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Author/s:
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Title:
The Projectification of Reparation

Date:
2020-11-01

Citation:
Sperfeldt, C. & Hughes, R. (2020). The Projectification of Reparation. Journal of Human Rights Practice, 12 (3), pp.545-565. https://doi.org/10.1093/jhuman/huaa045.

Persistent Link:
https://hdl.handle.net/11343/290299

Submission type: **article**

Title: **The Projectification of Reparation**

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Abstract

There has been increasing use of project-based organisation in various areas of human rights practice, including within truth and justice-seeking in the wake of mass atrocities. This paper traces the development and deployment of project-based approaches to judicial reparation at the Extraordinary Chambers in the Courts of Cambodia (ECCC), an internationalised (hybrid) criminal tribunal. Drawing on the authors' many years of close observation in and around the ECCC, it describes and explains how a project-based approach responded to the challenge of 'moral and collective' reparation for victims of mass crimes committed by the Khmer Rouge (1975-1979). The paper critically examines how development actors nominated, designed and 'delivered' so-called 'reparation projects'. Twenty-four projects were ultimately recognised by the ECCC; key details of these are succinctly tabulated here for the benefit of readers. The paper discusses the effects of the projectification of ECCC reparation, including new practices,

changed relationships and changed meanings of reparation. It finds that in Cambodia – a state that has experienced decades of international development assistance resulting in the entrenchment of project forms across different fields – the mobilisation of new actors and resources has expanded the possibilities for ECCC reparation and provided some benefits to those victims involved. However, a project-based approach also reshaped decision-making and accountability structures underpinning reparation work. This paper argues that using 'projectification' as an analytical lens expands our capacity to understand how, and with what consequences, global notions of reparation and justice are enacted in different contexts through the coordination and implementation of projects.

Keywords (max 6)

Extraordinary Chambers in the Courts of Cambodia (ECCC)

international development

Khmer Rouge

projects

transitional justice

victims

Funding statement

This work was supported in part by the Australian Research Council (project ID: DE160100501).

Acknowledgements

We would like to thank all our interviewees for their time and insights. We are also grateful for helpful feedback from Maria Elander and Rachel Killean, as well as two anonymous reviewers, on earlier drafts of this article.

Conflict of interest declaration

None.

1. Introduction

Projects have become a central feature of the organisation of societies and economies across multiple scales (Jensen, Thuesen and Geraldi 2016). As 'organisational forms chartered to advance well-defined objectives over a specific time period' (Lundin and Söderholm, adapted by Munck af Rosenschöld and Wolf 2017: 273), projects are usually associated with decentralised and multi-level governance as distinct from longer-term, more centralised forms of organisation. Human rights as a 'global project' will be a characterisation especially familiar to readers of this journal, even as anxiety and pessimism now attends and arguably eclipses such characterisation (Sharp 2019). 'Projectification' has become an analytical term used to describe and explain the trend to organise and manage ever more activities through projects (Cerne and Jansson 2019). This trend is embedded in an increasing reliance on market-based instruments in various areas of governance, including international development assistance. Projectification has largely been considered as a way to enhance efficiency, innovation and responsiveness to local contexts in contrast to state-centric and central government programmes and other organisational forms, but has more recently been critically appraised as a form of colonising logic and power produced by and allied to market-based modes of operation (Cicmil and O'Laocha 2016: 548). In the same critical vein, it has also been argued that projects and projectification can create unanticipated outcomes that vary across space and in time (Li 2016).

In this article, we examine the increasing use of project-based organisation within truth and justice-seeking processes in the wake of mass atrocities and, more specifically, in reparation schemes associated with judicial truth and justice-seeking. In doing so, we show the necessity of theoretical and empirical engagement with project forms in advancing a critical understanding of the practice of reparation. The socio-legal, reparation and transitional justice literatures have not explicitly engaged with the growing use of project forms for reparation nor the implications of this for how justice is conceived, practiced and experienced. What happens to justice and reparation initiatives when they materialise in the world through projects? We argue that using 'projectification' as an analytical lens expands our capacity to understand how, and with what consequences, global notions of reparation and justice are enacted in different contexts through the coordination and implementation of projects. Using the collective reparation scheme at the Extraordinary Chambers in the Courts of Cambodia (ECCC) as a case study, we show how the confluence of project-based organisation, international development assistance and international criminal justice processes have shaped recent reparative efforts and

relations. Our findings are based on our long-standing research at and around the ECCC in Cambodia, including ethnographic fieldwork and interviews. While the use of projects has long been part of 'transitional justice' practice in various settings worldwide, we here consider the projectification of judicial reparations as a relatively new phenomenon and argue that the actual and potential consequences of this phenomenon are yet to be sufficiently acknowledged in scholarly research.

2. Projectified Reparations at the Extraordinary Chambers in the Courts of Cambodia

Reparation has become one the most important conceptual formulations of a more victim-oriented approach to delivering justice in the aftermath of mass atrocities. In 2005, the UN General Assembly proclaimed a 'right to reparation' for victims of mass abuses (UN Doc A/RES/60/147 2005, para. 11). These developments also had an impact on international criminal justice and its institutions. The International Criminal Court (ICC) was the first international criminal tribunal to which victims could submit claims for reparations (Rome Statute 1998: Art. 75). Some hybrid courts have subsequently included provisions for reparation. It is only in the last few years, however, that the first practice has emerged from these courts. Notable among such courts is the hybrid Extraordinary Chambers in the Courts of Cambodia, a Cambodian court with United Nations support, established by agreement between the two parties in 2003.

