

## Local voices in internationalised justice: The experience of civil parties at the Extraordinary Chambers in the Courts of Cambodia.



### I. EXECUTIVE SUMMARY

The experience of civil parties participating in Case 002 at the Extraordinary Chambers in the Courts of Cambodia (ECCC) provides important insights into victim participation in a mass atrocity trial. Understanding the expectations of civil parties and evaluating their experience so far will help us to improve victim support at future cases at the ECCC and other internationalised courts.

This report presents the findings from interviews with civil parties at the beginning of Case 002/01. It uses a qualitative methodology grounded in thematic analysis and identifies key themes constructed and defined from the responses of civil parties.

The report examines the following themes: what makes justice meaningful and satisfactory for civil parties; their goals for participating; the emotional

consequences of application and participation; the impact of limited resources for victims; how civil parties understand the trial and participation process and their thoughts on moral and collective reparations.

The report then draws some lessons learned, including the need for education concerning fair trial rights, calls for a strategy for communication regarding reparations and proposes different ways to maximise the impact of attendance.

It also identifies a gap regarding psycho-social support at the application stage and calls for a general strategy for updates and support to civil parties despite the funding limitations. Finally, the report concludes with areas for future research.

## 2. INTRODUCTION

**[Victim participation] is always very important, because first of all at least we can know about our story more clearly and then we know about the violations committed by our leaders and then it provides us hope for the future and for justice.**

**Civil party from Kampot province.**

After 30 years, the people of Cambodia finally have a chance at accountability for Khmer Rouge crimes. Following a lengthy and fraught negotiation process, the UN and the Cambodian government established the Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2006.<sup>1</sup> The ECCC was established as a hybrid tribunal, and has a mandate to bring to trial senior leaders of the Khmer Rouge and those most responsible for the crimes constituting serious violations of Cambodian and international law committed between 17 April 1975 to 6 January 1979.

This period of Khmer Rouge rule was devastating to the country, with nearly 2 million people killed.<sup>2</sup> Due to the hybrid nature of the ECCC, which draws on both Cambodian and international law, victims are able to participate in proceedings in an unprecedented way. Under the Cambodian Criminal Procedure Code, part of the civil law system retained from the country's time under French colonial rule, victims can act as civil parties in the domestic judicial system with a number of rights, including the right to be represented by a lawyer, to question the accused and witnesses, to introduce evidence and to make a closing statement.<sup>3</sup>

Similarly, civil party participation was included in Rule 23 of the Internal Rules of the ECCC in 2007 (the rules that govern the functioning of the Court) enabling victims of the Khmer Rouge period to take part.<sup>4</sup> Civil parties before the ECCC have the capacity to a) participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and b) seek

collective and moral reparations.<sup>5</sup> The decision by the Pre-Trial Chamber in March 2008 to allow civil parties to participate was heralded by NGOs and court observers as a landmark ruling in international criminal justice and a victory for victims.<sup>6</sup>

Anyone who has suffered physical, psychological or material harm as a direct consequence of the Khmer Rouge regime can apply to become a civil party. They then have the same rights as every other party to the proceedings. During the first trial of Kaing Guek Eav aka "Duch" (the head of the notorious S-21 Phnom Penh prison) 90 civil party applicants took part, (although ultimately only 76 were accepted by the Court as meeting the criteria for civil party status).<sup>7</sup> However, their involvement in the trial (known as Case 001) lengthened proceedings by increasing the time given to questioning, often with repetition between civil party lawyers representing different groups.<sup>8</sup> The judges responded by allocating time slots for each party to the proceedings.

During Case 001 the judges also eliminated the right of civil parties to participate in sentencing proceedings and to question the accused and certain witnesses.<sup>9</sup> In order to further streamline civil party representation, the Internal Rules were amended in February 2010, consolidating the civil parties into one group, represented by one international and one Cambodian lead co-lawyer at trial.<sup>10</sup> Although these

5. Although the Internal Rules regarding civil party participation have been revised a number of times, this dual role has remained constant. Rule 23, Internal Rules (Rev. 8), ECCC, 2011.

6. FIDH, "Cambodia Tribunal allows victims to participate in proceedings", March 2008. Available at <http://www.fidh.org/en/asia/cambodia/ECCC/Cambodia-Tribunal-Allows-Victims>

7. 94 people applied to become Civil Parties in Case 001, three of these withdrew their applications and one was denied. In the Duch Judgement in July 2010, 24 applicants were declared inadmissible although 10 were granted civil party status on appeal. The fact that a number of civil parties were declared inadmissible at this late stage caused confusion and frustration for those involved, who had participated the same as the others. In Case 002 the Internal Rules were changed and civil party admissibility was determined at the end of the judicial investigation, before the trial. (FIDH, Victims' Rights: Before the Extraordinary Chambers in the Courts of Cambodia (ECCC) A Mixed Record for Civil Parties. Available at <http://www.fidh.org/en/asia/cambodia/ECCC/Victims-Rights-before-the-ECCC-A-12533>).

8. Civil parties were divided into four groups in Case 001, and each group had one Cambodian and one international lawyer. For further details please see, Alain Werner and Daniella Rudy, "Civil Party Representation at the ECCC: Sounding the Retreat in International Criminal Law?" *Northwestern Journal of International Human Rights*, Volume 8, Issue 3 (Summer 2010), P.304.

