five percent of the total expenses of the ECCC in 2018 and 2019 (ECCC 2019a). In addition, the UK also supports various TJ projects of local NGOs. With the start of the first trial in Case 001 in 2009, the British Foreign and Commonwealth Office funded a project for media outreach of the trial, including weekly documentary films.¹⁸ The project was implemented by the Asian International Justice Initiative, a collaboration between the East West Center and initially the War Crimes Studies Center of the University of California Berkeley¹⁹, together with Khmer Mekong Films (Sperfeldt 2014, 7). Each episode provided summary information on the public hearings at the ECCC, including the testimonies of victims and of the accused and important parts of the trial. This information was prepared for the audiences of national and international

14 See https://www.eccc.gov.kh/sites/default/files/articles/legacybrochure_englisch_final.pdf accessed 14 Sep 2019.

15 See <http://giz-cambodia.com/civil-peace-service/> (accessed September 14, 2019).

16 See <https://www.forumzfd.de/en/about-us> (accessed December 28, 2019).

17 See <https://www.forumzfd.de/en/cambodia> (accessed December 28, 2019).

18 See <https://krtmonitor.org/aboutsite/> (accessed November 14, 2019).

19 This project later moved from the University of California Berkeley to Stanford University under the WSD Handa Center for Human Rights and International Justice.

4 Donors Role in Shaping TJ in Cambodia

television. Episodes also included victims' perspectives based on their experiences during the KR regime. After the end of Case 001, the UK embassy also contributed funds for summary outreach films in Case 002/1 and specific aspects in Case 002/2. In 2015, the British embassy supported the use of these documentary films by NGOs in their outreach projects for villagers and university students. The use of these documentaries provided a good opportunity to create the space for victims to talk about their suffering and how they deal with trauma.

The Government of Japan also provides direct funding to the ECCC and has covered most of the ECCC's budget so far, funding at least 30% of the ECCC's budget each year. Besides funding the ECCC's work, Japan has taken a different approach to TJ funding in Cambodia. It has so far only supported TJ initiatives of the Cambodian state, rather than supporting the TJ work of local NGOs. Japan has funded the construction of the building of the Legal Documentation Center (LDC) relating to the Extraordinary Chambers in the Courts of Cambodia through its Japanese Non-Project Grant Aid, as well as some of the LDC facilities, such as its archives and information and communication equipment (Embassy of Japan 2017). The purpose of creating the LDC is to serve the public to better understand the ECCC and the KR history and to provide documentation and resources for researchers. The LDC has outreach activities in various provinces to provide information to youth, explore new knowledge and experiences from the past and prevent the return of the KR regime.

With regards to multilateral donors, the EU Commission provided funding for the ECCC's international side and reparation projects. The reparation projects funded by the EU included the development of smart device applications on the KR history by Bophana Audiovisual Resource Center and the Documentation Center of Cambodia with a focus on history education of younger generations (EU Delegation to Cambodia n.d.).

After this brief typology and overview of some of the key donors of TJ in Cambodia, the next section turns to a discussion of the role that donors have in shaping the TJ process at the ECCC and through the work of civil society organizations.

In the context of Cambodia, the donors did not have a common policy for TJ funding. Instead, most of the donors dedicated funding from other packages such as human rights or development funds. The existing scholarship on donor funding of TJ shows that this type of fragmentation and the lack of institutionalization of TJ funding, especially for donor countries, is quite characteristic in the field: funding decisions are often taken 'in different parts of donor agencies, for a variety of reasons, and at varying levels of authority' (Arthur 2018, 230). As a result, and as is the case in other contexts (see Muck and Wiebelhaus-Brahm 2016, 66), this has made estimating the total amount of TJ funding difficult.

²⁰ For more information, see Vireak (2010).

Nonetheless, the ECCC has received most of the donors' TJ funding in Cambodia. Prioritizing funding for formal TJ institutions such as courts rather than funding civil society projects also seems to be a general feature of donor funding for TJ beyond the case study of Cambodia (Arthur 2018, 231).

When asked why they became active in supporting TJ in Cambodia, the donor representatives interviewed for this paper often mentioned the aim of promoting the rule of law, of bringing justice and reconciliation, of building capacity and human resources to develop the domestic judiciary and to build a legacy for younger generations. This is also how donors publicly frame their support of TJ in Cambodia. For example, a representative of the Japanese Embassy in Cambodia explained to journalists that his government "attaches importance to the KR tribunal" because it brings justice to victims and strengthens the rule of law in Cambodia' (Nachemson and Handley 2017). This also reflects how donors started to become involved in funding TJ initiatives worldwide. Since donor support for TJ initiatives increased in prominence in the 1990s along with the establishment of the international criminal tribunals for ex-Yugoslavia and Rwanda, it has been 'seen as linked variably to the purposes of human rights, democratization, rule of law and/or peacebuilding' (Arthur 2018, 212-213). Since then, major donor agencies such as USAID or the Swedish International Development Cooperation Agency added 'democracy aid' to their agenda (Ibid. 211).

Interestingly, the donor representatives interviewed for this paper did not mention their countries' connections with Cambodia over history as a motivation for funding TJ in Cambodia. This is something that McGrew (2018) pointed out in her work: each donor supporting TJ in Cambodia had a previous relationship with Cambodia and then started to support the promotion of justice as a model to achieve truth and reconciliation. For example, France's colonial history in Cambodia, Japan's role as a regional power²⁰, Germany's historical experience with the Holocaust and the United States' history in the war in Vietnam have motivated these countries to provide funding for the ECCC (McGrew 2018, 151). Besides these historical experiences and connections to Cambodia, some of the donors who are funding the TJ process in Cambodia today were previously involved in supporting the remaining KR forces after the end of the KR regime in 1979. In the context of the Cold War, from 1979 until 1993, for instance, the official seat for Cambodia at the UN General Assembly was granted to the KR delegation even though the scale of atrocities committed

21 Skype interview, former donor representative (in Cambodia from 2014 to 2018), 4 June 2019.

22 Skype interview, former advisor of a Human Rights organization related to TJ in Cambodia, 8 June 2019.

23 See also the contribution of Kimsan Soy and Vandanet Hing in this Working Paper series on Cambodia.

by the KR was known (Fawthrop and Jarvis 2014, 52-70). This could also have played a role in their motivations to fund the TJ process in Cambodia.

Given that in the interviews, donor representatives placed such an emphasis on funding TJ in Cambodia, and more specifically funding the ECCC, what has been their role in contributing to the rule of law in Cambodia through funding the ECCC?