Reparations associated with domestic criminal proceedings usually rely on a direct transaction between the convicted person and his or her individual victims. As such, monetary compensation and the restitution of unlawfully acquired property remain the two most prominent forms of reparation in domestic proceedings. In the context of mass atrocities and mass victimisation, however, individual reparation, especially monetary compensation, has often been considered inappropriate and unfeasible. Collective reparations have increasingly been regarded as a solution to the conundrum of how to nonetheless meet expectations for redress and repair in such contexts (Rosenfeld 2010; Tapia Navarro 2018). Many scholars argue that the nature and gravity of international crimes, in which entire communities are targeted and victims and perpetrators are less easily considered as exclusive identities, renders inappropriate any approach that relies solely on individual reparations (see Roht-Arriaza 2004). Yet the meaning and legal status of collective reparations remains ambiguous, and no universally recognised definition exists under international law.

When states negotiated the ICC Statute they expanded the notion of reparation to include more collective forms, especially rehabilitation and 'other appropriate forms of reparations' (Sperfeldt 2017). Collective reparations involve a more indirect form of delivery, whereby the ICC, court-affiliated entities, such as the Trust Fund for Victims (TFV), and non-state actors play an active role in shaping and 'delivering' reparations, for example, by turning monetary awards or other financial contributions into collective measures. Collective reparation awards have since become the main entry point for the projectification of reparation at the ICC, whereby awards are turned into projects that are delivered to their beneficiaries through a range of intermediaries.

With a similar rationale in mind, ECCC judges excluded individual monetary reparation measures from the permissible forms of reparation for participating victims, known as 'civil parties' (Sperfeldt 2012). Their drafting of the ECCC 'Internal Rules', in 2007, limited reparation to 'moral and collective' measures. A more practical concern related to the fact that the reparations scheme remained bound to the assets of convicted persons.[1] After the defendant in *Case 001* was declared indigent, judges granted very little in the way of tangible reparation. They awarded only two reparation measures, namely a compilation of statements of apology and remorse made by the defendant, and an inclusion of court-recognised victims' names in the verdict.

After this difficult and controversial experience, ECCC judges significantly amended their legal framework to provide alternative avenues for reparations through and beyond the judicial process. The main goal of the judges was to establish a mechanism that would allow for external financing of reparations, effectively severing the award from the liability of the defendant.[2] In doing so, the judges adopted provisions that expanded the mandate of the ECCC Victims Support Section (VSS) to seek donor funding and collaborate with external actors, while closely liaising with the newly created Civil Party Lead Co-Lawyers Section (CPLCLS), who represent civil parties before the ECCC. The judges could then recognise a specific 'project' as giving effect to the award sought by the civil parties. The notion of 'project' was so much taken for granted that the word 'project' appeared in the amended ECCC Internal

[1] The first Internal Rules stipulated that reparations 'shall be awarded against and be borne by convicted persons.' ECCC Internal Rules (v1), adopted 12 June 2007, Rule 23(11) and (12).
[2] We note that the convicted-borne avenue has remained in effect, although it has not been further operationalised. ECCC Internal Rules (v6), 17 September 2010, Rule 23*quinquies* 3(a).

Rules without definition or clarification.[3] The rules change ushered in a whole new modality: the projectification of reparation in the form of externally-financed 'reparation projects', and the entire debate on reparation at the ECCC became henceforth dominated by talk about 'projects'. In *Case 002*, the ECCC judges ultimately recognised two dozen such reparation projects in two separate judgments, in 2014 and 2018, relating to the two sub-trials of that case: 11 projects in *Case 002/01* and 13 projects in *Case 002/02* (see Table 1 compiled by the authors).[4]

As Table 1 shows, some 24 reparation measures were recognised by the ECCC judges over the two sub-trials of *Case 002*. The largest amounts of funding came from Germany – the first donor to provide funding for reparation projects in *Case 002/01* – and the European Union (which funded, via a single competitive grant scheme, three projects for *Case 002/02*). Other bilateral donors included Switzerland, France, Australia, and the US through USAID. Partner organisations were largely Cambodian-registered Non-Government Organisations (NGOs). Many such organisations had already played a formal role at the ECCC when changes to the reparation mandate were announced at the beginning of *Case 002*, including assistance with outreach (Bophana Audiovisual Resource Centre), the provision of documentary evidence for the trials (the Documentation Center of Cambodia) and the provision of psychosocial support (Transcultural Psychosocial Organization Cambodia). Other local NGOs emerged specifically to take up the challenge of ECCC reparation and drew funds from international donors whose work was focussed on similar processes elsewhere, for example, memorialisation (as in the case of the International Coalition of Sites of Conscience) and responding to people's traumatic experiences (as in the case of Stiftung Kriegstrauma Therapie).

The reluctance of the Royal Government of Cambodia (RGC) to engage in a more substantial way with ECCC reparation was one of the reasons that international project-based funding became the dominant mode of financing ECCC reparation. However, Cambodian government

[3] ECCC Internal Rules (v6), 17 September 2010, Rules 12*bis* (2) and 23*quinquies* (3).
[4] In its *Case 002/01* judgment, issued on 7 August 2014, the Trial Chamber recognised 11 of the 13 reparations projects proposed by the *civil parties*, but rejected two of the projects, mainly on the grounds that they had not secured sufficient funding. See Case 002/01, 'Judgment', Trial Chamber, Case File No 002/19-09-2007/ECCC/TC, E313, 7 August 2014, paras. 1151-1160. In its *Case 002/02* judgment, rendered in November 2018, the Trial Chamber fully recognised 12 out of the 14 proposed reparations projects. It rejected a component of one project, finding that livelihood support amounted to individual monetary payments, precluded under the Internal Rules. Another project dealing with the harm suffered by Cambodia's indigenous minorities, was rejected on the basis that such acts fell outside the scope of *Case 002/02.* See 'Case 002/02 Judgment', Trial Chamber, Case File No 002/19-09-2007/ECCC/TC, 16 November 2018, paras. 4415-4467.

