

Victim Participation and the Trial of Duch at the Extraordinary Chambers in the Courts of Cambodia

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Abstract

The trial of Kaing Guek Eav, alias Duch (Case 001), at the Extraordinary Chambers in the Courts of Cambodia (ECCC) was the first in the history of international criminal justice in which surviving victims of alleged crimes could participate directly in international criminal proceedings as civil parties. In this study, we interviewed all 75 civil parties residing in Cambodia, including those who had ultimately been denied civil party status at the conclusion of the trial in Case 001. The objective was to learn about their experiences in participating in the ECCC proceedings. The results are compared with data from a nationwide survey of the general population. The results show that the Cambodian civil parties viewed positively their overall experience of participating and testifying. However, civil parties who had their status denied felt anger, helplessness, shame, and worthlessness. Compared to the overall population who lived under the Khmer Rouge, civil parties were more negative about the impact of the trial on their (1) acceptance of loss and reaching closure, (2) forgiveness of the perpetrators, and (3) perceptions as to whether the trial had improved the rule of law in Cambodia. Many civil parties lacked understanding about key aspects of the trial, including sentencing. The results emphasize the importance of victims' participation in the proceedings, but also suggest that participation alone is unlikely to bring about healing, closure, and reconciliation for the victims. Future international courts must develop the resources and mechanisms that ensure a meaningful and effective participation of victims, and engage participants in a dialogue over procedures and expectations.

Keywords: civil party; international criminal justice; Post-traumatic stress disorder; reconciliation; victim participant

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Introduction

On 30 March 2009, the Extraordinary Chambers in the Courts of Cambodia (ECCC) commenced its first trial in the case against Kaing Guek Eav, alias Duch (ECCC, 2011a).¹ The ECCC, also known as the Khmer Rouge Tribunal, is a hybrid international tribunal established in 2006 to try senior leaders of the Khmer Rouge and those who were most responsible for ‘the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979’ (Royal Government of Cambodia, 2004: Article 1). The regime’s rule, which lasted from 17 April 1975 to 6 January 1979, resulted in the death of at least 1.7 million people, or a quarter of the population. Duch was prosecuted for crimes committed while being deputy and then chairman of the infamous Tuol Sleng prison (also known as S21) and its branches, where at least 12,200 Cambodians were imprisoned, tortured, and ultimately killed.

The prosecution of Duch in Case 001 was a landmark in international justice and the result of over 10 years of negotiations between the United Nations (UN) and the Royal Government of Cambodia. Not only did Case 001 represent the first effort to bring justice to the victims of the Khmer Rouge,² nearly 30 years after the violence, but it also was the first time in the history of international criminal justice where surviving victims of the alleged crimes could participate directly in the proceedings as civil parties. This meant that victims could bring claims for reparations against the defendants and have nearly equal procedural rights with those of the defence and the prosecution in the criminal proceedings, including legal representation.

In Case 001 against Duch, 90 people participated as civil parties or civil party applicants in the trial (KRT Monitor, 2009).³ Of these, 75 lived in

1 The Duch trial’s initial hearing was held on 17 February 2009. The substantive part of the trial began on 30 March 2009. The trial lasted 77 days ending on 27 November 2009. (See ECCC, 2011a)

2 In 1979 the then government, the People’s Republic of Kampuchea, established the People’s Revolutionary Tribunal (PRT) in Phnom Penh to judge the crimes of the Khmer Rouge regime. The tribunal was held in absentia, focusing on two individuals, Pol Pot and Ieng Sary. At the end, a jury of 10 people convicted both and sentenced them to death. However, the sentencing never prevailed. Pol Pot died, supposedly of a heart attack while under house arrest by his own people in a jungle base at Anlong Veng on 15 April 1998, and Ieng Sary was eventually pardoned on 15 September 1996 by King Norodom Sihanouk in agreement with both Co-Prime Ministers. Ieng Sary is currently indicted in ECCC’s Case 002. The ECCC Pre-trial Chamber found that neither the absentia conviction nor the pardon excluded him from prosecution before the ECCC.

3 Out of the 94 people who originally applied as civil parties, three people withdrew their application and one person was denied at the beginning of the trial because he applied after the deadline. Out of the remaining 90 people who participated in the Duch trial, 28 were accepted as civil parties during the investigation phase and 62 were only provisionally

Cambodia, and 15 resided outside Cambodia. Ultimately, when the Court announced its verdict in Case 001 on 26 July 2010, it accepted 66 of the original group of civil parties who participated in the trial (ECCC, 2010a).⁴ The Court thus denied civil party status to 24 civil party applicants at the end of the trial, including 22 out of the 75 Cambodian-based applicants.⁵

In this article, we describe a study undertaken following the conclusion of the trial in Case 001 to learn from the civil parties, together with those who had been denied civil party status, about their experiences of participating in the ECCC proceedings. The article sets out their perceptions and attitudes with respect to each stage of the process and to the final outcome. Their views offer insight not only into actual and potential civil parties' personal experiences of international criminal trials, but also into larger questions about the value to victims and to society of legally focused transitional justice mechanisms.

Methodology

The researchers interviewed all 75 of the civil party applicants who were at the time resident in Cambodia (Figure 1). Even though not all of these people remained as civil parties at the end of the trial, all had participated in the proceedings as if they were civil parties. The results presented here distinguish between civil parties (CP) who were confirmed (CP-C) and those parties whose status was rejected at sentencing (CP-R). All of these original 75 Cambodian civil party applicants are referred to here as 'the civil parties', regardless of whether their status was denied. Because of logistical constraints, researchers did not interview the 15 civil parties who lived outside of Cambodia. Their experience, contact with, and opinions about the Court may have been different.

