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Date:
2016

Citation:
Hughes, R. (2016). Victims' rights, victim collectives and utopic disruption at the Extraordinary Chambers in the Courts of Cambodia. Australian Journal of Human Rights, 22 (2), pp.143-166. https://doi.org/10.1080/1323238X.2016.11910946.

Persistent Link:
https://hdl.handle.net/11343/228854

Victims' rights, victim collectives and utopic disruption at the Extraordinary Chambers in the Courts of Cambodia

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Abstract: This paper examines victim participation at Cambodia's hybrid tribunal, the Extraordinary Chambers in the Courts of Cambodia. The tribunal — which attempts to bring former Khmer Rouge to justice for crimes committed between 1975 and 1979 — has invited significant participation by 'victims' and has provoked new public debate about the past, ongoing suffering and reparation. The participation of collectives of victims, and the collective nature of their participation, are here considered as interventions in the immanent utopic processes of the ECCC. These interventions produce new claims for reparation, claims that exceed extant human rights discourses in Cambodia and confront dominant economic and socio-political conditions.

Keywords: Cambodia, victims' rights, victim participation, ECCC, reparation, utopia

Acknowledgments: Thank you to my fellow participants at the *Promises and Utopias in Human Rights Workshop*, and particularly to Ben Authers, Maria Elander and two anonymous reviewers for their insightful comments on an earlier version of this paper.

Introduction

The theoretical claim of this article is that victim participation in internationalised criminal tribunals is utopic, where utopia is considered 'a distinctive *type of process* in which something better is not-yet and thus has disruptive, excessive qualities even as it is immanent to lived and material culture at multiple scales' (Anderson 2006, 698, emphasis in original). The empirical subject of this article is the Khmer Rouge Tribunal (KRT), more correctly known as the Extraordinary Chambers in the Courts of Cambodia (ECCC). Jointly designed, funded and staffed by Cambodia and the United Nations, it seeks justice for the victims of Khmer Rouge crimes committed between 1975 and 1979. The ECCC is increasingly well known for its victim participation provision, being the first internationalised criminal tribunal in which victims can join the proceedings, being known as 'civil parties'. A number of authors have explored this novel provision in a normative frame, noting the lessons and challenges it raises for international criminal law and victims' rights more broadly (McGonigle Leyh 2011; Sperfeldt 2012; 2013). My intention here is different and is skewed towards understanding how victims' rights[1] and participation productively disrupt the legal process of the tribunal and confront the broader economic and socio-political conditions of contemporary Cambodia.

My argument is that victim participation in internationalised criminal tribunals provides a stage for the putting of collective claims in otherwise politically impoverished post-conflict contexts. These small groups, which nonetheless speak to, and sometimes for, larger populations, show as scandalous the current 'non-utopian present without history or futurity'

[1] A widely accepted notion of victims' rights is set out in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (United Nations 1985).

(Jameson in Christodoulidis 2009) in which the 'order of capital' is ascendant (Christodoulidis 2009). These scandalising confrontations or interventions have been variously integrated or co-opted — by the ECCC as a legal process, and by wider political and economic contexts in which victims' claims and activities find support and visibility only when they are individuated or entrepreneurial.

The article proceeds in five parts: a brief introductory discussion of Cambodian political periods since 1979 and human rights and collective action in Cambodia from the United Nations Transitional Authority in Cambodia (UNTAC) of 1991–93 to the present; an outline of the theoretical underpinning of the article with regard to the 'geographies of hope' literature; some details about victim participation at the ECCC; a discussion of victim participation as a disruptive intervention in utopic processes; and some comments about the attempt to co-opt such disruption through an international donor-dependent, project-based approach to reparations.

Cambodia, UNTAC and economic marketisation

Cambodia's modern history, beyond what Michael Vickery has diagnosed as the Standard Total View (Vickery 1999, 39–68, x–xi), needs some introduction. While the period of the Khmer Rouge state of 1975–79 — Democratic Kampuchea (DK) — is well known, less well known is its successor state, the socialist People's Republic of Kampuchea (PRK). Accountability for the mass political violence and abuses of the DK period, and the wider social need inherited by the PRK, were causes stymied at the international level in the last decade of the Cold War. In 1979, only months after Vietnamese and anti-Khmer Rouge Cambodian forces ousted the Khmer Rouge from Phnom Penh, the new state (the PRK) held a trial *in absentia* of Khmer Rouge leaders Pol Pot and Ieng Sary. This trial involved international advisers and presented compelling evidence, but was also legally flawed and internationally derided (see Fawthrop and Jarvis 2004; Gottesman 2003). [not in ref list] Also oft-forgotten is the civil war fought between the PRK (backed by Vietnam) and the remnant Khmer Rouge (with support from Thailand, ASEAN and Western states) in the northern and western border regions of Cambodia. This conflict preceded, but also post-dated, the UNTAC period in Cambodia (1991–93). With the Cold War warming, resolving Cambodia's ongoing civil conflict became politically feasible, and this intent took the form of the Paris Peace Agreements of 1991. This Agreement ushered in UNTAC and elections in which Cambodia's warring groups were to participate.

