

BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No. : 001/18-07-2007-ECCC/TC
 Date of Document : 14 September 2009
 Party Filing : Co-Lawyers for the Civil Parties
 Filed to : Trial Chamber
 Original Language : English

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	17 / 09 / 2009
ម៉ោង (Time/Heure):	15:30
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	Ratanak

CLASSIFICATION

Classification of the document suggested by filing party : Public

Classification by OCIJ or Chamber

Classification Status

Review of Interim Classification

Records Officer Name

Signature

ឯកសារច្បាប់ត្រឹមត្រូវតាមច្បាប់កម្ពុជា	
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME	
ថ្ងៃ ខែ ឆ្នាំ ធ្វើការបញ្ជាក់ (Certified Date/Date de certification):	22 / 09 / 2009
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	SANN RADA

CIVIL PARTIES' CO-LAWYERS' JOINT SUBMISSION ON REPARATIONS

Filed by:

Co-Lawyers for Civil Parties:

Mr. Karim A. A. Khan

Ms. TY Srinna

Mr. Alain WERNER

Ms. Brianne McGONIGLE

Mr. Pierre-Oliver SUR

Mr. KONG Pisey

Mr. HONG Kimsuon

Mr. YUNG Panith

Ms. Silke STUDZINSKY

Mr. KIM Mengkhy

Ms. MOCH Sovannary

Ms. Martine JACQUIN

Mr. Philippe CANONNE

Ms. Christine MARTINEAU

Ms. Fabienne Trusses NAPROUS

Ms. Annie DELAHAIE

Ms. Elisabeth RABESANDRATANA

Distributed to:

The Trial Chamber:

Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge THOU Mony

Copied to:

Accused:

Mr. KAING Guek Eav alias
“Duch”

Counsel for the Accused:

Mr. KAR Savuth
Mr. François ROUX

Office of the Co-Prosecutors:

Ms. CHEA Leang
Mr. YET Chakriya
Mr. William SMITH
Mr. PICH Sambath

I. INTRODUCTION

1. On 27 August 2009, the Trial Chamber issued its Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions requesting for the Civil Party Groups to file a submission “stipulating the form or forms of the award of collective and moral reparations they contend shall be awarded against the accused if convicted.”¹

2. According to the Internal Rules, one purpose of a Civil Party action before the ECCC is to “[a]llow Victims to seek collective and moral reparations...”.² In the context of mass violence and gross human rights and humanitarian law violations, international law has long provided grounds for victims to seek reparations and increasingly recognizes this as a right.³ The term ‘reparations’ under the international legal framework generally refers to a broad set of responses to the harms suffered by victims of mass and serious abuses. It is an essential mechanism for recognizing victims’ rights and acknowledging the harms they have experienced as well as restoring their worth and dignity in society.⁴

3. Although the Internal Rules do limit the forms of reparations available to Civil Parties, it is nonetheless vital that the Civil Parties in Case 001 receive meaningful and substantive moral and collective reparations.⁵ The Civil Party Groups respectfully submit that this Court has the authority to award a wide variety of meaningful moral and collective reparations, including but not limited to: dissemination of information and apologies from the accused should he be convicted, medical care including

¹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions, 27 August 2009, para. 1.

² Internal Rule (Rev.3) 23(1)(b).

³ The right to reparations is reflected in a wide range of international agreements including the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination and the Convention against Torture among others. This obligation has been confirmed by the United Nations General Assembly adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (April 19, 2005) [*hereinafter* “Basic Principles”].

⁴ Lisa Magarrell, *Reparations in Theory and Practice*, International Center for Transitional Justice, www.ictj.org/static/Reparations/0710.Reparations.pdf, last accessed 1 June 2009.

⁵ According to the finding of the survey conducted by the Human Rights Center at the University of California at Berkeley, 88 percent of all respondents believe that it is important to provide symbolic or moral reparations and 68 percent believe that reparations should be collective in nature. See Phuong Pham, Patrick Vinck, Mychelle Balthazard, Sokhom Hean and Eric Stover, *So We Will Never Forget*, University of California Berkeley Human Rights Center (January 2009), pages 43-44.

psychological and physical care, educational programs and the memorialization of victims.⁶

4. Furthermore, the Civil Party Groups respectfully submit that if the accused is convicted but is not in a position to bear the costs of a reparation award, this Court is in a position to (i) encourage the Government of Cambodia to create a state-funded reparation program for the Civil Parties in this case, and (ii) create a voluntary trust fund within the Court which can be managed by Victims Unit or another body specifically created and mandated to administer the fund. Either of these trust funds, if established, can implement the reparation awards handed down by the Court.