The interviews were conducted between 25 November 2010 and 18 January 2011, nearly a year after the trial ended, and about six months after the Court announced its verdict. A team of Cambodian interviewers, recruited and trained by the authors in collaboration with the Center for Advanced Study (CAS), a Cambodian research organization, conducted all interviews. The investigators collaborated with the Transcultural

accepted or pending, leaving the Trial Chamber to decide on their admissibility. Among those provisionally accepted or pending, 24 were rejected at the time of the verdict (see *KRT Monitor*, 2009).

4 The Court accepted the civil parties who had either 'established their claim to be immediate victims of S-21 or S-24, or to have proved the existence of immediate victims of S-21 or S-24 and close kinship or particular bonds of affection or dependency in relation to them. They have further shown that the death of these victims caused demonstrable injury and that this harm was a direct consequence of Kaing Guek Eav's offending' (see ECCC, 2010a).

5 The ruling is being appealed and no decision has been reached at time of this writing, 16 August 2011.

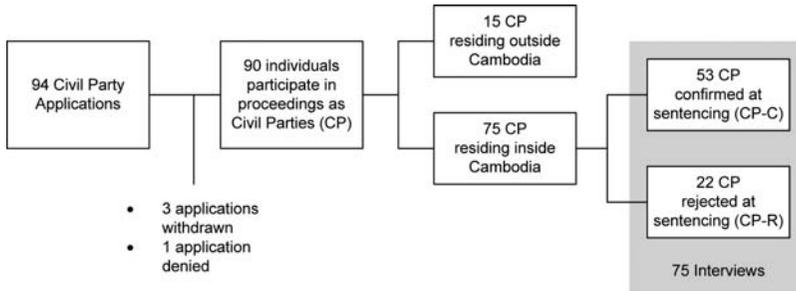


Figure 1: Civil Parties and Interview Selection

Psychosocial Organization (TPO), who invited all civil parties to be interviewed in Phnom Penh over a three-day period. Fifty-seven of the interviews were conducted at that time. The interviewers were not affiliated with TPO or any other organization providing support to or in contact with civil parties, and conducted the interviews independently from the logistical organization of the interviews. The remaining 18 interviews were conducted at the civil parties' homes throughout Cambodia.

The interviewers used a structured questionnaire to ask the civil parties about their knowledge, opinions, attitudes, and reactions to the pre-application phase, application process, legal representation, information about, and participation throughout the hearing and the verdict. Response options based on pilot interviews were provided to the interviewer for coding on the questionnaire but were never read to study participants, with the exception of questions employing a scaling format (such as the Likert scale). An open-ended field was always available for interviewers to record complete responses. The open-ended responses were then coded by the CAS field supervisor during the analyses. In addition, the questionnaire covered nine topics: (1) demographics; (2) needs and priorities; (3) justice and rule of law; (4) the Khmer Rouge regime; (5) the ECCC's outreach efforts; (6) knowledge, attitudes, and perceptions of the ECCC; (7) establishment of a historical record, truth-telling, and reparations; (8) exposure to violence; and (9) mental health. Mental health was assessed using the Post-traumatic Stress Disorder Checklist – Civilian Version (PCL-C), a scale comprising 17 items (total scores ranging from 17 to 85 with reliability Cronbach $\alpha = 0.91$), and the 15-item depression section of the Johns Hopkins Depression Symptom Checklist (HDSC – total scores ranging from 15 to 75 with reliability Cronbach $\alpha = 0.89$). The instrument was first developed in English and then translated into Khmer. Back-translation and consultation with local experts ensured the quality of the translation.

In addition, those civil parties who testified were asked about their experience of giving testimony. Since the results were based on 100 percent of the

target population (that is, 75 out of 75 civil parties in Case 001 living in Cambodia), no weighting or statistical extrapolation was needed.

Comparisons to the General Population Survey

In parallel to the present study, the researchers also implemented a large-scale survey representative of the adult Cambodian population (Pham et al., 2011). In that survey, 20 interviewers conducted 1,000 interviews with a random sample of adult Cambodians selected throughout the country using a multistage cluster random sampling procedure. Among them, 720 lived under the Khmer Rouge regime. The survey interviews were conducted using a structured questionnaire similar in content and wording to that of the present study, except additional questions relating directly to participation in the ECCC proceedings. Where appropriate and possible, we compare the results of the civil party study with those of the general adult population with regard to perceptions and attitudes about the Court and the Duch trial.

Participation at the ECCC

The concept of victims participating in criminal trials as civil parties is not new in Cambodia. Largely based on the French legal system, the Cambodian Code of Criminal Procedure includes provisions for victims to testify, to file a complaint, to bring a civil action jointly with criminal procedures to the court, and to seek reparation for injuries suffered (Cheung and Assmann, 2008: 1, 7–8). The courts can grant reparation in the form of either individual compensation in proportion to the injury suffered or restoration of damaged property to its original state (Oehlrich, 2009).⁶ The Cambodian criminal justice system recognizes the right of victims to apply as civil parties. However, it took some debate among the ECCC judges before this right was included in the ECCC's Internal Rules; they were concerned (1) by the potential number of applicants as civil parties, (2) by the extent of the crimes committed during the Khmer Rouge regime, and (3) the practicality of the involvement of civil parties.

In June 2007, the judges adopted Rule 23 of the Internal Rules, which affords victims the ability to bring a civil action jointly with judicial criminal procedures, and thus become parties (ECCC, 2007: Rule 23). According to this rule, the purpose of civil party action is to participate 'by supporting the prosecution' and to 'seek collective and moral reparations'. By being parties to the proceedings, civil parties have procedural rights similar to those of the defence and prosecution, such as addressing the court from the beginning of the proceedings and questioning experts, witnesses, and the accused. However, whereas the Cambodian civil law

6 For comparison between the Cambodian Code of Criminal Procedure articles that deal with victims' rights and the ECCC Internal Rules (Rev. 3), see Oehlrich, 2009.

system allows people to trigger an investigation, the ECCC's Internal Rules limited a civil party's application to the investigative phase, after a case has been submitted to the co-investigating judges by the co-prosecutors.

