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In order to rebuild the fragmented Cambodian society, it was recognised that it would be important and necessary to pursue transitional justice against the past mass atrocities (Hammarberg,¹ 2001; Fletcher and Weinstein, 2002). The establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) represents progress on this front.

The ECCC trials demonstrate the importance of the contributions of various actors. The commitment of the Cambodian state has been vital (Gong and Kaur, 2011). The support of the international community (the UN and its member states), non-governmental organisations (NGOs) and civil society actors, as this NTS Alert demonstrates, have also played an integral role, particularly in providing information about the ECCC trial process to the Cambodian people.

This NTS Alert examines how stakeholders apart from the state have contributed to promoting human security in Cambodia through transitional justice. It maps out the relations between and among different actors and how these relations have affected and will continue to affect the realisation of human security for Cambodia. In particular, it discusses the potential impacts of Cambodia's Law on Associations and Non-governmental Organizations (NGO Law), now in its third draft, on the ability of NGOs to empower and raise awareness among the Cambodian people. This NTS Alert argues that it is crucial that the Cambodian government work closely with the different stakeholders – the international community, NGOs and civil society actors – to keep Cambodians involved in the rebuilding effort.

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The Responsibility of the International Community

According to the Responsibility to Protect (RtoP), the state has the primary responsibility to protect its people from massive human rights abuses. Moreover, in the case of a society torn apart by past abuses, the state is also responsible for rebuilding (ICISS, 2001; Evans, 2008:164). However, in some cases, the state may be unable to take action. For instance, Cambodia in the 1990s was crippled economically and intellectually after decades of civil conflicts and gross human rights violations. Human insecurity was widespread: 47 per cent of the population were under the poverty line and 64 per cent illiterate (World Bank, 2011; Royal Embassy of Cambodia, 2011). The Cambodian government and judiciary were severely affected by the killings of educated professionals. The economic underdevelopment and intellectual deficit represent significant constraints on the ability of Cambodia to conduct independent investigations and prosecutions of the Khmer Rouge perpetrators (Hammarberg, 2001). Under such circumstances, according to the tenets of the RtoP, the international community has the responsibility to intervene to build a state's capacity and to exercise its responsibility to relieve and empower the people in order to address the lingering impacts of past abuses and prevent a repetition of history.

As the most representative international body in the global political and security arena, the UN is widely regarded as the agency best suited to assist the state in exercising the RtoP or to mandate an intervention to enforce it. Entrusted with the authority to maintain peace and security by the UN Charter, the UN is expected to coordinate the international reaction to mass atrocity crimes by employing the resources of member states. Moreover, with the concept of human security being mainstreamed into the discussion of peace and security in the 1990s, the physical security and well-being of individuals have also been incorporated into the UN agenda (Jolly et al., 2009:177). This development has reinforced the obligation of the UN to assist post-atrocity peacebuilding efforts.

History of UN Involvement

The early UN role in Cambodia was brokered in Paris in 1991 between the four factions then involved in a civil war in Cambodia and the five permanent members of the UN Security Council. The Paris Agreements called for seven distinct components – human rights; electoral, military and civil administration; civilian police; repatriation of Cambodian refugees and internally displaced persons; and rehabilitation of war-torn Cambodia.

In mid-1993, consequent to the 1991 agreements, Cambodia received assistance from the UN Transitional Authority in Cambodia (UNTAC), a peacekeeping operation initiated by the UN Security Council. That was the first time a mandate was given to the UN to take over the running and administration of a state (previously, it had played a support role).

While the UN mandate was wide-ranging, there were practical difficulties in implementing the various components, such as the difficult relations between the Supreme National Council of Cambodia (made up of the four warring factions and with whom sovereignty rested) and the Special Representative of the UN Secretary-General, Yasushi Akashi. In addition, because the Khmer Rouge was part of the negotiations in Paris, there was no clear mandate given to pursue and prosecute the perpetrators of the mass atrocities. Rather, the decision was left up to a future Cambodian government (Chopra, 1999).

In June 1997, the Co-Prime Ministers of Cambodia requested the assistance of UN Secretary-General Kofi Annan and the international community, to bring to justice those responsible for the mass atrocities committed by the Khmer Rouge. This request was prompted by the realisation that Cambodia lacked the necessary resources and expertise (Luftglass, 2004:895). Of significance here is the fact that it was the Cambodian government that initiated the process. However, the UN's recommended option, an international tribunal, was rejected. As a result, a period of negotiations followed and a compromise was reached in 2003, leading to the establishment of the ECCC.