II. THE NATURE AND OBJECTIVES OF REPARATIONS

5. The key aspects of a reparations program in the context of grave human rights and humanitarian law breaches are usually restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁷ Restitution is meant to restore victims to their original situation before the violation occurred.⁸ Compensation is appropriate for economically assessable damage, such as physical or mental harm, lost opportunities such as employment, material damages and loss of earnings, moral damages, and the costs of medical, legal and social services. Rehabilitation includes medical and psychological care, as well as legal and social services.⁹ Satisfaction usually refers to a wide range of measures including those aimed at the cessation of violations, public disclosure of the truth, the search for the whereabouts of the disappeared, etc., a public apology, sanctions against persons liable for the violations, and commemorations and tributes to the victims.¹⁰ Finally, guarantees of non-repetition refer to a variety of measures aimed at preventing the recurrence of violations, including measures to strengthen the rule of law and the adherence to legal and ethical norms by domestic institutions.

6. The goals of a reparations program will depend on the circumstances of human rights violations and the nature of the society affected. These goals will, in

⁶ Civil Party Group 2 further submits that the Court has authority to request an official acknowledgement and apology from the Cambodian Government.

⁷ Jaya Ramji, "A Collective Response to Mass Violence: Reparations and Healing in Cambodia" in Jaya Ramji and Beth Van Schaack, *Bringing the Khmer Rouge to justice: prosecuting mass violence before the Cambodian courts* (2005), page 360.

⁸ M. Cherif Bassiouni, *International Recognition of Victims' Rights*, 6 Human Rights Law Review 203, 268 (2006).

⁹ *Id.* at 270.

¹⁰ *Id.* at 272.

turn, determine the appropriate forms of reparations, be they financial, restoration of rights, moral, societal or a combination of different means. Further, these goals will determine the most suitable mechanism of implementation, as an individualistic or collective response.

7. In general, reparations may be individual-oriented or collective in nature. Although individual reparations do not, at this time, fall within the mandate of the Court, they have been requested by a small number of Civil Parties and can often aid in redressing harms suffered. Collective reparations, which are currently the only form of reparations available to Civil Parties before this Court, focus on benefiting those who have directly or indirectly suffered from human rights violations as a group. In the aftermath of post-mass-violence societies, collective reparations offer an effective response to the damage done to the morale, identity and trust of a society or group of victims. Collective reparations provide for collective healing and create a sense of solidarity and unity among the Civil Parties in this case. Collective reparations also address the physical destruction of community infrastructure and institutions.

III. THE SCOPE OF RULE 23

8. The ECCC's reparations mandate is contained within Rule 23(11) of the Internal Rules.¹¹ This provision allows victims to claim reparations only by formally appearing through a 'civil party action', and also limits the type of reparations that the Court may award to 'collective and moral reparations'.

9. Article 23(12) further clarifies that forms of 'collective and moral reparations' may include ordering a convicted person to 'publish the judgment in any appropriate news or other media', to 'fund any non-profit activity or service that is intended for the benefit of victims', or 'other appropriate and comparable forms of reparation'. These examples suggest room for the Court to apply flexibility in awarding reparations— for example, by ordering convicted perpetrators to perform community

¹¹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 3), as revised on 3 March 2009.

service, or interpreting 'publish' as appearing before communities rather than relying on conventional media that may be unavailable to victims.¹²

10. Other moral and collective reparations include erecting public memorials and statues, encouraging the Cambodian government to establish days of remembrance, identifying and reburying or memorializing victims' remains, issuing public apologies of the convicted defendant, creating or supporting medical centers and counseling clinics, building or supporting schools and other educational programs, and other forms of commemoration that are significant for direct and indirect victims. The public dimension of these actions is vital in facilitating broader societal recognition, which plays an important role in addressing the exclusion and harm victims have suffered.