To manage further the participation of victims in a more efficient manner, the judges developed a system for grouping civil parties. They did, however, leave open the possibility for civil parties to be represented either individually or by a victims' association (ECCC, 2007: Rule 23(7), (8), and (9)). In Case 001, the Trial Chamber accepted a system of grouping civil parties which was recommended by a coalition of non-governmental organizations (NGOs). The result was four uneven but distinct groups, roughly divided along the lines of the NGOs that acted as intermediaries facilitating civil parties' applications. At least two legal counsel, one international and one Cambodian, represented each civil party group.

During the first trial, several Court rulings redefined and further narrowed the role of civil parties in the proceedings. Civil parties were prevented from (1) making submissions on the actual sentencing of the accused, (2) posing questions to the accused on his character, and (3) questioning expert witnesses or other defence witnesses regarding the character of the accused. More generally, the Trial Chamber found that 'the Internal Rules were to be interpreted restrictively, such that they do not confer a general right of equal participation [of the Civil Parties] with the Co-Prosecutors' (Werner and Rudy, 2010: 303).

Results

Characteristics of Civil Parties

In order to be admissible as a civil party, the injury, physical, material or psychological, has to be directly linked to the defendant's offenses (ECCC, 2007: Rule 23 (2)). Among the Cambodia-based civil parties in Case 001, eight (11 percent) applied as direct survivors of the S21 prison or of one of its branches, S24, indicating exposure to extreme violence during the Khmer Rouge regime. The remaining civil parties made an application on the ground that they were kin or had a close relationship to a person who was killed at the prison. A majority (45 out of 75, 60 percent) of the Cambodia-based civil parties in Case 001 were women (Table 1). Among the 45 female civil parties, 12 (27 percent) had their status denied on 26 July 2010 (the day the Trial Chamber handed down the verdict) and nearly the same percentage of male civil parties (30 percent) also had their status denied. Six individuals were confused about their current recognition by the Court. One accepted civil party in Case 001 did not know or did not acknowledge whether or not she applied to be a civil party. Five out of the 22 civil parties whose status was denied at the verdict believed that they were still recognized by the Court as a

Table 1: Socio-demographic Characteristics of Civil Party and Population-based Survey Participants

		CP-C* (n = 54)	CP-R** (n = 21)	Total civil parties (n = 75)	Population survey*** (n = 1000)
Sex	Male	21 (39%)	9 (43%)	30 (40.0%)	500 (50%)
	Female	33 (61%)	12 (57%)	45 (60.0%)	500 (50%)
Age	Mean (Std. deviation)	58.6 (12.3)	54.0 (7.0)	57.3 (11.2)	43.4 (15.0)
Head of household	Yes	38 (70%)	17 (81%)	55 (73%)	542 (55%)
Marital status	Single, never married	4 (7%)	0 (0%)	4 (5%)	97 (9%)
	Married/partnered	30 (56%)	19 (91%)	49 (65%)	801 (80%)
	Widow/widower	16 (30%)	2 (9%)	18 (24%)	90 (9%)
	Divorced/separated	4 (7%)	0 (0%)	4 (5%)	12 (2%)
Literate	Yes	37 (69%)	17 (81%)	54 (72%)	721 (71%)
Education	No school	9 (17%)	2 (10%)	11 (14.7%)	164 (17%)
	Informal (alphabet)/ Pagoda	10 (18%)	4 (19%)	14 (18.7%)	73 (7%)
	Primary incomplete (grades 1–5)	16 (30%)	11 (52%)	27 (36%)	372 (37%)
	Primary complete (grade 6)	3 (6%)	1 (5%)	4 (5.3%)	66 (6%)
	Secondary incomplete	9 (17%)	3 (13%)	12 (16%)	225 (23%)
	Secondary complete (grade 12) or higher	7 (13%)	0 (0%)	7 (9.4%)	100 (10%)
Birth ethnicity	Khmer	49 (91%)	18 (86%)	67 (89%)	980 (98%)
	Cham	5 (9%)	1 (5%)	6 (8%)	17 (2%)
	Mixed/Kachak	0 (0%)	2 (10%)	2 (2%)	3 (0%)

* Civil party confirmed at sentencing (CP-C)

** Civil party rejected at sentencing (CP-R)

*** Percentage data for Population-based Survey are weighted and thus can not be calculated directly from count data. By design 50 percent of the sample was female.

civil party.⁷ For three out of the five, the confusion might have arisen because, although denied in Case 001, they were accepted as civil parties in Case 002. The two others just did not know their status. This disarray suggests the importance of simple explanations of legal processes, considering the difficulties that some applicants have in understanding these processes.

Sixty-seven (89 percent) of the civil parties were Khmer and six (8 percent) were Cham. The other two were of mixed descent. A majority of the Cambodia-based civil parties (62 percent) were farmers at the time of the survey, and eight (11 percent) were street vendors. Some of those who reported being farmers indicated that before Khmer Rouge rule in the 1970s, they were civil servants or other salaried employees. Most Cambodia-based civil parties had low levels of education, with less than 30 percent having completed primary school. CP-C had on average higher educational achievement compared to CP-R, with 36 percent of the CP-C having at least completed their primary education, compared to 18 percent of the CP-R. CP-C, however, were no more educated than the overall population, which suggests that participation was not limited to an educated elite.