4.1 Donor Funding of the ECCC: Contributing to the Rule of Law in Cambodia?

Ever since its establishment, the ECCC has been portrayed as an avenue to improve the rule of law in Cambodia because of its hybrid nature. One of the main hopes generally associated with hybrid tribunals is indeed that they will have positive 'spill-overs' to domestic courts and contribute to strengthening the national judiciary, as they are set in the country where the crimes have taken place and employ national staff (see e.g. OHCHR 2008; Dickinson 2003). In his 2010 annual report to the UN, then Special Rapporteur for human rights in Cambodia, Surya Subedi, similarly suggested that the ECCC would function as a model court in Cambodia and that its practices can be shared with the wider judiciary so that it gradually helps to uplift the practices of the national judiciary in Cambodia (A/HRC15/47).

Several respondents, including representatives of the Japanese Embassy, the former representative of the EU delegation to Cambodia, a former donor²¹ and a former advisor²² similarly mentioned the advantages of having national staff at the ECCC in interviews conducted for this paper.

However, observers have been rather critical of the ECCC's possible impact on the national judiciary and the rule of law in Cambodia (see e.g. Bates 2010, 49-51) because of the apparent political control of the justice system. In their report, Ryan and McGrew (2016), for instance, describe the limitations that national staff members encounter when applying their experiences of the ECCC to national courts. It is often not easy to transfer the experience from an international court to domestic courts in terms of increasing fair trial rights, especially regarding the rights of accused persons, the role of civil parties or legal arguments in court as a forum for justice, because supervisors in national courts often ban or discourage such practices (Ryan and McGrew 2016, 54-59). While the national staff members working at the ECCC have the opportunity to build their capacities, train on the job and access educational sources, they remain skeptical that there will be any improvements in the short term in Cambodia's rule of law environment.²³ This is an extremely ambitious task since the ECCC has no real influence on the national court system where 'abuse of power at the highest level is getting worse' (McGrew 2016, 60). National legal professionals interviewed by Ryan and McGrew (2016, 62) expressed only 'limited optimism that key leaders within the national system would affect administrative improvements because of their experience with the ECCC'. An often-cited innovation in the national judiciary linked to the ECCC has, for

instance, been the introduction of the ECCC case database management system at the Cambodian Court of Appeal (see Boyle and Kongkea 2012).

George Edgar, former Ambassador and Head of the EU delegation to Cambodia, also noted the transfer of administrative procedures of the ECCC to domestic courts:

Beyond the importance of bringing justice for what happened under the KR, and of ensuring that those terrible events are not forgotten, the other thing which has always been seen as important is the impact of this court on the judicial system in Cambodia. I think it is difficult at this point to say how extensive that impact will be, but the Cambodian judges, lawyers, and staff who work at the ECCC in many cases will return to the national judicial system and will bring with them experiences of what we hope is a very high standard of justice in the ECCC. And I understand that in terms of administration there has already been a useful transfer of experience from the ECCC, in particular to Cambodia's supreme court.²⁴

However, challenges remain in Cambodia today for transferring practices of the ECCC to the national judiciary, beyond improvements of administrative procedures. Moreover, besides facing challenges in contributing to the rule of law in Cambodia, the ECCC itself has been subject to allegations of political interference from the Cambodian government.

The allegations of political interference have mainly focused on the controversial Cases 003 and 004 at the ECCC (OSJI 2010). While Cases 001 and 002 have been welcomed and supported by the government, it seems that the government does not want Cases 003 and 004 to continue (Ryan and McGrew 2016, 16). High-ranking officials of the Cambodian government have indeed expressed their clear opposition to these cases on several occasions. For instance, the Minister of Interior Sar Kheng observed during the pronouncement of the summary of the judgment in Case 002/2 in mid-November 2018: 'There is no more [top KR leader left to try], and our policy [is that] now this process has ended' (Dara 2018). In April 2009, the Prime Minister Hun Sen said:

I would prefer to see this court fail than for war to come back to Cambodia...that is my absolute position... just focus on these few people... if they try another 20 people and war erupts, who will take responsibility? ... and I would pray for this court to run out of money and for the foreign judges and prosecutors to walk out. That would allow for Cambodia to finish the trial by itself (as quoted in Sokheng 2009).

These statements from high-ranking officials of the Cambodian government contrast with views of victims participating in the TJ process and members of the general population. Indeed, in the survey that I conducted with colleagues in 2018, we found that 80.2% of the 439 respondents we surveyed across the country wanted Cases 003 and 004 to move forward at the ECCC (Williams et al. 2018).

24 Interview, Head of EU delegation to Cambodia, 2 July 2019, Phnom Penh.

25 See ECCC Internal Rules at https://www.eccc.gov.kh/sites/default/files/legal-documents/Internal_Rules_Rev_9_Eng.pdf. See also Law on the establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006). Article 10, 19, 25 and 42.

26 Interview, former donor representative, 4 June 2019, Phnom Penh.

27 Interview, former donor representative, 4 June 2019, Phnom Penh.

At the ECCC however, the national and international staff members have repeatedly disagreed on whether Cases 003 and 004 should move to trial (see ECCC n.d.). The national co-prosecutor and co-investigating judge have argued that the accused in these Cases do not fall under the Court's mandate, as they do not qualify as 'most responsible' or 'senior leaders'. Because of the strong opposition of the Cambodian government to Cases 003 and 004, critics have called out the Cambodian government for politically interfering in the ECCC's legal proceedings. Some have even questioned the entire TJ process at the ECCC because of the government's interference. On the occasion of Trial Chamber judgment in Case 002/1 in August 2014, Brad Adams, director of Human Rights Watch's Asia division, argued, for instance: 'The goal of justice for KR victims has been irrevocably tarnished by Prime Minister Hun Sen's political interference, the failure to bring more cases, long delays, and pervasive corruption. What should be a day of celebrating justice is instead a reminder of missed opportunities' (Human Rights Watch 2014).

Based on the Internal Rules of the ECCC, the judges, co-prosecutors, co-investigating judges and counsels of a suspect or accused shall all be independent in the performance of their functions and shall not accept or seek any instructions from any part of government.²⁵ Because of this very clear legal basis, donor representatives interviewed for this paper strongly believe that the judges at the ECCC, both domestic and international, actually made their decisions independently. They also feel that it is not the role of donors to push for legal proceedings or try to influence the decisions of the ECCC but rather to fund and allow the legal proceedings to take place.

