



Episode 1 (November 2020)
Spotlight on Cambodia

Welcome to *Justice Visions*, the podcast about everything that is new in the domain of Transitional Justice (TJ). *Justice Visions* is hosted at the Human Rights Centre of Ghent University. For more information visit Justicevisions.org.

Tine: Welcome to the second season of [Justice Visions](#). And for those listeners just tuning in for the first time, I am [Tine Destrooper](#) and I'm a professor of transitional justice at the [Human Rights Center of Ghent University](#). I'm also the project lead of *Justice Visions* and regular host of this podcast.

Sangeetha: And I'm [Sangeetha Yogendran](#). I'm a PhD research fellow at Ghent University. And one of the researchers on this great project, [examining victim participation in transitional justice processes, with a focus on Cambodia](#).

Tine: And Sangeetha, people may actually recognize your voice, right, because you also do the intro of our podcasts. But today you are here as a co-host. And if I say that you are here as a co-host then I'm already giving away that we also have another guest. And today that's [Samphoas Huy](#) who is an expert on the Khmer Rouge Tribunal, and we will properly introduce her in a bit. But I first wanted to say a few words about what we will be doing this season because the first season of our podcast has come and gone a lot quicker than we thought actually, and we got a lot of great feedback from the listeners. One of the most frequent requests that we received was to really talk more about the specific cases in this season.

Sangeetha: So this season, we're going to start by zooming in on recent developments in transitional justice contexts around the world.

Tine: And we'll start, of course, by putting the spotlight on those cases that we know best, right? Which is the countries that we are studying as part of *Justice Visions*.

Sangeetha: And today, in particular we'll be talking about Cambodia because quite a lot is happening there, actually.

Tine: When we first started to work on this episode, it was because one of the defendants in one of the cases, Duch, had died. And we'll say more about that in a minute. But then as we were preparing this episode, actually, something else happened, right? And now there are two good reasons to be doing this episode on Cambodia.

Sangeetha: One of the only four cases that has ever come before the Court actually got dismissed quite recently.

Tine: And to understand the importance of both of those things Sangeetha, I think we first need to take a step back. So give us a short heads up about the Cambodia case.

Sangeetha: Great. I'll try to keep this as short as possible. So the [Extraordinary Chambers in the Courts of Cambodia](#), which we'll often refer to as the ECCC,

Tine: Or the Khmer Rouge Tribunal, right?

Sangeetha: Exactly. It's quite a mouthful. So ECCC, or Khmer Rouge tribunal, it's an international hybrid tribunal, which was set up both by the UN and the Cambodian government to try the most senior leaders and the most responsible members of the Khmer Rouge regime. Now what's special about it is that this is one of the few international tribunals where victims participate in the proceedings as civil parties.

Tine: So civil parties, that means that victims are actually granted procedural rights to participate in their personal capacity. And that's unique. Right?

Sangeetha: Exactly. That's it. And there've been quite a few challenges and questions regarding how to organize this victim participation because mass crimes make for thousands of victims, unfortunately. The crimes perpetrated during the Khmer Rouge regime in Cambodia, for example, caused the death of nearly 1.7 million people.

Tine: And then you read these statistics about how that is actually one fourth of the population.

Sangeetha: Which is a shocking number. So in a way, given the widespread scale of the atrocities committed, basically almost the whole Cambodian population could claim victim status before the ECCC.

Tine: But then obviously, not the whole Cambodian population has been involved and more importantly, also the court has only convicted very few people. And now that's the reason why we're doing this episode. One of them has died.

Sangeetha: Correct. Kaing Geuk Eav, if I'm pronouncing it properly, I hope, also more commonly referred to as comrade Duch was a former senior figure of the Khmer Rouge. And he passed away recently. He was actually serving a life sentence after having been found guilty of war crimes by the ECCC in its very first trial.

Tine: So he *was* actually found guilty.

Sangeetha: Exactly. He was also more notoriously known for being in charge of the S-21 security center in Phnom Penh, Cambodia's capital, where at least 12,000 people were tortured and then killed.