Forms of UN Assistance

In 2006, the ECCC became operational. The Cambodian government did not have the financial resources and judicial expertise to conduct trials on its own against international crimes such as genocide and other crimes against humanity, and the UN stepped in. It provided personnel support as well as knowledge transfer, engaging extensively with the Cambodian government and civil society actors to improve the domestic judicial system and empower the people.

UN assistance in the area of transitional justice was instituted even before the ECCC became operational. After general peace was restored in 1993, the UN began to build the capacity of the legal and judicial communities in Cambodia. The Ministry of Justice was the primary contact in the Cambodian government for the UN system to carry out assistance projects. For instance, the UN Centre for Human Rights implemented the Judicial Mentors Programme in close consultation with the Cambodian Ministry of Justice. Under this programme, foreign legal experts were invited to train Cambodian judges and prosecutors.

Consultants were placed in courts to ensure conformity with international standards of justice and human rights. The improvements in the quality of the Cambodian legal profession were essential to promoting the rule of law and preventing future human rights abuses.

The Centre's projects extended beyond the judicial system to include other law enforcement units dealing with human rights abuses, such as the police force. It provided judicial advisory services and human rights training programmes and workshops to the police. This reflected the recognition that human rights education for the police was of equal importance to the training of judicial personnel. There have been repeated reports of cases of the Cambodian police force violating basic principles of human rights (Asian Legal Resource Centre, 2001; Human Rights Watch, 2010). Hence, raising the awareness of the police force to human rights, the rule of law and self-discipline can contribute to preventing gross human rights abuses and enhancing human security in Cambodia. The above UN efforts were critical in laying the foundation for the rebuilding of the Cambodian judicial system.

In addition to building judicial capacity, the Centre focused on the empowerment of people. This was attained through community engagement. The Centre supported the incorporation of human rights education into the Cambodian school system and worked jointly with the UN Educational, Scientific and Cultural Organization (UNESCO) to train journalists on freedom of the press and related laws (UNGA, 1995). Indeed, a free media serves as a check on both state and non-state actors as it provides a channel to disclose abuses and injustice. The UN also fostered the growth of Cambodian NGOs by providing financial support, technical assistance, consultative services and training. UN support for NGOs strongly bolstered the democratic space in Cambodia in the 1990s.

UN assistance in the judicial and legal areas contributed to promoting human security in Cambodia in two ways. It reduced the risk of law enforcers retrogressing to abusive perpetrators. Second, it empowered people through enhancing their awareness of their rights and providing channels for help in case of human rights violations.

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The Significance of Civil Society Contributions

Civil society is another important contributor to efforts to redress the Khmer Rouge crimes. Civil society refers to 'a realm in the interstices of the state, political society, the market and the society at large for organization by non-state, non-market groups that take collective action in the pursuit of the public good' (Alagappa, 2004:32). There is an array of actors within this sphere; and NGOs, which are 'autonomous from the structure and machinery of the state, and of the governmental and intergovernmental bodies', are an important actor (Josselin and Wallace, 2001:3). NGOs focus on pursuing the public good and the empowerment of the people, and because of this, they are usually deemed to pose challenges to state authoritarianism. They can influence states through policy recommendations, advocacy and campaigns, capacity building for the state as well as individuals and communities, and the provision of humanitarian relief (Evans, 2008:198).



A visit by UN Secretary-General Ban Ki-Moon to the Tuol Sleng Genocide Museum in Phnom Penh, 28 October 2011.

Credit: UN Photo/Mark Garten.

The commitment of NGOs to the public good and their independence from the state open an alternative channel for the public to seek protection and justice, thus vesting NGOs with the capacity to compete with the state for legitimacy to act on behalf of the people (Mayhew, 2005:728). Nevertheless, despite such competition, the state and NGOs may cooperate in providing public services. The ECCC trials demonstrate one model of government-NGO cooperation, with the former serving as the primary actor bringing Khmer Rouge perpetrators to justice and NGOs filling in the gaps of capacity and knowledge left by the Cambodian government and the UN. For instance, when the ECCC public affairs unit started outreach activities in 2009, they could capitalise on the experience of NGOs which had been working on confronting the mass atrocity crimes long before the ECCC trials began.²

The Documentation Center of Cambodia (DC-Cam), an international NGO, has since 1995 documented the Khmer Rouge history and thus has the most extensive database. The recording of the dark history of the Khmer Rouge era provides crucial material for educating the public, especially the younger generation, about the devastation and pain caused by mass atrocities and the importance of protecting people from these, so as to prevent them happening again (Teitt, 2010:18).