Another donor representative similarly observed that the ECCC judicial offices should not be pressured to please donors, although he acknowledged the important role that donors played through their funding in making the ECCC proceedings possible in the first place:

In fact, the ECCC have to have strategies, prosecution, judgment and it is wrong and doubt[ful] if they have to please donors despite [the fact that] ECCC will fail without their support.²⁶

He added that the rationale of supporting the ECCC was not only to find the truth and reconciliation for the victims of KR regime. It was also to strongly send a key message to future leaders that impunity would not prevail if they break the rule of law, even though he acknowledged that international criminal justice is very expensive.²⁷

In 2006, in accordance with the agreement between the UN and the Cambodian government, the donors to the ECCC established the Principle Donors Group, also known as the 'Friends of the ECCC', which meets twice per year. However, this group seems to have taken a 'relatively hands-off role' (Ciorciari and Heindel 2014, 79). While the group did not develop specific measures to evaluate the quality of the ECCC's work, they have regular meetings with representatives of the ECCC's various administrative and judicial offices (see e.g. ECCC 2014). The head of the EU delegation to Cambodia, George Edgard, reflected about this monitoring work of the ECCC as follows:

In practical terms it is a mixture of keeping an eye on what is in the media, what comes out in press statements by the court – there is generally a press statement by the court when there is any particular big development – and I have attended a number of sessions of the court, and so have colleagues and delegations. When the court is in session we have been to listen to the questioning of witnesses or the accused or to hear decisions delivered by the court. We have attended quite often over the last four years. And we have regular meetings with officials of the court, bilaterally and as part of the group of friends of the ECCC.

Donors thus expect that the ECCC will contribute to the rule of law in Cambodia through building national staff's capacity and bringing justice to victims. In recent years, however, the political situation in Cambodia has worsened. The political opposition was prohibited from participating in the last elections in 2018 (Robertson 2018) and the judicial system has continued to be exposed to political control from the ruling party. During my field research, I therefore asked donor representatives if they saw any links between the political situation and the ECCC's work, as this may question the ECCC's contribution to the rule of law. However, most respondents did not see any links between the current political situation and the ECCC. The former head of the EU delegation to Cambodia George Edgard, for instance, observed:

I don't see it as being directly linked with the current political situation. Bringing some justice is important: there should be accountability for what was done during the period of rule by the Khmer Rouge. People on all sides of politics in Cambodia lived through the Khmer Rouge period and the period of conflict afterwards, and I think it is inevitable that that has an impact on the way they look at politics, on the way that political life in Cambodia operates, but I think making a direct link between the Khmer Rouge period and current politics would be a mistake.²⁸

Although in the interviews conducted for this paper, donor representatives highlighted the contribution to the rule of law as an aim of funding the ECCC, this has not been truly achieved today. Through their funding, donors contributed more successfully to providing some form of justice to survivors of the KR rather than to a long-term transformation of Cambodia's judicial system.

It is important, however, not to forget that the TJ process in Cambodia is not only about the ECCC. NGOs have also played an important role and their projects too were funded by international donors. The next section discusses the contribution of donors in funding NGOs' work under the concept of TJ in Cambodia. I argue that here international donors significantly contributed to broadening the TJ process beyond a criminal justice process. They also facilitated the capacity building of NGO staff members.

28 Interview, Head of EU delegation to Cambodia, 2 July 2019, Phnom Penh.

²⁹ See <https://www.eccc.gov.kh/en/forms>.

³⁰ Interview, donor representative, 25 April 2019, Phnom Penh.

4.2 Donors Shape TJ in Civil Society

In Cambodia, a significant number of NGOs were created in the 1990s after the UN peacebuilding intervention. Since the first election in Cambodia in 1993, there has been a large influx of development aid (Sperfeldt 2012, 150). In 2013, the total amount of NGOs registered in Cambodia was about 3,500 (Domashneva 2013). After the establishment of the ECCC, NGOs took the main role in facilitating communication between KR survivors and the ECCC through outreach with funding from various donors. They thereby complemented the ECCC in important ways, given that the ECCC had limited capacities and resources for this type of work. Moreover, NGOs had an added value for conducting outreach, as they could make use of their existing structures across the country and of their established relations with the population (Sperfeldt and Oeung 2019, 88).

The villagers who attended these outreach activities could decide whether they wanted to apply and participate in the ECCC, and could apply either by themselves, by submitting the Victims Information Form to the ECCC²⁹, or with the assistance of NGOs (Kirchenbauer et al. 2013, 18). NGOs played a crucial role in facilitating the participation of survivors at the ECCC, in particular in enabling civil party participation. We can see this for instance from the results of our 2018 survey mentioned before. 58% of the 255 civil parties and civil party applicants surveyed and 18.6% of the 59 complainants surveyed mentioned that they had submitted their victims information form through NGOs (Williams et al. 2018, 69).

After the initial phases of the ECCC, NGOs continued to play an important role in outreach. They not only updated the general population with information from the ECCC, but also opened up space for dialogues between survivors and younger generations and facilitated meetings between civil parties and their lawyers (Sperfeldt 2012, 156). The project 'Voices for Reconciliation' mentioned previously, which was supported by USAID from 2013 until 2015, is an example of such an NGO project that played a significant role in outreach. Its aims were to increase community awareness and understanding of the ECCC, to empower conflict-affected groups, to create space for dialogue at the commune level, and to build accessory capacities among those groups of participants. In total, 181 dialogue meetings across Cambodia were conducted with the facilitation of regional staff of ADHOC (Sperfeldt, Hyde and Balthazard 2016, 22).

By participating in outreach projects, victims can have their own voice and let everyone know what happened during their life, as they are historical witnesses for the younger generations, who did not live during the KR regime. Providing a voice to victims, and in particular civil parties, was a main motivation for donors involved in TJ in Cambodia. A representative of a donor who has always supported TJ in Cambodia observed: '[G]iving survivors voices through civil parties that was somehow the idea [...]'.³⁰

NGOs with donor funding also played an important role in providing support to victim groups that were not very visible or did not receive a lot of support at first in the TJ process in Cambodia. For instance, the Minority Rights

Organization (Miro) implemented the project 'Dialogue Reconciliation Workshop' on the judgement in Case 002/2, with the support of GIZ-CPS. This project aimed at supporting members of the Cham and Vietnamese ethnic minorities in specific locations such as Kampong Chhnang province. Members of the Vietnamese minority and of the Cham minority (who are mainly Muslim and therefore also called Khmer Islam) had almost the same experience of suffering under the KR regime. They were both specifically targeted by the KR regime. During the project activities, the Cham and Vietnamese victims talked with younger generations and villagers about their suffering under the KR regime, including their living conditions, the lack of freedom, torture, being forced to engage in practices that were against their religions and the disconnect with relatives. At the end of the event, the participants – who were Khmer – reflected that 'both Vietnamese and Cham suffered since they were a target group to be killed during the KR regime'.³¹

Through working closely with survivors since 2010, I have been able to observe that the NGOs' projects have worked on transferring information from the ECCC to the grassroots level, contributing to reconciliation of former KR cadres and victims and opening up spaces for victims of different groups – Khmer, Cham, Vietnamese – to talk together and with members of the younger generations about their suffering during the KR regime. Moreover, donors initiated this work with ethnic minorities, which, given the general situation of racism against Vietnamese in Cambodia, may otherwise not have happened (McGrew 2018, 170).