Tine: That means, only a handful of those survived?

Sangeetha: I think it was about six or seven individuals that ended up surviving, which is incredible if you think about it and horrific at the same time. In July, 2010, the trial chamber of the ECCC actually convicted him for crimes against humanity, and grave breaches of the Geneva Convention and sentenced him to 35 years imprisonment.

Tine: So that means that he is one of the few people that actually was sentenced?

Sangeetha: One of three actually. But his sentence was reduced by five years. He also received credit for the time that he already spent in detention, both under the authority of the Cambodian military court and the ECCC.

Tine: And today we talk about what his death means for victims and for transitional justice processes. But first the reason Sangeetha why you're also with us is because you actually worked on that case, right? And, and I wanted to ask you to tell us a bit more about that, because I know you as a researcher, but there you were actually involved as a practitioner. How was that?

Sangeetha: It's been a very surreal experience for me to now be working on a Cambodia case study for our project, when more than 10 years ago, I was an intern at the ECCC's victims unit, as it was then called. I was still an undergraduate back in law school in Singapore. And the six months I spent in that office were truly eye opening to say the least. I was actually there for the start of case one, and we at the victims unit were managing the 90 something civil parties who were registered for the first case.

Tine: And when you're talking about case one, that's the Duch trial that we're talking about today. Right?

Sangeetha: There've actually been two cases in total before the ECCC, so far: case one, which we're talking about today, which found Duch guilty for his role in running the Toul Sleng prison. And then there's case two. What's worth noting about case two is that because of the huge scale of the crimes covered, this trial was actually split into two parts. So the deputy secretary of the communist party of Kampuchea was one of the defendants, and also the former head of state of democratic Kampuchea, another defendant, were both found guilty of crimes against humanity, grave breaches of the Geneva Conventions and genocide against both the Muslim Cham and Vietnamese communities. So case two actually started with four defendants. But proceedings against the deputy prime Minister for Foreign Affairs were terminated in 2013, following his death. And the Minister of Social Affairs was found unfit to stand trial due to dementia back in 2011.

Tine: So if I'm counting correctly, there's only two cases where there have been a total of three verdicts.

Sangeetha: Exactly. While working at the victims unit, I remember actually organizing together with my wonderful colleagues, one of whom we'll be speaking to, for the civil parties in that case to visit the tribunal and attend the start of the trial. And as you can imagine, it was a very significant day because it was also during his opening statements that Duch turned to the audience, sitting inside the chamber and apologized for the crimes he had committed. Now I remember that moment elicited a lot of emotional reactions from everyone sitting there with many civil parties needing to be excused to the sick bay throughout the day, because they were experiencing headaches and stomach pains, which I think perhaps were very physical response to an emotional day.

Tine: Actually what you're saying, Sangeeta also reminds me of an earlier episode. If you remember, one that we did with Rudina Jasini who also mentioned that it's so difficult to cope with this as a lawyer because you're not really trained for it, right? And, and you were in the end involved as a lawyer.

Sangeetha: You're completely right. Tine. I was not trained to cope with that in itself. And that was a huge learning experience for me as a practitioner and now as a researcher and something I've become much more attuned to after that. At the end of that internship, I started working with one of the civil party lawyers and we worked to put together a case for the Khmer Krom minority, on and off for several years after that, we worked to build

a case for this group who had actually been persecuted by the Khmer Rouge, but they had not been included in the trials up till then. And they were persecuted because they were accused of having Vietnamese heads and Khmer bodies. So for us as a team, it was actually a really great day, many years ago when the submissions were included into case four.

Tine: But this case four is the other thing we were talking about with our guest today, because, just to recap, you mentioned that there are two cases where there have been verdicts, but then there was also case three and four where there were proceedings, or at least attempts to proceed, and now one of those cases got dismissed.

Sangeetha: Recently, in August I believe, the Supreme Court Chamber of the ECCC actually terminated one of the cases with charges against one of the deputy secretaries of the central zone. And this was after months of procedural deadlock. So that leaves two remaining cases that are still at the earlier stage of trial. These two remaining cases with charges against additional accused are still pending for both case three and cases four, but they unfortunately mired in procedural quagmires. And unfortunately, due to reluctance from national judges, don't seem likely to ever get to the trial stage.