9. The KRT Trial Monitor, Report Issue 19, Week ending 30 August 2009, pp. 5-6. Available at [http://wpsc.berkeley.edu/wp-content/uploads/documents/KRT\\_Monitor\\_Report\\_19\\_week\\_18.pdf](http://wpsc.berkeley.edu/wp-content/uploads/documents/KRT_Monitor_Report_19_week_18.pdf)

10. ECCC News, "7th Plenary Session of ECCC concludes", 9th February 2010. Available at <http://www.eccc.gov.kh/en/articles/7th-plenary-session-eccc-concludes>

1. For a detailed account of the negotiation process please see John D. Ciorciari, "History and Politics behind the Khmer Rouge Trials" in *On Trial: The Khmer Rouge Accountability Process* eds. John D. Ciorciari and Anne Heindel (DC-Cam, 2009), pp. 67-81.

2. David Chandler, *A History of Cambodia* (Boulder, CO: Westview, 2008), p.259.

3. Sarah Thomas and Terith Chy, "Including The Survivors In The Tribunal Process", in *On Trial: The Khmer Rouge Accountability Process* eds. John D. Ciorciari and Anne Heindel (DC-Cam, 2009), p.291, n.52.

4. Rule 23, Internal Rules, ECCC, 2007. Available at <http://www.eccc.gov.kh/en/documents/legal/internal-rules>

amendments to the Internal Rules may have restricted some civil party rights, there was really no other option since changes were needed in order to streamline the proceedings and ensure expediency of the trial. The revisions were needed due to the vast increase in the number of civil parties in Case 002, where nearly 4,000 applicants were accepted.

With so many thousands of civil parties and the many changes made to the process, what does participation mean and what has been the experience for civil parties? This report presents the findings of the research project “Local voices in internationalised justice”, consisting of interviews with civil parties at the beginning of Case 002/01.<sup>11</sup> This project used a qualitative methodology grounded in thematic analysis to read more attentively a select number of respondents’ accounts.<sup>12</sup> In this manner, the research aimed to capture the complexity of experience of being a civil party, complementing the large-scale surveys undertaken for both Case 001 and Case 002.<sup>13</sup> 24 civil parties were interviewed from 5 different provinces across the country. The paper then explores lessons learned from the experiences of civil parties during the trial process. As the Trial Chamber considers its verdict for Case 002/01, due later this year, the findings of this project carry important lessons for any further cases at the ECCC, the ICC and to future courts, with respect not only to funding and resources but to the psychological and procedural needs of a large number of victim applicants.

### 3. ANALYSIS

In my analysis of the interviews, responses from civil parties can be divided into 6 main themes.

#### 1. MEANINGFUL AND SATISFACTORY JUSTICE

Civil parties had clear ideas of what they wanted from trials at the ECCC. In order to feel satisfied

11. The project was funded by a Nuffield Foundation small grant, SGS/39236.

12. For a description of inductive (as opposed to deductive or theoretical) qualitative analysis, see Richard Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (London: Sage, 1998).

13. For a survey of civil parties please see Nadine Kirchenbauer et al, “Victims Participation before the Extraordinary Chambers in the Courts of Cambodia”, (Cambodian Human Rights and Development Association and Harvard Humanitarian Initiative, 2013), available at <http://www.adhoc-cambodia.org/?p=2828>. For a general population survey please see Phuong Pham et al, “After the First Trial: A population based survey on knowledge and perception of justice and the Extraordinary Chambers in the Courts of Cambodia”, (Berkeley: Human Rights Center, University of California, June 2011). Available at [http://www.law.berkeley.edu/files/HRC/Publications\\_After-the-First-Trial\\_06-2011.pdf](http://www.law.berkeley.edu/files/HRC/Publications_After-the-First-Trial_06-2011.pdf).

with the proceedings, they wanted a) the accused to acknowledge their crimes, b) the ECCC to abide by international standards and c) the trial to take place swiftly.

#### a) Acknowledgement

Civil parties expressed a desire for the accused to take responsibility for their crimes in their own words. This was important to the people interviewed in the sense that they believed the accused ought or should be made to admit to their actions, and that such acknowledgement was an important realisation of justice in itself.

**I don’t care much about reparations, but I just want them to confess, to tell the truth and to be responsible for that.**

**Civil party from Battambang province.**

**For me satisfaction here means that the accused confess and then they admit what they did.**

**Civil party from Kampong Speu province.**

A number of interviewees talked of disappointment or anger when the accused failed to take responsibility or denied what happened, for example in the opening statements when they disputed the allegations against them and blamed the actions of the Vietnamese.

**When they said that it was the Vietnamese who killed Cambodian people I was very angry because I only saw Cambodian people kill Cambodian people...I was angry because they were not responsible for what they did.**

**Civil party from Pursat province.**

**Watching them, hearing them, hearing their refusal, their denial of what happened, really made me furious.**

**Civil party from Kampong Speu province.**

#### b) International standards

For civil parties to feel satisfied with the justice process they also wanted the trial to be held to international standards. References to the role of the ‘international community’ by civil parties demonstrated their support and faith in an international standard of justice at the ECCC.