Beyond funding these important NGO activities, which played a crucial role in Cambodia's TJ process, donors also facilitated capacity building amongst NGO staff members. The donors perceive themselves to be building the capacity of local NGOs by providing technical assistance (OHCHR 2008, 18).

A necessary condition for such capacity building, for ensuring the increase of local knowledge and its use in complex settings, is long-term funding. However, this was rarely the case with donors funding TJ in Cambodia since donors often make assessments before they donate funds. The European Commission, however, has allowed for longer-term funding as it provided funding for multiyear projects (Sperfeldt 2012, 155). The long-term funding of the German CPS in Cambodia, which provided expert advisors to various local partner organizations also played an important role in this regard. I could observe that having international technical assistance at the beginning of the establishment of the ECCC was highly effective for empowering and building the capacity of the local staff.

In my experience as a national staff member who has worked for many years in a Cambodian NGO that received support from the German CPS, I could also observe that this support enabled national staff members to build professional skills. For example, collaboration with the German technical advisor helped the development of linguistic skills as well as professional skills in research, fundraising, reporting as well as monitoring and evaluation of the societal effect of the project. Local staff members working on TJ also had the chance to learn more through exchange programs by institutes and networks.

³¹ See www.facebook.com/krtrri-almonitor/?_tn_=%2Cd%2CP-R&eid=ARC4Gh-9RqawQanuPU-crcDgqtw-ITOfXmLDkM3AF2wGYSikW-y1QQuTR30A_i0drlaDJ323in2QV0TsQK (accessed November 24, 2019).

Building local capacity also depends, then, on an intimate connection to context and an understanding of the specific challenges faced by civil society actors (Arthur 2018, 231). Another challenge in enabling capacity building of NGOs working on TJ in Cambodia is that, when it is focused on individuals, efforts may be lost if individuals change jobs or professional trajectories (McGrew 2018, 164). One of the respondents who had experiences as a project officer in the field of TJ in Cambodia criticized from his perspective that there were not many benefits from working in this field besides the salary. While this view does not apply to all the Cambodian staff members who used to work on TJ, it shows that some may not understand or see any personal benefits from working in this field.

Over time, we have seen in Cambodia that NGOs working on TJ have closed down in the context of the decrease of funding dedicated to TJ activities in Cambodia.

From the perspective of donors, this decrease of funding may be necessary because they may consider NGOs to be 'more concerned with completing one-off projects and getting new grants than working toward social change' (Arthur 2018, 231). The small amount of donor funding for NGOs – in comparison with donor funding dedicated to formal TJ mechanisms such as the ECCC – may also be justified by donors if they believe that it will be challenging or difficult for small organizations to receive and effectively make use of large funds, especially in the short term (Ibid.). However, from the perspective of civil society organizations, they face challenges on the prospects of their projects since there is no guarantee that they will receive new funds for the next period (Ibid. 234).

Based on my own observations, NGOs can, however, also close down by themselves, simply because they have changed their vision, mission and activities, rather than because of the challenges in funding their TJ work. In Cambodia, an institute that used to work to promote and empower civil parties from 2007 until 2015 stopped working on this because they wanted to support general human rights work in Cambodia and also because they noticed that many local NGOs were working in this field already. But I also observed another reason for NGOs not to continue their TJ work: after finishing a project, the NGO could not get new funding, maybe because the evaluation of the project showed that it did not reach its goals within the project timeline. Often, there are not enough human resources to implement a project on TJ in the context of Cambodia or NGO leaders may also be weak in leading their team. Other challenges also include the lack of capacity of the staff members working on the project, the lack of time and the lack of clarity of the NGO's internal structure for the project. Working as a team is important to ensure the quality of civil society's TJ work. Each member working in the same team must think about the collective benefit more than the individual benefit and NGOs themselves should be practical in their checks and balances, especially with regards to accountability. The cooperation between different internal structures of an organization is important in order to reach the aims with transparency and ensure the long-term sustainability of the organization.

This is also something that a donor representative observed during the interview for this paper, adding that the lack of cooperation within organizations may have been an unintended consequence of donor funding:

I see [...] rather [...] a mess in NGOs, because NGOs: how do they set up themselves? I don't know how many departments [or internal groups each NGO has] and each group [is] working with certain donors on [a] certain topic.³²

However, I also observed that over time, international donors contributed to increased cooperation between the Cambodian NGOs working on TJ. While initially, there was some competition between NGOs applying for TJ funding, donors later encouraged NGOs to apply together and work on joint projects, each NGO contributing with their specific expertise, skills or networks to the project.

³² Interview, donor representative, 25 April 2019, Phnom Penh.

5 Conclusion

This paper has explored some of the roles that international donors have had in the TJ process in Cambodia and how they have indirectly shaped the process through funding both the ECCC and the TJ initiatives of local NGOs. It draws from empirical data, including seven semi-structured interviews with current and former representatives of bilateral state donors, multilateral donors and non-state donors.

Without donor funding, the TJ process on the KR regime, including the legal proceedings at the ECCC, would not have been able to take place. However, the legacy of donor funding in Cambodia is mixed. Donor funding to TJ in general, and the ECCC in particular, is mainly framed in terms of contributing to the rule of law in Cambodia. Indeed, an important theme emerging from my interviews was the belief that the ECCC contributed to the capacity building of the ECCC national staff members and would act as a model for Cambodia's judicial system. Interestingly, respondents were also confident that the ECCC is an independent judicial institution, acting on the basis of its internal rules. However, the ECCC's legacy for Cambodia's judicial system and its independence – especially when it comes to allegations of political interference in Cases 003 and 004 – have both been widely debated ever since the ECCC's establishment and are once again being questioned in the current worsening political situation in Cambodia. This clearly questions donors' contributions to the rule of law in Cambodia through their funding of the ECCC.

In order to improve the contribution of the ECCC as a role model to national courts, donors should have regular projects monitoring the national courts to make sure that they can reach their goal. Moreover, donors should establish a real monitoring system of the ECCC, with regular reports on the quality of the ECCC's work, to make sure that the ECCC is genuinely independent and does not break the trust of donors.