Experience of Violence

The Cambodia-based civil parties reported levels of exposure to violence during the Khmer Rouge regime that were higher than those of the general population who lived under the Khmer Rouge regime (Table 2). All but two of the 75 civil parties had personally lived under the regime and experienced direct violence, including torture (60 percent), and beatings (22 percent). Among the general population, a smaller proportion (30 percent) of those who lived under the Khmer Rouge regime reported experiencing torture at that time, and eight percent reported being beaten. Overall exposure to other violations was also higher among civil parties than for the general population who lived under the Khmer Rouge. All but one of the 73 who reported violence also reported experiencing starvation, 64 (88 percent), had property confiscated, 64 (88 percent) were forcibly separated from family members, and 62 (85 percent) were subjected to forced labour. Over three quarters were forced to evacuate (58 or 80 percent) and lacked shelter (57 or 78 percent). The 75 civil parties experienced, on average, two and a half times more traumatic events during the Khmer Rouge period as compared to the general population who lived under that regime. However, the two groups showed similar exposure to violence after the Khmer Rouge regime.

Using the PCL-C standard scale to assess symptoms of Post-traumatic Stress Disorder (PTSD) and the HDSC, civil parties showed statistically

⁷ The names of the civil parties, accepted and rejected, are in the judgment (see Judgment, *Kaing Guek Eav*, Case No. 001/18-07-2007-ECCC/TC, Trial Chamber, 26 July 2010, paras 645–50). The ruling on civil parties' admissibility is currently appealed.

Table 2: Comparison of Exposure to Violence, Symptoms of PTSD and Symptoms of Depression between Civil Party and Population-based Survey

	Total Civil parties (n = 75)		Population survey respondents who lived under Khmer Rouge (KR) regime (n = 708)		Population survey (n = 1000)	
	Mean	Std. deviation	Mean	Std. deviation	Mean	Std. deviation
Symptoms of PTSD sum *	41.1	13.6	30.4	11.4	29.9	11.1
Symptoms of depression sum *	36.0	11.8	29.4	10.7	28.2	10.2
Total exposure during KR * (number of events)	8.7	3.7	6.2	3.2	4.4	3.8
Total exposure after KR (number of events)	1.8	2.0	1.4	1.6	1.5	1.7

* Significant difference between civil parties and population who lived under the Khmer Rouge regime, Independent T-test p-value <.01.

higher average scores than those surveyed in the population-based survey, indicating a greater prevalence of the disorders' components. These results suggest that the civil parties represent a group of individuals who were more severely affected by trauma compared to members of the overall population who lived in Cambodia during the Khmer Rouge regime and survived.

Civil Party Application – The First Steps

To ensure victims had the opportunity to participate in the ECCC proceedings, the Victims Unit, subsequently named the Victims Support Section (VSS), was created according to the ECCC Internal Rules. A similar unit was also created at the International Criminal Court (ICC) to aid victim participation (ICC, undated). The VSS was set up to act as an intermediary between victims and the Court, partly to receive and process victim information forms and transmit them to the appropriate judicial office (ECCC, 2007: Rule 12 (2)). Although victim participation was a component of the Court from the adoption of the Internal Rules in June 2007, the VSS did not become fully functional until it received funding and resources in late 2008 (ECCC, 2008), close to the civil parties' application deadline and the

Table 3: Reported Motivation to Apply as Civil Party

Motivation to apply as civil party	n	% of cases
To obtain justice for me and my relative who died	51	68
To know the truth	32	43
To honour the memories of my relatives	24	32
To tell my story	20	27
To have my suffering acknowledged	13	17
To confront Duch	11	15
To receive individual reparations	7	9
To put Duch in prison/life sentence	3	4
To prevent future violence	1	1
Don't know	1	1

beginning of the Duch trial in February 2009. Thus several local and international NGOs supported victim participation by being active in every step of the application process, including (1) informing victims about their right to participate (as well as general information about the ECCC and its existence), (2) assisting those interested in making an application, and (3) assisting the civil parties before, during, and after the trial.

The civil party interviews confirm that most civil parties in Case 001 learned about their opportunity to participate from, and were assisted in submitting applications by, NGOs. Nearly three quarters (71 percent) stated that NGOs were the first to inform them of their right to submit a civil claim although some (8 percent) learned from radio outreach announcements. When asked which organization or individual helped them with the application process, all except two people named Cambodian NGOs or lawyers associated with NGOs.⁸ Furthermore, all used generally positive terms to describe their application experience: 63 percent felt ‘extremely’ supported by the NGOs, and 68 percent received information from NGOs at least once a month. In addition, civil parties who received information more than once a month during the application process felt more supported, reflecting the importance of the NGOs’ involvement. Some of the NGOs provided regular updates on the development of Case 001 and offered opportunities to civil parties to meet their lawyers regularly.

The main motivation for participation was to obtain justice for themselves and/or their relatives. The civil parties defined (69 percent, Table 3) justice

8 The NGOs include the Documentation Center of Cambodia (DC-CAM), the Cambodian Human Rights and Development Association (ADHOC), the Center for Social Development (CSD), the Khmer Institute for Democracy (KID), Legal Aid of Cambodia (LAC), the Cambodian Defenders Project (CDP) and the Transcultural Psychosocial Organization (TPO).

in terms of knowing who is right and who is wrong, being fair, and applying the law. Almost half (43 percent) applied because they wanted to know the truth about what happened to their relatives, and a third (32 percent) applied to honour the memories of their relatives.

Despite the civil parties' overall positive application experience, among the 22 whose status was ultimately denied, the most common reactions were anger, helplessness, shame, and feelings of worthlessness. One CP-R stated he was 'angry because it is an injustice to me and my dead relatives'. Some had emotional outbursts and/or cried upon learning the news; some reported having sought psychological support. Others felt 'ashamed' and 'worthless', leading them in some cases not to tell their families and/or their neighbours that they were rejected. In the words of the civil parties: 'I feel pain in my head, in my chest. I feel so much ashamed. I am here to find justice for my mother who was killed at S21', or 'If there is one civil party rejected, we are all feeling the pain', indicating that, even for accepted civil parties, the rejection was not acceptable (*Transcultural Psychosocial Organization, 2010: 2*).

