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**Maria Elander, *Figuring Victims in International Criminal Justice: The Case of the Khmer Rouge Tribunal*. Abingdon: Routledge, 2018. Pp. 195. ISBN: 9781138242302**

Showcased at Choeung Ek – the so-called ‘killing fields’ outside of Cambodia’s capital Phnom Penh – are row upon row of human skulls. The skulls are quite literally show-cased: In glass cases, visitors to this key site of the Cambodian genocide, encounter thousands of mottled milky-white to brown coloured bone pieces. The tooth fragments of the top skull rest on the cranium beneath it. Equally distressing are the photographs of prisoners, most of them tortured and executed, hanging on the walls of the famous S-21 Prison in Cambodia’s capital Phnom Penh. The mug shots of over a hundred former prisoners, taken when they were first brought into the complex, can be viewed in what is now the Tuol Sleng Genocide Museum. These sites of victimhood are major tourist destinations. Choeung Ek and Tuol Sleng rank globally at number 5 on a ‘dark tourism’ website, where destinations are ordered by ‘degree of darkness/significance’.<sup>1</sup> Tourism Cambodia, seemingly embracing the spectacle of horror, describes the Khmer Rouge regime as ‘devouring its own children.’<sup>2</sup> On TripAdvisor, an online travel platform, tourists can book a tour of both destinations, starting from £19.73 for 2 adults with ‘a professional English speaking tour guide’ who collects you from your hotel.<sup>3</sup>

Maria Elander’s book *Figuring Victims in International Criminal Justice: The Case of the Khmer Rouge Tribunal* is a far more sensitive, less brutish, less voyeuristic account of victimhood. It delicately and lyrically sets out the way in which the victim subject is brought into being. With the increased reliance on victims’ stories to provide legitimacy for the field of international criminal law, and a larger ‘turn to victims’ in neighbouring fields of transitional justice, peacebuilding and criminology, this book is a welcome addition to a growing literature concerning the divide between ‘real’ victims and ‘constructed’ victims. Broadly speaking, this literature concerns questions around how victimhood is legally, politically, culturally and aesthetically configured depending on the social context. Elander’s book not only adds to this

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<sup>1</sup> ‘Top 10 Dark Tourism Sites by Degree of Darkness/Significance’, available at [www.dark-tourism.com/index.php/18-main-menus/mainmenussubpages/618-list-of-top-10-dark-touristz-sites-by-degree-of-darkness](http://www.dark-tourism.com/index.php/18-main-menus/mainmenussubpages/618-list-of-top-10-dark-touristz-sites-by-degree-of-darkness) (last visited 26 March 2020).

<sup>2</sup> ‘Tuol Sleng Museum S21’, available at [www.tourismcambodia.com/attractions/phnompenh/toul-sleng-museum.htm](http://www.tourismcambodia.com/attractions/phnompenh/toul-sleng-museum.htm) (last visited 26 March 2020).

<sup>3</sup> ‘The Killing Field and Tuol Sleng Genocide Museum (S21) Tour’, available at [https://www.tripadvisor.co.uk/AttractionProductReview-g293940-d17846606-The\\_Killing\\_Field\\_and\\_Toul\\_Sleng\\_Genocide\\_Museum\\_S21\\_Tour-Phnom\\_Penh.html](https://www.tripadvisor.co.uk/AttractionProductReview-g293940-d17846606-The_Killing_Field_and_Toul_Sleng_Genocide_Museum_S21_Tour-Phnom_Penh.html) (last visited 26 March 2020).

literature, reminding us that the legal platform is *a* — rather than *a superior* — platform for victims to recount their stories (at 24),<sup>4</sup> it also pushes the discussion into new and important directions. The more brutal depictions of victimhood, though, acutely remind us that images of victimhood often stand *in competition* with one-another – and that certain victim images are deemed as more competitive than others. Elander’s book gestures toward this competition (at 71),<sup>5</sup> but could have gone further in explaining the context in which one victim figure is prioritised over another. A political economy critique which foregrounds competition is moreover essential for coming to grips with a central aspect rather neglected in the book, namely the racialised features of victimhood. The relevance of analytically centering race for discussions on victimhood has become particularly topical during the coronavirus pandemic. Elander’s book of course predates the events of the coronavirus, but the ‘figuring’ of victims around racialised notions of who is a ‘deserving’ victim demonstrate the continued urgency to critically engage with constructions of victimhood.