support remained relevant for *Case 002* reparation. For instance, two of the 24 projects were established by government decree: the 'National Remembrance Day' (see Table 1, *Case 002/01* reparation 1), and the Legal Documentation Center related to the ECCC (LDC-ECCC) (see Table 1, *Case 002/02* reparation 10). Both of these measures are more difficult to capture under the notion of 'project', as they involve a public observance (see Hughes and Elander 2012: 49) and public records of the trials. Furthermore, two Cambodian ministries – the Ministry of Education, Youth and Sport (MEYS) and the Ministry of Culture & Fine Arts (MCFA) – have sanctioned a number of reparation projects. This is largely due to the pedagogical aims of these projects, for example, the provision of textbook chapters, teaching materials and training for school teachers and university lecturers (see Table 1, *Case 002/02* reparation 2), and engagement with students in high school and university classrooms across the country (see Table 1, *Case 002/02* reparation 3). In the following discussion section, we outline some of the practices involved in the projectification of reparations and some of the effects or unintended consequences of these practices.

3. The Practices and Effects of Projectification

With convicted persons' assets unavailable, and Cambodian government support focussed on the court's trials, ECCC judges sought to expand reparations beyond the judicial field, so as to mobilise new actors and resources for their realisation. The projectification of reparation subsequently occurred at the intersection of two fields: (international) criminal justice and international development assistance. The specificity of projectification at this intersection may limit the generalisations that can be drawn from this case study. This particular or similar intersections are, however, an increasingly common feature of transitional justice programs in many low-income, post-conflict societies, as we explain further below. In the following, we discuss four major implications of the projectification of ECCC reparation: changed roles for judges and lawyers; new funding streams and practices created by the expansion of reparation into the development sector; the exclusions and inclusions of different actors it brought about; and the effects of these changes on the meaning of reparation. The ordering of these discussions allows us to tell a story of the projectification of reparation at the ECCC that includes observations about origins, developments, and outcomes, and provisional suggestions regarding reparation project legacies at the scale of lived experience.

3.1 Projectification in the justice field: Judges and lawyers as project managers

The justice field is not one commonly associated with the phenomenon of projectification. The de-judicialisation of reparation at the ECCC led, therefore, to an expansion of ECCC office-bearers' activities into new areas where few had specific expertise. A project-based approach meant that judges and lawyers' practices regarding reparation became more managerial, especially around the development of projects and the match between projects and any possible resources available for their realisation. In an attempt to find practical solutions to difficult problems, judges and lawyers adopted practices that would normally be associated with project managers, including giving instructions on technical aspects of project design and funding modalities, as well as accepting or rejecting project proposals. The Trial Chamber explained the intended functioning of the amended reparation scheme as follows:

> The idea was to ensure that tangible, externally funded awards acknowledging the suffering of *civil parties* could be realised soon after a verdict becomes final. This presupposes the development of awards (technically through program management) in parallel with the ongoing trial. [The] allocation of project development in relation to Rule 23*quinquies*(3)(b) to this section was the obvious choice. A program manager tasked with the development of these awards was installed in the Victims Support Section. S/he is expected to design the award(s) identified by the Co-Lead Lawyers, and ensure their funding and readiness for implementation at the verdict stage.[5]

The trial judges also provided detailed guidance as to how they wanted reparation *projects* to be 'operationalised', including detailed project descriptions, budget plans and confirmation of funding.[6] The Chamber stressed that it would not endorse proposals that do not comply with these conditions. The zeal with which the Trial Chamber pushed the reparation projects forward contrasted with the fact that most of these projects were in large part rather non-judicial in nature and that their reparative value would merely be 'recognised' by the judges. Very few legal issues regarding reparation were debated before the bench. Instead, various aspects of reparation project management, including progress reports and updates on funding commitments, dominated most submissions on reparation ahead of the Trial Chamber judgment in *Case 002/01*.

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[5] *Case 002*, 'Initial Specification of the Substance of Reparations Awards Sought by the Civil Party Lead Co-Lawyers Pursuant to Internal Rule 23quinquies(3)', Trial Chamber, Memorandum, E125, 23 September 2011.

[6] The Chamber required from the Lead Co-Lawyers the following information: '(1) Proof of consent and cooperation of any involved third party has to be demonstrated; (2) Funding has to be fully secured, as the Chamber cannot endorse a reparation project that has secured partial funding only; (3) Any necessary additional information shall be provided to the Chamber, such as detailed descriptions (including sketches and/or pictures) and budget plans of proposals.' *Case 002/01*, 'Trial Chamber's Subsequent and Final Order on the Updated Specification of Civil Party Priority Projects as Reparations Pursuant to Rule 81bis(4)', Trial Chamber, E218/7/4, 6 September 2013, para. 3.

The Civil Party Lead Co-Lawyers acknowledged the tasks assigned to them as 'not only daunting but also unprecedented in the context of an international tribunal. Such tasks are normally performed by specialised entities which are afforded a large staff, funding, time and experience.'[7] Significant frustration stemmed from the requirement that external funding for reparations would need to be secured *prior* to a reparation decision. The International Civil Party Lead Co-Lawyer stated that although fundraising was not in her job description, it took up a lot of her time. She lamented that 'the law, as written, imposes upon the civil parties a heavy and unjust burden… In effect, the civil parties have the obligation to find the funding for these reparations'.[8] As responsibilities for reparations under the amended reparation framework were split between the VSS and the CPLCLS, regular frictions emerged between the two sections. Some of these challenges arose when lawyers and project managers tried to collaborate on reparations. One ECCC officer reported of the collaboration across different fields of expertise: 'they have a legal background, and don't really understand project management processes [while] we don't have the legal skills' (Interview ECCC32, Phnom Penh, 9 December 2015). Bringing legal and project management logics and practices together proved often difficult.