However, there has been consistent criticism about political interference at the ECCC, specifically in the progression of Cases 003 and 004.<sup>14</sup> The Cambodian Prime Minister and several senior Cambodian officials have caused controversy by publicly declaring these further trials as unnecessary.<sup>15</sup> The international co-investigating judge resigned at the end of 2011 citing attempted political interference<sup>16</sup> and the reserve international co-investigating judge resigned the following year stating his authority to act had been constantly contested by his Cambodian counterpart.<sup>17</sup> Some civil parties believed the UN should act to prevent interference.

**The UN...they are already involved in this process in Cambodia, they should use all their best possible measures to ensure that this court is firm and independent. Because...the chance is only one.**

***Civil party from Kampot province.***

### **c) Expeditious proceedings**

This trial is taking place over 30 years after the end of the Khmer Rouge period. Obviously the length of time that has passed means that the accused, witnesses and some civil parties are very elderly. Unsurprisingly, civil parties raised the speed of the trial as one of their concerns and were worried that the accused might die before justice can be delivered.

**I feel tense and frustrated because it is not going as fast as I would like it to...and...if they die before the trial, then our application will become meaningless right?**

***Civil party from Pursat province.***

**What I really want is that it should be more expeditious and I want the international community, NGOs, whoever involved to really help push it forward faster. Because if they**

14. Open Society Justice Initiative, "The future of cases 003/004 at the Extraordinary Chambers in the Courts of Cambodia", October 2012, Available at [http://www.opensocietyfoundations.org/sites/default/files/eccc-report-cases3and4-100112\\_0.pdf](http://www.opensocietyfoundations.org/sites/default/files/eccc-report-cases3and4-100112_0.pdf)

15. Open Society Justice Initiative, "Political Interference at the Extraordinary Chambers in the Courts of Cambodia", July 2010. Available at <http://www.opensocietyfoundations.org/sites/default/files/political-interference-courts-cambodia-20100706.pdf>, pp.16-17.

16. Open Society Justice Initiative, "Recent developments at the Extraordinary Chambers in the Courts of Cambodia", November 2011, p.5. Available at <http://www.opensocietyfoundations.org/sites/default/files/eccc-developments-20111114.pdf>

17. *Supra* n 14, p.11.

**can do so, just to make it expeditious it really means that you help the victims of this country already.**

***Civil party from Kampot province.***

Unfortunately this fear was realised towards the end of the trial with the death of Ieng Sary in 2013. Unsurprisingly the fact that Sary died before judgement is disappointing not only to civil parties, but to the many victims of Khmer Rouge crimes.<sup>18</sup>

## **2. GOALS OF BEING A CIVIL PARTY**

What does it mean to be a civil party? Civil parties share similar values and goals, creating their own meaning for the role beyond the official purpose in the Internal Rules. These goals fall into four main areas: a) witnessing justice b) personal motivation c) social interaction and educational benefits d) playing a role in achieving justice.

### **a) Witnessing justice**

**By participating here, it is important, because we victims, especially myself, I can witness the process, the actual, the real process happening at the Court setting...it is important that I am here physically.**

***Civil party from Kampong Speu province***

It has been a long wait for accountability in Cambodia and attending the trial satisfies the civil parties' need to see justice. The civil parties placed great importance on physically attending the trial, translating the ECCC's abstract discourse of justice into time, place and experience. Since the Khmer Rouge shrouded Cambodian lives in misinformation and conspiracy about the 'truth' of the regime and what happened during it, the ECCC plays a vital role in clarifying knowledge about the regime.

**... [Attendance] ... helps because we can witness and we can hear directly words from their mouth.**

***Civil party from Pursat province.***

18. Open Society Justice Initiative, "Recent Developments at the Extraordinary Chambers in the Courts of Cambodia", March 2013, p. 7. Available at <http://www.opensocietyfoundations.org/reports/recent-developments-extraordinary-chambers-courts-cambodia-march-2013>

## b) Personal motivation

[Reasons for participation] ... First, is my suffering, second is because almost all of my family members were purged and I also lived my hard life in the work stations during that time in the prisons...And because of all those reasons I was so keen to apply and I tried also in many ways to make sure that I could apply.  
*Civil party from Kampot province*

As could be expected, personal and family experiences are the main motivation for participation, with nearly half of respondents stating they were acting on behalf or in memory of family members who suffered or were killed during the regime. Feelings of suffering and loss motivated the civil parties.

This is what Cambodian people have been waiting for...I myself, especially what happened to my family members still haunts me until today, I still have nightmares about that. It is still very recent, [even] after 30 years.  
*Civil party from Pursat province.*

## c) Social interaction and educational benefits

Practitioners and scholars of international law are consistently in danger of losing grasp of a trial not only as a process of legal norms, actors and judgements, but understanding it as a social event. Civil parties value the social nature of civil party participation. Attendance is important to civil parties since they can meet others undergoing the same experiences, providing an important social function to attendance.

... [Attendance provides the] ... opportunity to meet with other people, younger, older, sharing stories [of] these kinds of experience, and networking, at least it helps.  
*Civil party from Pursat province.*

Here they meet each other in a context that is focused on the former regime and their experiences of it and this can have educational as well as social value. Many said that they would go back and explain to family and village what happened at the ECCC.