Simon Springer argues that economic reform was 'a major factor in both the timing of and the reasoning behind the UN's attempt to settle Cambodia's civil conflict' (Springer 2009, 306). The official reason given for UNTAC, however, was the promotion of peace and respect for human rights. Although human rights and the rule of law 'had been the subject of extensive internal debate for years [during the PRK period]' (Gottesman 2003, xiii), there was little public human rights discourse in Cambodia prior to UNTAC. As Caroline Hughes notes:

> [Those] international organisations looking for non-governmental or community-based organisations to work with as [Cambodian] partners largely had to create their own, beginning with the support given to human rights organisations by the Human Rights component of UNTAC. [C Hughes 2009, 127]

Despite the relative stability in the country, and the efflorescence of human rights projects and activities in the post-UNTAC period, little of the economic exploitation and political marginalisation experienced by the majority of Cambodians has been alleviated in the two and a half decades since. Hughes sees this as an effect of the narrow political legacy of UNTAC. The UNTAC 'peace-building' approach saw expressions of need and requests to

remedy injustice met by an administratively cumbersome and politically unadventurous international force; questions of power, disadvantage and injustice were to be solved by an individual choice at the ballot box, with little democratic debate and significant intimidation (C Hughes 2009). Hughes and others (Ear 2013; Slocomb 2010; Springer 2011; 2015) also point to the growing inequality and aid dependency produced by three decades of marketising Cambodia's economy (which had been a domestic priority prior to UNTAC), exploring how this process has been strategically and profitably overseen by Cambodia's political elite. Aid dependence brings with it the predominance of aid-donor preferred activities such as competitive project-based funding that engages local partners in endless cycles of project design, monitoring and evaluation (C Hughes 2009). Simon Springer further argues that a 'violent Orientalism' underwrites processes of neoliberalisation in contemporary Cambodia, and that these processes are commonly seen as 'rationalising' enterprises in the face of what is considered an 'irrational [Cambodian] culture of violence' (Springer 2009, 306).

Given this, collective action from below on the part of Cambodians attempting social betterment has been poorly served by the legacies of UNTAC, and by both prior and subsequent economic policy in the country (C Hughes 2009, 127). Few civil society actors question the dominant notion of the free market economy as a bastion of peace (Springer 2009, 307). Indeed, civil society organisations, including those engaging in human rights advocacy, have arguably become complicit in the 'culture of violence' discourses in Cambodia that license social and economic development, despite individuals within these organisations recognising the problematic nature of such orientalism (Springer 2009, 307). It is in this context of an impoverished model of democracy under marketisation that I wish to consider victim participation at the ECCC: as a recent and high profile example of Cambodians collectively attempting social betterment against significant odds. From within an ethos of hope, this collective participation has drawn on victims' rights discourses, and has 'opened up' the tribunal in multiple, unprecedented ways. Some of these 'openings' have quickly been closed down again by neoliberal developmentalities (see Ilcan and Phillips 2010).

An individual victim claim is the focus of participation at the ECCC; this participation begins with the filling out and submission of an individual 'Victim Information Form', and participating civil parties have individual ECCC administrative identifiers that allow them to be tracked and contacted by the courts. Although victims may be physically accompanied by a professional support person while appearing before the court, they do so sitting inside what seems, at times, to be an isolated kind of space — the witness stand, which has room only for one body at a time.[2]

Each victim brings, however, multiple others to this participation (lost loved ones, living family members), and victims to these large magnitude crimes are so numerous that they are or become represented by others, representative of others, and grouped together (into 'consolidated groups' and victim associations, as well as into the imagined larger 'national' collective) (see Elander 2012, 15; FIDH 2012, 34–35). As such, it is victim collectives, in their various guises and formations, that have intervened to significant effect in the legal, socio-political and economic processes that co-constitute the ECCC.

[2] Civil party Martine Lefeuvre, however, reported feelings not of isolation but of determination on arriving at the witness box:

> I told myself, 'I'll occupy this place. It is small, maybe a square metre, but it is going to be my place. I will get comfortable. This is my place.' [Quoted in Stover, Balthazard and Koenig 2011, 526]

Geographies of hope and utopianism

Utopian imaginaries, discourses and experiments have attracted the attention of geographers because they 'typically express a belief in the power of space to shape human activities, whereby an ordered space becomes a means to contain social processes, exclude historical change, and ensure harmony and stability' (Pinder 2009, 795). Key geographical thinkers have argued that attempts to realise utopias based on static spatial forms have been fraught with problems and contradictions, especially concerning the authoritarianism required to create the ideal, and the need to reconcile this with the social processes involved in their materialisation (Pinder 2009, 795). More recently, interest has emerged in both claims of 'the end of utopia(s)' and of thinking differently about utopia or utopianism in light of renewed injustice.

In his reading of the work of Ernst Bloch, Ben Anderson notes how the simple existence of hope discloses 'how the world itself, just as it is in a mess, is also in a state of unfinishedness and in experimental process out of that mess' (Bloch 1986, 221). Anderson finds a 'utopian materialism' that has 'no need for an otherworldly form of transcendence that would intervene in the world from a position "out there"' (Anderson 2006, 700). This argument refuses even the recent revisiting of utopia that affirms practices of utopianism over the form of utopia, because in this 'it is still taken for granted that utopianism involves a procedure of imagination that envisions an alternative through the production of a vision […] [however] much more besides visions can and do become part of utopic processes and thereafter achieve utopic effects' (Anderson 2006, 702–03). Anderson's definition of utopianism is, consequently, 'a means of transformative intervention in immanent utopic processes that strive to give and find hope through an anticipation of alternative possibilities or potentialities' (Anderson 2006, 703). By way of examples, Anderson refers to interventions in performative participatory action research, theatre and forms of academic critique.