The projectification of reparation also introduced new tensions, for example concerning the temporality of reparation, often because of the nature and considerable length of international(ised) criminal proceedings. For instance, most of the projects listed in Table 1 had already been fully or partially implemented by the time they were formally recognised by ECCC judges as 'reparation'.[9] The reasons for this curious state of affairs are to be found in the feasibility-based approach to reparation which the ECCC pursued through the new reparation framework in *Case 002* (Sperfeldt 2020). This approach placed emphasis on the apparent effectiveness of reparation projects, which was taken to be expressed, among other ways, in the availability of funding *prior* to a reparation order. What this meant operationally was that preparations for project design and fundraising had to start at an early stage, long before a finding of guilt. Once donors had committed funding to NGO projects, judicial and project timelines increasingly diverged. International donor funding operates under strict and

[7] *Case 002*, 'Initial Specification of the Substance of the Awards that the Civil Party Lead Co-Lawyers Intend to Seek – Hearing of 19 October 2011', Civil Party Lead Co-Lawyers, E125/2, 12 March 2012, para. 40.
[8] Simmoneau-Fort, Elisabeth, 2013, 'Reparations a Major Issue', *Phnom Penh Post*, 8 August 2013.
[9] In formal communications between the actors involved and in any public presentation or document, these projects had to be termed 'proposed reparations' up until their formal recognition in ECCC judgements.

contractually-fixated timelines, often bound to specific budget cycles. This required NGOs to conduct the funded activities in a timely manner such that they could meet the funding conditions set by donors. The lengthy and unpredictable judicial adjudication process quickly exceeded the usual one- to two-year project timeframes, so that most projects were not formally recognised as reparation until after they had been implemented.

Explaining this rather counter-intuitive situation to participating victims, and even to some partner NGOs, was a constant and, at times, frustrating task for the VSS and the CPLCLS. An added risk for all involved was that the very elderly defendants in *Case 002* would pass away, in which event there would no longer have been a case, a judgement, or any formally recognised reparations. This risk was offset by the nature of the projects themselves – which donors and NGOs considered to be important and beneficial to Cambodians regardless of formal legal recognition – and the imperative to work as quickly as possible to offer some form of redress to elderly civil parties and other elderly victims. These hard-won successes of the reparation rules amendments were largely due to the impetus and interest created by new funding streams, the activities they made possible and the relationships therein fostered.

3.2 Reparation 'projects' and the development field: New funding streams and practices

Another feature of projects is that they are an outlet for flexible funding allocation, which has created new market opportunities for actors involved in project work. Reparation has increasingly been projectified in low-income societies, where monetary compensation is often seen as not feasible or appropriate. The projectification of reparation in these contexts is closely associated with international development assistance. International development projects tend to involve a North-South relationship, whereby a donor or international agency from a high-income country allocates resources through project-based organisation to a range of local and international project actors in a low-income country. Unequal power relations are a core feature of international development projects, despite continuous but largely unsuccessful efforts to recalibrate the relationship, such as through notions of 'participatory development' (Green 2000, Kothari 2005), 'local ownership' and 'sustainability' (Ika and Hodgson 2014).

The politics of international development aid and assistance in Cambodia has been critically interrogated by a number of scholars. Aid dependency is considered to have undermined democracy (Ear 2013) and overseen 'enduring rural-urban inequalities' (Brickell and Springer 2016). A notable proportion of development assistance goes to the non-government sector, and

NGOs in Cambodia have found a new and expanded role thanks to donor emphasis on civil society and good governance (Frewer 2013: 99). However, Cambodian NGOs are often trapped in cycles of competitive project bidding, with donors generally unwilling to invest in the administration and development of the organisation itself or long-term programs (see C Hughes 2009: 129). From even this cursory examination of the scholarly literature on international development activities in Cambodia, it can be seen that projects – be they concerned with infrastructure, rule of law, health, educational or poverty reduction – have become the dominant way of working across many sectors and scales. The projectification of reparation at the ECCC was therefore unsurprising the moment that funding from major Official Development Assistance (ODA) donors was sought.

The intersection of judicial and development fields introduced ODA-funded project work – with its specific logics and practices – into ECCC reparations. The judges' rules amendments – requiring funding for projects to be in place prior to a judgment – had the effect of reorienting external actors' practices toward securing funding. While voluntary contributions to the ECCC's core operations had come by and large from the foreign ministries of external governments, the development branches of these governments were more amendable to funding reparation and victim assistance. This signalled a shift from foreign policy to development project-based funding. Funding initially came from the German Federal Ministry of Economic Cooperation and Development (BMZ) commitment of almost EUR 500 000 for several of the proposed *Case 002/01* reparation projects.[10] German government-related support funded roughly half of all projects approved by the judges in *Case 002/01* and amounted to around two-thirds of the total monies raised in that case. The Swiss Agency for Development and Cooperation also committed funds to *Case 002/01* reparation projects.[11] Many of the other large ECCC donors, however, most notably Japan and the United States, did not contribute to *Case 002/01* reparations, suggesting divergent views among larger ODA donors regarding ECCC reparations. Funding for reparations still represented only a small fraction of the money that international donors and the Royal Government of Cambodia had invested in the ECCC. While external donors contributed more than US$770 000 to reparations in *Case 002/01*, donors had simultaneously contributed more than US$230 million to fund the ECCC core

[10] See ECCC, 'The Court Report', Issue 63, August 2013, 8. Additional funding was later provided through the German GIZ for another two reparations projects. See ECCC, 'The Court Report', December 2013, 6.
[11] In Case 002/01, the SDC committed USD 126,000 for a two-year period to a project implemented by the local NGO Youth for Peace. Case 002/01 TC Judgment 2014, para. 1137.

operations by the time the trial judges handed down their judgment. To that point, reparations had attracted a mere 0.3 per cent of the amount for core operations.[12]

Dollar amounts have been harder to ascertain in the case of *Case 002/02* reparations, as financial details have not been made public. The German government was again the most active donor, contributing to five of the thirteen *Case 002/02* projects (see Table 1). The European Union held a competitive bid process and divided funds of over one million Euro between three successful proposals (see Table 1, *Case 002/02* reparations 1, 2 and 3). Overall, we estimate that the total donor contributions in *Case 002/02* surpassed the amounts provided in *Case 002/01*.

