

SYMPOSIUM ON ART, AESTHETICS, AND INTERNATIONAL JUSTICE

VISUALIZING LAW AND JUSTICE AT THE EXTRAORDINARY CHAMBERS IN
THE COURTS OF CAMBODIA

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The body is falling backwards, facing the sky. The hands are clasped together in a *sampeah*, as if in greeting, as if in prayer. For the artist of the Cambodian Tragedy Memorial, also called *A ceux qui ne sont plus là* (*For those who are no longer here*), the body “speak[s] both to and beyond individual identity.”¹ By standing both as personal testimony of loss and “in memory of the Cambodian genocide and its impossible representation,”² the memorial raises long-standing questions on the authority and limits of testimony, on representation, and, importantly for this symposium, on the relation between art and international criminal law.

In 2014, the Extraordinary Chambers in the Courts of Cambodia (the ECCC, also known as the Khmer Rouge Tribunal), accepted *For those who are no longer here* as a reparation in Case 002/01,³ in recognition of the harms and suffering⁴ caused by the forced evacuation of the population of Phnom Penh. This event of forced evacuation was found to have amounted to a series of crimes against humanity committed by two former leaders of the Communist Party of Kampuchea, Nuon Chea and Khieu Samphan.⁵ In assessing proposed reparations, the Chamber noted how public memorials like *For those who are no longer here* provide opportunity for healing and learning, as well as constitute in their very existence an acknowledgement of crime or suffering. They “provide public acknowledgment,” the Chamber notes in the judgment, “assist in healing the wounds,” and “encourage learning and knowledge”; they may even “promote a culture of peace and . . . contribute to national reconciliation.”⁶ Thus, in the Chamber’s assessment, by re-presenting the event in the form of a memorial, the sculpture both articulates something (crime, suffering) and invokes responses.

These references to healing and reconciliation in relation to public memorials seem to resonate with a broader trend in the field of international criminal law that perceives art as a supplement for law’s deficiencies. I believe this is a misconception. In this essay, I provide a close reading of *For those who are no longer here* not to show that the

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¹ Séra, *For Those Who Are No Longer Here: The Cambodian Tragedy Memorial, a Memorial in Homage to the Victims of the Khmer Rouge* 4 [no date] (hereinafter “Artist pack”) (on file with the author).

² *Id.*

³ [Case 002/01 Judgment](#), Case No. 002/19-09-2007/ECCC/TC, at 1153 (Aug. 7, 2014).

⁴ Extraordinary Chambers in the Courts of Cambodia, [Internal Rules](#), Rule 23quinquies(1) (Rev. 9, Jan. 16, 2015) [hereinafter ECCC Internal Rules].

⁵ See also [Case 002/02 Judgment](#), Case No. 002/19-09-2007/ECC/TC (Nov. 16, 2018); [Closing Order](#), Case No. 002/19-09-2007-ECCC-OCIJ (Sept. 15, 2010); [Case 002/01 Judgment](#), *supra* note 3.

⁶ [Case 002/01 Judgment](#), *supra* note 3, at para. 1152.

sculpture fulfils something law cannot, but to demonstrate how artworks operate as *part of* the field of international criminal law and as such require critical attention.

The Field of International Criminal Law

As a field,⁷ international criminal law (ICL) is contested: It is in a constant state of becoming and of renegotiation, which reflects internal contestations over authority and interests, including contestations among the national, transnational, and supranational, and between the global and local non-governmental. It *becomes* in the negotiations between different systems of law (e.g., common and civil) and bodies of law (human rights law, criminal law, international law). And in the larger pursuit to render law “justice,” ICL *becomes* in the contestations over whether this quest is also one for *transition*, whether transitional justice endeavors are too dominated by ICL, or whether there is too much belief in extrajudicial impacts of ICL.⁸

The ECCC provides a fertile ground for examining the purposes and limits of the field of ICL. Set up through an agreement between the Cambodian government and the United Nations in 2003,⁹ it has been presented as a mechanism for transition for both individual victims by alleviating suffering and for the state of Cambodia by improving the rule of law. Although its jurisdiction and prosecutorial strategy¹⁰ are limited to bringing to trial Khmer Rouge officials who were senior leaders and those most responsible for crimes committed between April 17, 1975 and January 6, 1979, the hopes and aims of what it could accomplish go beyond any legal findings against an accused. An ambitious victim participation scheme, extensive outreach programs, and collaboration between “international” and “national” staff resonate with what is elsewhere done under the banner of transitional justice. For Sok An, then Deputy Prime Minister and Chairman of the Cambodian Task Force for the ECCC, the Court would “provide a new role model for court operations in Cambodia,”¹¹ while international donors hoped it would “promot[e] respect for the rule of law in Cambodia.”¹² This transitional justice enterprise can be summarized in the Court’s motto: “Moving Forward through Justice.”¹³