... [Attendance is an opportunity to] ... inform my children of younger generation about what happened during the regime and about the sentence.  
*Civil party from Pursat province.*

If we have the opportunity to attend the court it will give us more understanding and then it [gives us] understanding of what is the current social reality happening in the country now.  
*Civil party from Battambang province.*

Attendance may also contribute to a broader understanding of rule of law, which is significant since the Cambodian domestic judicial system has well-documented problems with bribery and patronage.<sup>19</sup>

It is important because I can know about the legal process and proceedings at the Court and especially we learn that there is a law that can try this kinds of atrocities or leaders that committed this kinds of atrocities.  
*Civil party from Kampot province.*

## d) Play a role in achieving justice

We...participate in the meeting about the trial of the four accused so that justice can be delivered.  
*Civil party from Kampong Speu province.*

Some civil parties were satisfied or happy that, in their words, justice was being pursued and that they were a key part of this. The invocation of 'justice' was in these cases uncomplicated by concerns regarding reparations, sentencing, the number of prosecutions or interference in trials. Rather, the pursuit of justice in the specific circumstances of the ECCC was referred to as equal to justice itself.

For these civil parties, being part of the official process was enough. There was real importance given to the opportunity to participate and most civil parties (as well as their families) were very happy that there was this possibility.

Actually it took too many years of waiting for this to happen, I have been waiting for this and I really wish that this kind of tribunal happen even before that.  
*Civil party from Battambang province.*

<sup>19</sup>. *Supra* n 15, pp 4-5.

### 3. EMOTIONAL CONSEQUENCES OF APPLICATION AND PARTICIPATION

A central concern within any research based on victim involvement is the extent to which victims' mental health is affected by a justice process. While some respondents said that they had no misgivings about participation, many other respondents presented with emotional distress associated with their participation. One of the reasons given for not having concerns about participation was telling the ECCC the truth. A civil party from Pursat stated that he had no worries "because this is my real story."

However, despite this positive outlook from some civil parties, other respondents confirmed that participation could result in the reliving of trauma, saying that recollection of experiences during the application process had been painful. Not only was recalling experiences to complete the application form difficult, there were sometimes physical effects such as headaches and nightmares.

**It was very difficult, you know, when I started to write at night I had a nightmare about the regime and then sometimes when I woke up, I said...should I stop writing now.**

***Civil party from Pursat province.***

**I felt at that time, still very embarrassed about talking about all those stories happening to me especially when they asked me more and more questions, I tend to become forgetful and then became shocked immediately.**

**I know their questions, I understand their questions, but I could hardly say anything about all that and even now still feel very embarrassed.**

***Civil party from Kampong Speu province.***

Nearly a third of respondents were either concerned themselves with reprisals post-participation or their families were. While the international community may be forgiven for viewing the Khmer Rouge regime as part of the history of twentieth-century totalitarian dictatorship, for these particular victims the regime is an ongoing presence and threat.

**... Those senior leaders – I am sure they don't know me, they don't know who I am, but what I worry is that because when I filed this ...**

**There [are] lower level cadres who probably still know me, still recognise me and I am afraid that I [could] be [harmed] by these people.**

***Civil party from Kampong province.***

**... Fear that I will always be haunted by the thought that someone would murder, someone would kill me – this sort of thing is still in my mind.**

***Civil party from Kampong Speu province.***

Some civil parties had family and friends who chose not to participate for fear of reprisal, while others spoke about the fear of their friends and family at their own participation.

**There were people, some other relatives, [who said] "you filed a complaint you know, and [now] you will have your name at the Court and then if anything happens and if the Pol Pot regime comes back again, you will have your name there, [and] you will be the first one to be killed.**

***Civil party from Pursat province.***

This social pressure led this respondent to "feel regret at filing the application, I thought I should not have filed the applications."

Nonetheless, different aspects of participation brought emotional relief to most civil parties. The thought of achieving justice led to relief and satisfaction on the part of civil parties as well as benefits from the participation process in general, including the opportunity to share their suffering under the Khmer Rouge with their family and others. For example, this civil party from Pursat province found writing the application form cathartic:

**Little by little, day after day, I finally could manage to finish about 20 pages. I had the opportunity to recall what happened and then through writing I thought I was relieved also and I printed that story and then I handed it out to my children and then my children read it and sometimes they cried but anyway they learnt about their father's story and it helps me.**

**While I was writing I recall the story, I cry, I wrote, all of that it made me relieved.**

#### 4. PROBLEMS FROM LIMITED RESOURCES

**So frustrated. I think I have asked people [about my application] until they got tired of me, I think.**

**Civil Party from Pursat province.**

The ECCC found it hard to deal with the thousands of applications by potential civil parties, and the huge number that had to be processed was compounded by the difficulties caused by the lack of funding (and late set-up) of the Victims Unit (subsequently renamed the Victims Support Section).<sup>20</sup> The interviews reveal the frustration of civil parties at the mercy of the application process, and the sense of anxiety they felt upon discovering limited legal assistance and explanation about the trial.

Civil society organisations and international NGOs have criticised the lack of resources given to victims and this is reflected in the responses of the civil parties. Civil parties called for further psychological support and financial assistance (mainly for attendance of trial). A number acknowledged that there has been limited and delayed information leading to long waits to hear about their progress.