In addition to information collection, NGOs have lobbied for justice for the victims and survivors and the reconciliation of a fragmented society. The Cambodian Human Rights Action Committee (CHRAC) submitted a petition signed by 84,195 Cambodians to the UN in 1999, requesting the establishment of a proper international tribunal that conforms to the standards of international law (Bonacker et al., 2011:126). These early activities provided people with an opportunity to relieve their sorrow and seek justice for their suffering.



A public forum organised by the Extraordinary Chambers in the Courts of Cambodia (ECCC) in the former Khmer Rouge stronghold of Pailin, 22 October 2011.

Credit: ECCC / flickr.

After the agreement on the ECCC was reached in 2003, NGOs initiated a wide range of activities to support the tribunal. They have played a proactive role in public outreach, legal advisory services, psychological consultations, and reporting on trial process – both independently as well as in cooperation with the ECCC. The public affairs and victim support units of the ECCC have worked closely with NGOs in disseminating the information on the trials as well as facilitating public participation.

The ECCC allows victims to participate in the trials as civil parties. However, the complex procedures and difficult legal terms pose huge challenges for victims. NGOs have helped victims to submit applications and educated them about their rights (Bonacker et al., 2011:128). Also, given their close relationships with local communities, NGOs are well placed to encourage individuals to come forward as witnesses and civil parties in the trials. The Khmer Institute of Democracy (KID) has approached this problem by training citizen advisors to disseminate information on ECCC procedures, to enhance understanding of witness protection and fair trial principles, and to increase awareness of the history of the Khmer Rouge among village

communities.³

NGOs also recognise that their education and awareness efforts go beyond the ECCC and its trials. DC-Cam is gradually transforming its role, from a focus on documentation to greater involvement in genocide education. DC-Cam has, in collaboration with Cambodia's Ministry of Education, Youth and Sport, published a textbook, and trained thousands of teachers across the country (Pham et al., 2011:13–14). Educating the younger generation on the history of the Khmer Rouge is an important way to commemorate the victims and, at the same time, impart the need to prevent future mass atrocities. The release of the textbook demonstrates that collaboration between NGOs and the Cambodian government is beneficial for promoting human security through education.

The discussion in this section underlines the critical role played by NGOs in empowering ordinary people. In particular, NGOs often provide services in areas that are not addressed by other actors. Therefore, the recovery of Cambodia from past mass violence and the empowerment of the people should proceed on the basis of joint efforts by the government, the international community and civil society. Cooperation and collaboration between and among the three actors would be conducive to sustainable rebuilding, while mistrust and estrangement could spoil the achieved progress.

However, recent evidence suggests that the space for NGOs is 'shrinking'.⁴ As the NGO sector grew, there was a shift from local accountability to accountability to international donors. NGOs came to be seen as crowding out the private sector. As a result, there was a significant shift in donor funding that saw money go from supporting the NGO sector to embedding individuals into state ministries (Hughes and Pupavac, 2005). NGOs are also vulnerable to the perception that they are in some respects competing with the government sector, which has led to concerns that their space will be eroded through government regulation, a development which is discussed further in the next section.

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Cambodia is an example of a post-conflict society in which all forms of civil society groups were devastated but re-emerged as part of the reconstruction process (ICNL, 2011b). Civil society experienced rapid growth thanks to support from the UN, foreign governments and international NGOs (INGOs).

At present, over 4,000 NGOs operate in Cambodia. Many of them have framed their current identity with reference to the ECCC and domestic socio-political needs. The ECCC trials have served as a catalyst for government-NGO collaboration for the sake of increasing human security for the Cambodian people. However, the recent tensions arising from the proposed NGO Law indicate that there exists mistrust between the two sectors. The controversial law has caused wide concern among the NGO community that their activities will be curtailed.

The NGO Law was first mooted in September 2008. The Cambodian government reasoned that a law was needed to monitor illegal activities in the non-governmental sector,⁵ curb terrorist activities, and introduce transparency and control in the sector (LICADHO, 2009). While these are valid policy concerns, it remains unclear what role the NGO Law is to take to circumvent terrorism and illegal activities, as these are currently dealt with by other laws. For most of these issues, there appears to be sufficient domestic legislation. For example, in April 2007, the Cambodian government updated its existing Law on Terrorism, which gives the authorities substantial powers to deal with the threat. The Cambodian Criminal Code adopted in 2008 covered penalties for NGOs (Bunthoeurn, 2011; LICADHO, 2009). Against such a background, some NGOs suspect that the NGO Law was drafted because the government considered NGO activities to be a challenge to its authority – rather than complementary or supplementary to government initiatives – and thus wanted to exercise political control over the sector (Mayhew, 2005:728, 735; LICADHO, 2009).