The negative response to rejection may in part be explained by the initial provisional acceptance as a civil party, which partly resulted from the lack of guidance and criteria on civil parties' admissibility from the Court. Given that at least one other trial is to be held (Case 002), and that nearly four thousand individuals have applied for the status of civil party, rejection is likely to occur again, but hopefully before the trial begins (*ECCC, 2009: Rule 23(3) and (4)*; also see *ECCC, 2010b: 4*).⁹ The impact of rejection on the emotional health of applicants remains largely undocumented, and support systems for rejected applicants are lacking.

Selection and Interactions with Legal Counsel

Civil parties are required to have legal representation according to the ECCC Internal Rules. However, the ECCC did not provide formal legal aid to civil parties in Case 001; hence all civil party legal assistance was either self-funded or funded by an institution other than the ECCC (*ECCC, 2010c: Rule 12 (ter)*).¹⁰

9 Notably, 60 of the 75 Cambodian civil parties in Case 001 submitted claims in Case 002, and 27 have already been accepted as participants. In September 2009, the Internal Rules were modified so that civil parties' admissibility would be dealt with before the beginning of the second trial (see *ECCC, 2009: Rule 23(3) and (4)*). At the time of the Closing Order, 15 September 2010, the co-investigating judges had rejected 1,846 civil party applications (see *ECCC, 2010b*). On 24 June 2011 the Pre-trial Chamber granted appeal to 1,728 civil party applicants out of 1,846 previously rejected as admissible, bringing the total number of civil parties in Case 002 to 3,850 out of a potential number of 3,988 (see *ECCC, 2011b*).

10 The civil parties in Case 001 formed four groups divided according to NGOs' assistance to specific civil parties. Each group was represented by at least one national and one international counsel. This representation scheme will change in Case 002. The Trial Chamber revised the Internal Rules in February 2010 to require all civil parties to be consolidated

Most civil parties interviewed in this study (52 respondents or 72 percent) indicated they had the possibility to choose their own legal counsel. For most, however, NGOs were the main source of assistance and information throughout the Duch trial, especially during the application phase, and after the verdict. Not surprisingly, the civil parties said they had the most interaction with their legal counsel during the trial phase. However, 20 civil parties (27 percent) could not name their national or international lawyer, three (4 percent) could name only the national lawyer, and 14 (19 percent) could name only the international lawyer. This suggests that almost half of the civil parties did not have close working relationships with their legal team (except where the civil party had an opportunity to testify as described below) and that NGOs continued to have an important role in informing civil parties about the case and facilitating their involvement.

Experience of Testifying

Participation in the ECCC proceedings as a civil party does not guarantee an opportunity to testify before the Court. Of the 75 Cambodian civil parties in Case 001, 17 (23 percent) testified at the trial, including five whose status was denied at the time of the verdict and sentencing.

When asked how they came to testify, eight of the 17 said they volunteered, seven stated that their lawyers made the request, and two stated that the Court made the request.¹¹ When asked what motivated them to testify, 15 of the 17 wanted to tell their own or a relative's story. Some added that it was to confront the defendant or to ask him previously unanswered questions.

Nearly all who testified (15 out of 17) reported that their lawyers helped them to prepare. Beside their lawyers, some mentioned NGOs. About three quarters (13 out of 17) felt sufficiently prepared to give their testimony, and 15 out of 17 were satisfied with their testimony and also believed that their lawyers treated them with respect (Table 4). In addition, over three quarters of those who testified thought that the Court had treated them fairly during their testimony.

Experience during the Trial

The VSS and NGOs were instrumental in providing transportation and logistical assistance (such as accommodations, food, and so on) offering opportunities for civil parties to come to the hearings throughout the trial. As a

into one group for the purposes of the trial, represented by two lead co-lawyers. Prior to the trial (for example in pre-trial hearings), civil parties will be assisted by their own lawyers, but during the trial and beyond they will be represented by the lead co-lawyers assisted by individual lawyers, if deemed necessary by the lead co-lawyers. (See ECCC, 2010c: Rule 12 (*ter*)).

11 Based on a list of civil parties submitted by the civil parties' lawyers, the Trial Chamber chose civil parties who testified during the trial.

Table 4: Civil Parties' Perception and Attitudes towards Testifying during Hearings at the ECCC

	I am satisfied with my testimony at the ECCC		I felt respected by my lawyer*		During my testimony, I was treated fairly by the Court		I felt sufficiently prepared for my testimony	
	n	%	n	%	n	%	n	%
Strongly agree	13	77	12	71	6	35	7	41
Agree	2	12	3	18	7	41	6	35
Neutral	1	6	1	6	2	12	2	12
Disagree	1	6	0	0	1	6	2	12
Strongly disagree	0	0	0	0	1	6	0	0
No opinion	0	0	1	6			0	0

*To avoid the problem of set responses (i.e. responding in a similar way to similarly-phrased questions) and leading questions, statements were stated in negative and positive terms. However, the results were recoded for consistent reporting.

result, the civil parties in Cambodia reported a high level of engagement with the Duch trial, and were naturally much more engaged than the general population. Fifty-eight (72 percent) of the civil party participants said they attended the first day of the Duch trial, and about the same proportion, 56 people, attended the day of the verdict. Another 44 (59 percent) said they attended other days of hearings, and, among those, more than three out of four (77.3 percent) attended six hearings or more. Most (93 percent) wished they had been able to attend more days. The most common reasons for not being able to attend were health problems (24 percent), distance (19 percent), cost (19 percent), and lack of time (19 percent). However, seven (9 percent) did not know that they were allowed to attend. In comparison, less than one percent of the overall population attended hearings and/or visited the Court.