The reparation outcomes show that the ECCC succeeded with one of its goals for the projectification of reparation: it attracted new resources for reparations that were previously not available. Despite this, some ECCC officials questioned NGOs' motives of engaging with reparations. One international civil party lawyer noted, 'the NGOs have very clearly understood the game; they only need to go through the reparations scheme to get money, because donors feel somewhat compelled to help us', but at same time conceded, 'either it's that or nothing really would have happened' (Interview ECCC19, Phnom Penh, 4 August 2015). While a project-based and externally funded approach to reparations in *Case 002* eventually delivered two dozen reparations projects, it was driven by which projects NGOs were in a position to offer and/or what donors wanted to fund, rather than primarily by participating survivors' preferences and needs. One international ECCC legal officer described the outcomes therefore as 'funding-driven, not civil party-driven' (Interview ECCC21, Phnom Penh, 5 August 2015). This observation points to the transformative effects project work can have on the relationships between the actors involved in this work.

3.3 Projectification and the reconfiguration of relationships: Inclusions and exclusions

Projects are usually advanced by a broader set of actors, often cutting across more permanent organisational boundaries. At the ECCC in Cambodia, the projectification of reparation has indeed provided a new space of engagement, especially with local NGOs, that had not previously existed. Because staffing levels at the VSS never reflected its expanded

[12] By October 2019, total contributions to the ECCC had risen to more than USD 355 million. See ECCC, 'ECCC Financial Outlook', 31 October 2019.

responsibilities regarding reparation, the Section reached out to local NGOs to leverage their work with survivors for the purposes of reparations. In this way, Cambodian NGOs emerged as central actors in conceiving and implementing ECCC reparation projects (Sperfeldt 2013). In *Case 002/01*, for instance, from the 11 reparation projects recognised by the Trial Chamber in its judgment, seven projects were proposed by Cambodian NGOs; with one additional project being driven by Cambodian diaspora communities in France. Almost all of these NGOs had been involved in Khmer Rouge-related work, often with survivors, prior to *Case 002*, which brought long-term knowledge and expertise in memory practice to the table (Hughes 2019). Of the Cambodian NGO projects, four were projects that these NGOs had previously been doing outside of the ECCC that were then proposed to the court for recognition as reparation. Another three were projects that had a more specific link to the facts adjudicated in *Case 002/01*, especially the forced transfer of populations.

In *Case 002/02*, many of the successes of *Case 002/01* reparation work were directly built upon: testimonial therapy and self-help group projects undertaken by TPO were expanded and extended to new communities with a specific focus on the elderly (see Table 1, Case 002/02 reparation 11). Work in the pedagogical field such as the development of a textbook chapter and teacher training activities by DC-Cam during *Case 002/01* was further expanded in a *Case 002/02* reparation project on crimes specific to that sub-trial. A storybook of testimonies of those civil parties who had appeared in court during *Case 002/01* was complemented by a *Case 002/02* reparation project that comprised a storybook of civil parties who had not had the opportunity to appear (see Table 1, *Case 002/02*, reparation 7). New actors also emerged in relation to in *Case 002/02*, including some associated with the creative arts in Cambodia, bringing different ways of knowing and communicating past experiences and harms into contact with ECCC judicial processes. These creative arts included song-writing, drawing, classical dance (the significant new dance performance known as *Phka Sla Kraom Angkar*, see Grey, Yim & Kum 2019), and a theatre play (*The Courageous Turtle*). A small group of young Cambodian artists have benefitted professionally from their inclusion in these projects, which also served to connect them to the work of the court. Other projects brought existing Cambodian researchers' knowledge to the development of content, for example, a Khmer Rouge history education 'App' devised by the Bophana Audiovisual Resource Centre was advised by a 'scientific committee' of eminent Cambodian academics and researchers.

The projectification of ECCC reparations not only expanded the number and types of actors involved in reparation work, it also reconfigured the relationships between them. While judicial reparations at international(ised) criminal courts are traditionally conceived through an interaction of perpetrators, victims and courts, the expansion of reparations into the development sector introduced new relationships and recalibrated existing ones. NGOs and the specific conditions and practices introduced by international development funding of reparations became a dominant feature in how reparation projects were designed and carried out. While some NGOs felt frustrated by the legal rules that governed what qualified as an ECCC reparation project, they also felt that they might otherwise be excluded from an important new funding stream. One ECCC lawyer observed that NGOs who had long worked on Khmer Rouge projects 'are facing [an] awkward situation because all the traditional donors they would go to are actually now funding only through the ECCC reparation scheme' (Interview ECCC33, Phnom Penh, 10 January 2017).