In giving the example of 'performative participatory action research', Anderson allies his own thinking to a wider field of geographical scholarship concerned with fostering 'postcapitalist' subjects, economies and communities (see Gibson-Graham 2006; Gibson-Graham, Cameron and Healy 2013). This 'community economies' or 'diverse economies' scholarship supports and interrogates such processes as grassroots renewable energy initiatives (Cameron and Hicks 2014), alternative forms of economic market organisation (Callon 2015), and community-supported resource management (Snyder and St Martin 2015). An ethos of hope is key here, and is drawn as much from researcher-as-activist experiences as it is from philosophical writings. Davina Cooper (2014) also links her significant project of examining the conceptual life of 'everyday utopias' with community economies scholarship. Cooper offers a sophisticated account of 'sites' as diverse as public nudism, London's Speakers' Corner, the Toronto Women's Bathhouse, alternative schooling, equality governance and a LETS scheme to show how 'the conceptual lives of everyday utopias contribute to a transformative politics' (Cooper 2014, 24). I am not here asserting that victim participation at the ECCC constitutes an 'everyday utopia', because such participation is (as will be explored) so much less often and less coherently 'up and running' than Cooper's sites (Cooper 2014, 5). As well, the 'thingness' that Cooper's 'everyday utopias' take on in her analysis, and her emphasis on concepts in utopian practice, moves away from an understanding of utopianism as a means of intervening in existing processes (without necessarily envisioning the new), an understanding closer to my purpose here.

In light of these critical adventures in utopia, in the following section I consider victim participation, to use Anderson's phrasing, as a means of intervention in the immanent utopic processes underway at the internationalised criminal tribunal. While not (or not yet)

constituting a wholesale 'rupture' (Christodoulidis 2009) of the legal process that is the ECCC, these are nonetheless hopeful disruptions brought by collectives of victims that are born of immanent critique and that 'strive to give and find hope through an anticipation of alternative possibilities or potentialities' (Anderson 2006, 703).

The ECCC and victim participation

The current tribunal is concerned with crimes committed during the period April 1975 to January 1979, the recognised period of Khmer Rouge rule in Cambodia. In 1997, nearly 20 years after the fall of the Khmer Rouge, Cambodia's then co-prime ministers wrote to the United Nations to request assistance in bringing former Khmer Rouge leaders to trial. Between 1999 and 2003, the two parties arm-wrestled over the form and function of the tribunal, coming to an agreement in 2003 to try 'senior leaders and those most responsible' for Khmer Rouge crimes. The tribunal, a 'hybrid' model of international and national law being applied in a series of 'extraordinary chambers' within Cambodia's national court system, were fully operational in 2007. In Case 001, a single defendant, Kaing Guek Eav (known as 'Duch'), was found guilty of crimes against humanity and grave breaches of the 1949 Geneva Convention. He was originally sentenced to 35 years in prison (reduced to 19 years) but, on appeal, was sentenced to life imprisonment.

Hearing of evidence in Case 002 began in 2011. The two defendants remaining in this case are Noun Chea and Khieu Samphan, alleged former leaders of the regime, both aged in their 80s and in poor health.[3] Case 002 is so large and complex, dealing as it does with the former 'upper brothers' of the regime, that it has been severed into two mini-trials. The judgment in the first mini-trial[4] was handed down in August 2014, when both defendants were found guilty of crimes against humanity.[5] An unprecedented number of people (over 100,000) attended this mini-trial through the court's public gallery (ECCC 2014b). The hearing of evidence in the second section of the case is scheduled to conclude at the end of 2016.

Three further individuals have recently been charged across two additional ECCC cases, 003 and 004. These further indictments were sought by the international co-prosecutor, but not by the counterpart national co-prosecutor, and the progress of these cases has been supported by a series of international co-investigating judges but not by the national co-investigating judge (see Jarvis 2016; Un 2013). [not in ref list] As Kheang Un reports:

> The Cambodian prosecutors and judges argue that Cases 003 and 004 do not fall under the Tribunal's jurisdiction because [the indictees] were neither 'most senior' nor 'most responsible'. Such judicial reasoning … is seen as contrary to the opinion of experts and therefore is viewed as politically driven by many journalists, human rights activists, and scholars. [Un 2013, 785]

The Prime Minister and other ministers in the Cambodian government have also not supported extending the work of the ECCC beyond Cases 001 and 002 (Jarvis 2016, 30). Further controversy — and significant international media attention — has attended

[3] The defendants in the current case originally numbered four, but Ieng Thirith was found mentally unfit to stand trial and Ieng Sary passed away in 2013.

[4] The substantive hearings in this trial commenced on 21 November 2011 and concluded with closing statements on 31 October 2013. It primarily focused on alleged crimes against humanity related to the forced movement of the population from Phnom Penh and later from other regions (phases one and two), and execution of Khmer Republic soldiers at Toul Po Chrey execution site immediately after the Khmer Rouge takeover in 1975. It also considers the roles of the accused in relation to regime policies relevant to all charges, which will provide a foundation for examining the remaining charges in future trials: see ECCC nd.

[5] Over 222 days, the Trial Chamber heard testimonies from 92 individuals, including 53 fact witnesses, five character witnesses, 31 civil parties and three experts.

unspecific and unsubstantiated allegations of corruption at the courts (see Jarvis 2016, 40 n67), adding to a generally negative international media portrayal of the ECCC (R Hughes 2015).