The civil parties reported receiving most support (such as logistical and/or financial support) during the trial from NGOs (53 percent), while nine percent mentioned receiving support from their lawyers, most of them associated with NGOs. About three quarters (72 percent) interacted with either an NGO or their lawyer at least once a month during the trial, and 67 percent felt adequately supported. However, just one third (37 percent) reported having a good understanding of what was happening during the trial, and more than one quarter (28 percent) described having no or little understanding of what was happening. Upon further examination, the more the civil parties attended hearings and the more support they received from NGOs, the more confident they felt about their knowledge of the trial. For most civil parties, however, their understanding remained limited.

Perceptions of the trial were also mixed (Table 5). One in three civil party participants said the hearings did not meet their expectations at all or just a little. Although the majority (59 percent) believed that the Duch trial was conducted fairly, most also felt that the Court gave Duch too much time to explain himself and did not give victims enough time to tell their stories. Further comparison indicated that civil parties who reported greater understanding and attended more of the court proceedings held less positive perceptions and attitudes towards the Duch trial proceedings than civil parties who were less involved and less knowledgeable. Comparison with the data from the population-based survey indicates that, in general, the civil party participants' perception of the hearing was less positive than that of the general population (p -value $< .01$). These data combined suggest that more nuanced knowledge of the trial proceedings may translate into more critical perceptions and attitudes towards the Court.

Reactions to the Verdict

On 26 July 2010, the Trial Chamber at the ECCC found Duch guilty of crimes against humanity and grave breaches of the Geneva Conventions. He was sentenced to 35 years of imprisonment. By discounting five years for

Table 5: Perceptions and Attitudes towards the Duch Trial Proceedings (percent)

	The Duch trial was conducted fairly		The court gave too much time to Duch to explain himself		Victims did not have enough time to tell their story	
	Population survey (n = 1000)	Civil parties (n = 75)	Population survey (n = 1000)	Civil parties (n = 75)	Population survey (n = 1000)	Civil parties (n = 75)
Strongly agree	27	23	15	37	19	57
Agree	42	36	35	33	37	23
Neutral	7	11	9	7	8	4
Disagree	4	21	10	12	8	4
Strongly disagree	3	8	2	4	2	5
No opinion	17	1	29	7	26	7

illegal detention at a military prison and the years he spent in custody both at the military prison and at the ECCC, the time Duch might actually spend in prison will probably be reduced to 18 or 19 years depending on when the final judgment will be issued.¹² The Court further specified that the civil parties whose claims were accepted by the Court would have their names and the names of their relatives who suffered at the S21 prison included in the final judgment, along with the publication of Duch's expressions of remorse and apology. The defence, the prosecution, and the civil parties all separately appealed the judgment, and the final decisions on the appeals are expected in late 2011 or early 2012.

On the day of the verdict, there was extreme confusion about the sentence among participants at the hearing, including lawyers, civil parties, and the media (Savina and Kilpatrick, 2010; Telegraph, 2010; Hunt, 2010; Transcultural Psychosocial Organization, 2010: 2).¹³ At the time of the survey, nearly six months after sentencing, half the civil party participants were still confused about the sentence. Out of the 75 Cambodian civil parties, 38 (51 percent) knew the overall prison sentence; two civil party participants thought he was sentenced to life imprisonment, and the remainder cited a sentence between 18 and 50 years. Civil party participants who were able to identify correctly the overall prison sentence were also able to specify the number of years Duch will spend in prison after deducting the years he had already served.

Among the half who accurately knew Duch's jail sentence, 30 (80 percent) said that Duch should have received a longer sentence and just seven (18 percent) believed the sentence was just. The others were unsure. When the interviewers told respondents the exact number of years that Duch would spend in prison, 50 out of 75 (67 percent) believed Duch should spend more time in prison, 19 (25 percent) believed he received a just sentence, one person believed he should serve less time, and five (7 percent) said they did not know enough to give an opinion.

The Court is set to examine appeals from all parties, and so the interviewers also asked the civil party participants what they expect to be the outcome of the appeals. Responses varied: 22 of the 75 civil party participants expected Duch to be sentenced for a longer period or to life; eight

12 At the time of the judgment, the Trial Chamber did not propose a number of years in prison. However, since Duch was arrested in 1999, in 2010, ECCC monitors advanced the number of 19 years as time that Duch will spend in prison after reduction. In 2011, this number would be reduced to 18 years to take into account the total number of years in custody.

13 Despite a press release issued by the Court on the day of the verdict (see ECCC, 2010a), there was extreme confusion between the 35-year sentence and the time Duch would actually serve in prison. This was especially acute on the day of the verdict (see Savina and Kilpatrick, 2010). Some newspapers announced 30 years (see e.g. Telegraph, 2010), while others said 19 years (see Hunt, 2010). The civil parties were especially confused on the final sentence (see Transcultural Psychosocial Organization, 2010).

Table 6: Civil Parties* Reported Expectations of the Duch Trial Verdict's Appeal

What do you expect to be the outcome of the appeal?	n	%*
Longer jail sentence or life for Duch	22	56
Appropriate reparations or more favourable outcome for victims	8	21
Justice for all victims in KR regime.	6	15
New procedures in recognizing the victims at the ECCC	5	12
Continued appeals by victims if Duch wins his appeal	1	3
Recognition of the crimes committed by the KR	1	3
Recognition of my deceased family member as a victim of S21	1	3
Don't know	4	10

* The responses are among 39 civil parties who were aware that there was an appeal. Some of these respondents provided more than one response.

expected more appropriate reparations for victims; and five expected new procedures to recognize victims (Table 6). It should be noted that 36 of the 75 civil parties were not aware that there was an appeal at the time of the interview.