IV. REQUESTED FORMS OF 'COLLECTIVE AND MORAL REPARATIONS'

11. Based on the information received from all Civil Parties both from their initial application forms and subsequent meetings and discussions, the Co-Lawyers for the Civil Parties respectfully request this Court to award reparations which take into account past harms suffered, on-going harms suffered and the cultural context in which the Civil Parties live. Specifically, the Civil Parties request the Court to award a range of reparations that roughly fall under the headings of outreach and dissemination of information and apology, medical care including psychological and physical care, educational programs and the memorialization of victims. In accordance with the directions of the Trial Chamber, the Civil Parties hereby jointly stipulate the forms their reparations requests will take,¹³ and intend to make specific claims for moral and collective reparations in final submissions.¹⁴

A. Outreach, publication and dissemination of information

¹² Ruben Carranza, *Imagine the Possibilities for Reparations in Cambodia*, International Center for Transitional Justice, <http://www.ictj.org/images/content/9/5/950.pdf> (last accessed 1 June 2009); Lisa Magarrell, *supra* n 2, p. 5.

¹³ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions, 27 August 2009, para. 1.

¹⁴ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions, 27 August 2009, para. 5. Civil Party Submission on Reparations

12. As part of a collective healing process, uncovering the truth about past events and who were responsible is an important goal of reparations for victims and their families. It is therefore essential that a reparations award, at a minimum, must include the distribution of trial findings through outreach and various media outlets, including print media, television and radio, thus allowing Cambodians to feel included and engaged in the process of justice. An effective outreach program is also important for managing the expectations of victims and their communities, as well as to give greater confidence to victims who may be struggling to speak about their experiences. Five percent of Civil Parties who specifically mentioned a form of reparation in their civil party application forms requested an award related to the publication of documents related to the Khmer Rouge and this case in particular.¹⁵

13. Unquestionably, the ECCC is a central actor in the broader truth and healing process by providing a space for victims and perpetrators alike to tell their stories within the parameters of a case, and the unveiling of critical information from historical documents that could allow some notion of the ‘truth’ to emerge. In fact the Court is responsible, through its Public Affairs section, for prioritizing outreach.

14. However, greater efforts are necessary in this area. It is noted that the Court can issue binding orders to the Office of Administration and the Outreach Office as to what specifically must be done. In a recent empirical study on the attitudes of Cambodians towards social reconstruction, possibly the most comprehensive survey of its kind to date, involving 1,000 respondents, 39% indicated they had ‘no knowledge’ of the ECCC, 46% only had ‘limited knowledge’ and 15% had ‘some level of knowledge’. During the month prior to the survey, 64% of respondents reported not to have heard anything about the ECCC in the media or other sources of information. When asked about the number of arrestees who were awaiting trial at the time of the survey, only 10% were able to provide the right answer. A mere 3% were able to name the five accused persons. Among those who have heard of the ECCC, the television and radio also appeared to be more trusted sources of information than newspapers.¹⁶

15. Although the above statistics are from late 2008 and reflect the views of all Cambodian people rather than the specific Civil Parties in this case, they nevertheless

¹⁵ ECCC, Victims Unit Statistical Report, attached hereto as Annex 1.

¹⁶ Phuong Pham, et al., *So We Will Never Forget*, *supra* n 5, p 38.

demonstrate that more must be done in terms of outreach. However, general outreach activities, including trial outcomes, should be covered by the Court's Public Affairs section and should not be viewed as a reparation 'award' for victims. Victims cannot be 'awarded' something the Court already has an obligation to fulfill.

16. Nonetheless, some additional outreach activities could be viewed as an 'award' by the Court because they would not usually fall under the general outreach activities of the Public Affairs section. One example could include requiring the compilation of apologetic statements of Duch which were made throughout the trial. These statements could then be disseminated throughout Cambodia by the Victims Unit combined with public comments of Civil Parties made in their statements before the Court and/or to the media. Another example could include the facilitation of public apologies by Duch, based on the understanding that he would cooperate and respect the victims. Respect in this sense means that Duch should not apologize and then claim that he was only following orders. This excuse-based apology only hurts victims and makes his apologies seem insincere.