Tine: Sangeetha, I feel that you got me up to speed and I feel that it's also time to start introducing our guests for this episode, because actually you met our guest while working on case four. Right?

Sangeetha: Case one, actually, during my time as an intern at the victims unit that I had the pleasure of becoming friends with my dear colleague and the guests for today's episode, Samphoas.

Tine: Samphoas, welcome to this episode.

Samphoas: Thank you for having me.

Tine: Samphoas, we're really happy that you accepted this invitation to join us for this conversation because you're now in the process of completing your PhD thesis on the topic of, if I'm not mistaken, the treatment of gender crimes and women's contributions in transitional justice and peace building, right?

Samphoas: Yes.

Tine: You've got an impressive resume of also working as an expert consultant to and working at the very renowned Documentation Center for Cambodia and with the victims unit of the ECCC. So my first question of course, would be, if you can tell us a bit more about your involvement in the ECCC and particularly with that case one, that Sangeetha also just told us something about.

Samphoas: I was an outreach facilitator at the victims unit. But at that time, we don't have many people to run the unit, like Sangeetha had mentioned, she was an intern, but we worked together side-by-side with interns. And also, the unit is located in town, far from the court. The reason that it was in town because it make it easy for survivor to file the application and to connect to the NGO, non-governmental organization who worked to support the court proceeding. So my work was to assist survivor to file application as a witness and civil party or complainant. At that time, we explain them clearly whether they

want to be a witness, civil party, it's a part of the trial, they can join a trial, or to be a complainant, like they only give information to the prosecutor.

And we help them to fill the victim information form.

We don't have many staff to run and then, NGO already collect many, many forms and then sent them to the victim unit. And we also collect some form later.

We have to work and join hand-in-hand with NGO and also with the court itself to inform the victims about what happened, what is happening in the Court and the progress of the Court, and, give all the information. For example, we give them a time to meet with their lawyer and the lawyer explain their rights, how to be a civil party and how they, when they become a civil party, they can be called for testifying before the court.

Sangeetha: Actually really interesting Samphoas and you're really taking me back. You were involved in so much of case one, including, you know, registering the victims and following them to attend the trial. What for you, would you say was the most memorable thing from case one?

Samphoas: In my memory the work load is very, very heavy. I remember that I was so tired and then, actually my parents didn't see me much at home because I have to spend a lot of time in the province because we have to do outreach to, many victim who will not be able to come to Phnom Penh to lodge their complaint directly in victim unit or the NGO cannot reach them. So we create the civil party forums and also meetings. And also we go directly to the place where a lot of people would like to lodge complains. Remember once, the last time before the case two deadline, I was in Siem Reap province, and one of the lady, she forget to put her shoe on and jump on the motor taxi from her house to the hotel that I and my colleagues were working right there to help them assist filling the form. And she told me that it was so emotional and then she lost all the family members, husband and all the children, and now she's so lonely living alone. And at the time that she filed a complaint from the beginning to the end, she cried, emotionally, and at the time I could not even hold my tears, you know. It was so hard working with the victims, but I am so happy to so that I can help them, you know, like to narrate their story, to put everyone know about the hard time that they experienced, the difficulty that all the survivors been through those regime.

Sangeetha: In that one story you've demonstrated how exhausting the work is for the people involved, but also how important it is like, I can't imagine this lady, you know, was so certain that she wanted to be part of this process that she literally forgot to wear her shoes. That's incredible. And it says so much about how important participation can be for victims involved. And actually now I'm going to bring your memories back to another day, more than 10 years ago, the ECCC handed down the verdict in the Duch trial. I remember sitting inside the chamber of the courtroom and the initial reaction among so many people was very mixed. Some were very happy, some were a bit confused about the reduction in sentence. So maybe my question is, what do you think his death means for the whole transitional justice process in Cambodia?