Besides funding the ECCC, donors have played an important role in Cambodia's TJ process by funding civil society's work on TJ. This funding has allowed NGOs to step in to provide key services that the ECCC was not able to provide on its own. This included facilitating victim participation at the ECCC, thereby encouraging victims to speak out about their experiences under the KR, but also conducting tailored outreach on the legal proceedings for the broader – and most importantly rural – population. This is very significant because victims of the KR regime can act as witnesses and can share their past experiences with the younger generations in Cambodia. Donor funding to TJ in Cambodia has therefore contributed to making the TJ process meaningful to victims and accessible to the broader population.

Even though donors played the main role in supporting NGOs in Cambodia to deliver justice, reconciliation and information on the TJ process, the limitation of funds and the competition for these funds led NGOs to apply for reduced budgets. This led to limited human resources and affected the quality of NGOs work. Thus, in their decision making, donors should make sure that enough human resources are budgeted for, besides the foreseen project activities. They should evaluate the capacity or quality of work rather than just

auditing the finances. Nonetheless, donors played a key role in developing the knowledge and capacities of local NGO staff members who gathered significant experiences in TJ, and developed and sharpened many skills, including in proposal and report drafting, monitoring and evaluation and conducting baseline studies. This capacity building of local NGO staff is very important for developing the human resources for the future of Cambodia and for strengthening civil society in preventing human rights violations in the future. Although the ECCC will be coming to an end, the donors, as TJ actors, should continue their mission of contributing to the rule of law and to building peace in Cambodia.

Bibliography of the Foreword

Bibliography of the Foreword

- Bruneteau, Bernard. 1999. *Les totalitarismes*. Paris: Armand Colin.
- Chhim, Sotheara. 2014. "A Place for Baksbat (Broken Courage) in Forensic Psychiatry at the ECCC." *Journal of Psychiatry, Psychology and the Law* 21, no. 2: 286-296.
- Ciorciari, John D., and Anne Heindel. 2014. *Hybrid Justice: The Extraordinary Chambers in the Courts of Cambodia*. Ann Arbor: The University of Michigan Press.
- Gidley, Rebecca. 2019. *Illiberal Transitional Justice and the Extraordinary Chambers in the Courts of Cambodia*, Switzerland: Palgrave Macmillan.
- Hinton, Alexander L. 2014. "Justice and Time at the Khmer Rouge Tribunal: In Memory of Vann Nath, Painter and S-21 Survivor." *Genocide Studies and Prevention: An International Journal* 8, no. 2: 7-17.
- Hughes, Rachel. 2015. "Ordinary Theatre and Extraordinary Law at the Khmer Rouge Tribunal." *Environment and Planning D: Society and Space* 33: 714-731.
- Human Rights Watch. 2014. "Cambodia: Khmer Rouge Convictions 'Too Little, Too Late': Political Interference, Delays, Corruption Make Tribunal a Failure." News release. August 8. Accessed April 26, 2016. www.hrw.org/news/2014/08/08/cambodia-khmer-rouge-convictions-too-little-too-late.
- Jarvis, Helen. 2014. "'Justice for the Deceased': Victims' Participation in the ECCC", *Genocide Studies and Prevention: An International Journal* 8, no. 2: 19-27.
- Kent, Alexandra. 2013. "Friction and Security at the Khmer Rouge Tribunal." *SOJOURN: Journal of Social Issues in Southeast Asia* 28, no. 2: 299-328.
- Kiernan, Ben. 2003. "The Demography of Genocide in Southeast Asia: The Death Tolls in Cambodia, 1975-1979, and East Timor, 1975-1980." *Critical Asian Studies* 35, no. 4: 585-597.
- Killean, Rachel. 2018. *Constructing Victimhood at the Khmer Rouge tribunal: Visibility, Selectivity and Participation.* *International Review of Victimology* 23: 273-296.
- KOFF. 2018. "Cambodia: Elections and Violence", *KOFF peacebuilding magazine: à propos* 156. August 2018. <https://www.swisspeace.ch/apropos/august-en-2018/>
- Lemonde, Marcel. 2013. *Un juge face aux Khmers Rouges*. Paris: Editions du Seuil.
- Kum, Somaly. 2019. "Brother No. 2 of the Khmer Rouge becomes a Lesson Learned at the ECCC?" *New Mandala*. August 19, 2019. <https://www.newmandala.org/lesson-learned-at-the-eccc/>
- Ly, Ratana. 2017. 'Prosecuting the Khmer Rouge: Views from the Inside.' In *After Nuremberg. Exploring Multiple Dimensions of the Acceptance of International Criminal Justice*, edited by Susanne Buckley-Zistel, Friederike Mieth and Marjana Papa. Nuremberg: International Nuremberg Principles Academy. Accessed October 10, 2019. www.nurembergacademy.org/fileadmin/user_upload/Cambodia.pdf
- Manning, Peter. 2012. "Legitimacy, Power and Memory at the ECCC." In *Critical Perspectives in Transitional Justice*, edited by Nicola Palmer, Phil Clark and Danielle Granville: 217-33. Cambridge: Intersentia.
- McCargo, Duncan. 2015. "Transitional Justice and Its Discontents". *Journal of Democracy* 26, no. 2: 5-20.
- McGonigle, Brianne. 2009. "Two for the Price of One: Attempts by the ECCC to Combine Retributive and Restorative Justice Principles." *Leiden Journal of International Law* 22: 127-49.
- Mohan, Mahdev. 2009. "The Paradox of Victim-Centrism: Victim Participation at the Khmer Rouge Tribunal." *International Criminal Law Review* 9, no. 5: 733-75.
- Naidu, Natasha. 2018. "Disagreements and Design Flaws at Cambodia's Khmer Rouge tribunal", *New Mandala*. August 14, 2018. www.newmandala.org/disagreements-design-flaws-cambodias-khmer-rouge-tribunal/
- OSJI (Open Society Justice Initiative). 2006. "'No Perfect Justice': Interviews with Thun Saray, Son Chhay and Ouk Vannath", *Justice Initiatives: The Extraordinary Chambers*. Accessed October 10, 2019. www.justiceinitiative.org/publications/justice-initiatives-extraordinary-chambers
- OSJI. 2010. "Political Interference at the ECCC." Accessed April 27, 2016. www.opensocietyfoundations.org/reports/political-interference-extraordinary-chambers-courts-cambodia.
- Path, Kosal. 2017. "Multivocal Resistance to Transitional Justice in Post-Genocide Cambodia." In *Resistance and Transitional Justice*, edited by Jones, Briony and Julie Bernath, 123-141. New York: Routledge.
- Petit, Robert. 2010. "Lawfare and International Tribunals: A Question of Definition? A Reflection on the Creation of the 'Khmer Rouge Tribunal'." *Case Western Reserve Journal of International Law* 43, no. 1/2: 189-99.
- Ryan, Heather and Laura McGrew. 2016. *Performance and Perception: The Impact of the Extraordinary Chambers in the Courts of Cambodia*. New York: Open Society Justice Initiative (OSJI). Accessed December 2, 2019. <https://www.justiceinitiative.org/publications/performance-and-perception-impact-extraordinary-chambers-court-cambodia>
- Rubli, Sandra. 2012. "Transitional Justice: Justice by Bureaucratic Means?" *swisspeace Working Paper* 4. October 2012. www.swisspeace.ch/fileadmin/user_upload/Media/Publications/WP4_2012.pdf
- Sharp, Dustin. 2013. "Interrogating the Peripheries: the Preoccupations of Fourth Generation Transitional Justice." *Harvard Human Rights Journal* 26, no. 1: 149-78.
- Sirik, Savina. 2016. *Everyday Experiences of Genocide Survivors in Landscapes of Violence in Cambodia*, Phnom Penh: Documentation-Centre of Cambodia.
- Soy, Kimsan. 2016. 'Understanding Acceptance of International Justice through Duch's Sentence at the Extraordinary Chambers in the Courts of Cambodia', In *After Nuremberg. Exploring Multiple Dimensions of the Acceptance of International Criminal Justice*, edited by Susanne Buckley-Zistel, Friederike Mieth and Marjana Papa. Nuremberg: International Nuremberg Principles Academy. Accessed October 10, 2019. www.nurembergacademy.org/fileadmin/media/pdf/acceptance/Cambodia.pdf
- Sperfeldt, Christoph. 2012. "Collective Reparations at the Extraordinary Chambers in the Courts of Cambodia." *International Criminal Law Review* 12, no. 3: 457-90.
- Un, Kheang. 2013. "The Khmer Rouge Tribunal: A politically compromised search for justice." *The Journal of Asian Studies* 72, no. 4: 783-792.
- Studzinsky, Silke. 2011. "Neglected Crimes: The Challenge of Raising Sexual and Gender-Based Crimes before the ECCC." In *Gender in Transitional Justice*, edited by Susanne Buckley-Zistel and Ruth Stanley, 88-112. Basingstoke: Palgrave Macmillan.
- Werner, Alain and Daniella Rudy. 2010. "Civil Party Representation at the ECCC: Sounding the Retreat in International Criminal Law?" *Northwestern Journal of International Human Rights* 8, no. 3: 301-309.
- Williams, Timothy, Julie Bernath, Boravin Tann and Somaly Kum. 2018. "Justice and Reconciliation for the Victims of the Khmer Rouge? Victim Participation in Cambodia's Transitional Justice Process." Marburg: Centre for Conflict Studies; Phnom Penh: Center for the Study of Humanitarian Law; Bern: swisspeace. Accessed December 3, 2019. <https://www.swisspeace.ch/publications/reports/justice-and-reconciliation-for-the-victims-of-the-khmer-rouge-2>