**I was always waiting for the answers and the reply back to me. One day I saw I think on TV there was the explanation about the application process and then I saw there was big piles of application forms in the office on TV and then I thought to myself probably in that pile is one of my application, maybe. I just thought about that. But I was always looking and waiting to hear about how my status was.**  
**Civil party from Battambang province.**

**...We kept waiting for response and actually we really wanted to know about the result, the status and then we were always waiting for the call or for the information.**

**Civil party from Pursat province.**

When there was no follow up or if they had additional questions, civil parties were then unsure who to contact for additional information.

**...I didn't ask for any more information or this kind of thing because I don't know... and I didn't know who I should contact as well and... if I want to talk about anything I don't know how to meet with my lawyer or I don't know who I should meet to talk about this...**

**Civil party from Kampong Speu province.**

#### 5. UNDERSTANDING AND PERCEPTION OF CIVIL PARTIES REGARDING TRIAL AND PARTICIPATION

Although the civil parties were supported by various NGOs throughout the process, many of them lacked important information about participation. Most Cambodia-based civil parties have low levels of education, and their interview responses reflected their uncertainty about key aspects of the trials, including what to expect regarding sentencing and reparations.

**First when they talk about reparations, we always thought that probably individual reparations would be awarded but later on we learned that it could never be this form of reparations - it's only collective reparations. And now that we are poor with the hope that we can get some individual reparations, but now without that, I just don't know what kind of collective reparations it should be.**

**Civil party from Battambang province.**

Further, a number claimed that they had never met their lawyer. However, it is certain that nearly all of them would have at least met their lawyer at least once. The ECCC held regional civil party forums all over the country for civil parties to learn about their application acceptance, key aspects of the trial, their role and participation as well as providing the opportunity to meet their lawyers. This demonstrates the lack of understanding of what that meeting was for and the role of their lawyers.<sup>21</sup>

**I don't know, I don't know what they [the lawyers] are doing, I don't know what is the procedure, I don't know how many clients they have and then I don't know how many are invited or how many should meet their lawyers, I really don't know.**

**Civil party from Pursat province.**

20. For details on the under-resourcing of victims at the ECCC, please see Johanna Herman, "Realities of Victim Participation: The civil party system in practice at the Extraordinary Chambers in the Courts of Cambodia (ECCC)", *Contemporary Justice Review*, Volume 16, No 4, December 2013, pp. 469-472.

21. The ADHOC survey of civil parties also found that legal knowledge of proceedings needed to be strengthened and that just half knew that lawyers represented them at trials, *supra* n 13 Nadine Kirchenbauer et al, "Victims participation before the Extraordinary Chambers in the Courts of Cambodia", pp.iv-v.

None of the civil parties interviewed stated that they had had any contact with the Victims Support Section, even though all would have had contact with them at the civil party forum. Again, this shows little recognition of the role of the ECCC and the Victims Support Section. In addition to confusion about the role of lawyers, Victims Support Section and the outcomes of the trial and reparations, civil parties were uncertain about their role, specifically what they could hope for or achieve themselves and some were not able to express what they thought were the benefits of participation and attendance.

## 6. COLLECTIVE AND MORAL REPARATIONS

As stated in Rule 23 of the Internal Rules, civil parties are able to seek collective and moral reparations.<sup>22</sup> Similar to respondents in previous large-scale studies,<sup>23</sup> the civil parties voiced a wide range of opinions regarding reparations. Many of our civil party interviewees expressed an equanimity or resignation towards the impossibility of individual reparations, even though this was their stated preference.

**First people talk about individual reparations, but the more we were involved, the more we learned that individual reparations don't exist. And then, because we lost everything, property, everything during the Khmer Rouge...I would like to suggest that...the Court can think about victims individually for these reparations.**

**Civil party from Battambang province.**

The majority of respondents knew that reparations were to be collective, and felt they had little input over the ultimate award from the ECCC.

**Actually when we talk about reparations, what we really want is money, but because NGOs say there is no money, no such kind of reparations, only collective and then it's up to the Court.**

**Civil party from Kampong Speu province.**

Nevertheless, they showed understanding of collective reparations and described a desire for infrastructural

improvements to schools, training programs, stupa, national holidays, memorials and other kinds of commemorative legacies.

In addition, opinion was strong on the unsatisfactory nature of the reparations awarded in Case 001, with a number of respondents calling the reparations meaningless and inadequate.

**It's just disturbing. You know, you spend many years doing investigation, and then you indict them and then you sentence them and finally the reparations is just nothing.**

**Civil Party from Battambang province.**

## 4. LESSONS LEARNED

These lessons learned reflect on how the ECCC could have done things differently, and how to prepare for future cases, if they go ahead. Despite being specific to the situation at the ECCC, they demonstrate areas of concern for other courts in planning for victim support.

### EDUCATION CONCERNING FAIR TRIAL RIGHTS

The importance placed by civil parties on hearing the accused take responsibility for their crimes in the first theme, shows that fair trial rights need to be explained during civil party specific communication or broader public information campaigns. Although Duch was forthcoming with apologies and statements of remorse during Case 001,<sup>24</sup> it was a different situation in Case 002/01. Two of the accused exercised their right to remain silent - Ieng Sary (before his death in 2012) and Khieu Samphan (Nuon Chea was the only one to testify when called upon).