Moreover, projects are viewed by donors as suitable means to enhance accountability and the effectiveness of activities. Through a sophisticated system of risk management, monitoring and evaluation, those actors responsible for implementing a project are held to account with regard to the achievement of the project objectives, which is measured against the original, funder-endorsed project plan and associated performance indicators. Accountability is here largely understood to involve the relation between the funder and the project implementer, rather than the 'beneficiaries' of the project. Indeed, in our case, many NGOs felt their accountability to be first and foremost with the project donor, rather than ECCC sections or civil parties. Among other ways, this was expressed in funding agreements geared towards donors' policies and conditions; timelines dictated by donors' budget cycles rather than court requirements or civil party preferences; strict financial and accounting regulations; goals-based performance measurement rather than civil party satisfaction; and reporting priority to donors, rather than the ECCC or the civil parties. These conditions significantly re-shaped decision-making and responsibility structures in ECCC reparations. Conversely, project-based accountability has risked obscuring the relation between the convicted person/s and the victims that is imperative to reparation in the criminal justice field.[13] A technical approach in which the most pressing

[13] As one of us argues elsewhere, some ECCC reparation projects would have been 'cheap at twice the price'. This is because highly culturally competent partner organisations work beyond their allocated funding in order to work creatively, with significant technological expertise, and within an ethics of care and long-term connection (see Hughes 2019).

accountability relation is that between donor and the implementer can in these ways be problematic in situations where the repair of significant and widespread societal harm is being sought.

On the whole, both the ECCC and NGOs appear to have benefitted from the projectification of reparations. The court was able to take credit for reparation projects it could never have developed or implemented on its own. Participating NGOs were able to improve their standing within their own sector, and in some cases internationally, and obtain additional funding. Reparations in turn became more inclusive and locally contextualised, as can be seen in the diverse array of project types. One Cambodian ECCC officer working on victim issues took a positive view of reparation projects as enablers of social processes at the court's periphery, noting: 'reparations is a tool which can be used to involve all the stakeholders in the justice process; not just the judges, prosecutors or legal officers' (Interview ECCC26, Phnom Penh, 19 August 2015). Indeed, the ECCC reparation projects created a new space of connection and engagement with society. With low expectations at the outset, most of our interviewees from the ECCC and civil society ultimately assessed the outcomes as positive or even a 'success'.

As intimated above, however, projects and the specific techniques they promote not only enable coordination and collaboration, they can also constrain it. Preliminary studies of civil parties' views, for instance, paint a less optimistic picture about the reparation projects than did responses from local NGOs. In our own research we found that four years after the trial judgment in *Case 002/01*, most civil parties were not aware or had little knowledge of the reparation projects granted by the ECCC (Sperfeldt et al. 2016: 117). Among the few who knew about the reparations, a majority was satisfied with the outcomes. While many civil parties remembered some form of consultation on reparation projects, most felt that their views were not taken into account in the final decisions and outcomes (see also Williams et al. 2018: 116-118). These data seem to indicate that limited consultations by lawyers or project implementers, without enabling a deeper involvement in the project design and execution, are often insufficient to enable reparative effects among civil parties.

The VSS and CPLCLS attempted to improve the situation by increasing their consultation with civil parties for *Case 002/02*. According to the international CPLCL, it was this consultation with civil parties that set reparation projects apart from international development project work in Cambodia:

> [For] case 002/02 we really tried to build a long consultation phase, tried to have as many civil parties as possible involved in the process, [to] get their general ideas on what they want as a reparation project, and along the way consult them on specific projects (Interview ECCC33, Phnom Penh, 10 January 2017).

Notwithstanding these efforts, our observations suggest that there are deeper structural impediments to a more inclusive and equitable realisation of reparation through projects. Projects require technical expertise, accountability structures and insider knowledge that many survivors and survivor groups lack. International donor funding in this way often bypasses survivors themselves. This is where intermediaries, often non-state actors, and other local elites with the prerequisite project knowledge come into play. Those with the social capital and the skill set to benefit from governance through projects have also been referred to as the 'project class' (Kovach and Kucerova 2009). These intermediaries are able to influence the design of projects and direct funds – often with the best intentions – toward their preferred activities. Rather than being active participants, survivors may become excluded from project processes and decision-making as mere 'beneficiaries' of a project – a logic inherent in the from-towards perspective of project 'delivery'. Cicmil and O'Laocha highlight the danger of marginalising the very communities the funding was meant to help. They argue that 'the definition of communities on the basis of "needs" or "problems", together with the projectified organising of "responsible" responses to those needs, relegates recipient community members to the periphery of decision making and action in the construction of solutions to problems and the enacting of remedies to their needs' (Cicmil and O'Laocha 2016: 551). These authors call for more attention to the unrecognised power and knowledge asymmetries that exist in all stages of project-based work, from planning through implementation to evaluation (Cicmil and O'Laocha 2016: 558).

In Cambodia, survivor and civil party Chum Mey traced such asymmetries when he wrote that his victim organisation was 'not on the government side, or [on the] NGO side' (Chum 2012: 49). Although NGOs considered and publicly staged their role as seeking reparations *for victims* – by supporting and including victims in reparation project design and development, which was also an eligibility requirement from the court – this statement of Chum's belies such staging. Having their wishes and desires excluded even as they were included in ECCC cases and reparations led to evident frustration on the part of some civil parties. At civil party forums many continued to voice their preference for some form of individual monetary compensation,

even at the forum held immediately after the Trial Chamber judgement in *Case 002/02* was handed down. A discourse of 'expectation management' attended both ECCC and NGO discussion of such dissent, however we argue below that these calls may also have arisen because the meaning of reparation was being stretched beyond recognition. Individuals' needs were excluded even as they were ostensibly being included through consultation – through their lawyers and at civil party forum events and by belonging to a collective to whom the benefits of reparation projects would flow. One of the most important effects of the discussion of reparation 'projects' may have been that – as Li (2016: 92) notes in an Indonesian context– it subtly but surely directed attention away from alternative ways of thinking about reparation.