Bibliography

- Arthur, Paige. 2018. "Why Do Donors Choose to Fund Transitional Justice?" In *Transitional Justice, International Assistance, and Civil Society*, edited by Paige Arthur and Christalla Yakinthou: 209-241. Cambridge: Cambridge University Press.
- Bates, Alex. 2010. "Transitional Justice in Cambodia: Analytical Report." ATLAS Project/British Institute of International and Comparative Law.
- Boyle, David and Buth Reaksmy Kongkea. 2012. "Court Extension, A First Step to Reform." *The Phnom Penh Post*, October 11, 2012. www.phnompenhpost.com/national/court-extension-first-step-reform
- Ciorciari, John and Anne Heindel. 2014. *Experiments in International Criminal Justice: Lessons from the Khmer Rouge Tribunal*. Ann Arbor: The University of Michigan Press.
- Cohen, David, Mattes, Daniel and Caitlin McCaffrie. 2017. "Justice on Appeal: Commentary on the Case 002/01 Final Judgment at the ECCC." *Stanford and Phnom Penh: WSD Handa Center for Human Rights and Transitional Justice*. Available at <https://krtrialmonitor.files.wordpress.com/2017/08/justice-on-appeal-00201-cohen-mattes-mccaffrie-2017.pdf>
- Cohen, David, Hyde, Melanie and Penelope Van Tuyl. 2015. "A Well-Reasoned Opinion: Critical Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)." Honolulu: East-West Center. Available at <https://krtrialmonitor.files.wordpress.com/2015/11/cohen-wellreasoned2015.pdf>
- CDC (The Council for the Development of Cambodia). n.d. "Summary Record of the Negotiations on Development Cooperation between the Government of the Kingdom of Cambodia and the Government of the Federal Republic of Germany." Accessed November 14, 2019. http://www.cdc-crdb.gov.kh/cdc/Donor_Development_Cooperation_Programs/Germany/agreement_2015/Summary_Record_2015_0427601.pdf
- Dara, Mech. 2018. "No More Khmer Rouge Leaders to Stand Trial." *The Phnom Penh Post*, November 19, 2018. Accessed November 15, 2019. www.phnompenhpost.com/national-kr-tribunal/no-more-khmer-rouge-leaders-left-stand-trial
- De Gaudemar, Matthieu. 2016. "Cambodia to Remain Among Least Developed Countries, For Now." *The Phnom Penh Post*, December 9, 2016. Accessed November 10, 2019. www.phnompenhpost.com/business/cambodia-remain-among-least-developed-countries-now
- Domashneva, Helena. "NGOs in Cambodia: It's Complicated." *The Diplomat*, December 3, 2013. Accessed December 24, 2019. <https://thediplomat.com/2013/12/ngos-in-cambodia-its-complicated/>
- Dickinson, Laura. 2003. "The Promise of Hybrid Courts." *The American Journal of American Law* 97, no. 2: 295-310.
- Ear, Sopha. 2007. "The Political Economy of Aid and Government in Cambodia." *Asian Journal of Political Science* 15, no. 1: 68-96.
- ECCC. 2019a. "ECCC Financial Outlook as at 31 October 2019." Accessed December 26, 2019. www.eccc.gov.kh/sites/default/files/Copy%20of%20ECCC%20Contribution%20Data%20as%20at%2031%20Oct%202019_0.pdf
- ECCC. 2019b. "ECCC at a Glance." July 2019. Accessed April 28, 2019. www.eccc.gov.kh/sites/default/files/publications/ECCC%20AT%20THE%20GLANCE%20JULY%202019%20%20latest%20version%204.pdf
- ECCC. 2018. "The Court Report." Issue 111, January-February 2018. Accessed April 28, 2019. www.eccc.gov.kh/sites/default/files/publications/The%20Court%20Report%20-%20January%20February%202018.pdf accessed on 28 April 2019
- ECCC. 2014. "Statement by the Principal Donors Group for the ECCC." Accessed November 15, 2019. www.eccc.gov.kh/en/articles/statement-principal-donors-group-extraordinary-chambers-courts-cambodia
- ECCC. n.d. "Statement by the International Co-Investigating Judge." Accessed September 13, 2019. <https://www.eccc.gov.kh/en/articles/statement-international-co-investigating-judge>
- EU Delegation to Cambodia. 2018. "EU Support to the ECCC and the Awareness and Education Programme on the Khmer Rouge Regime." Accessed November 15, 2019. https://eeas.europa.eu/delegations/cambodia/50236/eu-support-extraordinary-chambers-courts-cambodia-eccc-and-awareness-and-education-programme_en
- Elster, Jon. 2004. *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.
- Embassy of Japan. 2017. "Press Release: The Inauguration of the Legal Documentation Centre Relating to the ECCC." Accessed November 13, 2019. <https://opendevelopmentcambodia.net/announcements/the-inauguration-of-the-legal-documentation-centre-relating-to-the-extraordinary-chambers-in-the-courts-of-cambodia/>
- Fawthrop, Tom and Helen Jarvis. 2004. *Getting Away with Genocide? Elusive Justice and the KR Tribunal*. London: Pluto Press.
- Hughes, Caroline. 2009. *Dependent Communities: Aid and Politics in Cambodia and East Timor*. Ithaca, New York: Cornell University Press.