To avoid disappointment or anger at why this is possible, the rights of the defence need to be clearly explained to civil parties. There are a number of ways in which this could be done. The defence support section already does a presentation at the regional civil party forums, and this particular aspect could be further explored and emphasised. Although time is necessarily short when they have so many clients, civil party group lawyers can also clearly explain what to expect from the defence strategy and behaviour of

22. Rule 23 *quinquies*. Civil Party Claim, Internal Rules (rev. 8), ECCC, 2011. Available at <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>

23. *Supra* n 13 Nadine Kirchenbauer et al, "Victims participation before the Extraordinary Chambers in the Courts of Cambodia", pp 38-42 and *supra* n 13 Phuong Pham et al, "After the First Trial", pp. 35-37.

24. The ECCC Public Affairs Section compiled Duch's statements of apology and acknowledgements of responsibility for the ECCC website as part of the reparations order. These are available at <http://www.eccc.gov.kh/en/articles/duch-apology-available-download>



the accused. ADHOC (a leading Cambodian human rights NGO) has a civil party representative scheme in place.<sup>25</sup> This enables them to communicate with the large numbers of civil parties through regional representatives. The representatives can be educated on this issue to then inform the civil parties in their area. The Public Affairs section and Victims Support Section at the ECCC should also include this in their materials where appropriate.

Further, a number of interviewees were upset at the decision to sever Ieng Thirith from the proceedings due to health issues.

**I don't like it all when Ieng Thirith's lawyers asked for her to get released. I think she is only pretending to be mentally unwell.  
Civil party from Pursat province.**

Again, education on the process involved, including the consultation of impartial medical experts to achieve a diagnosis should demonstrate that it is hard to 'pretend'. It may still be frustrating but will hopefully help civil parties understand why she is not involved in the trial.

## STRATEGY FOR COMMUNICATION REGARDING REPARATIONS

The issue of engaging Case 002 civil parties with the reparations submission is immediately complicated by that fact that in the Duch judgement, the judges took a very narrow view of reparations,<sup>26</sup> which was widely criticised as unimaginative and disappointing.<sup>27</sup> For this reason the concept of 'moral and collective' reparations is difficult to explain to civil parties based on this precedent. With the changes made to the Internal Rules since the first judgement there has been a great deal of uncertainty of how reparations will work in practice.

In the first trial, the four civil party groups provided their own individual submission on reparations as well as a joint submission between them. A key change for Case 002 was the single submission for collective and moral reparations by the lead co-lawyers on behalf of all civil parties, and this submission may only seek a

limited number of awards. Unfortunately there is no earmarked funding for this, such as a specific fund and it is up to the lead co-lawyers and Victims Support Section to raise the funds and demonstrate to the Trial Chamber sufficient external funding for each project (which has proved difficult and an unfair burden).<sup>28</sup>

It is important for civil party lawyers, the lead co-lawyers, the Victims Support Section and NGOs to plan a clear strategy to explain any reparations awarded by the ECCC later this year. The lead co-lawyers have submitted 13 reparation projects to the Trial Chamber relating to commemoration, rehabilitation and documentation and education. These included a number of memorials and monuments, national day of remembrance, testimonial therapy, self-help groups for rehabilitation, exhibitions on forced transfer and Tuol Po Chrey (Khmer Rouge execution site), a storybook and textbook chapter and publication of the judgment.<sup>29</sup> These projects were the outcome of an extensive process of consultation, carried out by the civil party lawyers, Victims Support Section and partner organizations once the co-investigating judges had decided the admissibility of civil parties. During this initial process 16 projects were identified.<sup>30</sup> The lead co-lawyers also considered the wishes expressed by civil parties in their original applications for admission.<sup>31</sup> The projects were developed through collaborative meetings, workshops and conferences.<sup>32</sup> In interviews, the civil parties expressed a sense of resignation and powerlessness towards reparations, which could have been avoided if they were informed of the consultation process as it was going on, were aware of taking part and understood their contribution.

However, it remains to be seen whether the Trial Chamber will accept these projects as reparations or whether some of them will be considered as non-judicial measures.<sup>33</sup> The Trial Chamber has stated that the initial 7 projects proposed in February 2012 (as priority projects) would be endorsed "in principle" as long as funding and support from the Cambodian

25. *Supra* n 13, pp 7-9.

26. The Trial Chamber allowed only the following reparations 1) the names of all civil parties would be included in the Judgment 2) compilation and dissemination of acknowledgment of guilty made by Duch.

27. *Supra* n 7, p. 53 and John D. Ciorciari, "The Duch Verdict", Cambodia Tribunal Monitor, Available at [http://www.cambodiatribunal.org/sites/default/files/resources/the\\_duch\\_verdict.pdf](http://www.cambodiatribunal.org/sites/default/files/resources/the_duch_verdict.pdf)

28. Open Society Justice Initiative, "Reparations for Khmer Rouge Crimes", September 2013.

29. ECCC news, "Meaningful reparation for Khmer Rouge victims", 25 February 2014. Available at <http://www.eccc.gov.kh/en/articles/meaningful-reparation-khmer-rouge-victims>

30. *Supra* n 7, p.54

31. Lead co-lawyers for civil parties, Lead co-lawyers indication to the trial chamber of the priority projects for implementation as reparations (Internal Rule 80bis(4)) with strictly confidential annexes. 12 February 2013. Para 2.

