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THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

Opening of the Trial in Case 002 : Expectations of Victims from Here and Abroad

Press kit

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



On 21 November 2011, the trial in Case 002 before the Extraordinary Chambers in the Courts of Cambodia (ECCC), targeting four senior Khmer Rouge leaders for crimes against humanity, genocide and war crimes, is opening. The International Federation for Human Rights (FIDH) and its member organisations in Cambodia, the Cambodian Human Rights and Development Association (ADHOC), and in the USA, the Center for Justice and Accountability (CJA), take this opportunity to highlight lessons learned from the previous trial and proceedings, especially as regards Civil Parties participation and reparation, and to leave the floor to victims from Cambodia and from the diaspora to express their expectations for this important trial.

The long road to the establishment of a hybrid tribunal to try Khmer Rouge leaders

Almost two decades after the collapse of the Khmer Rouge regime headed by Pol Pot, responsible for millions of deaths and the commission of countless grave human rights violations and international crimes, the Cambodian Co-Prime Ministers requested in June 1997 the assistance of the United Nations (UN) to organise the process for the Khmer Rouge trials. In December of the same year, the UN General Assembly adopted a resolution (A/RES/52/135) on the human rights situation in Cambodia, affirming the willingness of international community to see the crimes of the Khmer Rouge investigated, qualifying them as crimes of genocide and crimes against humanity.



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The negotiations between the UN and Cambodian authorities went on for six years. A Memorandum of Understanding (MoU) was signed in 2000 establishing a framework for cooperation between the UN and Cambodian authorities towards the creation of a hybrid tribunal, containing elements of both Cambodian and international law. In August 2001, the Cambodian National Assembly passed a law creating a hybrid tribunal, which was not entirely consistent with the MoU. A final agreement between the UN and the Cambodian government was reached in March 2003 and the Law on the Establishment of the **Extraordinary Chambers in the Courts of Cambodia (ECCC)** - amending the 2001 Law - was promulgated on the 27th October 2004.

However it was not until the 18th January 2006, that the Extraordinary Chambers in the Courts of Cambodia were formally established, and until the 8th May 2006, that the judges and prosecutors, Cambodian and international, were appointed. On 12th June 2007, after a long and complex process, the Internal Rules of the ECCC were adopted.

Jurisdiction of the ECCC

Temporal Jurisdiction: 17th April 1975 to 6th January 1979

Territorial Jurisdiction: The territorial competence of the ECCC was not specified. It is thus up to the Extraordinary Chambers to determine whether their jurisdiction is limited to the territory of Cambodia or if they could exercise their jurisdiction independently of the place where crimes were committed.

Personal Jurisdiction: Senior leaders of Democratic Kampuchea and those who bear the greatest responsibility for the violations and crimes under the ECCC jurisdiction.

Subject Matter Jurisdiction:

The ECCC apply national and international law. The 2004 ECCC law indicates that Cambodian law will hold primacy over international law. If there are inconsistencies and gaps in Cambodian law, guidance will be sought in international law.

- Crimes under international law: genocide, crimes against humanity, grave breaches of the Geneva Conventions, destruction of cultural property protected during an armed conflict pursuant to the 1954 Hague Convention for Protection of Cultural Property in the event of Armed Conflict.

- Crimes under national law: murder, torture, persecution on religious grounds.

Structure of the ECCC

The ECCC are of hybrid nature not only in the fact that they apply Cambodian law as well as international law, but also in their structure, which provides for an international participation.

- **At the pre-trial stage**, international and national participation are equivalent. Investigations are carried out by one international and one Cambodian Co-Prosecutor (Ms. CHEA Leang and Mr. Andrew T. CAYLEY) and one international and one Cambodian Co-Investigating Judge (Judge YOU Bunleng and Judge Siegfried BLUNK, who recently resigned), with identical powers. Any disagreement between them is settled by the Pre-Trial Chamber, composed of 5 Judges, 2 international and 3 Cambodian (including the presiding Judge).

- **At the trial stage**, international participation is minor. The Trial Chamber is composed of 5 Judges, 2 international and 3 Cambodian (including the presiding Judge) and decisions require a “super majority” of at least 4 Judges. The Appeals Chamber is composed of 7 Judges, 3 international and 4 Cambodian (including the presiding Judge) and decisions require a “super majority of at least 5 Judges.

A single appeal lies directly to the ‘Extraordinary Chamber’ of the Supreme Court.

Cases before the ECCC

Case 001 – against Kaing Guek Eav (a.k.a. “Comrade Duch”)

- Born in 1942, “Duch” ran the notorious S-21 / Tuol Sleng detention and torture center in Phnom Penh during the Khmer Rouge regime.
- He was detained by Cambodian authorities in a military prison since 1999.
- Charged with crimes against humanity he was provisionally detained by the ECCC on **31 July 2007**.



Mr. Kaing Guek Eav, alias “Duch”, during trial proceedings,
© Courtesy of the ECCC

- His trial began on **30 March 2009** and lasted until **26 July 2010**, when the Trial Chamber decided to sentence him to **35 years of imprisonment for crimes against humanity and war crimes**. He was convicted for the crime against humanity of persecution (extermination, encompassing murder), enslavement, imprisonment, torture (including one instance of rape) and other inhumane acts, as well as for grave breaches of the Geneva Conventions of 1949 (wilful killing, torture and inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian of the rights of fair and regular trial, and unlawful confinement of a civilian). His sentence was reduced to 19 years, the Judges taking into account the time served and his illegal detention in a military prison.
- An **appeal** of the judgement, by the Defence (challenging in particular the Trial Chamber’s jurisdiction over Duch), the Co-Prosecutors (requesting a life sentence and the inclusion of all crimes), as well as Civil Parties (appealing the exclusion of certain Civil Party applications and decisions on reparations) is pending. Appeals hearings took place in March 2011 and the Supreme Court Chamber declared it would pronounce its judgment by the end of 2011.
- A total of **93 Civil Parties** participated in the trial proceedings of Case 001 (3 withdrew their application in the course of trial proceedings). The Civil Parties were organised into four groups, each represented by their own counsel. 22 Civil Parties were heard during the course of trial. However, the Trial Chamber rejected 24 Civil Parties Application after the trial judgment.