3.4 Projects and meaning-making in reparation

Projectification in the justice field is arguably different from other areas of project-based activity, such as infrastructure or health, as concepts of 'justice' or 'reparation' also connote important symbolic or non-material meanings. Many of the claimed core functions of reparation, such as restitution, healing or accountability, draw their force from these meanings. As such, there are multiple and context-dependent understandings and legally inscribed definitions of reparations. In the case of the ECCC, the gradual move to make reparation collective and, eventually, projectified, has led to significant stretching of the meaning of 'reparation' (Killean and Moffett forthcoming). After reparation was legally defined as 'moral and collective' it was communicated in Khmer-language outreach as not including monetary compensation. This specification was sufficiently vague as to cause confusion, but also allowed future iterations of the Internal Rules to develop a reparation framework that was specific to the court and to Cambodia. The later projectification of reparation – made possible by the de-coupling of reparation from the responsibility of convicted persons – stretched the meaning of ECCC reparations even further.

For instance, one tension produced in temporary organisations lies between the short-term devices that are employed and the often-times long-term objectives they pursue as meaningful interventions in the world (Sjöblom 2009: 167). This is especially true with projects that pursue objectives, such as repair and reconciliation, in response to the long-lasting legacies of past atrocities. While ECCC reparation projects are meant to address the harm suffered by civil parties, it can be difficult to conceive and convey 'reparation' through an activity that is implemented in the time frame of one to two years – the average duration of most donor-funded ECCC reparation projects. Project-based organisation assumes a clearly defined beginning and

end of an activity, which sits uneasily with the open-ended, evolving and often-times messy nature of dealing with the past.

In addition to temporal limits, project practice can obscure how a diversity of meanings of reparation and their public contestation can be productive. One of the effects of materialising reparation in project form is that particular meanings of reparation become 'fixed', for example: reparation as recognition, reparation as an offer to repair, reparation as the conclusion of a period or relationship, reparation as the end (or loss) of a particular identity (see Dixon 2016). As such, this specification or materialisation will be met with diverse responses – from civil parties, other victim-survivors, advocates, public figures or from those who do not identify as victims at all. The nature of these responses is contingent on the meaning that individuals and groups hold about reparation and the nature of existence more broadly. Responses to reparation made specific may include relief and celebration, but they are just as likely to be met with confusion, contestation or rejection. Meaning-making in reparation is an interactional process, arising from the terms and feelings of changing relationships between actors and going far beyond the one-directional 'delivery' of a project in accordance to pre-conceived project plans and objectives. Yet 'beneficiary' subjectivities seem to be at the core of a project-based approach, often crowding out survivors' different meanings and positionings from the decision-making on reparation. Those managing projects are not always very perceptive of these meaning-making processes, perhaps fearing risk-taking and the consequences of project-failure (see Kuga Thas 2016).

4. Conclusion

Projects have become such a normalised feature of daily lives that their attendant practices and relations often pass unnoticed. Projectification is often presented as a neutral or benign technocratic trend. However, as we have shown in the case of ECCC reparations, projectification has significant material and non-material consequences for individuals, groups and organisations (see also Packendorff & Lindgren 2014: 12-14). On the one hand, the projectification of ECCC reparation has drawn in new actors (such as local NGOs) and resources (mainly in form of international development funding). This has expanded the opportunities for victim assistance in the ECCC context and positively contributed to further 'localising' the ECCC's internationalised criminal justice process through an enhanced involvement of civil society. On the other hand, projectification has re-configured the relations underpinning reparation work by reshaping decision-making and accountability structures,

with an impact on both the supposed beneficiaries of reparation (that is, the civil parties) and the meaning of reparation. These important consequences of projectification demand both practitioners and scholars become more sensitive to how projects govern and order areas of activity and how they impact on institutional practices and people's social and cultural lives.

Rather than leaving projects in the background, we therefore argue that projectification itself should become a subject of scholarly scrutiny. Although projectification of judicial reparation is a relatively new phenomenon, it has been progressively enacted in the ICC and ECCC contexts, as well as in other non-judicial administrative reparation programs. We hope that our contribution assists with opening up a field of inquiry and offer the following agenda for future research on the projectification of reparation. We see this as relevant to the study of similar projectification processes occurring in the post-atrocity justice field more broadly. Based on our research, we suggest that such research might (i) consider the dynamics and practices of projectification and the different forms it can take; (ii) describe and explain how the contradictions and contestations of reparation projects are responded to by those attempting to deliver reparations through projects (e.g. by studying those practicing reparation in project form) and how these contradictions and contestations stretch or reshape the meaning of reparation for diverse others; (iii) examine relationships and power structures, including those associated with 'the project class' or those set to profit from governance through projects (Munck af Rosenschöld and Wolf 2017: 278); and (iv) further consider how the concept of 'projectification' can itself be broadened by and for empirical research (Munck af Rosenschöld and Wolf 2017: 287) into the future.

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Table 1: ECCC Case 002 Reparations