Ten years and three completed trials later, there is little to suggest that the ECCC has had any direct effect on the Cambodian judicial system or any other state institutions. Instead, the Cambodian Supreme Court recently dissolved the main opposition party¹⁴ and the government regulates non-governmental organizations in a way that is described as a “crackdown.”¹⁵ In contrast to the transitional justice paradigm, according to which ICL contributes to a move towards liberal democracy, Cambodia seems to be going in the opposite direction—irrespective of the ECCC. Yet, this conflation in transitional justice discourse between court practices and liberal democracy does not mean the ECCC has been insignificant or meaningless. Rather, the manifold practices and activities organized or

⁷ Frédéric Mégret, *International Criminal Justice as a Juridical Field*, 13 CHAMP PÉNAL/PENAL FIELD (2016) (drawing on Bourdieu).

⁸ See Kieran McEvoy, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34 J. L. & SOC’Y 411 (2007).

⁹ [Law on the Establishment](#) of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (2004); [Agreement](#) Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (2003).

¹⁰ See [Appeal Judgment](#), Case No. 001/18-07-2007-ECCC/SC, paras. 44-81 (Feb. 3, 2012).

¹¹ Sok An, [ECCC BOOKLET](#) 4 (4th ed. 2011).

¹² Australian Embassy in Cambodia, [Press Release](#) (2011).

¹³ MARIA ELANDER, [FIGURING VICTIMS IN INTERNATIONAL CRIMINAL JUSTICE: THE CASE OF THE KHMER ROUGE TRIBUNAL](#) (2018); ALEXANDER LABAN HINTON, [THE JUSTICE FAÇADE: TRIALS OF TRANSITION IN CAMBODIA](#) (2018).

¹⁴ Prak Chan Thul & Amy Sawitta Lefevre, [Cambodia’s Main Opposition Party Dissolved by Supreme Court](#), REUTERS (NOV. 16, 2017).

¹⁵ See Melissa Curley, [Governing Civil Society in Cambodia: Implications of the NGO Law for the “Rule of Law”](#), 42 ASIAN STUD. REV. 247-67 (2018).

sparked by the ECCC have affected legal subjectivities in Cambodia and beyond. To understand how, we need to develop means to better understand the affective qualities of ICL and examine the forces and practices that take part in its making.

Outreach and Reparations as Visual Practices

Visual images produced in outreach and reparations provide entry points through which we can engage with the broader range of legal practices that constitute legal subjectivities. Apart from its legal findings, the ECCC has promoted a wealth of public engagements of a scale unprecedented amongst international criminal courts and tribunals.¹⁶ Civil society organized outreach activities as soon as the Court came into existence¹⁷; over the years, these have included information posters that use graphics to inform the public about the jurisdiction of the Court, radio and television shows, community meetings, and study tours that have educated the public on the legal process and on the Khmer Rouge. Since 2012, there has also been a flurry of activities relating to reparations.¹⁸ The ECCC Internal Rules provide for “moral and collective reparations,”¹⁹ but without the authority to “order the implementation or the payment of reparation measures against Cambodian or other national authorities”²⁰ and with allegedly indigent convicted persons, the bulk of the reparation system is instead based on the Civil Party Lead Co-Lawyers proposing fully developed and externally funded projects to the Court.²¹ Amongst those reparations awarded across the two later trials are a dance performance, art exhibitions, education materials on the Khmer Rouge (including a graphic novel), and a history app.²² These reparations are visual representations of law, visualizing crime and suffering, jurisdiction, and legal proceedings.

So what do we make of these artistic and visual representations? There is a tendency in some engagements with ICL (and transitional justice more broadly) to assume that art has a capacity to do something that law cannot, such as provide healing or closure. In this instrumentalist or romantic approach, the purpose and standard against which a piece of art is examined is how well it provides healing. This “romantic fantasy,” as Desmond Manderson calls it, concludes “that the purpose of art is to heal the world’s wounds . . . [an] idea that art can save the day or complete the law.”²³ Such a belief in art’s power of healing is reflected in the Trial Chamber’s claim that public memorials may “assist to restore the dignity of victims . . . in healing the wounds . . . [and] to promote a culture of peace and to contribute to national reconciliation.”²⁴ This romantic approach sees the art works as complementing the legal judgment in fulfilling loftier aims of justice by integrating, reconciling, and synthesizing the conflicting strands of a dry law with the demand for publicity, healing, and peace.²⁵ This is

¹⁶ Christoph Sperfeldt, *Cambodian Civil Society and the Khmer Rouge Tribunal*, 6 INT’L J. TRANSITIONAL JUST. 149 (2012); *Elander*, *supra* note 13.

