



ADHOC



LICADHO

## **The Participation of Civil Parties before the Extraordinary Chambers in the Courts of Cambodia Must Be Preserved**

The primary concern of FIDH and its member organizations in Cambodia, ADHOC and LICADHO, is to ensure that victims of crimes within the jurisdiction of the Extraordinary Chambers in the Courts of Cambodia (ECCC) are granted with an effective and adequate participation in the proceedings, according to Rule 23 of the ECCC Internal Rules which sets out the purposes of a civil party action to:

- “a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and
- b) Allow Victims to seek collective and moral reparations.”

The nature of the crimes currently before the ECCC is such that an important number of victims was affected. Whilst this may cause procedural and administrative challenges, given the nature of the crimes and the large number of victims, the ECCC should provide an adequate response, in accordance with the procedural rights of victims recognised in the Law on the Establishment of the Extraordinary Chambers and the Internal Rules.

In this regard, FIDH, ADHOC and LICADHO recall the importance of the United Nations Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly on December 16, 2005<sup>1</sup>, and more specifically its provisions on access to justice. According to these principles, the views and concerns of victims should be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.

The organizations are aware of the positions taken by certain judges to be submitted to the ECCC Plenary Session of Judicial Officers, asking to limit the rights of the victims to participate in the judicial proceedings of the Court. The victims should not bear the burden of the dysfunction that may have appeared during the trial of Case 1.

**The unique nature of the ECCC proceedings must be preserved.** The ECCC law shows the unique nature of the Court and reflects a mixture of both national and international criminal law principles. The introduction of civil parties in the proceedings has its origins in the Cambodian criminal legal system<sup>2</sup> (based on civil law tradition). However, it also reflects the progress achieved by international law in terms of the acknowledgement of victims' rights<sup>3</sup>, marked by the adoption of

<sup>1</sup> See UN Resolution [A/RES/60/147](#), 16 December 2005.

<sup>2</sup> See Articles 162, 258, 259, 313, 355, 375 and 393 of the Cambodian Criminal Code (CPPC).

<sup>3</sup> Eg. United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; Updated set of principles for the protection and promotion of human rights through action to combat impunity 8 February 2005, E/CN.4/2005/102/Add.1 and Report of Diane Orentlicher, independent expert to update the set of principles to combat impunity, 18 February 2005, E/CN.4/2005/102.

the Rome Statute.<sup>4</sup>

The civil party status allows victims of the crimes to have access to the courts in order to represent their interests. In doing so, they are acting in their capacity as directly and individually affected by the crimes. Therefore, victims who are considered as civil parties within criminal proceedings are granted with a wide range of rights, and not only with the right to claim reparations. The aim of giving them those rights is to influence the decision of the court by conveying information on their views, interests and concerns to the prosecutors, the investigating judges and judges while at the same time allowing them to prove the prejudice they have suffered as a consequence of the commission of the crimes and claim reparation for this prejudice.

It is precisely because the ECCC is the first international court to allow extended victims participation that this experience should be continued through the trial of Case 2. Victims will have an essential role in the second trial. The important number of victims may require some adjustments, including the organisation of a common legal representative system, although the existing framework of the civil parties system should remain.

The International Criminal Court Trial Chamber II, in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, has resorted to a common legal representative system, grouping victims, originally represented by eight different lawyers, into two legal teams. One of the arguments used by the Court was that this group of victims had special characteristics which allowed a single common representative to represent their interests. All victims in this case were affected by one particular attack. Therefore, the Chamber decided that at first hand no tensions were visible between them in terms of ethnicity, age, gender or the type of crimes they were allegedly the victim of.<sup>5</sup> Moreover, the Trial Chamber left the door open to reassess the common legal representation if in the future any conflicts of interests were raised<sup>6</sup>.

**A common legal representation system, if adopted by the ECCC, must abide by a certain number of principles.** The right of civil parties to be represented by a lawyer of their choice has the purpose to guarantee that his/her views and interests are well represented by a person of his/her trust. However, the modalities of the representation might be modified to adapt them to the particularities of the proceedings, keeping in mind that the freely chosen lawyer has to be granted the possibility of expressing his/her client's views at any time of the proceedings.

Any common legal representation system adopted by the ECCC should take into account that: a) victims are granted with the same rights than at national level; b) multiplicity of views should be able to be known to the Court; c) the system should aim to avoid duplication or repetition of same matters by civil parties' legal representatives; d) encourage the presentation of common written filings; and f) allow legal representatives to verify that his/her client's interests are well represented. The set-up of an adequately equipped and suitable support structure will be key for its success for any system adopted by the ECCC.

Finally, an effective coordination system should benefit from the full cooperation of the civil parties' lawyers. Therefore, FIDH, ADHOC and LICADHO strongly urge the ECCC Plenary Session of Judicial Officers to adopt a system that reflects the civil parties' lawyers and intermediaries' views and concerns.

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<sup>4</sup> See Articles 68 and 75 of the Rome Statute on the International Criminal Court.

<sup>5</sup> See Paragraph 12 of the decision *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Order on the Organisation of Common Legal Representation of Victims, Trial Chamber II, 22 July 2009, ICC-01/04-01/07.

<sup>6</sup> See Paragraph 16 of the decision *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Order on the Organisation of Common Legal Representation of Victims, Trial Chamber II, 22 July 2009, ICC-01/04-01/07.