Case 002/01

1	National Remembrance Day	Royal Government of Cambodia (RGC)	RGC	An official National Remembrance Day [20 May] honouring victims of the Democratic Kampuchea (DK) era, both living and deceased, and acknowledging the crimes of the Khmer Rouge (KR) regime.
2	Memorial in Phnom Penh to Honour Victims of Forced Evacuations	Séra ING, Embassy of France, ANVAYA Assoc., OUBA SAS & ACYC SARL Architectes	France; ANVAYA Association; OUBA SAS; ACYC SARL Architectes; French Members of Parliament	A sculpture erected in Phnom Penh depicting the exodus of the Cambodian people from urban areas during the KR regime.
3	Testimonial Therapy	Transcultural Psychosocial Organization (TPO)	German Federal Ministry for Economic Cooperation & Development (BMZ); Stiftung Kriegstrauma Therapie; Commonwealth of Australia	A culturally adapted treatment of psychological suffering resulting from DK era crimes through the recording of testimonies of traumatic experiences with the assistance of mental health workers.
4	Self-Help Groups	TPO	BMZ; Stiftung Kriegstrauma Therapie; Commonwealth of Australia	Local and professionally facilitated self-help groups (voluntary associations of people that meet to help themselves and each other, develop coping skills and overcome traumatic suffering).
5	Permanent Exhibition on Forced Transfer & Tuol Po Chrey	Documentation Center of Cambodia (DC-Cam)	BMZ	Permanent exhibitions on forced transfer and the executions at Tuol Po Chrey established in Cambodian provincial museums.
6	Mobile Exhibition/ Education Project: Exploring History & Transitional Justice	Kdei Karuna (KdK) & Youth for Peace (YfP)	BMZ	Multimedia exhibitions and educational initiatives to inform survivors and post-war generations of Cambodians about crimes committed during the KR era.
7	Chapter on Forced Pop. Movement & Executions at Tuol Po Chrey	DC-Cam (with Ministry of Education)	German Development Cooperation (GIZ)	Teacher's manual chapter on forced population movement and executions at Tuol Po Chrey (based on testimonies in Case 002/01) to assist the teaching of DK history in Cambodian secondary schools.
8	Community Peace Learning Centre	YfP	Swiss Agency for Development & Cooperation (SDC)	Community peace learning centre (information centre and library) at Samraong Khnong, Battambang Province, for seminars and training on KR era crimes and the work of the ECCC.
9	Illustrated Civil Party Storybook	Cambodian Human Rights Action Committee (CHRAC)	GIZ Civil Peace Service (ZFD)	An illustrated book of the accounts of civil parties who experienced the range of crimes and topics addressed during Case 002/01.
10	Publication & Distribution of the Judgment in Case 002/01	ECCC	Through ECCC outreach program	Publication and distribution of two Khmer-language editions of the Case 002/01 verdict (the entire judgment & a summary version).
11	Inclusion of Civil Party names on the ECCC website	ECCC	N/A	Inclusion of civil parties' names on the ECCC website as an additional means of recording their participation within the Case 002 trial.

Case 002/02

1	App-Learning on KR History	Bophana Audiovisual Resource Centre	European Union (EU) through UNOPS; Rei Foundation; endorsed by Ministry of Education, Youth and Sport (MEYS)	Information on KR history in an innovative multimedia application incorporating contemporaneous audiovisual materials and civil party accounts.
2	KR History Education through Teacher & University Lecturer Training	DC-Cam	EU through UNOPS; approved by MEYS	Development of teacher/lecturer training curriculum, as well as two teacher trainings, one university lecturer training and 15 classroom forums for students.
3	The Turtle Project: Innovative Cross Media Project	Cambodian German Cultural Association, with Khmer Art Action	Institut für Auslandsbeziehungen (IFA) of German Foreign Office; EU through UNOPS; supported by MEYS	A theatre play and other multi-media cultural and educational activities with high school and university students nationwide, including photo exhibitions and intergenerational dialogue with civil parties.
4	Community Media Project: The Cham people & the KR	Cambodian German Cultural Association	Embassy of Switzerland; Heinrich Böll Foundation	Young photographers, filmmakers and researchers from Cham communities developed personal stories of Cham civil parties into two films and a multimedia exhibition.
5	Phka Sla Kraom Angkar	Khmer Arts Academy, with KdK, Bophana Center & TPO	SDC; BMZ through GIZ; United States Agency for International Development (USAID)	A classical dance production and related exhibition addressing the regulation of marriage during the DK period (including public performances and community dialogue in order to promote public awareness).
6	Voices from Ethnic Minorities	Kdei Karuna	BMZ through GIZ ZFD; Embassy of Switzerland	Mobile exhibitions, intergenerational dialogue, a graphic novel and forum theatre to document and present Cham and ethnic Vietnamese experiences during the DK period.
7	The Unheard Stories of Case 002/02 Civil Parties	CHRAC	Heinrich Böll Foundation	A second illustrated book of the accounts of 30 civil parties, in this case of those who experienced the crimes addressed during Case 002/02 but did not appear in court.
8	A Time to Remember: Songwriting Contest 2016	Youth Resource Development Program (YRDP)	BMZ through GIZ ZFD; supported by Ministry of Culture and Fine Arts	A song-writing contest and concert acknowledging the experiences of survivors by fostering intergenerational dialogue between civil parties and the younger generation.
9	Memory Sketches of Kraing Ta Chan	YfP and Peace Institute of Cambodia	International Coalition of Sites of Conscience	An exhibition of memory sketches of the Kraing Ta Chan security centre with university students in consultation with civil parties and an accompanying booklet.
10	Legal Documentation Center related to the ECCC (LDC-ECCC)	RGC	RGC	A repository of publicly available documents available free of charge related to ECCC proceedings and civil party participation.
11	Healing & Reconciliation for Survivors of the KR Regime	TPO with KdK	USAID	Mental health interventions for civil parties and other survivors using truth telling and reconciliation activities (including community dialogues, counselling, self-help groups and testimonial therapy).
12	Legal & Civic Education for Minority Civil Parties	Minority Rights Organization with civil party lawyers	BMZ through GIZ ZFD	A legal and civic education pilot project for ethnic Vietnamese minority civil parties, involving community-based outreach and education workshops.
13	Improving Health & Mental Well-being	HelpAge Cambodia	EU through UNOPS; and SDC	Mobile health camps (for civil parties & other older people) to provide basic primary health care and mental health education at the community level (project only partially recognised).

Compiled and adapted by the authors from public sources, including ECCC judgments, and their own primary research.