### **Focus on Cambodia**

As much of the focus of international criminal law remains on the International Criminal Court (ICC) in The Hague, it is important to maintain a perspective from other tribunals and geographies. Elander’s focus on the Extraordinary Chambers in the Courts of Cambodia (ECCC) – or the Khmer Rouge Tribunal – exposes important tensions and complexities where the ICC’s observers might be tempted into simplifications. The ECCC was established as a compromise between the United Nations and the government of Cambodia. The ‘hybrid’ nature was constituted through the relevant laws and procedures, and reflected in staffing decisions. Keen to prove to the Cambodian population that the Khmer Rouge regime had been overcome, President Hun Sen was in favour of a tribunal, but wanted to retain control over who would be under legal scrutiny – and who would do the scrutinising (not least because several suspects had since defected to his government). Meanwhile at the United Nations, there was little appetite for drawing attention to the political messiness of having recognised the Khmer Rouge as the Cambodian representatives at the General Assembly for over a decade. In the USA, which supported the establishment of the ECCC, and was one of the main funders of the documentation of evidence of the genocide, there was no desire to extend the view to the

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<sup>4</sup> Here, Elander relies on Marie-Bénédicte Dembour and Emily Haslam, ‘Silencing Witnesses? Victim Witnesses at War Crimes Trials’ (2004) 15(1) *European Journal of International Law* 151, 153.

<sup>5</sup> With reference to Martti Koskenniemi’s structural bias of law in *From Apology to Utopia* (Cambridge University Press 2005).

abominable US bombardments of Cambodia as part of the Vietnam War.<sup>6</sup> This tribunal, being a hybrid tribunal situated in Cambodia rather than in The Hague, had to navigate the struggle between the political and the legal, the 'local' and the 'global', the national and the international, the colonial and the anti-colonial *on site*.

A simplified, comfortable, narrative from the perspective of liberal internationalism would be to say that these struggles were ones of law attempting to overcome politics. Law would be the neutral force to conquer the partisanship of politicised transitioning societies. This narrative is emboldened by the international Co-Investigating Judge Kasper-Ansermet (a Swiss national) dramatically resigning from the bench in 2012, claiming he could no longer 'properly and freely perform his duties'.<sup>7</sup> Along these lines, the victims could be described as requiring law as a means to find a voice and a forum outside of the distortions of local or national politics. Elander is not tempted into these simplifications. In her refusal to submit to the comforting language of heroic legal internationalism, which is in contrast to the politicised national, her work corresponds with a growing critical tradition within international criminal law and transitional justice. The tradition highlights, among other issues, the gendered language of masculine interventionism;<sup>8</sup> the orientalisising faculties of distinguishing between the local and the global;<sup>9</sup> and the protection of market interests through the institutions and discipline of international criminal law.<sup>10</sup> Elander's distinct contribution is the complicating of victim figures, away from a crude description of victims as 'victims of culture'. Her interest lies in how victims are discursively constructed by all participants through laws, courtroom practices, and in the academic commentary.

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<sup>6</sup> According to Christopher Hitchens, *The Trial of Henry Kissinger* (Verso 2001) the USA dropped a higher tonnage of bombs onto Cambodia than the total of all allied bombs used in the Second World War.

<sup>7</sup> 'Press Release from the International Reserve Co-Investigating Judge' (press release, 19 March 2012), Discussed in Elander at 36-37.

<sup>8</sup> E.g. Yoriko Otomo, 'Of Mimecry and Madness: Speculations on the State' (2008) 28 *Australian Feminist Law Journal* 53; Kirsten Campbell, 'Gender Justice Beyond the Tribunals: From Criminal Accountability to Transformative Justice' (2016) 110 *AJIL Unbound* 227-233.

<sup>9</sup> E.g. Vasuki Nesiah, 'Local Ownership of Global Governance' (2016) 14(4) *Journal of International Criminal Justice (JICJ)* 985-1009; Michelle Burgis-Kasthala, 'Scholarship as Dialogue? TWAIL and the Politics of Methodology' (2016) 14(4) *JICJ* 921-937.

<sup>10</sup> Tor Krever, 'International Criminal Law: An Ideology Critique' (2013) 26(3) *Leiden Journal of International Law* 701-723.