Case 002 – against Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan

Case 002 concerns four former senior Khmer Rouge officials, Mr. **Nuon Chea** (a.k.a. “Brother Number Two”), chief ideologist and right-hand man of Pol Pot, Mr. **Ieng Sary**, former Foreign Minister and Deputy Prime Minister, his wife Ms **Ieng Thirith** (a.k.a. Sister Phea), former Minister of Social Affairs, and Mr. **Khieu Samphan**, former head of State.



© Courtesy of the ECCC

After the Co-Prosecutors filing of 18 July 2011 requesting the Co-Investigating Judges to investigate, the four former Khmer Rouge leaders were arrested in September 2007 (for Nuon Chea) and in November 2007 (for the three others). Whereas ‘Duch’ was one of the targeted persons in the Co-Prosecutors initial filing, the Co-Investigating Judges decided in November 2009 to split the cases and prosecute him separately. The four remaining officials were then indicted on 15 September 2010 and charged with crimes against humanity (incl. extermination, enslavement, torture, persecution), genocide (of the Cham and the Vietnamese), war crimes (incl. wilful killing, torture, inhumane treatment) and other counts of crimes under Cambodian law (homicide, torture and religious persecution). On 13 January 2011, the Pre-Trial Chamber confirmed the indictments with minor changes.

Case 002 has looked at certain sites and criminal activities, including 3 instances of mass displacement of the population, 6 cooperatives and worksites, 11 security centers and 3 execution sites, crimes against the Cham, the Vietnamese and Buddhists and regulations of marriage.

Initial hearings were organised in June 2011 by the Trial Chamber to discuss preliminary procedural issues and consider possible witnesses to be heard. Preliminary hearings on the issue of fitness to stand trial for the accused Ieng Thirith and Nuon Chea took place in August and October 2011, for the Trial Chamber to examine reports by medical experts. Preliminary hearings on the issue of reparations were also conducted in October.

On 22 September 2011, the Trial Chamber issued a **severance order** decided the **sequencing of the trial** in Case 002, cut into multiple trials defined by subject matter, with each trial focusing on distinct portions of the Indictment. The first Case 002 “mini trial” or sequence will concern forced movements or evacuations from Cambodia’s cities to rural areas from 17 April 1975 to mid-1976, and related crimes against humanity. It will also provide a general foundation for all allegations against the accused, including the examination of the structure of Democratic Kampuchea, the roles of each accused before and during the period and policies of the Democratic Kampuchea government.

Co-Prosecutors appealed this order, arguing that there was a need for reformulation in the interest of justice, which was rejected in October 2011. Certain Civil Parties and their lawyers also criticised this decision, which does not meet Civil Parties interests.

The **substantial hearings** of the trial in Case 002 will open on **21 November 2011**. Opening statements, by both Co-Prosecutors and Defense, are scheduled to take place from 21 to 24 November 2011, the hearings on evidence beginning on 5 December 2011.

3866 Civil Parties were admitted to participate in Case 002 proceedings, represented collectively, representation coordinated by two Co-Lead Lawyers.

Cases 003 and 004

On 9 September 2009 the International Co-Prosecutor filed an Introductory Submission on alleged crimes in Cases 003 and 004, naming five suspects. Two months later, in November 2009, the Pre-Trial Chamber decided to forward Cases 003 and 004 to the Co-Investigating Judges. Although not named by the ECCC, the identities of the two former officials suspected in Case 003 have been widely reported as being Khmer Rouge air force commander Sou Met and navy commander Meas Muth. Case 004 involves three individuals. In both cases, indications of political interference and a disturbing lack of transparency raised concerns, of Civil Parties and civil society in particular, as regards developments in Cases 003 and 004.

Concerning Case 003:

- On 2 February 2011 Co-Investigating Judges declared that their work in Cases 003 and 004 focused on “examining and analyzing the documents available on the Case Files... particularly in the previous Cases Files 001 and 002”, and that, at that stage, no field investigation was being conducted. It is on 29 April 2011 that the Co-Investigating Judges stated that their investigation in Case 003 was concluded.
- On 9 May 2011, the International Co-Prosecutor filed requests for further investigative actions and for a supplementary delay for Civil Party Applications in Case 003 and made a public statement about his requests. Taking into consideration the Co-Investigating Judges Order of 18 May 2011 and the Pre-Trial Chamber’s considerations of 24 October 2011, the International Co-Prosecutor decided on 27 October 2011 to retract his public statement of 9 May 2011 on Case 003.
- On 7 June 2011, Co-Investigating Judges decided to reject the International Co-Prosecutor’s different requests considering that the exceptions for a solitary action by one Co-Prosecutor (record of a delegation of power or a disagreement) were not met. Three days after, the International Co-Prosecutor resubmitted three investigative requests and a request for an extension of the deadline for filing Civil Party Applications in Case 003, after having recorded four Disagreements as requested by Internal Rules. He also filed a notice of appeal against the Co-Investigating Judges’ rejection order to the Pre-Trial Chamber, stating that he does not accept their interpretation of the law.
- The International Co-Prosecutor’s appeal of Co-Investigating Judges decision of 7 June, rejecting his requests for further investigative actions and for a supplementary delay for Civil Party Applications in Case 003, is still pending.