Concerns Related to the NGO Law

It is feared that some of the restrictive provisions of the NGO Law (see Table 1) are likely to result in a decline in the number of NGOs and their activities, threatening human security and prospects for a sustainable peace. According to the latest draft of the NGO Law, the registration of associations, which is currently voluntary, would become mandatory (ICNL, 2011a). However, this requirement runs counter to the guarantee of freedom of association enshrined in the Cambodian constitution. Moreover, registration does not mean that an NGO is allowed to exist indefinitely. Each NGO is subject to a 5-year term, and there is also no transparency in decisions on suspensions.⁶

The latest draft of the NGO Law also specifies that the founding members of both associations and NGOs must be Cambodian nationals. The draft law thus excludes refugees, stateless persons and others resident in Cambodia from forming associations or domestic NGOs. This nationality requirement constitutes a clear infringement of the right to freedom of association, which should be available to all individuals resident within the state's territory and subject to its jurisdiction.

In the draft law, it is mandatory for INGOs to collaborate with the Cambodian government. Thus, there appears to be no room for INGOs to act independently of the government in addressing public goods or community needs (INCL, 2011a). This requirement appears to stem from the common view that NGOs tend to be accountable primarily to donors (Mayhew, 2005:748), so INGOs are assumed to be accountable to foreign governments, transnational companies and foreign nationals. However, missing from this argument is a consideration of the (negative) impact of the restrictions on the beneficiaries of INGO activities. Moreover, as INGOs are more effective than local NGOs in advocating for adjustments and improvements on the part of the government (Mayhew, 2005:748), this provision would reduce the checks on the government.

In essence, the registration requirements introduced in the draft NGO law are felt to be complex and burdensome. They would severely restrict the operations of rural grassroots groups, and informal networks and associations, which have limited resources yet provide a valuable channel for community empowerment (UN ECOSOC, 2007). For example, grassroots NGOs sent a letter to the President of the Asian Development Bank in October 2010 regarding the adverse impacts of a USD142 million government project to rehabilitate Cambodia's railway on more than 1,000 relocated households (Kozlovski, 2011). Grassroots NGOs enable disadvantaged groups to raise their concerns with the government in a post-conflict scenario, and as such, any reduction in their operations will increase the vulnerability of these people.

Table 1: Concerns Related to Cambodia's Law on Associations and Non-governmental Organisations (NGO Law).

Concerns	Related Provisions (based on the third draft of the NGO Law)
Prohibition of activities of unregistered non-governmental organisations (NGOs)	<p>Article 6: Any association or non-governmental organization, which is not registered or has not signed a Memorandum, shall not enjoy any benefits from this law, and may not operate the activities in the name of an association or non-governmental [sic] organization in the Kingdom of Cambodia. The signing of a Memoradum [sic] of Understanding shall not be mandatory for any foreign non-governmental organization operating their activities less a year, but a written</p>

notification about their aid projects, duration and locations of their operation to the Ministry of Foreign Affairs and International Cooperation.

Limitation on the eligibility of founding members

Article 4:

An association is referred [sic] to a group of Cambodian natural persons who agree to establish for the interest of its members or/and public without conducting any activity to generate profits for sharing among their members.
A domestic non-governmental organization is referred [sic] to a group of Cambodian natural persons who agree to establish to serve public interests without conducting any activity to generate profits for sharing among their members.

High minimum membership requirement

Article 8:

To register an association, there shall be at least eleven (11) Cambodian founding members. These members shall choose at least five (05) governing members to fulfill formalities and conditions for registration.

Barriers to the registration and activity of international non-governmental organisations (INGOs)

Article 36:

A foreign non-governmental organization shall collaborate with relevant partner ministries/ institutions of the Royal Government of Cambodia when developing projects, monitoring, and evaluating the implemented activities or results. Should aid-projects/programs be implemented in Phnom Penh or other provinces in the Kingdom of Cambodia, a foreign non-governmental organization shall notify its partner ministries/ institutions of the Royal Government.

Source: ICNL (2011a). The translated extracts of the NGO Law are from Cambodia (2011).

Opportunities Provided by the NGO Law

While there are admittedly valid concerns raised by the provisions of the NGO Law, proper legislation could in fact enhance the legitimacy and accountability of NGOs. For instance, an entity registered with the Ministry of Interior, a mandatory requirement under the draft NGO Law, could expect some government protection.⁷ Its property could be protected from land grabbing which is a major source of tension in Cambodia.

