



Submission in response to

**Call for Contribution of Ideas Extraordinary Chambers in the Courts of Cambodia (ECCC)
Residual Functions Related to Victims**

ATT: Judge YOU Ottara
Judge Claudia FENZ

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We write this submission as scholars with long-standing research experience regarding the ECCC process. We appreciate this opportunity to share some ideas for the Co-Rapporteurs' consideration, based on our past research and diverse collaborations with Cambodian counterparts. As researchers, it is not our role to propose concrete initiatives. Instead, we suggest some **guiding principles and opportunities** that we believe could assist with conceiving appropriate and effective victim-related initiatives facilitated or supported by the ECCC residual function:

*First, initiatives conceived under or facilitated by the ECCC residual function should consider and/or **build on past or existing initiatives** that have been implemented by various ECCC sections and Cambodian civil society organisations.*

A significant legacy of the ECCC is the support it has given to the creation of multiple victim-centred initiatives over the last two decades. Cambodian civil society has been a driving force. This became most visible in the collective reparations measures recognised by the ECCC. The mandate of the ECCC residual function in this space is an opportunity to **further continue, enhance or expand those successful initiatives**. In this respect, a collaborative approach from the outset with key Cambodian stakeholders, particularly from civil society, is imperative. Such an approach should go beyond one-off consultations and involve a more **structured engagement** where the residual mechanism can take on a convening role. This will not only avoid competition over funding from key donors but also contribute to harnessing expertise for more sustainable initiatives. See Annex A for a non-exhaustive list of organisations.

*Second, these initiatives should **learn from past experience** and contribute to consolidating and making available knowledge that could inform future victim-related initiatives post-residual function.*

Over the years, the various outreach, victim assistance, reparations and non-judicial measures have built a rich body of expertise, knowledge, lessons and best practices in terms of respect, impact and responsiveness in working with victims and survivors of the Khmer Rouge crimes – both inside and outside the Court. This has significantly expanded and diversified our knowledge base for victim-related work. However, much of this knowledge is fragmented, often not publicly available or at risk of disappearing (e.g. when NGOs and their websites close, staff move on, soft copies of valuable materials

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and documentation become unavailable or lost). The ECCC residual function could contribute to consolidating, preserving and making publicly available knowledge and sources that have the potential to inform future Cambodian victim-related and educational initiatives post-ECCC and post-residual function. Such a task could potentially be coordinated with or complementary to its archival function. The work of collating and preserving some of this material is currently being undertaken by the LDC-ECCC but would benefit from additional project-based funding and staff. Seconded staff familiar with the long history of ECCC victim participation could be of great benefit to this ongoing work.

Third, initiatives should contribute to enhancing the ECCC's educational legacy for Cambodia.

Beyond consolidating and preserving the knowledge accumulated throughout the ECCC process, there are significant opportunities to enhance the ECCC's educational legacy with benefits to youth, survivors and the general public. We have observed great demand among Cambodian youth and students to learn more about the past and the ECCC. At university level, many lecturers seek opportunities for capacity development on these topics and would like to see further integration of this knowledge into higher education curricula of different disciplines. The residual function could contribute to embedding relevant knowledge into the formal education sector in Cambodia and assist with making available and/or producing more Khmer-language information and materials for use in teaching and learning. In this context, the accessibility of the ECCC archives is of paramount importance.

Fourth, there are opportunities for collaboration between the residual function and academic researchers for the purposes of producing further knowledge of victim related practices at the ECCC and elsewhere.

Academic scholars inside and outside of Cambodia have conducted extensive research on a range of ECCC related topics and practices, including research specifically on victim participation and reparations (see Annex B). This research has expanded knowledge and understandings of a range of victim related practices, some of which has influenced later initiatives. However, many knowledge gaps remain, and thus there is scope for further research and opportunities for research collaboration in areas of mutual interest for researchers and the residual function.

*Finally, given the transitional and temporary nature of the residual function, initiatives should, wherever possible, be **Cambodian-led**, involve a diversity of Cambodian actors, and ensure that survivors - including civil parties - are consulted and heard.*

The transitioning out of UN and other international assistance is an opportunity to further recognise and strengthen Cambodian leadership of victim-related initiatives during the residual phase. The main role of a residual function could consist of facilitating and supporting such leadership in all of its activities. Here, we also want to emphasise the importance of involving civil parties and other victims in the process, noting a significant decrease of ECCC and civil society outreach activities over the course of the two mini-trials in Case 002.