Victims of the Khmer Rouge may participate at the ECCC in any of three ways. They may be called to appear as a witness, they may submit useful information to the tribunal as a complainant, and (if they can show that they have been directly affected by the crimes under consideration) they can become a civil party. The 'purpose' of civil parties of the ECCC is to 'assist the Prosecution' and seek 'collective and moral reparations' (ECCC 2015, 23). The ECCC is a hybrid of international and Cambodian law, with Cambodian law being based in the French civil law (rather than common law) tradition. So the ECCC takes its method of victim participation, the provision for 'civil parties', from the Cambodian (civil law) aspect of its hybrid jurisprudence.[6]

Cambodian and international NGOs have been heavily involved in facilitating the participation of victims in the ECCC. From 2006 onwards came the work of informing and educating Cambodians nationwide and in the diaspora about the existence and mandate of the tribunal, as well as encouraging and assisting victims to participate (Stover, Balthazard and Koenig 2011; Sperfeldt 2013). Cambodian and international NGOs have organised the majority of victim submissions, as well as a system for managing submissions, and have provided pro bono legal representation for the majority of civil parties. The costs of civil parties' attendance at meetings and trial proceedings have also been borne by NGOs. So, as is the case for human rights advocacy and social development work in Cambodia, ECCC victim participation is heavily dependent on NGOs and their donors.[7]

The manner and extent of victim participation have changed over the course of Cases 001 and 002. ECCC judges have refined and revoked some initial provisions, such that civil parties are now prevented from making submissions on sentencing, from questioning the accused on their character, and from questioning expert witnesses or character witnesses (Pham et al 2011). Additional and significant disquiet around victim participation arose when, on the day of the Case 001 judgment, 24 of the 90 civil parties who had participated in the case were rejected (their status having been only provisionally confirmed). The timing of this rejection was highly regrettable in terms of the confusion, distress and loss of face that it caused among civil parties. Some 3,866 civil parties, including 125 overseas Cambodians, are currently recognised in Case 002. I turn now to a few brief examples of victim participation as a means for disruptive, utopic intervention in the ECCC.

The Khmer Rouge victim and victim collectives at the ECCC

A Cambodian population-based survey conducted in 2008 found that more than 80 per cent of those surveyed consider themselves to be victims of Khmer Rouge rule, despite only 69 per cent of the surveyed group reporting that they lived under the regime (Pham et al 2009). Until recently, most Cambodians have remembered their losses and harms within their immediate communities, often in relation to Buddhist observances, and sometimes in relation

[6] This system differs from class actions (also known as 'representative proceedings') that allow for one claimant to bring an action in court on behalf of a group of people because each individual civil party is joined to the action.

[7] Additional organisations in France and the United States have facilitated the participation of overseas Cambodians in the ECCC (see Nou 2013).

to unmarked local sites.[8] A minority of the population has visited the national-level memorial sites, the Tuol Sleng Museum and the Choeung Ek memorial; these sites have largely failed to engage social memories in Cambodia. The initial curatorial thrust of the sites was to emphasise the collective nature of Cambodians' suffering (where the collective is the people of the successor state to Democratic Kampuchea, the People's Republic of Kampuchea) and the criminal nature of the Khmer Rouge (R Hughes 2003). They aimed to remind Cambodians who it was that had liberated the country from the Polpotists (the leaders of the PRK, and Vietnam), but not to openly discuss different experiences under the regime, or to deliberate on how these pasts might be understood and adequately curated.

Much has changed with the advent of the ECCC and its victim participation provision, most evident perhaps in a surge of public interest in the tribunal and survivors' experiences of the Khmer Rouge regime. In addition to widespread and sustained Cambodian mass media interest, NGOs in both Cambodia and the diaspora have been actively reporting on the ECCC and providing support for victims in their communications with the tribunal (see Nou 2013). Talk of victims' rights and injury in largely individual-psychological terms in media and civil society discourse has, however, emphasised the *individual* victim's access to, and role within, the ECCC, including potential re-traumatisation through participation.[9]

One of the effects of this has been to propel some individuals, recognised civil parties, to greater national and international prominence. Bou Meng and Chum Mey, for example, are survivors of incarceration and torture at the largest Khmer Rouge security centre, S-21, which was overseen by Case 001 defendant Duch. Well-known public figures since their participation in Case 001, they are also founding members of Ksaem Ksan, a victim association formed in 2009. Cambodian-American author, lawyer and activist Theary Seng is another individual who has been highly vocal and visible both during and after her participation as a civil party in Case 002. Theary Seng was the first and last civil party to directly address the ECCC at her own request in a pre-trial hearing in 2008; subsequent to this, civil parties have been limited to speaking through their lawyers unless they were called to appear by the court (Elander 2012, 15). Seng appealed and publicly criticised this decision. Her statement two years later — that defendant Duch's (initial) sentencing translated to 11 hours per life he had taken — was picked up in media reports globally (De Launey 2010). In November 2011, due to ongoing frustrations with the court, she formally withdrew from Case 002. Seng is the founding president of another victim association, the Association of Khmer Rouge Victims in Cambodia (Seng nd).

Despite these developments around the individual civil party, it is more appropriate to talk of victim collectives in the case of the ECCC.[10] In the remainder of this section, I discuss four different collectives of ECCC victim participation: collectives produced out of administrative rulings; motivations of civil parties to more-than-individual participation; collectives of participatory experience; and victim associations. These are very different kinds of collectives, some of which nonetheless co-exist and overlap. Some of these collectives have emerged spontaneously, others have been enforced, some have arguably silenced, others have

[8] See Zucker 2013 for an ethnographic account of post-1979 remembrance in two village communities in south-western Cambodia.