In 2002, a high-profile local human rights NGO was investigated for fraud and misuse of donor funds, prompting allegations of widespread abuse within the local NGO sector (Mayhew, 2005:744). The draft NGO Law provides for quality checks and financial reporting, thus ensuring that NGOs are held accountable to their funders and recipient communities. This could reduce the occurrences of fund misuse and ensure the quality of NGO services.

Thus, if legislated and implemented appropriately, the NGO Law can bolster and guide the growth of civil society. However, in the absence of an effective rule of law, an independent judiciary and other institutions, an excessively restrictive NGO Law could stifle civil society, with broader long-term implications for the nature and size of the democratic space in Cambodia. This would affect the rebuilding of Cambodian society as NGOs have made significant contributions in confronting past abuses and healing people's wounds in an effort to secure a sustainable peace.

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Conclusion

This NTS Alert examines how the international community and non-governmental actors have contributed to the ECCC trials. It finds that the Cambodian government, the UN and NGOs play complementary roles in line with the division outlined by the RtoP. The UN and NGOs have supported the Cambodian government in pursuing transitional justice and strengthening its capacity to govern. In addition, they have been instrumental in efforts to empower the Cambodian people, thus reducing their vulnerability to state abuses. It is important that the three sectors continue to cooperate and coordinate in the ongoing rebuilding process in Cambodia. The ECCC trials provide a window for collaboration between and among the three sectors.

One issue of current concern is the tension between the government and civil society. The controversial NGO law is viewed by some as an attempt by the government to control the non-governmental sector. There is concern that the future of human rights NGOs will be bleak after the completion of the ECCC proceedings. This is an issue that needs to be addressed given that NGOs are integral to the effort to prevent future mass atrocities and other human rights abuses. They contribute through promoting human rights, providing alternative models of protection, monitoring government policies and acting as a bridge between the government and the people. NGOs have in fact proven to be

highly effective at reaching out to the people, due to having gained the people's trust through years of service and advocacy. For instance, at the beginning of the Case 001 hearings, victims were reluctant to stand in court as witnesses because they did not trust the domestic judicial system. The distrust was defused by outreach activities, which were largely undertaken by NGOs. As a result, participation in Case 002 has been vastly higher. Moreover, 84 per cent of victim participation applications were submitted through NGOs (Pham et al., 2011:13). Given the expertise developed by NGOs in protecting and empowering people, it is in the interest of Cambodian society to see a harmonious relationship between the government and NGOs.

In view of the growing number of NGOs in Cambodia, the need felt by the government to regulate NGOs is reasonable. However, a cautious and inclusive approach is needed to reach a balance between the need for regulation and the imperatives of freedom of association.

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Notes

1. Ambassador Thomas Hammarberg played an instrumental role in the ECCC negotiations from 1997 to 2000 (Chhang, 2007:162)
2. Personal interview with a think tank researcher in Phnom Penh, 30 August 2011.
3. Personal interview with an NGO practitioner in Phnom Penh, 24 August 2011.
4. Personal interview with NGO practitioners, Phnom Penh, 23 August 2011.
5. Personal interview with an NGO practitioner in Phnom Penh, 24 August 2011.
6. Personal interview with an NGO practitioner in Phnom Penh, 23 August 2011.
7. Personal interview with a law professor in Phnom Penh, 23 August 2011.

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The Centre for Non-Traditional Security (NTS) Studies of the S. Rajaratnam School of International Studies was inaugurated by the Association of Southeast Asian Nations (ASEAN) Secretary-General Dr Surin Pitsuwan in May 2008. The Centre maintains research in the fields of Food Security, Climate Change, Energy Security, Health Security as well as Internal and Cross-Border Conflict. It produces policy-relevant analyses aimed at furthering awareness and building capacity to address NTS issues and challenges in the Asia-Pacific region and beyond. The Centre also provides a platform for scholars and policymakers within and outside Asia to discuss and analyse NTS issues in the region.

In 2009, the Centre was chosen by the MacArthur Foundation as a lead institution for the MacArthur Asia Security Initiative, to develop policy research capacity and recommend policies on the critical security challenges facing the Asia-Pacific.

The Centre is also a founding member and the Secretariat for the Consortium of Non-Traditional Security (NTS) Studies in Asia (NTS-Asia). More information on the Centre can be found at www.rsis.edu.sg/nts.