¹⁷ *Sperfeldt*, *supra* note 16; RACHEL KILLEAN, *VICTIMS, ATROCITY AND INTERNATIONAL CRIMINAL JUSTICE: LESSONS FROM CAMBODIA* (2018).

¹⁸ *But see* Sarah Williams & Emma Palmer, *Transformative Reparations for Women and Girls at the ECCC*, 10 INT’L J. TRANSITIONAL JUST. 311–31 (2016).

¹⁹ *ECCC Internal Rules*, *supra* note 4, Rule 23(1).

²⁰ *Judgment*, Case No. 001/18-07-2007/ECCC/TC, at 1116 (July 26, 2014).

²¹ *Id.* at 1113.

²² *See, e.g.*, Bhopana, *App on Khmer Rouge History*; Rachel Hughes, *Showing Now: The Bopana Audiovisual Resource Centre and the Extraordinary Chambers in the Courts of Cambodia (ECCC)*, in *TRANSITIONAL JUSTICE AND CIVIL SOCIETY IN ASIA AND THE PACIFIC* (Lia Kent et al. eds., 2019).

²³ Desmond Manderson, *Modernism and the Critique of Law and Literature*, 35 AUSTL. FEMINIST L.J. 107, 108 (2011).

²⁴ *Case 002/01 Judgment*, *supra* note 3, at 1152.

²⁵ *Manderson*, *supra* note 23, at 118; *Case 002/01 Judgment*, *supra* note 3, at 1152.

problematic not only for the way it instrumentalizes art, but also because it misses an opportunity to assess and understand the artistic and visual representations *as law*.

Hence, in approaching ICL and *For those who are no longer here*, I take my cue from W.J.T. Mitchell's insight that "[v]isual culture is the visual construction of the social, not just the social construction of vision,"²⁶ as well as work by cultural legal scholars on how law and the visual are mutually constitutive.²⁷ Here, rather than approaching visual images as (external) objects for analysis, images are conceived as constitutive elements of the legal field. This interconnectedness means it is necessary to pay attention to both the conditions and effects of visual images. *For those who are no longer here*, a sculpture likely apprehended visually, is the product of certain legal, social, financial, and cultural contexts that require attention. Yet, while these contexts are significant, the memorial is not reducible to them. Visual images also *do* something of their own, a doing which has variously been described as seduction,²⁸ the punctum,²⁹ or an affective quality.³⁰ Much work has been dedicated to defusing the power of images, such as by drawing attention to the ways in which images may spectacularize victimhood³¹ and by questioning the extent to which photography can help us understand.³² Yet, precisely because of their power, visual images, whether in the form of reparations or evidence, require being taken seriously—not as extrajudicial, or as completing, or as threatening law, but as part of the legal field.

Authorizing For those who are no longer here

For those who are no longer here provides an entry point to the contestations that make up the field of ICL by raising a question that lies at its heart: that of authority.

For the artist of the sculpture, French-Cambodian Séra, *For those who are no longer here* is a comment on both a personal and a collective loss. When the Khmer Rouge entered the Cambodian capital of Phnom Penh on April 17, 1975, he was a young boy. Together with his French mother and brothers, he fled to the French embassy, from where, they, like other foreigners, were evacuated in the weeks to come. However, the Khmer Rouge denied refuge to his Cambodian father. Séra never saw him again. For Séra, the memorial testifies to a very personal loss. His own experience of losing a father and being forced to leave the place he grew up provides him with a particular kind of authority to bear witness.³³

At the same time, Séra wanted the sculpture to be "in homage to all the victims" and the body to "speak[] both to and beyond individual identity."³⁴ Yet, the sculpture has been somewhat controversial. An earlier version that Séra created, more abstract with missing limbs, was considered too disturbing by Phnom Penh authorities.³⁵

²⁶ W.J.T. Mitchell, *Showing Seeing: A Critique of Visual Culture*, 1 J. VISUAL CULTURE 165, 171 (2002).

²⁷ See, e.g., [ENVISIONING LEGALITY: LAW, CULTURE AND REPRESENTATION](#) (Timothy Peters & Karen Crawley eds., 2018); see also Immi Tallgren, *Come and See: The Power of Images and International Criminal Justice*, 17 INT'L CRIM. L. REV. 259–80 (2017).