Attitudes and Perceptions of the Duch Trial

One of the objectives of this study was to examine how civil parties perceived the participation process, the Duch trial, and the work of the Court, and how, if at all, it had affected them. As well as the views on process discussed in the previous sections, the interviewers also asked a series of open-ended questions about outcomes.

Not surprisingly, the civil parties' most frequently cited positive outcome of the trial was that Duch was found guilty (25 percent). However, many also emphasized the contribution of the trial to establishing a historical record. Specifically, civil parties mentioned that the trial gave victims an opportunity to tell their story (23 percent), or that they themselves had the opportunity to tell their story (9 percent). They also said that the trial allowed Duch to provide a direct account of what happened from his perspective (13 percent), and that he recognized what he did (11 percent). Several civil parties mentioned the apologies offered by Duch as the most positive outcome (18 percent), and 15 percent emphasized the fact that the trial had been conducted fairly. At the same time, 12 civil parties (16 percent) said they were unsure or did not know of any positive impact.

While Duch's conviction was the most frequently identified positive outcome, several civil parties also mentioned his sentence among their main negative outcomes (16 percent). This confirms the earlier finding that two thirds (67 percent) believed Duch should spend more time in prison. Civil

Table 7: Reported Psycho-social Impact of the Duch Trial

Mean score, maximum of 5 (Std. deviation)	Civil parties	Population lived under KR
I personally feel stronger mentally after the Duch trial	4.0 (0.9)	3.55 (0.9)
I have more hope for the future after the Duch trial	4.03 (1.1)	3.72 (0.9)
The Duch trial helped me in accepting the loss of my loved ones	2.41 (1.4)	2.93 (1.2)
The Duch trial has helped me in finding closure/ coming to terms with my painful past (recoded to positive)	3.35 (1.3)	3.62 (1.2)

party participants also mentioned as negative outcomes (1) that the Court did not order reparations for victims (12 percent), and (2) that it ultimately rejected some civil party claims at the time of sentencing (12 percent). In addition, at the Closing Arguments, the international and national defense lawyers split, advancing different closing defense strategies. The international lawyer argued for mitigating circumstances whereas the national lawyer argued that Duch was not ‘most responsible’ and thus that the court had no jurisdiction over the case. Several civil party participants (9 percent) viewed the national defense lawyer’s argument about the court having no jurisdiction as a negative outcome. Because civil parties’ experience with the ECCC was limited to the Duch trial and no other trials had yet taken place, perceptions of the Court and of the Duch trial were similar.

Impact of the Duch Trial and the ECCC

In addition to the open-ended questions about the outcomes of the trial, the interviewers asked the civil parties whether or not the trial had had an impact in various dimensions, including mental health, rule of law, forgiveness, and reconciliation. The transitional justice literature frequently argues that trials can have a healing effect on survivors of mass violence, as well as strengthen the rule of law and foster forgiveness and reconciliation among the population in the aftermath of widespread violence (Thoms et al., 2010).

Regarding the impact on trauma and mental health, the study showed that civil party participants were significantly more likely to meet the criteria for symptoms of PTSD compared to the adult population in general and the adult population who lived under the Khmer Rouge regime. Respondents assigned a score to a series of statements from 1 to 5, with 1 being the most negative, and 5 the most positive.

The civil parties agreed that the trial made them feel stronger mentally and increased their hopefulness about the future, and they felt more positively on these points than the general adult population who lived under the Khmer Rouge regime (Table 7). Civil parties were less positive, however, about

Table 8: Attitudes towards Forgiveness, Reconciliation, and Trust

Mean score (Std. deviation)	Civil parties	Population lived under KR
I believe that the apology from Duch was genuine (max = 5)	2.27 (1.33)	3.01 (1.17)
After the trial, I am more ready to reconcile with Duch (max = 5)	2.64 (1.32)	3.02 (1.18)
The ECCC will help promote national reconciliation (max = 2)	0.75 (1.74)	1.74 (0.57)
The ECCC will help rebuild trust in Cambodia (max = 2)	1.6 (1.75)	1.75 (0.57)

whether the trial had helped them accept the loss of loved ones and/or come to terms with the past. On these items, the civil parties felt more negatively than the overall population who lived under the Khmer Rouge, perhaps because direct participation in the proceedings reminded them of that period, and of their suffering and the suffering of their loved ones, or they were a self-selected group whose exposure to the Khmer Rouge led to more deleterious effects. It also highlighted the fact that accepting the loss of loved ones or coming to terms with the past is a process that might go beyond attending judicial proceedings (Mendeloff, 2009; O'Connell, 2005).

Considering forgiveness and reconciliation, the civil parties demonstrated more negative attitudes than the overall population who lived under the Khmer Rouge. Of the four indicators, civil parties were most positive about their readiness to reconcile with Duch after the trial (Table 8). However, they were on average less positive about this than the overall population who lived under the Khmer Rouge. Civil parties were less positive also that Duch's apologies were sincere (2.27 out of a total score of 5, indicating an average negative perception) and, again, were more negative than the general population who lived under the regime. With regard to the ECCC more broadly, civil parties on average were more negative than the overall population about the ability of the ECCC to contribute to reconciliation. Similarly, they were on average more negative than the overall population about the Court's ability to rebuild trust in Cambodia. This, however, is not surprising. The Duch trial was an encounter with direct suffering that happened in their past or detailed information about what their loved ones had suffered while imprisoned. Thus, civil parties in Case 001 had a direct link with the crimes committed at S21 and S24, which was not the case for the vast majority of the Cambodians who lived under the Khmer Rouge.