Concerning Case 004:

On 16 June 2011, the International Co-Prosecutor informed the public that he filed a request for investigative action and a supplementary submission to the Co-Investigating Judges as regards the ongoing investigations in Case 004.

As of 30 August 2011, the Victims Support Section (VSS) had received **382 Civil Party Applications** for Cases 003 and 004.

Case 002 - The issues at stake as regards victims' participation and reparation

- **The Civil Party figure must be preserved**

The ECCC law as regards victims' participation 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 system¹ (based on civil law tradition). However, it also reflects the progress achieved by international law in terms of the acknowledgement of victims' rights², marked by the adoption of the Statute of the International Criminal Court (ICC).

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 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 002. 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, but "every victim of the Khmer Rouge holds a piece of truth about that dark period and their involvement will greatly increase the ability of the ECCC to create a comprehensive picture of the period"³. The rights of victims should not be infringed.

However, the February 2010 revision of the ECCC International Rules and recent judicial developments appear to restrict Civil Parties rights.

In order to improve coordination among Civil Parties and their lawyers and avoid possible delays in trial proceedings for Case 002, the ECCC Plenary of Judges decided to amend the ECCC Internal Rules and create the figure of Civil Party Lead Co-Lawyers (CP LCL), in charge of representing the interests of the consolidated group of Civil Parties. These two Lead Co-Lawyers, one international and one Cambodian, are supported by all Civil Parties Lawyers (CPL) chosen by victims.

If the creation of the position of CP LCL is positive, the lack of clarity as regards the powers of each lawyer and the lack of any mechanism for the settlement of genuine strategy disputes between CP LCL and CPL, raise concerns.

Moreover, recent decisions by the Trial Chamber, failing to notify Civil Parties Lawyers of important case documents (only notifying CP Lead Co-Lawyers), indicate that the role of Civil Parties Lawyers is diminishing. These developments create a rare situation in which Civil Parties are not treated equally if participating at the Pre-Trial stage or at the Trial stage. "While in the

1. See Articles 162, 258, 259, 313, 355, 375 and 393 of the Cambodian Criminal Code (CPPC).

2. 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 promotions 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.

3. Kate Yesberg, « Assessing Justice Through Victim Participation at the Khmer Rouge Tribunal », in 40 VUWLR, 2009, p.568.

pre-trial proceedings civil parties are free to choose their counsel, once the trial stage begins, they lose the power of choice over their representation”⁴.

In addition, the rights of victims granted by their Civil Party status seem to be infringed. For example, Civil Parties lawyers do not have the right to make preliminary remarks, contrary to the Prosecution and Defense, who will deliver their opening statements during the 21-24 November hearings of the Case 002 trial.

Also, the sequencing of the trial in Case 002 into different “mini trials”, each focusing on a different portion of the indictment, does not enable recognized Civil Parties to act as such (that it to be heard, cross-examine witnesses or request reparations) throughout the trial, and artificially divides Civil Parties’ harms and suffering in the name of judicial management of the case file.

Victims and more specifically Civil Parties in Case 002 should not bear the burden of the dysfunction that may have appeared during the trial of Case 001. The Civil Party figure as initially conceived by the ECCC, innovative for an international(ized) tribunal, should be preserved.

- **Victims’ Right to Remedy: Awarding Meaningful Reparations at the ECCC**

The Extraordinary Chambers in the Courts of Cambodia’s reparations scheme has the potential to be the Court’s most remarkable contribution to Cambodian victims and the development of international law. Although monetary reparations are not available to survivors participating in the trial, the Court has the ability to issue collective and moral reparations that acknowledge the harm of the victims at the hands of crimes committed by the accused.

Case 001 Judgment on Reparations

In the first case to reach verdict before the Court, against KAINING Guek Eav *alias* Duch, only a small fraction of the 28 reparations requests put before the Trial Chamber by Civil Party Lawyers were granted, in part due to the Court’s application of a stringent test that was not contained in the Internal Rules, causing some observers to note that the reparations judgment in Case 001 offered “nothing of real value for civil parties.” The reparations granted included the publication of the names of the Civil Parties in the final judgment including descriptions of their connection to S-21 as well a compilation of Duch apologies.

The remaining 25 reparations requests were rejected. Some of these requests included the construction of pagodas, educational programs and psychological and medical care for victims. The requests were either explicitly denied or simply not included with the granted awards and frequently without related discussion or analysis. The Chamber’s rationale for its rejection of reparations claims in Case 001 can be broken down into the three main categories: lack of specificity; insufficiently moral, collective (or symbolic) in nature; and overreaches the mandate of the Court by compelling governmental action or involving the Court in the enforcement and/or implementation of reparations awards. The Chamber’s decision on reparations in Case 001 is currently under appeal before the Supreme Court Chamber. Oral arguments on the reparations appeal were heard in late March 2011. The Chamber has stipulated that its decision on the appeals to Case 001 will be rendered by the end of the year.

Case 002: repairing reparations

On 19-20 October 2011, the Trial Chamber for Case 002 heard an oral presentation on the initial reparations requests, presented by the Lead Co-Lawyers (LCLs) for civil parties. At this time, the LCLs stated that civil party reparations requests will fall under four broad categories: (1) Remembrance and Memorialization Requests (incl. stupas and monuments, commemoration of names of victims, preservation of crime sites); (2) Rehabilitation and Health Services (incl. health centers for elderly, low-income victims); (3) Documentation and Education (incl. preservation of

4. Andrew F. Diamond, « Victims once again ? Civil Party participation before the ECCC », in Rutgers Law Record, volume 38, 2010-2011, p.45.