32. *Ibid.*

33. *Supra* n 7, p.55.

Government was obtained.<sup>34</sup> Most of the 13 projects have now secured funding from various sources.<sup>35</sup> Nonetheless, these are still a small number of projects with limited scope and reach, likely quite different to what the civil parties interviewed envisaged. Despite the difficulties in communicating with the thousands civil parties, they need to be made aware of the projects ultimately awarded in the judgement, the relevance of these particular projects to civil parties, and why and how these projects were chosen. With the departure of the international civil party lead co-lawyer in May 2014, an established communications strategy formulated by all stakeholders is even more crucial.<sup>36</sup>

As of February 2010, the Victims Support Section is also entrusted with the development and implementation of non-judicial programmes and measures addressing the broader interests of victims, not just civil parties. These programmes can be developed with external governmental and non-governmental organizations. This is another major change from Case 001. It is therefore not a surprise that civil parties are confused, when non-judicial measures are completely new and NGOs and lawyers were also unsure of what the Trial Chamber would find acceptable regarding reparations awards. However, this makes it all the more important that once the verdict for Case 002/01 is out and there is a clearer idea of what the Court will support and what can be awarded, this should be communicated for civil parties in future cases by NGOs, ECCC and lawyers in a coordinated way. This information should support a comprehensive consultation process for all civil parties on reparations carried out by NGOs, ECCC Victims Support Section, civil party lawyers and lead co-lawyers.

### MAXIMISE IMPACT OF ATTENDANCE

The trial can benefit civil parties as not simply an accountability mechanism but specifically as a meeting place for those directly affected by the regime. The trial provides an educational and social function for the civil parties allowing them to meet, and to then pass on

what they have learned to others. It is therefore crucial to make the experience as meaningful as possible for those attending. The Victims Support Section aimed to ensure that every civil party attended the ECCC at least once during Case 002/01. This in itself posed logistical and organisational problems since there are nearly 4,000 civil parties from all over the country. Although some printed materials are made available as people enter the courtroom, further targeted support to those attending would make the experience worthwhile. In addition to the handouts explaining key facts about the case, further oral explanation of the day's proceedings and how this contributes to the trial as a whole would help the civil parties understand what they are witnessing.

The social function of attendance as a means of reaffirming a sense of community of civil parties could also be developed. Although there are the regional civil party forums, the trips to the ECCC could also promote bonds between civil parties and understanding of their role, as an individual and as a group. NGOs and ECCC staff can inform civil parties during their visit of how they contribute and what participation means for the trial. In this way they can understand the significant role they have to play together. However, their role must not be exaggerated. One civil party from Pursat province said they would be "extremely disappointed" were they not given the opportunity to testify in court. It is therefore crucial to ensure that they have a realistic perspective of what they are able to do as civil parties when attending the ECCC.

### PSYCHO-SOCIAL SUPPORT AT APPLICATION STAGE

Psycho-social support is provided for civil parties through a number of mechanisms. The Transcultural Psychosocial Organisation is the primary NGO in this area and provides on-site services for those attending the trial.<sup>37</sup> This support however, focuses on accepted civil parties and their attendance at the Court. Our interviews show that civil parties spoke of 'headaches', 'embarrassment', 'shame', 'anger', and 'pain' from the beginning of the application process. It was not only attendance (or acceptance) as a civil party that may cause trauma, but the act of applying. Therefore, in the future psychosocial support should also be made available when NGOs are visiting potential civil parties

34. Anne Heindel, "Trial Chamber endorses proposed Case 002 Reparation projects 'In Principle'", Cambodia Tribunal Monitor, p. 2. Available at [http://www.cambodiatribunal.org/wp-content/uploads/2013/08/commentary\\_130812.pdf](http://www.cambodiatribunal.org/wp-content/uploads/2013/08/commentary_130812.pdf)

35. Lauren Crothers, "Most ECCC Reparations Projects Secure Funding", *The Cambodia Daily*, April 22, 2014. Available at <http://www.cambodiadaily.com/news/most-eccc-reparations-projects-secure-funding-56910/>

36. ECCC news, "Statement by Elisabeth Simonneau-Fort, International Civil Party Lead Co-Lawyer", 21 February 2014. Available at <http://www.eccc.gov.kh/en/articles/statement-elisabeth-simonneau-fort-international-civil-party-lead-co-lawyer>

37. Please see the TPO website <http://tpocambodia.org/index.php?id=justiceanddrelefforsurvivors>

to assist them with the application process. Depending on the needs of the applicant, the NGO either helps them write the form, or leaves the form with them and returns a few days later. In the first case, there could be a debrief after writing the form, making them aware of how they may feel and providing an opportunity to talk further at that time if necessary. In the second case, counselling could be made available when the NGO returns to pick up the form.