Samphoas: If I were the victim of S-21, I feel or at least think that justice is served. And as I am a researcher, I feel Duch is a person who knows a lot about a complexity of the history of the Khmer Rouge and losing Duch, I think we are also losing part of the history of the Khmer Rouge as well, you know. If you follow the trial you might know that he won't, he won't answer all the questions that all the victims would ask. So he didn't reveal all the truths, yet. So I think if he would live longer, he might thinking that one day he can reveal

the truth and, for victim, when I'm talking with some of my informants they feel didn't it make them feel healing or closure you know, because he didn't tell all the truth that the victim needs.

Tine: I find it so interesting, what you're saying Samphoas, you're talking about how this passing of Duch affects the victims and I'm wondering if his passing, do you think it's also going to have an effect on the debate that we hear about in a way, the legitimacy of the whole ECCC process more broadly, because it's been so contested and that the defendants are so old and they are dying and now yet another defendant has died and you feel that this might stall the transitional justice process in Cambodia, or that it might have an effect on that kind of systemic level as well?

Samphoas: I think right now everyone is fatigued about ECCC. Yeah, I'm telling the truth because we can see it's not going forward as much as the international side need to be. The funding is also not really giving a lot to run the ECCC. You know, like the justice process always costs a lot of money and people. And some people say, "Oh, we might use all of the money that we paid for ECCC to develop our country, it's better". But I don't think so because justice cannot be buy.

Sangeetha: I can just build on that a bit more, we kind of briefly mentioned what's happening in cases three and four, and then maybe most likely they're not going to proceed to trial, but there are already some civil parties admitted to both these cases. So what kind of impact do you think that's going to have on them, regardless of the impact it will have on the tribunal itself, but for the victims who have already been admitted?

Samphoas: Some part of ECCC giving hope for the survivor, and some survivors are also disappointed. When I'm going for my research, they told me that it's not really what they want, you know, like reparation and all kinds of things. It's not really making them happy. They want individual monetary reparations, something that they can dedicate to their loved one individually, but how can we do that? We don't think that only ECCC can play the role but we have NGOs, we have other people take part in the process. ECCC gave people hope at first and after the process, it's going to shrink and then people also get disappointed as well. And as you mentioned, the civil party in the case four, they might be disappointed also because case is not going further.

Tine: The image that you're painting in a way, I think it's very realistic that the concerns about victims expectations being raised, and then not being met. I also wanted to ask you, and this is in a way in the last season, a question that we also ask all our interviewees, a question about where you are looking now for answers or in this case, I would almost say, given the constraints that you see politically, at the international level, in terms of what victims want, I would almost want to ask what your ideal case scenario is in a way for the ECCC going forward.

Samphoas: I hope to have more case to be try in the tribunal. And also, I hope the victim who already filed a complaint in the court because they want to seek the truth and justice for their loved one. At first the ECCC gave them hope, not only to the survivor, but also they dedicate to the people that they love. And when you upset them, for example, the lady who came to me file the form, and I guess at that night, or even a month, she could not sleep well. So this kind of thing, for women to reveal that, it's hard, you know, to say that, oh, you now you have the court. So you filed a complaint. You will find justice. And then after that, the national ones not go on to make the case forward, and international

one, the corruption and the politics around the court. If I were the victims, I also got disappointed. I got upset.

For me, I do support ECCC because without the ECCC, we didn't hear what going to happen inside S-21. Why those leaders decide to evacuate people from Phnom Penh? Why they decide to kill the intellectuals? Why they decided to kill their own people, even to kill their colleagues. It's all about finding the truth and also finding justice at the same time. But to be short, But I do hope that one, Even like the situation in Cambodia right now, a little bit tense, but I hope that one day we will work together. We will listen to each other, in the courtroom.