We remain available for further consultation or the provision of relevant resources and research materials that may assist the Co-Rapporteurs and/or the future residual function to fulfill their mandates.



ANNEX A: Non-Exhaustive List of Relevant Civil Society Organisations

Note: Some of these organisations do no longer exist or are non-operational. They have nevertheless implemented important activities in the past and/or produced valuable information (booklets, films, outreach materials etc.) or methodologies that could be considered under initiatives supported by the residual function.

ANVAYA Association

Cambodian Human Rights and Development Association (ADHOC)

Asian International Justice Initiative (KRT Monitor) / Center for Human Rights & International Justice, Stanford

Bophana Audiovisual Resource Centre

Cambodian Defenders Project (CDP)

Cambodian Human Rights Action Committee

Center for Social Development (CSD)

Center for the Study of Humanitarian Law (CSHL), Royal University of Law and Economics

Documentation Center of Cambodia (DC-Cam)

HelpAge Cambodia

Khmer Art Action

Khmer Institute of Democracy (KID)

Kdei Karuna (KdK) [previously International Center for Conciliation, ICfC]

KDKG (Cambodian German Cultural Association)

Ksaem Ksan

Legal Aid of Cambodia (LAC)

Transcultural Psychosocial Organisation (TPO) Cambodia

Minority Rights Organisation (MIRO)

Youth for Peace (YfP)

Youth Resource Development Program (YRDP)



ANNEX B: Relevant publications related to victims and reparations at the ECCC

Elander, Maria, *Figuring Victims of International Criminal Justice: The Case of the Khmer Rouge Tribunal* (Routledge 2018)

Hughes, Rachel, Maria Elander, Christoph Sperfeldt, Helen Jarvis, William Smith, Lyma Nguyen, and Wendy Lobwein, 'Achievements and Legacies of the Khmer Rouge Trials: Reflections from Inside the Tribunal' (2018) 44(2) *Australian Feminist Law Journal* 303-324.

Hughes, Rachel, 'Victims' rights, victim collectives and utopic disruption at the Extraordinary Chambers in the Courts of Cambodia' (2016) *Australian Journal of Human Rights* 22(2):143-164.

Killean, Rachel, *Victims, Atrocity and International Criminal Justice: Lessons from Cambodia* (Routledge 2018)

Manning, Pete, *Transitional Justice and Memory in Cambodia: Beyond the Extraordinary Chambers* (Routledge 2018)

McCaffrie, Caitlin, Somaly Kum, Daniel Mattes, and Lina Tay, "'So We Can Know What Happened": The Educational Potential of the ECCC', Report for the Center for Human Rights and International Justice at Stanford University and the East-West Center, January 2018.

<https://humanrights.stanford.edu/publications/so-we-can-know-what-happened-educational-potential-eccc>

McCaffrie, Caitlin, 'An Educational Legacy: Exploring the Links between Education and Resilience at the ECCC' (2020) *Leiden Journal of International Law* 33(4): 975-991.

Sperfeldt, Christoph & Rachel Hughes. The Projectification of Reparation. *Journal of Human Rights Practice*. 12, 2020, 545-565.

Sperfeldt, Christoph & Oeung Judy, 'The Evolution of Cambodian Civil Society's Involvement with Victim Participation at the Khmer Rouge Trials' in Lia Kent, Joanne Wallis, Claire Cronin (eds), *Civil Society and Transitional Justice in Asia and the Pacific* (ANU Press, 2019) 85-105.

<http://press-files.anu.edu.au/downloads/press/n6044/pdf/ch04.pdf>

Sperfeldt, Christoph, 'Broadcasting Justice: Media Outreach at the Khmer Rouge Trials' (2014) 115 *Asia Pacific Issues*, 1-12. <https://www.eastwestcenter.org/publications/broadcasting-justice-media-outreach-the-khmer-rouge-trials>

Tann Boravin & Khuochsopheaktra Tim, "'Duty Not to Forget" the Past? Perceptions of Young Cambodians on the Memorialization of the Khmer Rouge Regime', *Cambodia Working Paper Series 3/2019*, Swisspeace.

<https://www.swisspeace.ch/assets/publications/downloads/d15dd63fdc/WP-1-Cambodia-Series-d.pdf>

Williams, Timothy, Julie Bernath, Boravin Tann & Somaly Kum. *Justice and Reconciliation for the Victims of the Khmer Rouge? Victim participation in Cambodia's transitional justice process*. Marburg: Centre for Conflict Studies; Phnom Penh: Centre for the Study of Humanitarian Law; Bern: Swisspeace, 2018