## The Changeability of Victim Images?

Foregrounded in *Figuring Victims* are then the discursive practices of the construction of victims - what Elander calls 'victiming'.<sup>11</sup> Subjectivity is, according to Elander, 'inaugurated through language' through the act of naming (at 9). Crucial to Elander's methodology is that she does not qualify individuals as victims herself, but rather that she studies invocations of victimhood. She studies the modes through which a discursive narrowing takes place, creating 'by no means accidental' exclusions (at 54).<sup>12</sup> Law and its practices distinguish between those recognised *under law* as victims, and those who are '*a*-legal, or non-lawful, for the purposes of that particular institution' (at 39). Although she is also interested in photographs of victims – specifically those exhibited at the Tuol Sleng Genocide Museum – this is mostly in relation to victim *invocations* at the ECCC. The construction of victimhood that Elander observes is necessarily unstable: victim figures are changeable and often conflicting. 'While victims appear centre stage, there is nothing self-evident about the particular ways in which they do so' (at 185). Victimhood is therefore not *pre*-figured; 'victiming' is relational. In Elander's words: '[T]hese figurations of the victim never settle down but are constitutively plural (at 185). In Chapter 3, Elander uses forced marriage under the Khmer regime to exemplify the 'relational' framing of victimhood. Specifically, she asks in which way forced marriages were 'translated' into crime (at 78f). She displays 'manifold victim representations' that emerge from the translation of the marriages into ICL. '[T]he victim', Elander restates her central point, 'is constitutively multiple and multifaceted' (at 101). At the same time, the multifaceted suffering is constrained through the demand of international criminal justice for easily recognisable harms – in this case sexual violence (at 100). For their registration by the law, Elander notes, statements of suffering must also be *spoken* (at 141). Perhaps this is why Elander is largely agnostic, or at least ambivalent, about the accumulation of mass atrocity imagery, its exhibition, and consumption – so long as their authenticity is not attributed to Western sources (at 169). Photographs provoke, they are part of an 'affective encounter' (at 182), with a 'potential for opening up a space for connections between viewers' (at 173).

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<sup>11</sup> Building on Judith Butler's 'girling' as the corporeally enacted femininity which comes with the naming of the 'girl' in *Bodies that Matter* (Routledge 2011).

<sup>12</sup> Building on Sara Kendall and Sarah Nouwen's important work, 'Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood' (2014) 76 *Law and Contemporary Problems* 235-262.

Elander is correct in focusing on the relational functions of invocations of victimhood. Multiple individuals, groups, and organisations construct victimhood. When we speak of multiple victims, there is an abstracting of victimhood which takes place. This is not only the case with mass atrocity, but can also be seen in the global pandemic caused by the coronavirus (COVID-19). As the number of fatalities rises, a shift from individual victims to masses of victims takes place. This includes those suffering from the virus and its fatalities; but it also includes those who have lost their jobs due to the abrupt halting of entire industries, those who have other health conditions but cannot be treated, and those who are vulnerable in their own homes. Multiple victim configurations emerge and shift. But, with this analogy we also see something about ‘victiming’ that is, in contrast to Elander’s theorisation of instability, particularly *stable*, even predictable. Although the virus does not medically discriminate (every-body can get the disease), the structures within which it targets its victims decidedly do. Healthcare systems, like criminal justice systems, are sites of inequality. In the neoliberal order, profit has been prioritised over public health, creating greater inequalities for access to healthcare, and access to health. This is as much a divide between the Global North and the Global South as a geographic marker, as it is a divide between the Global North and the Global South as a social marker. Across the neoliberal order, where race has been socially constructed as a dividing line between who is deserving of wealth and health, racialised women and men are far more vulnerable to becoming victims. And yet, as with mass atrocity crimes, their figuring of victimhood differs from white victims. The recurring patterns of victimhood mean a structural prioritisation – and therefore discursive and visual prioritisation – of victims that support the heroism of white interventionism. Whether in relation to mass atrocity crimes or a pandemic, underlying exploitative chains of (racial) capitalism are hidden from victim narratives.