[9] The work of the Transcultural Psychosocial Organisation, providing on-site support for civil parties under a memorandum of agreement with the ECCC, and through its wider Testimonial Therapy Program, is an exception to this overall trend. The TPO emphasises the social nature of trauma and the necessity of culturally appropriate responses and programs (see Strasser et al 2011).

[10] It should be noted that empowered *individual* civil parties have, at times, played an important role in resisting the wholesale co-option of the victim participation process by lawyers and NGOs.

given voice, some enjoy official sanction and support, others have been marginalised. These collectives have moving and sometimes competing agendas, their claims differently framed and mobilised.

Institutional collectives

Institutional collectives have emerged in and through the legal process itself in light of the fact that the civil party provision in law was never intended or designed for trials of mass crimes. In Case 001, a total of 90 civil parties were represented in four groups, with each group represented by at least one international and one national (Cambodian) lawyer. In Case 002, formally recognised civil parties, some 3,866 people, are considered as a 'single, consolidated group'. [11] Rather than having multiple legal teams in the chamber as for Case 001, 'civil party lead co-lawyers'[12] were required for Case 002 in Revision 5 of the Internal Rules in February 2010 (Jarvis 2016, 15; ECCC 2010a, 14). Civil Party Lead Co-Lawyers coordinate the consolidated group, which is comprised of 11 component groups, with each component group retaining their own lawyers. As the International Federation for Human Rights (FIDH) has put it:

> This raises a simple but legally complex question: who are now the real parties at trial? … [Is it] the Civil Parties, as individuals represented individually by lawyers duly authorised by them, or the 'consolidated group' of Civil Parties whose interests are represented by the Lead Co-Lawyers, who have received no mandate to act in the name of the individual Civil Parties? [FIDH 2012, 35]

Rather than take up this legal argument (for which others are far better qualified), I note simply that the consolidated group attempts to singularise, in many instances, the participation of many different civil party collectives. While this has aided the coherence and efficiency of civil party representation (Jarvis 2014, 23), and with it the progression of the case, it has also meant that the burden of representing the diversity of civil party experiences and claims has fallen to the civil party lead co-lawyers, who must communicate with numerous national and international co-lawyers in order to bring their clients' interests and insights into the proceedings. These formal collectives aside, according to researchers who have interviewed civil parties (Carmichael 2015; Pham et al 2011; Poluda, Strasser and Chhim 2012; Stover, Balthazard and Koenig 2011), civil parties' motivation, modes of participating, and levels of satisfaction are often linked to their sense of justice as being more-than-individual and to their shared experiences of participation.

More-than-individual motivations

As many civil parties see it, they are not participating 'for themselves' or by themselves; rather, they are participating on behalf of, or alongside, their lost loved ones. More than two-thirds of the 75 Cambodian-resident civil parties in Case 001 reported that they were motivated to apply for civil party status to 'find justice for [themselves] and [their] relative who died' (Pham et al 2011, 273). Half of these civil parties also reported that they were motivated 'to know the truth about what happened to their relatives', while one-third reported

[11] On 5 September 2008, the 4th Plenary Session agreed upon the power of co-investigating judges and the chambers to require civil parties to form a group and to choose one lawyer to represent the group (ECCC 2008).

[12] The courts are staffed by both international and Cambodian office-bearers. There is a national and international co-investigating judge, a national and international defence co-lawyer for each defendant, and so on. Cambodian judges outnumber internationals in all chambers, but a supermajority is needed for judgments, so neither group can vote as a dominant bloc.

that they 'wanted to honor the memories of their relatives' (Pham et al 2011, 274).[13] Civil parties have brought mementos such as framed photographs of their loved ones into the witness box (see Stover, Balthazard and Koenig 2011, 504), and on many occasions the Trial Chamber itself has shown a photograph of a deceased person named in the testimony of a civil party. These images occur on-screen within the chamber, and on screens visible to those watching the proceedings from the public gallery (see Carmichael 2015, 227). This visual presence of lost loved ones has heightened the emotional impact of testimonies, despite the courts' curtailment of physical and verbal expressions of emotion by civil parties during testimony (see Elander 2012, 16–17). Maria Elander (2012) argues that the formal admittance only of spoken words, and not non-verbal emotion, 'points to the difficulties, particularly in law, of articulating the vulnerability of the attachments that constitute community' (Elander 2012, 17).

In their testimonies, and through the process of their participating, civil parties often spoke 'to' their lost loved ones, as well as 'about' them. Robert Carmichael, chronicling the participation of overseas civil parties Martine Lefeuvre and Neary Ouk in Case 001, records how Martine closed her ECCC testimony with the affirmation that her late husband, Ket, was 'more present than ever in our hearts … we love him and that we will always love him' (Carmichael 2015, 193). Her daughter, Neary, after her own testimony at the ECCC and prior to returning home to France, revisited the cell that her father had occupied at S21 (now Tuol Sleng Museum) to leave a printed message for him on the cell wall (Carmichael 2015, 243).