Finally, responses were also mixed about the impact of the trial at the ECCC on perception of the national judicial system in Cambodia. Cambodian civil parties were very positive about the trial's contributing to

their learning about what happened during the Khmer Rouge, more so than the general population who lived under the Khmer Rouge. This could be explained by the fact that the civil parties had taken a more active role in the trial and had attended more hearings than the general population. However, although the civil parties were also positive about the fairness of the Duch trial, they were less convinced that it could bring justice to the victims than were the general population who lived under the Khmer Rouge. This difference in view might be related to the lack of reparations provided to civil parties in Case 001, and/or the shorter than expected sentencing.¹⁴ Additionally, while most of the general population were more positive than before the trial about trusting the justice system, the view was more neutral among the civil party participants.

Discussion and Conclusions

Participation of victims in the proceedings of international and hybrid criminal tribunals is a relatively new feature of international justice. The ad hoc tribunals set up in the 1990s to judge crimes in Rwanda and the former Yugoslavia (the International Criminal Tribunal for Rwanda, ICTR, and the International Criminal Tribunal for the former Yugoslavia, ICTY) included no provision for victims to participate beyond the role of witness, and did not create outreach programs to engage with populations affected by the violence until several years into the process.

The Rome Statute of the International Criminal Court (ICC) drafted in 1998 significantly expanded the potential role for victims, including a new role of ‘victim participant’, to be represented in the proceedings. Subsequently, the Special Tribunal for Lebanon also included a role for victims as participants in the trials, not merely confining their role to that of a witness. The evolution in the place of victims from observer status, or sources of evidence, to recognition as active participants in international criminal trials was formalized in the 2005 UN Basic Principles on the Right to a Remedy and Reparation (UN General Assembly, 2005).

While victims’ advocates have embraced victim participation, tribunals have found it challenging to integrate into their operations. They have been required to establish new services to support applications and effective victim participation, and more broadly, to redefine the role of victims in the courtroom, such as their ability to have their own legal representation and to speak.

The ECCC is unique in that for the first time survivors of mass atrocities can join as civil parties at an international hybrid tribunal, granting them similar procedural rights to every other party to the proceedings and also giving them the right to seek reparations. Yet, as this study shows, from the civil parties’ perspective many challenges remain.

14 This ruling is currently on appeal.

The lack of early guidance in the application process meant that 24 out of the 90 civil parties provisionally accepted as civil parties in the trial ultimately had their status denied, including 22 among the 75 Cambodian resident civil parties. Among those who ultimately had their status denied, anger, helplessness, shame, and feelings of worthlessness prevailed. While the rejection was possibly made worse by its timing at the end of the trial, the responses highlight the need to engage with victims so that denial of civil party status is not perceived as chagrining. This means not only informing civil party applicants of the rejection but explaining how and why it happened so they could link it to the legal process. As the second trial is about to begin, this is an issue that needs to be thought out in advance.

Generally, the Cambodian civil parties in Case 001 viewed the experience of participating positively, and those who provided testimony also viewed that experience positively. However, many effects of participation that advocates expected were not observed; none of the Cambodian civil parties described a catharsis or healing effect. In fact, in many ways civil parties were more negative than the overall population who lived under the Khmer Rouge regime about the impact of the trial on their acceptance of loss and reaching closure, on their forgiveness of the perpetrators, or whether the trial had improved the rule of law. Furthermore, many civil parties remained uncertain and lacked understanding about key aspects of the trials, including sentencing. In addition, civil parties who attended the trial more frequently and had more knowledge of the trial were more critical of the process.

These results do not imply that victim participation should be abandoned. The participation of those who directly experienced the abuses perpetrated by those on trial is positive and important. It is a public acknowledgment of the pain and suffering of those who were victimized, and a unique perspective on the proceedings. Furthermore, it can empower individuals beyond the role of mere witnesses. The creation of the Association of Victims of Democratic Kampuchea (Ksem Ksan),¹⁵ the association's endeavour to build a memorial at S21, no matter what the reparation given by the Court will be, and the increased role as an advocate embraced by its president, Chum Mey, a survivor of S21, reinforce that point. What this does suggest, however, is that victim participation, and indeed trials in general, are unlikely on their own to address the wounds of a society affected by mass atrocities, or bring about healing, closure, and reconciliation to victims or to the larger population. Rather, the trials should be seen as first steps towards at least three key dimensions of social reconstruction: creating a historical record, allocating responsibility, and acknowledging the victims (Weinstein, 2011). As future trials unfold, lessons learned at the ECCC and elsewhere should inform the development of an effective and meaningful participation process. Despite

15 The Association of Victims of Democratic Kampuchea was created by several civil parties in Case 001 and Case 002.

some disappointments in the Duch trial outcomes, civil parties felt positive about their overall participation, suggesting the importance of that process.

For its second case (Case 002), the ECCC has already addressed some of the challenges encountered in Case 001, introducing admissibility at the investigating stage and providing legal representation to a consolidated group of civil parties under a scheme of two co-lead lawyers at trial and beyond. But more broadly, such courts need to address in greater depth what victim participation should entail and what procedures and resources are needed to integrate victims more fully, assuming that courts embrace this direction and are committed to it as an institution. Furthermore, NGOs who have been the backbone of victim participation should be further supported and recognized in their role as intermediaries between the court and the victims. The court should provide early and clear guidance to NGOs on civil party application process and requirements as well as establishing effective communication channels between the court and civil society. The later is especially essential so that NGOs get updated information on rules, process and requirements on a regular basis and thus are able to inform civil party applicants in a timely manner. Additionally, a clear and direct communication channel would facilitate coordination of activities and thus maximize resources. Finally, recognition of the role of NGOs could be demonstrated by the court acknowledging their work in official publications and media as well as providing logistical and financial resources if NGOs were to provide services such as delivering court notifications, psychological support or legal representation.

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