- Human Rights Watch. 2014. "Cambodia: Khmer Rouge Convictions 'Too Little, Too Late'." Accessed April 28, 2019. www.hrw.org/news/2014/08/08/cambodia-khmer-rouge-convictions-too-little-too-late
- Karnavas, Michael. 2017. "Opinion: Due Process Not Negotiable, Even in Khmer Rouge Tribunal." May 15, 2017. Accessed November 6, 2019. <https://english.cambodiadaily.com/news/opinion-due-process-not-negotiable-even-khmer-rouge-tribunal-129742/>
- Kirchenbauer, Nadine, Balthazard, Mychelle, Ky, Latt, Vinck, Patrick and Phuong Pham. 2013. *Victims Participation Before the ECCC: Baseline Study of the Cambodian Human Rights and Development Association's Civil Party Scheme for Case 002. ADHOC and Harvard Humanitarian Initiative*. Available at <https://www.eccc.gov.kh/sites/default/files/Victims-participation-before-ECCC-Baseline-Study-Jan-2013.pdf>
- Kinetz, Erika. 2008. "ECCC Budget Estimated at \$170 Million." *The Cambodia Daily*, February 7, 2008. Accessed December 23, 2019. <https://english.cambodiadaily.com/news/eccc-budget-estimated-at-170-million-61800/>
- Kum, Somaly. 2019. "Brother No. 2 of the Khmer Rouge becomes a Lesson Learned at the ECCC?" *New Mandala*. August 19, 2019. Accessed on November 15, 2019. www.newmandala.org/lesson-learned-at-the-eccc/
- McGrew, Laura. 2018. "Hybrid Court, Hybrid Peacebuilding in Cambodia." In *Transitional Justice, International Assistance, and Civil Society*, edited by Paige Arthur and Christalla Yakinthou: 144-173. Cambridge: Cambridge University Press.
- Muck, William, Eric Wiebelhaus-Brahm. 2016. "External Transitional Justice Funding: Introducing a New Dataset." *Journal of Peacebuilding & Development* 11, no. 2: 66-71.
- Nachemson, Andrew and Erin Handley. 2017. "Donors Still Backing the Khmer Rouge Tribunal." *The Phnom Penh Post*, May 15, 2017. Accessed November 19, 2019. <https://www.phnompenhpost.com/national/donors-still-backing-khmer-rouge-tribunal>
- OHCHR. 2008. "Rule of Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts". Accessed December 9, 2019. <https://www.refworld.org/docid/47ea6fbb2.html>
- OSJI (Open Society Justice Initiative). 2010. "Political Interference at the ECCC" Accessed June 30 2019. www.opensocietyfoundations.org/reports/

Bibliography

- Robertson, Holly. 2018. "Cambodia's Banned Opposition Calls for Boycott of 'Sham' Election." Los Angeles Times, July 26, 2018. Accessed November 14, 2019. <https://www.latimes.com/world/la-fg-cambodia-election-boycott-20180726-story.html>
- Ryan, Heather and McGrew Laura. 2016. Performance and Perception: The Impact of the Extraordinary Chambers in the Courts of Cambodia. New York: Open Society Justice Initiative (OSJI). Accessed September 12, 2019. <https://www.justiceinitiative.org/publications/performance-and-perception-impact-extraordinary-chambers-court-cambodia>
- Sokheng, Vong. 2009. "More Suspects Risks War: PM." The Phnom Penh Post, April 1, 2009. Accessed November 24, 2019. www.phnompenhpost.com/national/more-suspects-risks-war-pm
- Sharp, Bruce. n.d. "Counting Hell." Accessed November 24, 2019. <https://www.mekong.net/cambodia/deaths.htm>
- Sperfeldt, Christoph and Jeudy Oeung. 2019. "The Role of Cambodia Civil Society's Involvement with Victim Participation at the Khmer Rouge Trials." In Civil Society and Transitional Justice in Asia and the Pacific, edited by Lia Kent, Joanne Wallis and Claire Cronin. Australian National University Press: pp 85-106.
- Sperfeldt, Christoph, Hyde, Melanie and Mychelle Balthazard. 2016. "Voices for Reconciliation: Assessing Media Outreach and Survivor Engagement for Case 002 at the Khmer Rouge Trials." Available at <https://krtrialmonitor.files.wordpress.com/2016/03/vor-survey-report.pdf>
- Sperfeldt, Christoph. 2014. "Broadcasting Justice: Media Outreach at the Khmer Rouge Trials". Asia Pacific issues 115. Available at <https://Eastwestcenter.org/AsiaPacificIssues>
- Sperfeldt, Christoph. 2012. "Cambodian Civil Society and the Khmer Rouge Tribunal." The International Journal of Transitional Justice 6: 149-160.
- United Nations Human Rights Council. 2010. Report of the Secretary-General (16 September 2010). A/HRC15/47. Available at https://cambodia.ohchr.org/sites/default/files/Ohchr-report/A_HRC_15_47CMB16092010E.pdf
- Vireak, Sim. 2010. "Cambodia-Japan Relations." Phnom Penh: Cambodian Institute for Cooperation and Peace, E-Book No. 2. Available at: www.cicp.org.kh/userfiles/image/download/cicp%20e-book%20no%202.pdf
- Williams, Timothy, Julie Bernath, Boravin Tann and Somaly Kum. 2018. "Justice and Reconciliation for the Victims of the Khmer Rouge? Victims Participation in Cambodia's Transitional Justice Process." Marburg: Center for Conflict Studies; Phnom Penh: Center for the Study of Humanitarian Law; Bern: swisspeace. Accessed 28 April 2019. <https://www.swisspeace.ch/publications/reports/>