Tine: I think that's a very beautiful perspective of those two sides that you're underlining on the one hand, I think a lot of the critiques and the criticism of the ECCC has often been about its functioning as a hybrid court. But the idea, I think the role it has also had in terms of truth seeking and truth finding and laying bare facts that we would otherwise not have known, I think that's something that quite often gets brushed over in this kind of conceptual definition about "yes, it's a court, So it shouldn't do the work of a truth commission", but what you're saying is, you know, it has brought to light so many things that we otherwise would not have known. And what you're saying also indeed, in terms of it being an example of a functioning judicial mechanism. I think that's also an important thing to bear in mind as it is increasingly being contested. And then I think a third point is also an argument that you also hear quite often is, you know, the effect that the ECCC has for the broader region, like what's happening in Myanmar now to show to people that, you know, accountability will take place at some stage in some form, and then Sangeetha, I think I'm also returning to you, right, because this is also Myanmar, for example, is also a case that you've been deeply involved in other contexts. And maybe that's a segue into the question that I wanted to ask you wanted to complement Samphoas views, with what you think these two phenomenon that we've been talking about today to the passing of Duch on the one hand, and then the dismissal of case four on the other hand, what you think the effect of that will be on the ECCC, and how you see the future of ECCC from your point of view as also a practitioner and researcher.

Sangeetha: I think Samphoas you touched on so many crucial and beautiful points, and I can only echo a lot of them, which is that I think, you know, there was so much work put into the civil party and victim participation efforts at the ECCC and you got a lot of buy-in and a lot of investment from individuals who were actually in a, I hope I'm not stereotyping, but in a culture where people are not always so forthcoming about traumatic and personal experiences like this, you actually gave a lot of people the chance to speak up about what happened to them and the opportunity for them to ask questions, to find out the truth about what happened to their loved ones. And I think that truth-telling function of the ECCC cannot easily be replaced and should not be replaced because the tribunal has had so many functions. And I think more importantly, you know, a lot of victim expectations were set and it would be a shame if, as a result of either defendants passing away or, you know, procedural issues before the tribunal, meaning that cases cannot go ahead. You are then going to cause a lot of victims to be so disappointed, especially the ones that have already invested their time and efforts into this. I'm thinking about some of the people we spoke to 10 years ago when we were trying to build a case and how much excitement, enthusiasm there was when we could finally go back and say, look after years of fighting and advocating for your cause, we've now included you into one of the trials and then to have the trial, not even proceed, I can completely understand if victims would be very disappointed and the bigger loss, is then is that victims are then disappointed in the whole participation process altogether. And Tine, like you mentioned,

I think the ECCC is an example, not just for other international hybrid tribunals, but more importantly for Asia or Southeast Asia, if I can narrow it down even more, there's a lot of need for accountability. I would say in certain situations, in the Asian context, Myanmar being one of them, where the ECCC could serve as a very good example. And I would hope that, you know, because of these developments, you don't take away from the learning process, not just within Cambodia, but for a much wider region.

Tine: Yes, that's a beautiful perspective. And I think what you both also show is that it's very clear, that developments like the ones we've been talking about today, that they have a profound impact on victims and on the transitional justice process, but also in a way that we shouldn't despair because you're both in a way showing that this process goes on in various kinds and forms and shapes, and no matter the kind of setbacks that we're facing, people always find a way to work around and to push forward in their struggle for more justice.

And I think that's actually also, related, as we are coming to the end of this episode, I want to take this as a stepping stone to also link this to our next episode, because we're moving all the way, I think more or less to the other side of the globe there, but also looking at a case where current events are actually very much linked to the transitional justice process. And that will actually be, this next episode, on constitutional developments in Chile where we will be talking to Marit de Haan. It sounds very different but we'll definitely try to link it back to this conversation. So at this point I just wanted to thank you both Sangeetha and Samphoas for sharing these insights. And I'm very much looking forward to seeing this evolve further.

Samphoas: Thank you so much. Thank you for having me.

Tine: Thank you.

This was Justice Visions. To relisten to this episode, or to browse our archive, visit our website, justicevisions.org or subscribe now via Spotify or Apple music. Justice Visions is made possible through generous funding of the European Research Council. The podcast is produced by Wederik de Backer and you heard the voices of Tine Destrooper, the Justice Visions researchers, and our guests.