²⁸ See SUSIE LINFIELD, [THE CRUEL RADIANCE: PHOTOGRAPHY AND POLITICAL VIOLENCE](#) (2010).

²⁹ See ROLAND BARTHES, [CAMERA LUCIDA: REFLECTIONS ON PHOTOGRAPHY](#) 27 (R. Howard trans., Vintage 2000) (1980).

³⁰ See Alison Young, *From Object to Encounter: Aesthetic Politics and Visual Criminology*, 18 THEORETICAL CRIMINOLOGY 159 (2014).

³¹ Christine Schwöbel-Patel, *Spectacle in International Criminal Law: The Fundraising Image of Victimhood*, 4 LONDON REV. INT'L L. 247–74 (2016).

³² SUSAN SONTAG, [REGARDING THE PAIN OF OTHERS](#) (2003).

³³ On the paradox of bearing witness, see GIORGIO AGAMBEN, [HOMO SACER, SOVEREIGN POWER AND BARE LIFE](#) (Daniel Heller-Roazen trans., Stanford Univ. Press 1998).

³⁴ Artist pack, *supra* note 1, at 4.

³⁵ Michelle Vachon, *Graphic Novel Depicts the Years Before Zero*, CAMBODIA DAILY (Apr. 4, 2016); see also Stephanie Benzaquen-Gautier, *Images of Khmer Rouge Atrocities, 1975–2015, at 250–293* (2016) (unpublished Ph.D. dissertation, Erasmus University Rotterdam).

Later, some civil parties in whose name the reparation was awarded argued when it was presented to them that it was not sufficiently “Cambodian,” that it was “too French.”³⁶ In this way, the sculpture provokes questions concerning place and belonging, the extent to which a sculpture can symbolize experiences that are both shared and unique, and the relation between the creation of memorials and those in whose name they are erected.

The controversies are not limited, either, to the sculpture itself. To some extent, the initiative to create a public memorial emerged when Séra was struck by a lack of monuments or memorials on the Khmer Rouge period in public (as opposed to religious or private) spaces.³⁷ Hence, when developing the proposal for the memorial, Séra suggested it be placed in an area of Phnom Penh known as Stat Chas, in a park outside the French embassy and adjacent to a busy intersection. In 1975, the intersection had been a point of departure for many of those forcibly evacuated, symbolizing, for Séra, an “inaugural episode of the Cambodian genocide.”³⁸

In December 2017, *For those who are no longer here* was erected at Stat Chas at a ceremony attended by officials, civil parties, and monks. Although Stat Chas no longer serves as an entry and exit point for the city, it is a public space marked by that moment when the city changed and its population was forced to evacuate. Less than two months later, officials removed the sculpture.³⁹ This, even though the memorial had been authorized by the ECCC, was fully funded, and was initially approved by the Phnom Penh municipality.⁴⁰ A while later, a place was prepared for it within the gates of Tuol Sleng Genocide Museum, a museum dedicated to the experiences of those imprisoned, tortured, and killed when the site was known as Security Centre S-21. Despite Séra’s intention for it to be a public memorial, it now stands within this particular institution, one that bears witness to related, but nevertheless different, experiences to that of forced evacuation.

So what do we make of this? These places and events provide contexts for the artwork, contexts that contribute to understanding the contestations and negotiations that make up the field of ICL. There is an unresolved question of authority here over *who* gets to represent and pay homage to those who suffered, over *how* to do so, and *where*. *For those who are no longer here* raises these questions but cannot—like ICL more broadly—provide full, complete, or definite finality. Meanwhile in Stat Chas, a short footpath still leads up to the pedestal on which the sculpture briefly stood. The empty pedestal is almost confrontational in how it signals an absence: a loss or lack. Maybe this does indeed “encourage learning,”⁴¹ as hoped by the ECCC Trial Chamber.

³⁶ Comments by participants at civil party forum in QUINZAINE CLAIRE (dir. Adrien Genoudet, Quilombo Films & Anti-Archive 2016).

³⁷ Audrey Wilson, *Memorial to Millions Is Set for 2017 Unveiling*, PHNOM PENH POST (Sept. 30, 2016).

³⁸ Artist pack, *supra* note 1, at 4.

³⁹ Erin Handley, *Khmer Rouge Reparations Statue Quietly Removed*, PHNOM PENH POST (Jan. 29, 2017).

⁴⁰ *Case 002/01 Judgment*, *supra* note 3, at 1153.

⁴¹ *Id.* at 1152.