Collective and connective experiences

Once recognised by the tribunal, individual civil parties also experience new forms of connectedness: to lawyers, to NGO staff and to other civil parties, especially those also represented by the same lawyer. As noted above, civil parties have been variously grouped in both Case 001 and Case 002. They attend briefings in a group, as well as the trial proceedings, where they are seated together, either inside the chamber or in the public gallery. During Case 001, an area 'backstage' of the court was set aside for the exclusive use of witnesses and civil parties, especially those testifying, where they could meet and rest away from media interest and other public gallery visitors.[14] One group working closely with civil parties has noted that, of all factors, 'the experience of mutual support and solidarity among [civil party] survivors over the full length of the trial period appeared to be of utmost importance' (Poluda, Strasser and Chhim 2012, 94). When the status of a significant number of civil parties was rejected at the Case 001 judgment, still-recognised civil parties spoke of the anguish they shared with those rejected (Pham et al 2011, 274).

Civil parties organising collectively have also drawn disciplinary fire from the ECCC. During the pre-trial proceedings in Case 002, strong statements made by the 'orphans class' of civil parties were taken to threaten the integrity of the tribunal. As part of a formal reprimand, civil parties were required to stop wearing uniformly printed T-shirts. The current ECCC website shows traces of this disciplinary move, requesting that visitors to the public gallery not wear clothing displaying slogans, or in any other way 'indicate support for any party to the proceeding or seek to offend any party to the proceeding' (ECCC website). In another instance of acting together, at the end of Case 001, a group of civil parties collectively boycotted proceedings for a week to protest determinations that they felt were unfair. Relief

[13] On the motivations of civil parties, see the 2009 video production by the VSS of the ECCC: *The Long-Awaited Day: Victim Participation in the ECCC*; some are cited in Jarvis 2014.

[14] Personal communication with Helen Jarvis, former chief of VSS.

— but also disappointment and distress — over the initial sentencing in Case 001, and anger at the apparent limiting of civil party participation, have led to public interviews, published critiques, the leaking of information about cases, and the formation of victim associations on the part of civil parties.[15] While these disruptions have been largely understood in a negative light, as evidence of disarray or bias at the tribunal, they are considered here as interventions and contestations that have aimed at betterment for both ECCC actors and the larger accountability process.

Victim associations

As Helen Jarvis notes, 'in the Cambodian situation of generalised suffering and privation of the entire population during the Khmer Rouge regime, within the country there was little concept of distinguishing a separate category of victims [of the Khmer Rouge]' (Jarvis 2014, 23). Two formal victim associations have, however, formed in Cambodia out of civil party participation in the ECCC. The Ksaem Ksan association was initially begun by civil parties united in their opposition to an August 2009 ECCC ruling that civil parties had no right to question character witnesses in the trial of Duch (Case 001). Ksaem Ksan means 'rainbow' in the Khmer language and was chosen to symbolise 'peace in mind or serenity', something that the association seeks for all victims 'in this life and the next one' (Chum 2012, 50). The association is focused on 'spiritual and/or psychological solidarity' and on providing material assistance to its members (some 1,600 individuals) from donations accepted from any organisation or individual and from members at the rate of 4,000 riels per month (Chum 2012, 49–50).

The activities of Ksaem Ksan include helping members recall, document, publish and share their life events under the Pol Pot regime (said to defuse victims' suffering and pass on knowledge to future generations); cooperating with 'judicial and moral authorities to find ways to alleviate suffering and obtain … reparations'; defending against the destruction of the human remains at both the Tuol Sleng and Choeung Ek sites; and pursuing funding for memorials and religious ceremonies for victims (Chum 2012, 50–51). Ksaem Ksan also states that 'our association is neutral, not on the government side or NGO side' (Chum 2012, 49). This suggests that the organisation draws a distinction between its own work and that of NGOs. Ksaem Ksan is thus perhaps best understood as a grassroots organisation, being smaller, membership-based, and operating without paid staff. Claire Mercer notes that such organisations 'tend to be (but are not always) issue-based and therefore ephemeral' (Mercer 2002, 6). Certainly, victimisation or traumatisation is no mere 'issue'; rather, it is an experience, and one far from ephemeral. Significant disquiet did arise in the organisation, however, when founding members Bou Meng and Chum Mey publicly disagreed over the issue of how best to memorialise the victims of S21.[16] At the time of writing, however, the issue had been resolved, and both Chum Mey and Bou Meng daily sell their biographies to museum visitors at stalls within Tuol Sleng Museum. Both men have also recently lent their participation to a 2015 exhibition at the museum entitled *Skill and Fortune: Survivors' Voices.*

[15] This kind of agitation has also been seen on the part of Cambodian staff at the tribunal, who went on strike in 2013 over the nonpayment of wages during a time of funding 'crisis': see Meyn 2013.

[16] A memorial stupa dedicated to the victims of the Khmer Rouge facility known as S21 was recently built at Tuol Sleng Museum, as requested by Ksaem Ksan and funded by the German Ministry of Economic Cooperation and Development (BMZ) and the German Agency for International Cooperation (GIZ). While Chum Mey supported a stupa design that bore the names of all known victims of S21, Bou Meng publicly disagreed with the inscription of names. It was later resolved that names would be part of the memorial.