## FUNDING AND STRATEGY FOR VICTIMS

The experience of the ECCC demonstrates the importance of considering victims early in the process. The ECCC has suffered from under-funding of the victims unit/victims support section, which is reflective of broader funding concerns of the ECCC.<sup>38</sup> The lack of money coupled with the massive increase in applications between Case 001 and Case 002 meant that there were many challenges in processing the applications. This research shows that civil parties have felt frustration and uncertainty from the resulting delays. They experienced anxiety from not hearing updates or information. Although it is difficult to make recommendations in this case where the money is simply not available, in any new cases going forward, there needs to be at least be a strategy for victims led by the ECCC including all other stakeholders to inform and update civil parties. For any other cases additional funding is not only needed for reparations projects, but for victim support during the participation process. This is a small amount in terms of what the ECCC costs overall, but it will have a great impact and maximise the money that donors have already committed, ensuring a legacy for victims by the ECCC. For other internationalised criminal courts with large numbers of victim participants, adequate funding needs to be in place early with a coordinated strategy.

## 5. AREAS FOR FUTURE RESEARCH

### COMMUNICATING COMPLEX TECHNICAL ASPECTS OF THE CASE

Many civil parties expressed the desire for the trial to be more expeditious. However, although the Severance Order of September 2011 split Case 002 into a series of shorter trials expressly to ensure that at least one verdict would be reached concerning some

charges,<sup>39</sup> none of those interviewed were aware of this. This is unsurprising since the Severance Order was disputed, subsequently went to the Supreme Court Chamber and was then appealed in 2013.<sup>40</sup> This is a very complex issue but is directly relevant to the concern regarding an expeditious trial.<sup>41</sup> Similarly to the complex and evolving role of reparations, further research needs to be done to find out how best to convey such information to civil parties, which may answer some of their concerns and questions.

### COMMUNICATING KEY ASPECTS OF VICTIM PARTICIPATION

Some civil parties were very uncertain as to what to expect from the outcomes of the trial, the trial process, the role of law/lawyers or the possibilities of reparations. This demonstrates that although these topics were discussed at civil party forums and by lawyers and NGO staff, it was not enough. The civil parties likely have never come into contact with the domestic justice system, let alone an institution such as the ECCC so there needs to be a concerted effort to educate and inform on these topics. This is crucial for civil parties to understand and engage with what is happening at different points. More importantly, there was some uncertainty regarding their role as civil parties and what they can achieve, which is extremely important for them to feel ownership of the participation process rather than just having a passive experience. By giving them knowledge and agency in the process they will not only be civil parties in name, but also active participants. Further research is needed on innovative and creative ways to communicate this information regarding their role and the participation process to civil parties.

### IMPACT OF THE DUCH APOLOGY

As part of the reparations awarded in Case 001, the ECCC compiled all statements of apology made by Duch during the trial into a 27 page document and

39. ECCC news, "Severance of proceedings ordered in Case 002", 22 September 2011

<http://www.eccc.gov.kh/en/articles/severance-proceedings-ordered-case-002>

40. ECCC news, "Trial Chamber issues reasoned decision on Case 002 severance", 26 April 2013. Available at <http://www.eccc.gov.kh/en/articles/trial-chamber-issues-reasoned-decision-case-002-severance>

41. Some NGOs were concerned about how this would impact civil parties whose harm suffered was not related to the charges in Case 002/01 (forced population transfer) including the question of eligibility of reparations. However, the Trial Chamber stated that limiting the scope of facts in this way does not affect civil party participation since the civil parties no longer participate individually but comprise a consolidated group.

38. Open Society Justice Initiative, "Planning and Leadership Now Needed at ECCC", November 2013, p.4.

published 10,000 copies for distribution. A summary of this document was also broadcast through radio and publicised through other media. As interviewees expressed the desire for the accused to take responsibility for their crimes, research is needed on the impact this had. How many people did it reach? Did they feel it was enough?

#### UNDERSTANDING AND IMPACT OF THE CASE 003/4 CONTROVERSIES

Although there were civil party demands for an international standard of justice, the research did not address directly whether the civil parties were aware of the alleged political interference on Cases 003/4, the resignations of ECCC staff or the comments made by the Cambodian Prime Minister against further prosecutions. Further research is needed on whether they have heard of these allegations, and whether this has changed their perception of the standard of justice at the ECCC.

#### POTENTIAL REPARATIONS AND NON-JUDICIAL MEASURES PROJECTS

The Victims Support Section has the responsibility to develop non-judicial measures and externally funded projects that can be awarded as moral and collective reparations. Further research is needed on relevant reparations programmes in other countries and their impact to assist the Victims Support Section in the development of these measures and projects. In addition, there are a number of innovative memorialisation and reconciliation projects in Cambodia by local NGOs and civil society organisations, which could also provide valuable and relevant experience.

## ABOUT THE CENTRE ON HUMAN RIGHTS IN CONFLICT

The Centre on Human Rights in Conflict is an interdisciplinary centre that carries out academic and policy-orientated research in situations of military, political, cultural, social, economic conflict and in transition from authoritarian regimes. Our work addresses the complex and dynamic relationships between human rights and conflict. The CHRC focuses on the interplay between international law and international politics and the legal, political and cultural contests about human rights.

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## IMAGE CREDITS

Photo of the courtroom shows the view from the public gallery on the first day of opening statements for Case 002. This photo is by the Extraordinary Chambers in the Courts of Cambodia and is licensed under [Creative Commons License Attribution-Sharealike 2.0 Generic](https://creativecommons.org/licenses/by-sa/2.0/). Source: <https://www.flickr.com/photos/krtribunal/6375801903/in/set-72157622636544794>

Photo of posters shows some of the materials used to educate civil parties about trauma. Photo by Johanna Herman.