About the Authors

Somaly Kum is a consultant for the Cambodia Programs of the WSD Handa Center for Human Rights and International Justice at Stanford University. She works closely with survivors of the Khmer Rouge regime and university students. She was a co-author of the survey reports 'Justice and Reconciliation for the Victims of the Khmer Rouge?' and 'So We Knew What Happened' and worked as a program assistant with the Khmer Rouge Trial Justice Project for ADHOC. Somaly holds a master's degree in Public Law from the Royal University of Law and Economics and a bachelor's degree in Management from Preah Kossamak Political Institute in Cambodia and another bachelor's degree in Accounting from the National University of Management.

Co-editors of the Cambodia Working Paper Series:

Ratana LY is a senior research fellow at the Center for the Study of Humanitarian Law, Cambodia, and a PhD candidate at the University of Victoria, Canada. Her research interests are in international criminal law, business & human rights, law & society, and transnational regulation. She is also experienced in empirical research.

Julie BERNATH is a senior researcher and program officer in the Dealing with the Past program at swisspeace. Her research specializations include the politics of transitional justice, victims' participation in transitional justice and dealing with the past in Cambodia. She holds a PhD in political science from the University of Basel.

About swisspeace and the CSHL

swisspeace is a practice-oriented peace research institute. It analyses the causes of violent conflicts and develops strategies for their peaceful transformation. swisspeace aims to contribute to the improvement of conflict prevention and conflict transformation by producing innovative research, shaping discourses on international peace policy, developing and applying new peacebuilding tools and methodologies, supporting and advising other peace actors, as well as by providing and facilitating spaces for analysis, discussion, critical reflection and learning. swisspeace is an associated Institute of the University of Basel and member of the Swiss Academy of Humanities and Social Sciences. Its most important partners and clients are the Swiss Federal Department of Foreign Affairs, the State Secretariat for Education, Research and Innovation, international organizations, think tanks and NGOs.

The Center for the Study of Humanitarian Law (CSHL) was established in August 2014 with the mission to advance a wider understanding of human rights and international humanitarian law through rigorous research, high quality education, and academic collaborations. To date, CSHL is the only university-based research center of its kind in Cambodia. It is attached to the English Language Based Bachelor of Law program (ELBBL) at the Royal University of Law and Economics (RULE). It is a non-monitoring academic research center, intended to be at the forefront of academic research in Cambodia and the region. Through its research, publications and educational activities the Center has enhanced awareness of human rights and humanitarian law across all strata of Cambodian society and this is making the difference of optimism in Cambodian societal aspirations. CSHL's mission is not possible without the generous support from RULE, ELBBL, the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), and various partners, institutions and experts.

Working Papers

CHF 15.– plus postage & packing

2 | 2019

Sibel Gürler & Joschka Philipps
Judicial Reform and Civil Society in Guinea

1 | 2019

Laurie Nathan
The Ties That Bind: Peace Negotiations, Credible Commitment and Constitutional Reform

4 | 2018

Friederike Mieth
Transitional Justice and Social Transformation

3 | 2018

Markus Bayer
The democratizing effect of nonviolent resistance

2 | 2018

Lisa Ott & Ulrike Lühe
Conflict Prevention: Connecting Policy and Practice

1 | 2018

Briony Jones (ed.)
Knowledge for Peace: Transitional Justice, Knowledge Production and an Agenda for Research

4 | 2017

Laura Dominique Knöpfel
Contesting the UN Guiding Principles on Business and Human Rights from below

4 | 2017

Laura Dominique Knöpfel
Contesting the UN Guiding Principles on Business and Human Rights from below

3 | 2017

Sara Hellmüller, Julia Palmiano Federer, Jamie Pring
Are Mediators Norm Entrepreneurs?

2 | 2017

Huma Haider
Breaking the Cycle of Violence: Applying Conflict Sensitivity to Transitional Justice

1 | 2017

Melanie Altanian
Archives against Genocide Denialism?

4 | 2016

Vincent Hug
The Role of Personal Relationships in Peacebuilding Interventions

3 | 2016

Joshua Rogers
Civil War and State Formation: Exploring Linkages and Potential Causality

2 | 2016

Sabina Handschin, Eric Abitbol, Rina Alluri (eds.)
Conflict Sensitivity: Taking it to the Next Level

1 | 2016

Jolyon Ford
Promoting Conflict-Sensitive Business Activity during Peacebuilding

2 | 2015

Virginia Arsenault
Resistance to the Canadian Truth and Reconciliation Commission

1 | 2015

Didier Péclard and Delphine Mechoulan
Rebel Governance and the Politics of Civil War

7 | 2014

Laurent Goetschel and Sandra Pfluger (eds.)
Challenges of Peace Research

6 | 2014

Elizabeth Shelley
Canadian Reconciliation in an International Context

5 | 2014

Stefan Bächtold, Rachel Gasser, Julia Palmiano, Rina M. Alluri, Sabina Stein
Working in and on Myanmar: Reflections on a 'light footprint' approach

4 | 2014

Sara Hellmüller
International and Local Actors in Peacebuilding: Why Don't They Cooperate?

Further Working Papers can be found at www.swisspeace.ch/publications/working-papers.html

Information

swisspeace brochure and annual report in German, French and English can be found at www.swisspeace.ch/aboutus

Newsletter

Free subscription to the KOFF e-newsletter koff.swisspeace.ch

Other Publications

A complete list of publications and order forms can be found at www.swisspeace.ch/publications

[swisspeace](http://www.swisspeace.ch)

Steingraben 22, 4051 Basel

Sonnenbergstrasse 17, P.O. Box, CH-3000 Bern 7

www.swisspeace.ch



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Embassy of Switzerland in Thailand



**University
of Basel**



**SAGW
ASSH**