Another victim association to emerge from participation in the ECCC trials is the Association of Khmer Rouge Victims in Cambodia (AKRVC). The online presence of this association is found within former civil party Theary Seng's personal site, and foregrounds an initiative of posting photographs, names, brief life histories of victims of Khmer Rouge rule, inviting any victim in Cambodia or overseas to leave a 'personal message of remembrance' (Seng nd). The AKRVC held a national conference on victim participation in December 2009, and in 2010 campaigned for the establishment of provincial learning centres furnished with the assets of the ECCC (including vehicles and computers) as reparation measures. This claim has, as yet, gone unheeded, and the organisation has not been recently active. Theary Seng herself, however, has gone on to lead two NGOs, as the executive director of the Centre for Social Development (an organisation that has assisted with ECCC outreach and victim participation) and president of the Centre for Cambodian Civic Education (CIVICUS Cambodia). Leading another group, known as Poetic Justice, Seng also staged a political protest ahead of the 2012 ASEAN summit meeting in Phnom Penh, attended by US President Barack Obama. The focus of the protest was a game of darts in which portraits of Henry Kissinger, Richard Nixon and Pol Pot, labelled 'war criminals', were used as dartboard targets, recalling the US bombing campaign that precipitated Khmer Rouge rule in Cambodia and proclaiming such figures 'legally and morally responsible', despite their falling outside the limits of ECCC investigations (Hunt 2012).

To this point I have considered instances of being 'collective', and formal victim associations, as interventions with diverse effects. It is too soon to say whether or not victim participation may be considered in terms of a 'strategy of rupture' in relation to the ECCC.[17] The crux of the strategy of rupture, argues Emilios Christodoulidis (2009), is 'an act of resistance [that] registers without being absorbed, integrated or co-opted into the system against which it stands'. In this, the function of utopia is to sense the impossible, 'not in helping us to imagine a better future but [by] demonstrating our utter incapacity to imagine such a future — our imprisonment in a non-utopian present without history or futurity — so as to reveal the ideological closure of the system … in which we are confined', resulting in 'a scandal for the mind, [one] that remains vivid and alive' (Jameson in Christodoulidis 2009). Thus, 'a legal strategy [of rupture] aims to discern the model's limitations as well as its blind spot over those limitations', while 'what [utopia] names is an impossibility and what it marks is a usurpation' (Christodoulidis 2009).

Civil party participation confronts the ECCC trials with an impossibility: to repair the injury suffered by these civil parties. Christodoulidis argues that 'if law is to offer redress to injustice it has to offer terms that can break incongruently, irreducibly so, with the order of capital', and it is precisely this that is not (yet) seen in the case of victim participation in the Cambodian trials. The 'order of capital' provides only piecemeal funds, both for victim participants and for reparations, as discussed below (and see Jeffrey 2014). The question remains as to whether, in the context of the current inability of the tribunal or any other actor to adequately fund and institute reparations, victim participation will recur as an 'act of resistance' or be 'absorbed, integrated or co-opted into the [ECCC] system' (Christodoulidis 2009). In one important sense, co-option has occurred, in a development that has left unquestioned the 'order of capital' in neoliberal Cambodia, as will now be discussed.

Reparation, or possibilities turned into 'projects'

[17] The architect of the 'strategy of rupture' discussed by Christodoulidis, criminal defence lawyer Jacques Verges, participated in the ECCC from 2007 until his death in 2013 as defence for the accused person Khieu Samphan.

The ECCC is mandated to award only 'collective and moral reparations', rather than individual reparations.[18] In Case 001, reparations included the naming of civil parties in the published judgment, and a compilation (published on the ECCC website) of the statements of apology made by the defendant during trial, but many victims considered these reparation measures less than satisfactory.[19] Scholars too have been critical of Case 001 reparation, arguing that the ECCC failed to live up to expectations that it would advance the international reparations agenda (Jeffrey 2014; Studzinsky 2013). Christoph Sperfeldt signalled 'a need to comprehensively consider the limitations and opportunities of a system of combined criminal actions and reparations when dealing with international crimes', while also calling for the Victim Support Section (VSS) to be provided 'with the capacities required to effectively implement its [reparations] mandate' (Sperfeldt 2012, 488–89).[20] For Case 002, the ECCC required that its own VSS, in dialogue with civil parties (through their lawyers) and NGOs, design and secure funding for reparations. In this development, as former ECCC civil party lawyer Silke Studzinsky notes:

> the enforceability of the [reparation] order becomes a pre-condition, and an integral part of any reparation order. This seems to be quite questionable as the matter of enforceability has never been an issue of relevance for the decision of a Trial Chamber on reparations. [Studzinsky 2013, 182]

In practice, the ECCC required a section of its own administration to become entrepreneurial around the question of reparation in a highly pre-emptive fashion, leaving the Trial Chamber judges to merely ratify rather than order such measures.

Of the 13 reparations set out in the August 2014 Case 002/01 judgment, two have been discontinued for lack of funds, while 11 are completed or remain viable at the time of writing (February 2016).[21] These 11 projects will involve international and local, government and non-government, donors and agents. They include a request for a national day of remembrance (which has been granted, but will not be observed until the conclusion of the case, including any appeals),[22] projects to build memorials and education centres in multiple locations within Cambodia, the publication of the court's judgment in Khmer, and the provision of cross-cultural testimonial therapy and the development of self-help groups within Cambodia. Only projects that had found at least some funding at the time of the judgment were recognised in the judgment. This was in accordance with a September 2010 amendment to the ECCC Internal Rules that broadened the scope of reparations such that the Chambers may either:

(a) order that the costs of the award shall be borne by the convicted person; or

(b) recognise that a specific project appropriately gives effect to the award sought by the lead co-lawyers and may be implemented. Such project shall have been

[18] In October 2014, four civil parties went public with claims for individual monetary compensation, and suggested that collective and moral reparations 'reflected the will of the court and NGOs': see Sotheary 2014.