The dominant narrative for the coronavirus is that the Chinese are victims of their own making, or simply perpetrators spreading disease; meanwhile Western victims are the ‘innocent’ victims. The most extreme version of this is the idea of the ‘foreign virus’ which has caught the innocent West off-guard.<sup>13</sup> In the context of the Cambodian genocide, the dominant narrative is that Cambodians were victims of their own making (i.e. their own ‘backwardness’). This invisibilises the victimhood created through the structural inequalities of colonialism; it invisibilises the victimhood created through the treatment of Cambodian lives as disposable

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<sup>13</sup> Paul LeBlanc, ‘Trump calls coronavirus a “foreign virus” in Oval Office address’ (12 March 2020), *CNN* available at <https://edition.cnn.com/2020/03/11/politics/coronavirus-trump-foreign-virus/index.html> (last accessed 26 March 2016).

during the Vietnam war; it invisibilises the victimhood created through structural adjustment programmes; it invisibilises the victimhood created through contemporary land-grabs. Relying on the seminal work by Anne Orford, Elander correctly observes that the international is generally absent from scenes of violence<sup>14</sup>. The ‘international’ is the site of heroism rather than a site of structural inequality. So, the question that needs to be most urgently attended to is not the question of the unsettled nature of victimhood, or its plurality, but rather which forms of *predictability* and *stability* does that absence construe for victimhood? Which patterns do victim stories tend to follow? Whose voices tend to be elevated? Although Elander discusses the ‘a-historicising’ of events as framing victimhood (at 59), a political economy perspective could have pushed the enquiry further.

One possible way in which the analysis of figurations of victimhood could have been productively extended through a political economy critique is in regard to US funding of internationalised criminal justice in Cambodia. As Elander notes, US Congress passed the so-called ‘Cambodian Genocide Justice Act’ in 1994, which funded the Documentation Centre of Cambodia (DC Cam) through Yale University (at 41).<sup>15</sup> Although DC Cam remained independent of the tribunal, it became the principal body to provide evidence for the ECCC. How, one might ask, do these funding patterns – and expectations – bear out on constructions of victimhood? Here, we are not simply speaking about discursive incantations in an individualised frame of ‘who is speaking?’, but also about the structural question of ‘who is heard?’. The ‘who is heard?’ question allows us to see more clearly who benefits from the framing of victimhood in a particular way.

Elander is right to point out that the figuring of victims is about more than the inclusion and exclusion of victims; it is also about the discipline of international criminal justice itself. Where I depart from Elander is in her statement that this is reflective of international criminal justice as a ‘citational network’ (at 14). International criminal justice is a discipline of material relations that determine whose representational voices are amplified and whose are marginalised or silenced. So, despite the changeability of the figure of the victim, there are also elements of the victim which are *predictable* and largely unchangeable. This includes the

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<sup>14</sup> Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (CUP 2003), Chapter 3.

<sup>15</sup> ‘Foreign Relations Authorization Act, Fiscal Years 1994 and 1995’, United States Congress, PL 103–236, (30 April 1994), 108 Stat 486; 22 USC 2656, Sec. 571-574.

construction of non-white victims as victims of ‘their culture’ and white victims as victims of ‘another culture’; this includes non-white victims as unable to fully grasp the extent of their suffering, requiring white agents to explain it to them; this includes a voyeurism of non-white bodies and great sensitivity towards white victims’ privacy; this includes the construction of non-white victims as dependent and white victims as resilient.

### **The Agency of Victims**

The importance of *Figuring Victims* lies most immediately in drawing attention to ‘[t]he significance of language’ (at 33). Elander reminds us of the power and manipulability of words. Linguistic-legal processes of ‘victiming’ must be highlighted for exclusions of victimhood to become visible. Moreover, *Figuring Victims* also provides a tentative but distinct message of hope: ‘[T]he victim, brought into being through language, also has a capacity to challenge the discursive practices that constitute it as a subject and thereby to alter the practices of ICJ [international criminal justice]’ (at 7). In combination with an awareness of the stabilising structural biases of speech and listening (drawn from a political economy critique), one might imagine the amplification of victim voices that challenge discursive practices. Such amplification could provide a powerful tactic for a *re*-figuring of victimhood. As constructions of victimhood continue to determine the distribution of resources - whether in regard to mass atrocity crimes or pandemics - recognising the agency of victims is key for those underrepresented on account of race, class or gender. The sensitivity with which Elander’s excellent book approaches the topic of victimhood, in soothingly stark opposition to the voyeurism of victimhood in competition, therefore bears within it the potential for significant political power.

*Christine Schwöbel-Patel*

*Associate Professor, University of Warwick*

*Email: Christine.Schwobel-Patel@Warwick.ac.uk*