B. Provision of medical care

17. With regard to what form reparations should take, according to information provided by the Victims Unit, 21% of the Civil Parties who specifically requested a form of reparation requested medical-related services. This form of reparation is particularly important as the age of the victims increases.¹⁷ This figure is in line with the results from the previously mentioned empirical study which demonstrated that 20% of respondents indicated that social services, such as health services, education, and psychological counseling should be provided for the victims.¹⁸

Psychological care

18. Mass human rights abuses entail the infliction of enormous psychological harm on victims and their families which can last a lifetime. The provision of psychological therapy and support can play a strong rehabilitative role by assisting

¹⁷ ECCC, Victims Unit Statistical Report, attached hereto as Annex 1.

¹⁸ *Id.* at 44.

victims and their families to confront and process trauma and abuse. While such support (or any other reparative measures) is unlikely to restore victims to their pre-injury state, it can help to partially remedy the mental harm, pain, suffering, and emotional distress that they continue to endure.

19. For instance, the Program of Reparations and Comprehensive Health Care for Victims of Human Rights Violations (PRAIS) provided victims of human rights violations in Chile (and their families) with free counseling and support for psychological and other mental problems. This assistance service not only provided treatment for depression, anxiety, and emotional distress, but also attracted attention to the damaging effects of violating human rights.¹⁹

20. At the ECCC, the Trans-cultural Psychosocial Organization (TPO) has currently been providing psychological assistance to many witnesses and Civil Parties in Case 001. Their efforts to offer free counseling should be supported and reinforced through a reparations award, particularly because they are currently in a position where they can offer immediate assistance.

Physical care

21. Past torture, forced labor, malnutrition and bad conditions of detention can have a huge impact on the health of victims. Moreover, psychological trauma can also create physical harm. These physical harms often worsen as the victim ages. For these reasons, the Court should take into consideration the physical health of Civil Parties and the need for medical care. Thus, free health care for the Civil Parties should be provided. This should also include transportation to medical facilities.

22. Support for such physical and psychological problems is important for the recovery of the Civil Parties in this case. Particularly for those who have suffered severe mental harm, counseling and general medical care is essential for the healing process.²⁰

¹⁹ Elizabeth Lira, "The Reparations Policy for Human Rights Violations in Chile," in Pablo De Greiff, ed., *The Handbook of Reparations*, International Center for Traditional Justice (2006), page 67.

²⁰ Truth and Reconciliation Commissions assisted in providing the definition of recipients of free psychological care in Chile and emphasized the need for counseling for victims of torture, former exiles, and families of those executed. *Ibid.*, page 56, 69.

C. *Education programs*

23. In addition to outreach and medical care, lawyers for the Civil Parties request that a reparations award include an educational component. According to information provided by the Victims Unit, 12% of Civil Parties who specifically listed a form of reparation requested education measures.²¹

24. One possible measure could include increased educational efforts in relation to the study of mass human rights abuses, genocide and crimes against humanity. The documentation of the historical ‘truth’ behind the Khmer Rouge could be adapted into textbooks, thus furthering education goals. The Documentation Center of Cambodia (DC-Cam) could be helpful in this regard, as they have already spearheaded a number of important projects, which the Court could bolster through an additional reparations award. Reparations can go towards the salaries and training of teachers, provision of facilities, curriculum design, publication of educational materials, and ongoing training for local participants in the rights education program.²²

25. Another option is to support a ‘know your rights’ education program, which can be effective in raising the human rights consciousness and awareness of Cambodian society, and play a positive role in the restoration and protection of legal rights. Furthermore, civil and human rights training could be conducted in local communities to educate Cambodians about their rights. For example, the Outreach and Public Affairs office for the Special Court for Sierra Leone (SCSL) provides education both to children and adults. Outreach is provided to the local population through capacity-building of the rule of the law to government and judicial officials at all levels. The Gender Program provides awareness of the situation for women in the state and “Kids Talking to Kids” is a radio program that gives children a place to debate topics and be quizzed.²³ There are numerous examples where, with the proper

²¹ ECCC, Victims Unit Statistical Report, attached hereto as Annex 1.

²² Jaya Ramji, *supra* n 3, page 370.

²³ Special Court for Sierra Leone, “Outreach and Public Affairs,” *available at* <http://www.scs-sl.org/ABOUT/CourtOrganization/TheRegistry/OutreachandPublicAffairs/tabid/83/Default.aspx>.

²³ International Criminal Tribunal for Rwanda, “Achievements of the ICTR,” *available at* <http://69.94.11.53/ENGLISH/factsheets/achievements.htm>; In Cambodia the French NGO “Lawyers Without Border set up a legal awareness program in the orphanages of several provinces. In France, a Civil Party Submission on Reparations

funding and targeted goals, an educational reparations award could leave a lasting positive impact on Cambodian society as a whole.