[19] Duch's statements were publicly rejected by Ksaem Ksan as 'trickery'.

[20] As Sperfeldt notes: 'Cambodia was not a stranger to recognising the right to reparations for serious human rights violations, [being] party to various human rights treaties that, in principle, recognise victims' rights to reparations … including the International Covenant on Civil and Political Rights and the Torture Convention; in 2002, Cambodia became one of few Asian countries to have ratified the Rome Statute of the ICC' (Sperfeldt 2012, 461).

[21] Author's interview with Him Vannak, VSS/ ECCC, 27 August 2015.

[22] Author's interview with Him Vannak, VSS/ ECCC, 27 August 2015.

> designed or identified in cooperation with the Victims Support Section and have secured sufficient external funding (ECCC 2010b, 25).[23]

The question of the Cambodian government's role in meeting such reparations requests is a crucial one, but one that is missing from current debate (Sperfeldt 2013). Nationally funded, long-term and democratically designed programs (not projects) that might begin to meet victims' needs now and into the future, especially those around basic social services such as health care and education,[24] seem impossible to imagine on either the Cambodian or international side of the courts.

The announcement of reparation measures in the Case 002/01 judgment also gave some evidence of government resistance to the social and political possibilities produced by the tribunal process and victims' voices within it. The first listed reparation project — a national day to remember the victims of the Khmer Rouge — has been met with governmental support. However, the Cambodian government has offered 20 May as the national day. This is not a neutral date, being a commemoration date that was instituted in 1984 and observed most visibly by Cambodia's ruling party ever since. There is a complex politics to 20 May that involves recognising as legitimate the revolutionary intentions of pre-1975 communists in Cambodia[25] while at the same time decrying the violence and loss caused by Khmer Rouge rule, and calling upon Cambodians to remain 'tied to strong feelings' about the losses of the past. This commemoration is not a new development for new times, but a response to new demands for recognition and remembrance with old politics.

In this context, it is unclear whether yet other disruptions and forms of reparation requested by specific civil parties will meet with government action. In the current mini-trial (Case 002/02), for example, the two remaining defendants have been charged with the crime of genocide, which it is alleged that they committed against various groups. For one group of civil parties — ethnic Vietnamese who for generations have resided in Cambodia — it is hoped that legal recognition of the harm they suffered under the Khmer Rouge, if it comes to pass, will translate into political will on the part of the Cambodian government to grant them citizenship. This would, in turn, give them the right to own land and securely settle in Cambodia, rights they do not currently hold (see Nguyen and Sperfeldt 2012, 6–7).

Conclusion

The international peace-building efforts of the early 1990s in Cambodia have been followed by two decades of donor dependency and limited success. The order of capital has, by dint of political priority, held sway, even as the number and activities of NGOs have grown

[23] In addition to the measures ordered or recognised by the Chambers of the ECCC, there is also a Non-Judicial Measures (NJM) framework within the ECCC Reparation Program. Under this framework, a memorial stupa was recently built at Tuol Sleng Museum, as requested by the victim association Ksaem Ksan. As noted above, the memorial was funded by the German Ministry of Economic Cooperation and Development (BMZ) and the German Agency for International Cooperation (GIZ) (ECCC 2014a).

[24] At an early reparations workshop in Kampot, for example, the main suggestions of civil parties were for 'hospitals and health care for the elderly and those who suffer psychological trauma [also for a] museum or library for preserving documents and evidence from the Khmer Rouge years and … for educating the public and future generations. Other suggestions included a statue depicting Pol Pot in handcuffs, national remembrance holidays, and the construction of schools, memorials, and *stupa* dedicated to the victims of the Khmer Rouge' (ECCC 2009, 15).

[25] Previously known as *tveer chang kamhoung* (the Day of Anger), the date commemorates the advent of agricultural collectivisation in 1973 within what were then Khmer Rouge controlled zones of the country, a decision taken by a group of revolutionaries that included individuals who later became Khmer Rouge leaders.

significantly. Under the twin stars of economic liberalisation and rights-based discourses and activities in Cambodia, public collective action remains tightly controlled (for recent examples, see Brickell 2014; Springer 2015). The ECCC has proved not only a testing ground for victim participation under international criminal law, but also a process of empowerment and public confrontation around questions of memory, social repair and victims' rights in this modern nation.

Relations with others are dynamic and capable of making change — mutually affecting — not simply shared or proximate. Despite the fact that victims enter the ECCC system recognised as individual civil parties, ECCC victim participation has produced various collectives that have disrupted international tribunal practice as well as Cambodian public discourse around victimhood and injury. These collectives include both spontaneous and mandatory collectives of civil parties; the 'collective' of a community of love between the living and those passed; and the wider, everyday collectives of pragmatic support for civil parties, comprising relatives, fellow villagers, lawyers, court staff and NGO staff. The emergence of these collectives emphasises processes of subjectivisation within processes of collectivisation, becoming-in-relation.

Through their (differently positioned) participation in ongoing trials, these groups confront both the ECCC legal process and Cambodian society and politics, with an immanent, utopic critique. This is a critique that is neither coherent nor complete — it is both part of, and at the same time an intervention in, that worldly state of unfinishedness and experiment (Bloch 1986, 221). The utopianism I have sought to highlight here is most potent *prior* to processes of 'imagining' better futures (oft-encouraged in development and transitional justice practice), which is, following Anderson (2006), most effective when least transcendent. In victims' shifting, shared anticipation of the not-yet, the privations of the present are scandalised.

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