Khmer Rouge documents used to teach history, creation of dedicated museums and libraries); and (4) Other Projects (incl. establishment of trust fund to manage voluntary monetary donations for implementing reparations). Following this hearing, Civil Party Lawyers must prepare a final submission on reparations for the end of the trial. The submission will include the final list of reparations requests as well as detailed description of the mode of implementation for the reparations requested.

As the first internationalized court to offer reparations to victims of mass atrocities, the ECCC is an international standard-setting institution. In spite of amendments to the Rules, which were adopted throughout Case 001 and in the time since, significant ambiguities and contradictions still surround the norms and practices governing reparations at the ECCC.

- Less specificity for reparations requests: Civil Parties, through their lawyers, want to avoid the problems that arose in Case 001 and meet pleading standards for reparations that will result in substantive awards that adequately acknowledge the harm of the parties. However, the standard of proof required of Civil Parties in submitting reparations requests remains unclear. Namely, the Rules do not articulate the information Civil Parties must provide to identify, with specificity, the reparations awards they seek.
- Indigency of Accused should not be considered in reaching a decision on Civil Party reparations: Though the purported indigency of the Accused seems to have given the Chamber pause in awarding reparations against Duch in Case 001, it must ensure that such considerations are given no weight in their judgment on reparations in Case 002, given that neither domestic nor inter
- Adoption of a definition and understanding of “collective and moral” reparations that coincides with those applied in international(ized) tribunals and collective reparations programmes around the world and dedication of a section in the reparations judgment to the Chamber’s evidentiary findings on the harm caused to Civil Parties as a consequence of the offences of the Accused. Indeed, the judgment in Case 001 takes a narrow view of “collective and moral” reparations that neither comports with international law and practice, nor the object and purpose of these types of reparations. In addition, the judgment in Case 001 failed to provide a meaningful discussion on the harm of the victims and the Chamber did not issue a reasoned decision for accepting and rejecting each reparations request.
- Determination of what body should be established to manage and oversee reparations funds and project. The Court should appoint an expert or a working group of experts to liaise with the Court Administration, Victim Support Section, and the Lead Co-Lawyers to determine what type of body should be established to manage and oversee reparations funds and projects that will outlast the life of the Court. This will be especially critical in the event the Court orders the costs of one or more award(s) to be borne by the convicted person per Rule 23quinquies(3)(a), as the funds can only be collected once the judgment is issued and any appeals decided. Such an expert can advise the Court on institutional measures that can be taken and infrastructure established to ensure that the potential for adequate and meaningful reparations before this Court are realized.

The Court should not take an unnecessarily narrow view of reparations in Case 002. This would diminish its ability to provide meaningful relief to Civil Parties who need the Court to pave the way for the Case 002 judgment to translate into justice for Cambodians.⁵

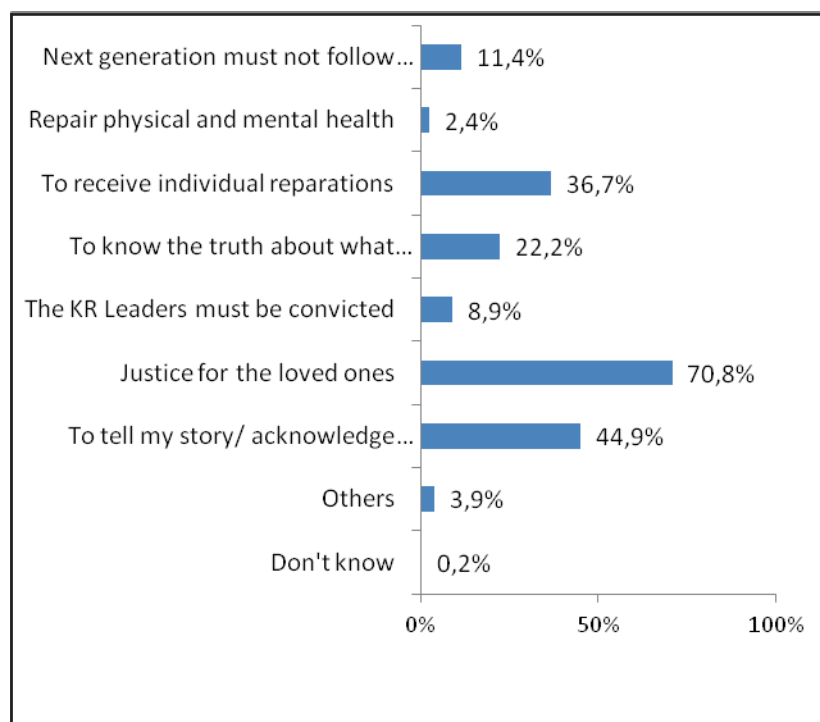
5. These recommendations are derived from a report entitled Victims’ Right to Remedy: Awarding Meaningful Reparations at the ECCC, co-authored by Access to Justice Asia LLP, the Center for Justice & Accountability, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law. The full report is available at this conference and on the respective websites of each institution: www.ajassa.org; www.cja.org; and www.law.berkeley.edu/ihrclc.htm.

Civil Parties Motivation on participation and expectations on reparation : Preliminary Survey Data from ADHOCs baseline study 2011

From May to October 2011, ADHOCs in collaboration with the Center for Advanced Study and researchers, conducted a baseline study of 414 civil parties. These were randomly selected from a comprehensive list of ADHOC's civil parties as of May 2011.

The majority was female (59.7%) and married (68.6%). The average age was 58.1 years. The majority 87.9% was ethnic Khmer and 8.7% was Cham. Conversely, 88.4% were Buddhists and 8.9% were Muslims. Half of the participants (51.9%) were farmers whereas about one out of ten were street market sellers (12.8%). About two third (71%) stated that they can read and write.

Figure 1: Motivation of participation as a civil party in case 002



Motivation on participation as a Civil Party

In the interview the participants stated that their motivation to participate in the ECCC as a civil party were to receive justice for the relatives who died under the Khmer Rouge (70.8%), to tell their personal story and receive acknowledgment for their suffering (44.9%).

Other reasons were to receive individual reparations (36.7%) and to know the truth of what has happened to their relatives during the regime, and to prevent the next generation from committing such atrocities (11.4%).

The overall experiences as a civil participant so far is perceived as positive (99.3%).

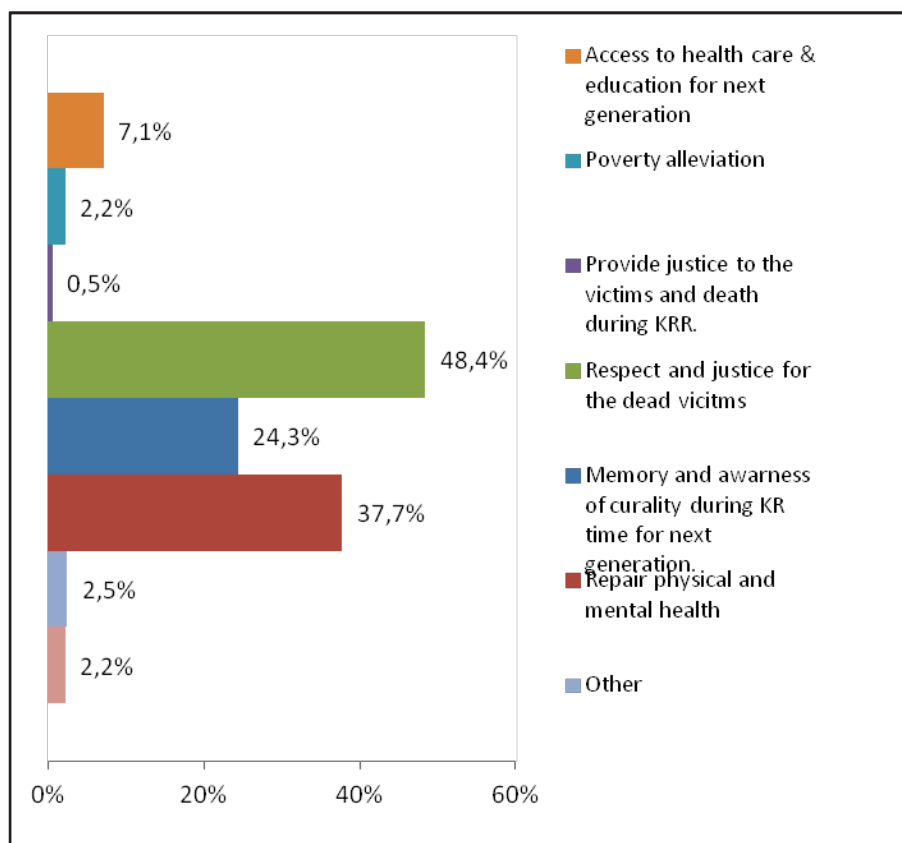
The interviewees stated that being a civil party gave them hope in the future (95.9%), made them feel “mentally” stronger (85.7%), and helped them to accept the loss of their loved ones (82.6%). Moreover, meeting and having exchange with other KR survivors made the respondents feel better about their painful past (96.1%).

In regards of justice, respondents answered that being a civil party, gave them a sense of justice (98.6%). And that they have a great trust in the law (97.8%) it

Moreover, civil party participants answered that they think the ECCC will bring justice to the victims of the Khmer Rouge and/or families (95.4) and that the ECCC will help in rebuilding trust in Cambodia (92.5%) and national reconciliation (92%).

Expectations in regards of reparations

Figure 2: Importance of reparations for Civil Parties



The interviewees were asked of the importance of collective and symbolic reparations for the victims. Almost all participants (97.3%) answered that this was of high importance to the victims of the Khmer Rouge. Only 2.5% did not think it was important and 0.3% was not sure.

The study aimed at finding out about the reasons of why reparations were important and what kind of meaning and impact they have for the victims. The victims stated that reparations will provide justice to the victims of the KR and to those who died during the regime (48.4%) and help to alleviate physical and mental health suffering (37.7%). Moreover, participants stated that reparations will help to keep the memory of crimes committed during the KR regime (24.3%) and raised awareness for the next generations so that those atrocities are not forgotten.

The results of the survey will be available soon.

Civil Parties in Case No. 002 from abroad: Cambodians in the United States of America and in France

Cambodians in the United States Diaspora

Dr. Leakhena Nou, director of ASRIC

Between 1975 and 1994, approximately 157,518 Cambodians resettled in the United States as refugees. The first wave of Cambodian refugees arrived in the United States during the Khmer Rouge regime (1975-1979); this wave of Cambodians included many refugees who had narrowly escaped the worst of the Khmer Rouge's brutality. Later waves of refugees and displaced persons, arriving from Cambodia (frequently via Vietnam or Thailand) after 1979, had experienced unprecedented rates of traumatic life events (such as imprisonment without cause or judicial recourse, torture, starvation, and witnessing multiple killings) at the hands of the genocide perpetrators. The Cambodians who survived the Khmer Rouge and the difficult journey to the United States faced additional, significant, post-resettlement challenges. Many Cambodians continue to face significant health challenges that stem from the traumas suffered under the Khmer Rouge as well as the mental-health legacy of those events, to the extent that today nearly all Cambodians face significant challenges in fully integrating into mainstream American society.

Among the Southeast Asian refugee population in the US, an estimated 86% of the Cambodian refugee population is affected by serious mental health issues, including PTSD and severe depression. Surviving the Khmer Rouge genocide affected both the individual and collective psyches of the Cambodian people.

At the individual level, many Cambodians report having psychosomatic and psychological symptoms associated with fatalistic thinking, social isolation, and hopelessness in one's life. Thoughts of suicide and feelings of "having a lost soul" are common. At the community level, they say that a lack of improvement in poverty and education causes embarrassment and confusion in identity for Cambodians. They share culturally based reactions to mental health problems arising out of their experiences; these include depression, headaches, constant worrying, and having somatic complaints and feelings of being crazy. An additional mental-health challenge is the tendency for problems to worsen over time among Cambodian genocide survivors and their children; the strong cultural stigma against discussing mental health concerns (even with close family and friends) or seeking mental health treatment and services means that parents struggle with significant psychosomatic and psychological symptoms that leave little mental energy for anything else—even their children—while those same children struggle to assimilate to American culture and define their Cambodian identity. Thus, the effects of the Khmer Rouge are passed from the first generation of survivors to the second.



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One of the more pressing judicial concerns facing Cambodians in the diaspora is the ongoing prosecution of the former leaders of the Khmer Rouge for crimes against humanity, genocide, and war crimes. Prosecution of Khmer Rouge officials is a critical step in the promotion of psycho-emotional health among all individuals affected by the Khmer Rouge trauma—no matter where they currently reside—and the social health of Cambodia for generations to come. This is why many Cambodians in the United States decided to participate directly in Case 002 as civil parties. Participation in the prosecution of Khmer Rouge officials is a critical step in the promotion of psycho-emotional health among all individuals affected by the Khmer Rouge trauma—no matter where they currently reside—and the social health of Cambodia for generations to come.

CJA Civil Party: **Sophany BAY**

Sophany Bay was a schoolteacher and the wife of an anti-communist military officer when the Khmer Rouge invaded Phnom Penh in 1975. Her husband at the time was in the United States for military training and she was forced to leave her home with her three young children alone, walking through the forest for days before being forced into labor camps. Sophany lost all three of her children during the war as a result of the Khmer Rouge atrocities. Bay eventually escaped to Thailand, where she lived in the Khao I Dang refugee camp. Meanwhile, her husband, Sarit, had been searching for news of his wife. He eventually learned through former refugees that she had been seen alive at the camp and in 1983, Sarit managed to bring Sophany to the United States.

As Bay puts it, “I am the most victim of the Khmer Rouge regime. They killed my whole family, they killed my children.” She believes the Khmer Rouge leaders “have to take responsibility for that regime. Even they didn’t kill, they didn’t use their hand to kill my son or my father, but the high authority (are) supposed to take responsibility for that regime.” According to her statement, “For more than three decades, I waited to see justice. When I and other victims can see justice has [been] done, we will be able to calm our sufferings, to have less depression and fewer nightmares. We are getting old. We want to see justice before we die.”



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CJA Civil Party - **Sarem NEOU**

In 1975, Sarem Neou left Cambodia on a one-year scholarship to study in France. During this time, her husband and two children remained in Cambodia. When the Khmer Rouge took over, she returned to Cambodia so she could be reunited with her family, unaware that the country would be forced to endure extreme hardship and human rights atrocities. However Neou never saw her husband and children again and she was forced to remain in a camp for returned Cambodians throughout the duration of the war. She later discovered that her parents, husband, siblings, and two daughters, among other family members, died during the Khmer Rouge regime. Following the war, Neou moved to the United States and has lived here ever since.

As a participant in the ECCC, Neou would like to see an education system developed in the Cambodian schools that teaches Cambodian youth about their country's history. She also wants to see funding for counseling services for victims. Neou states, "As a survivor and human being, I have a responsibility to find justice for the dead. Cambodians cannot heal and move on with their lives without knowing the truth."

A long awaited trial: trauma and testimony

Mrs. Diana Kolnikoff, TRACES

For over thirty years, victims of the genocide perpetrated by the Khmer Rouge regime have been waiting for impunity to end and for the international community to officially and legally recognize and condemn the perpetrators of one of history's most criminal regimes that killed nearly one third of their own population. Now the time has come to testify and to tell the stories stored up for all these years in the hearts and minds of the victims.

What does it mean for the victims participating in this trial to testify and what are the psychological implications?

The victims coming from the diaspora have often suffered a double trauma: persecution and exile. Often they are looked at as the "lucky ones", not only as survivors, but as having had the possibility to start a new life elsewhere. This is true and not true. They have been cut off from their language, culture and loved ones and implicitly obliged to turn the page on their past in order to adapt to their host's culture. Sad memories must be put aside in order to "look toward the future" as it is often asked of refugees. But traumatic memory can't be put aside in a corner, or forgotten. It is always there in the background ready to suddenly emerge, painfully intact, despite the passage of time, sometimes at the smallest evocation: a word, a smell, a noise.

Therefore to testify has many implications, and even obligations: "I who have survived must represent those, deceased, who cannot be here to tell their story." Primo Levi and other famous survivors felt the necessity and moral duty to leave a written trace of the traumatic events they endured. There is a feeling of solidarity to one's people by taking the risk to participate in this so long desired historical moment. And yet it is impossible to tell everything, all the details of one's personal itinerary during a trial. A witness is always partially heard. For the victims there can be frustration and even disillusion after waiting so long.

The return to one's homeland and re-memorizing the traumatic events often reactivate suffering. Physical and psychological symptoms caused by past political violence may reappear. As for the outcome of the trial and eventual reparation, can they possibly replace loss or help to alleviate decades of often unspoken sadness?

Despite all these difficulties and emotions that have to be dealt with during the trial, each and every victim feels it is essential to be there, and wants to participate in the end of impunity and the recognition by the international community of crimes against humanity committed by the Khmer Rouge officials against Cambodians like themselves.

What is important – including for TRACES and FIDH - is to take these psychological elements into account and to offer to victims, survivors and witnesses we are accompanying, the possibility to express their different feelings and emotions during and after the trial. It is necessary not to let silence and solitude, trauma's old and faithful companions, once again prevail.

FIDH Civil Party – KHIOU Vatak

Khieu Vatak left Cambodia on the eve of Phnom Penh's invasion by the Khmer Rouge. He lost his mother, two brothers and three sisters, who stayed in Cambodia while he left the country each of whom had children. "The most difficult for me is not knowing what happened to my mother, not knowing the truth" he says. For him, it is important to know why leaders of his country decided to elaborate a plan and kill millions of people. *"All Khmer Rouge leaders and officials responsible for the crimes committed should be held accountable!"*

FIDH Civil Party – MEA Chhin

After the invasion of Phnom Penh by the Khmer Rouge, MEA Chhin, who already lost her husband who occupied an official position at Province level and had been previously abducted by the Khmer Rouge, was forced to evacuate the city, with her 7 children, passing through different villages before being transferred to Pursath. They went through different camps, including Baktra, where they were starving while submitted to forced labour. *"I have lost more than half of my family members. Even years after what happened, I constantly think of them. I need to know what happened. I want justice to be done!"*

FIDH Civil Party – UNG Billon

Widow of Mr. UNG Boun Hor, former President of the Cambodian National Assembly, Ung Billon decided to participate as Civil Party before the ECCC for the loss of family members. *"For the memory of all my sisters and brother and their children, I want the truth and I demand justice."* *"It is also important that the history of the genocide is taught to the Cambodian children of today, so that this can not happen again."*

FIDH Civil Party – ROS Chuor-Si Y

In 1971, Ros Chuor-Si Y's husband went to Nice (South of France) to do his thesis in air law. Ms Ros joined him with their three daughters in 1972. Ieng Sary, Minister of Foreign Affairs, was travelling in Europe at that time, and publicly encouraged Cambodians—in particular intellectuals—to go back to Cambodia to contribute to the reconstruction of the country, guaranteeing that there would be no risk for their security. After the fall of Phnom Penh in 1975, rumours came to their ears that people were mistreated, but because of the years of propaganda, they did not believe them and decided, end of 1975, to go back, prepared to work hard for their country. In August 1976, they succeeded in entering Cambodia via Peking, but at their arrival at the Phnom Penh airport, senior members of the Communist party confiscated their passport and took them to a transit camp (Camp 15), where they stayed less than a month. Very quickly, they were starving. Ms Ros, her husband and their three daughters were then transferred to the camp of Taley, where they were submitted to forced labour. They were then transferred to Boeung Trabek. In November 1976 Ms Ros' husband was called by the Angkar after participating in a "session of re-education". She never heard from him again. Several months later, her daughters and her were transferred to Dey Krahâm, before being taken again to Boeung Trabek end of 1978, where they stayed until January 1979. A rush and unorganised evacuation of the camp led them to travel in different directions, losing sight of each other, until they succeeded to go back to Phnom Penh, staying in the suburbs of the city.

"Senior members of the Khmer Rouge asked more than 2000 people living abroad to go back to Cambodia for the reconstruction of their country. But they then accused them of being part of the KGB and CIA, tortured them and led them to death". Ms. Ros acts as Civil Party to demand truth and justice.



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The FIDH, ADHOC and CJA mobilisation

FIDH, ADHOC and CJA invite you to a conference “Opening of the trial in ECCC Case 002: Expectations of Victims from here and abroad”, held on 21 November 2011, from 6.30pm to 8.30pm at the Sunway Hotel Phnom Penh.

FIDH

The International Federation for Human Rights (FIDH) is a 1922 established international human rights NGO, with headquarters in Paris, France, which today unites 164 member organisations in more than 100 countries around the world. It has two member organisations in Cambodia: the Cambodian Human Rights and Development Association (ADHOC) and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO). FIDH coordinates and supports the member organisations’ activities and provides them with a voice at the international level. FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights. It takes action for the protection of victims of human rights violations, for the prevention of human rights abuses and for accountability of perpetrators.

Through its Litigation Action Group (LAG), a network of magistrates, lawyers and academics, FIDH provides legal and judicial support to victims of torture, crimes against humanity, war crimes and genocide, throughout legal proceedings before national, international and hybrid tribunals, in order to implement their rights to truth, justice and reparation. Through its partnership with the association TRACES, a network of psychologists and psychoanalysts specialized in political trauma that has a long experience in the complex situation for victims of giving testimony in long awaited trials, FIDH provides also psychological support to victims participating in judicial proceedings.

FIDH contributed to the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC), responsible for trying former leaders of the Khmer Rouge regime for international crimes committed between 1975 and 1979. FIDH

has worked for the recognition of victims' rights in ECCC proceedings, in particular their right to participate as Civil Parties. Two French lawyers from the FIDH Litigation Action Group, Mr. Patrick Baudouin, also coordinator of the LAG and FIDH Honorary President, and Ms. Marie Guiraud, represent 10 Civil Parties in Case No. 002 before the Extraordinary Chambers in the Courts of Cambodia.

Ms. Karine APPY, Mr. Arthur MANET

Press officers

International Federation for Human Rights (FIDH)

17, passage de la main d'or

75011 Paris - France

Tel: +33 (0)1 43 55 25 18

Fax: +33 (0)1 43 55 18 80

www.fidh.org

ADHOC

The Cambodian Human Rights and Development Association (in French Acronym "ADHOC") was founded by a group of former political prisoners in December 1991 after the signing of the Paris Peace Agreements on 23 October 1991. ADHOC is an independent, non-partisan, non-profit and non-governmental organization.

It has different levels of governance: a General Assembly which is convened every three years to elect a President and Secretary General, and a Board of Advisors which meet annually. ADHOC is tasked to address the absence of basic rights, freedoms, and liberties in Cambodia by providing people with knowledge and understanding of human rights, law, and democracy; and how to defend these rights and freedoms themselves.

ADHOC activities Case 001 - Case 002 -

From the end of 2006 to 2010 - nationwide Outreach project/Case 001: ADHOC has been the first and the major NGO to make the Extraordinary Chambers in the Courts of Cambodia (ECCC) known to "ordinary" Cambodians throughout the country. More than 103,000 women and men from virtually all districts have participated in participatory outreach workshops on the ECCC. ADHOC also played an essential role in assisting victims by helping filling out their civil party application, providing updated information and ensuring follow-up with applicants.

In Case 001 ADHOC assisted 33 civil parties who were either survivors or victims who had lost relatives at the notorious S-21 security center. ADHOC also worked closely together with other NGOs in the CHRAC network to provide various support services to those civil parties, and supported those civil parties by: inviting them to monthly meetings with their lawyers, conducting advocacy on their behalf and giving them the opportunity to attend the first trial on a regular basis.

Since 2010 – Civil Party Participation: Since April 2010 ADHOC re-focused its project primarily to allow for meaningful participation for civil parties before the ECCC in Case 002. Almost half of all civil parties, 1791, admitted in Case 002 have either, chosen ADHOC as their intermediary organization of choice or have received assistance from ADHOC in order to participate in the ECCC's legal proceedings. ADHOC is also the only NGO who provides assistance to civil parties in Cambodia's most remote provinces of: Rattanakiri, Mondulakiri and Oddar Meanchey.

In consideration of the high number of civil parties, ADHOC devised a Civil Party Representative Scheme whereby a Civil Party Representative (CPR) is either elected or appointed from amongst the Civil Parties in a particular area to facilitate communications between each individual victim and either: other victims, ADHOC, their respective Civil Party Lawyers or the ECCC itself.

Essentially, the 122 CPRs act as the nexus between civil parties, the court and the lawyers to ensure that civil parties are provided with sufficient information are regularly updated on the latest developments in Case 002. In the long term, local civil party groups may initiate their own activities to overcome the KR past.

Mr. LATT Ky, KRT/ICC Project Coordinator

Ms. Nadine KIRCHENBAUER, Senior Advisor, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Cambodian Human Rights and Development Association (ADHOC)

No. 3, Street 158, Oukghna Troeung

PO Box 1024

Beng Raing, Daun Penh

Phnom Penh, Cambodia

T.: +855 (0)23 218 653

F.: +855 (0)23 217 229

CJA

The Center for Justice and Accountability (CJA) is an international human rights organization based in the United States that is dedicated to deterring torture and other severe human rights abuses around the world and empowering victims of human rights abuse to seek truth, justice and redress. CJA uses litigation to hold perpetrators individually accountable for human rights abuses, develop human rights law, and advance the rule of law in countries transitioning from periods of abuse. In the United States, CJA files civil lawsuits against human rights abusers who reside in or visit the country. We also pursue criminal human rights cases before the Spanish National Courts for crimes committed around the world and support litigation before international and regional human rights bodies.

CJA attorney Nushin Sarkarati, along with Cambodian national attorney Sam Sokong, represents 45 Civil Parties in Case No. 002 before the Extraordinary Chambers in the Courts of Cambodia (ECCC). After the fall of the Khmer Rouge, approximately 150,000 Cambodian refugees resettled in the United States. A high percentage of these refugees continue to suffer from mental and physical health problems resulting from their experience under the Khmer Rouge and continue to wait for recognition of their harms and justice for the crimes they were forced to endure. During the trial, CJA aims to highlight the testimony of the Cambodian diaspora and seek reparations that include recognition of Cambodian victims residing overseas. In addition to our legal work before the ECCC, CJA and our partner organization the Applied Social Research Institute of Cambodia (ASRIC) conduct outreach forums for Civil Parties and Cambodians in locations throughout the United States where Cambodians are most heavily concentrated. The purpose of these forums is to provide legal outreach and information about the ECCC and provide the community with an opportunity to understand the transitional justice efforts taking place within Cambodia.

Nushin Sarkarati, Staff Attorney

Center for Justice and Accountability

nsarkarati@cja.org | www.cja.org

tel: 415.544.0444 ext 318 (USA) | local tel: +855 775 400 34 (Cam)

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FIDH - International Federation for Human Rights

17, passage de la Main-d'Or - 75011 Paris - France

CCP Paris: 76 76 Z

Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80

www.fidh.org

Director of the publication: Souhayr Belhassen / Editor: Antoine Bernard

Authors: Nushin Sarkarati (CJA), Nadine Kirchenbauer (GIZ Advisor - ADHOC), Delphine Carlens (FIDH)

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FIDH represents **164** human rights organisations on **5** continents



of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

Find information concerning FIDH's 164 member organisations on **www.fidh.org**