D. Memorialization

26. A number of Civil Parties requested that a reparations award include the establishment of community pagodas, pagoda fences, or memorials for their loved ones. The VU's report indicates that 14% of Civil Parties who explicitly requested a form of reparation asked for some type of religious building, 4% requested some type of funeral ceremony and 7% requested a memorial building.²⁴ While it is recognised that a number of memorials to the victims of the Khmer Rouge regime have already been constructed,²⁵ the Civil Parties request memorials specific to their relatives, the victims of S-21.

27. A place to memorialize the victims of S-21 can be a significant part of the mourning and healing process. Pagodas or memorials, such as monuments, temples, or even museums, represent a people's history and the ability for the community to move on because they 'embody memories.'²⁶ However, when establishing a place of remembrance or worship for the victims of human rights violations, and those of S-21, it is important to consider the local culture and customs.

28. There have been specific requests for the erection of memorials at the locations of S-21, Cheung Ek, and Prey Sar. Requests include a commemorative plaque which lists the names of all known victims, information boards listing the names of Civil Parties and telling their stories to the public, and statutes which symbolize the suffering of victims.

29. In addition to memorials or statues at S-21, the Civil Parties have specifically requested the erection of pagodas or pagoda fences in order to honor their loved

Human rights awareness program have been established by "L'ecole des droits de l'homme". <http://www.ecoledesdroitsdelhomme.org/>.

²⁴ ECCC, Victims Unit Statistical Report, attached hereto as Annex 1.

²⁵ Rachel Hughes, "Fielding genocide : post 1979 Cambodia and the geopolitics of memory", PhD, University of Melbourne (2006); Helen Jarvis, "Mapping Cambodia's 'killing fields,'" in John Schofield, William Gray Johnson and Colleen M. Beck, eds., *Matériel culture: the archaeology of 20th century conflict*, London & New York (2002).

²⁶ Brandon Hamber, "Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition," in Pablo De Greiff, ed., *The Handbook of Reparations*, International Center for Traditional Justice (2006), page 567.

ones.²⁷ Pagodas in Cambodia are often the center of the village and may be used for education, worship by monks, or as memorials. For many victims having even a small pagoda or pagoda fence would allow them to have a spiritual place to remember their loved ones. In fact, many of the Civil Parties in Case 001 do not live near Phnom Penh and having a small pagoda or pagoda fence in their local community, in addition to memorials set up at S-21, would better serve their interests.

30. Other requested forms of memorialization include: writing the names of the victims in a stupa or on a commemorative plaque to be placed at S-21, circulating the names of victims to all educational institutions, a traveling museum where photos and victim accounts can be shared with Cambodians unable to make it to Phnom Penh, the erection of memorial statues at S-21, Cheung Ek and Prey Sar, the inclusion of the names of Civil Parties as part of the existing exhibit at S-21, and the naming of important institutions such as hospitals after the countless victims of S-21. Thus, considering the cultural implications, it is important both to honour and remember the victims of S-21 through the construction of memorialization sites.

V. FUNDING OF REPARATIONS IN THE CASE OF INDIGENT CONVICTED PERSONS

31. The greatest challenge facing this Court is to decide how to award substantive and meaningful reparations when the accused has been properly determined to be indigent. Rule 23(11), which provides that reparation awards shall be borne by the convicted defendant, can be interpreted in two ways. First, it can be interpreted to mean that reparation awards can *only* be paid by the defendant regardless of whether or not that defendant is indigent. This interpretation would mean that if a defendant were deemed to be indigent then no other source of funding whether established by the Kingdom of Cambodia or through a voluntary fund could implement the reparations award.

²⁷ There are a number of pagodas throughout Cambodia which provide a place to remember those who died during the Khmer Rouge. The Kdey Doung Pagoda, for example, is in the center for mass graves, where individuals were buried between 1975 and 1979 by the Khmer Rouge regime. The bones of the victims rest at the base of the pagoda in a stupa as a memorial, see Khmer Rouge Trial Web Portal, "Sacred Kdey Doung Pagoda, A Former Khmer Rouge's Killing Field," available at http://www.krtrial.info/showarticle.php?language=english&action=showarticle&art_id=2918&needback=1.

32. If this interpretation is adopted by the Court, the Co-Lawyers of the Civil Parties argue that the promise of providing justice through reparations to the victims of S-21 would be meaningless. Moreover, the Co-Lawyers for the Civil Parties respectfully request that evidence be provided to the parties clarifying the defendant's indigent status. A crucial aspect of improving the process of reparative efforts under the current ECCC Internal Rules is to ensure that the Court and all parties involved have access to adequate information about the financial circumstances of defendants, such as information about the defendants' assets and their likely strategies relating to possible dissipation or relocation of assets. In the present case, there appears to be no concrete evidence of a proper asset assessment of the defendant's assets in the case file even though he has admittedly been in custody for over ten years. There is therefore a pressing need for greater accountability and transparency in this process, which has significant implications for future cases.

33. Second, Rule 23(11) can be read in a way which allows the Court greater flexibility in providing for and implementing meaningful reparations. In other words, the provision can be read so that it provides clear guidance on who should fund reparation awards when the convicted defendant has the means to provide for reparations, but that it *provides little to no guidance* for how reparations are to be funded when the convicted individual is indigent. Since the provision is ambiguous and provides little guidance, the Court is free to examine international standards and practices. Indeed, when there is uncertainty regarding interpretation or application of a procedural rule or if there is a question regarding a rule's consistency with international standards guidance may be sought in procedural rules established at the international level.²⁸ This interpretation is more in line with Cambodia's international obligations towards victims of human rights and humanitarian law violations.

34. The right of victims to claim reparation, regardless of whether the convicted individual has sufficient assets to provide effective and adequate reparation, finds strong support in international law. For example, the UN General Assembly has affirmed that the state has an obligation to "establish national programmes for reparation and other assistance to victims in the event that the party liable for the harm

²⁸ See Article 33 New, Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006), available at: http://www.eccc.gov.kh/english/cabinet/law/4/KR_Law_as_amended_27_Oct_2004_Eng.pdf.

suffered is unable or unwilling to meet their obligations.”²⁹ The Royal Government of Cambodia indeed did not object to this UN General Assembly Resolution.³⁰ Accordingly, the Court can encourage the Government of Cambodia, which unlike other international(ized) tribunals has a unique relationship with this Court, to set up a state-funded reparation program for Civil Parties. The Law on the Establishment of the ECCC states that criminally acquired assets are to be ‘returned to the State.’³¹ This provision demonstrates the need to examine reparations beyond the ECCC’s mandate and view them as a state obligation. The Court should notify the Royal Government of Cambodia of the need to create such a trust fund and request the Government submit its plans and comments on the issue no later than 30 days from handing down of the judgment.

35. In addition, alternative sources of funding, other than through the state, should also be examined if it may not be possible for the state to assume the responsibility for reparations. One possibility is the establishment of an independent and voluntary victims’ trust fund for the purpose of implementing the collective and moral forms of reparations. This fund could be managed through the Victims Unit, or another body specifically created and mandated to administer the fund, and funded through external sources as well as through the transfer of the defendant’s confiscated criminally-acquired property to the fund, if any should be found. The Victims Unit currently is the central contact between the Court and victims and is therefore in the best position to manage such a fund. Moreover, the creation of a voluntary fund through the Victims Unit would avoid the need to create another section of the Court, which would drain resources.

36. There is international precedent for the establishment of such a fund. The statute of the International Criminal Court (ICC) expressly includes the possibility for victims to obtain reparations from convicted criminals.³² It also recognizes that many of those convicted may be poor or without any assets and establishes a trust fund ‘for the benefit of the victims of crimes within the jurisdiction of the Court’ and ‘of the

²⁹ Basic Principles, *supra* n 3, Paragraph IX(16).

³⁰ Basic Principles, *supra* n 3, Chapter XI.

³¹ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended 27 October 2004, No. NS/RKM/1004/006 [*hereinafter* “Establishment Law”], Chapter XI, Article 39.

³² UN General Assembly, *Rome Statute of the International Criminal Court* (last amended January 2002), 17 July 1998, A/CONF. 183/9 [*hereinafter* “Rome Statute”], Article 75.

families of such victims.’³³ The ICC may order the transfer of fines or any confiscated property to such a fund if and when established.

37. