

# The Phnom Penh Post

## **Reparation remain a key issue** **James O'Toole** **July 27, 2010**

Judges at the Khmer Rouge tribunal yesterday brought to a close the first international war crimes case to include direct victim participation, issuing controversial rulings on civil party admissibility and reparations.

Although many observers at the court yesterday were focused primarily on the prison sentence handed down against Tuol Sleng prison chief Kaing Guek Eav, alias Duch, the 90 civil party applicants who participated throughout the trial were also waiting to see how the judges would rule on their applications and their claims for reparations.

Court rules allow judges to grant “collective and moral” reparations to qualifying civil parties. In announcing the ruling on reparations, Trial Chamber president Nil Nonn said that a request by the accepted civil parties to have their names included in the final judgment had been accepted, as had a request for the compilation and publication of all statements of apology made by Duch over the course of the trial.

Other requests, Nil Nonn said, had been rejected “on the grounds that they either lacked specificity or were beyond the scope of available reparations before the ECCC”. Such requests ranged from calls for monetary awards to a request for the establishment of a national commemoration day for victims.

A request for the construction of pagoda or a similar memorial was dismissed in the judgment:

“No information has been provided, for example, regarding the identity of the owners of all proposed sites, whether they consent to the construction of each proposed memorial, or whether additional administrative authorisations such as building permits would be necessary to give effect to each measure.”

Although he called the sentence laid against Duch “thoughtful” and “considered”, Civil Parties Group 1 lawyer Karim Khan said the reparations ruling was “really the most minimal, most conservative, and perhaps it’s fair to say unimaginative that could have been ordered”. The court pledged to publish Duch’s apologies on its website within 14 days after the verdict is finalised, but civil party lawyer Yung Phanit complained that many poor Cambodians would not have access to this information.

Decisions on reparations can be appealed in the event that the prosecution appeals the judgment, and a number of civil party lawyers said they were considering doing so if circumstances allowed. Prosecutors said yesterday that they were undecided on whether to appeal.

Also contentious was the judges’ decision to declare inadmissible the claims of 24 civil party applicants who had been involved in court proceedings throughout Case 001. Hong Savath, who said her uncle had been killed at Tuol Sleng, was one of those rejected.

“I am unhappy,” she said. “The judges should have told me from the beginning that I am not a civil party.”

Some parties complained during hearings in Case 001 that civil party participants did not appear to have been vetted properly.

In the judgment, the Trial Chamber said Hong Savath had failed to provide any documentary evidence of her uncle’s detention at Tuol Sleng, saying only that she had seen his photograph during a 2008 trip to the facility.

Nil Nonn said the 24 applicants had been denied either because they had not been proved to have suffered directly at prisons administered by Duch, or because “they have failed to prove close kinship or bonds of affection or dependency” with victims of such prisons.

Civil party lawyer Kong Pisey expressed frustration that the court had allowed the rejected civil party applicants to participate throughout the trial before deciding on their claims, as did Khan.

“It’s as if the court, late in the day, is rejecting their loss and tragedy,” Khan said.

Because of changes to the court’s internal rules, decisions on civil party admissibility in

future cases will be handled by the co-investigating judges before proceedings reach the Trial Chamber, part of what court officials say is an effort to streamline victim participation.

Those rejected in yesterday's decision have the option to appeal against the decisions against them regardless of whether the prosecution appeals, an option lawyers said they were considering.

"We must pay homage to the civil parties and the courage they have displayed from the start of this case," said civil party lawyer Martine Jacquin.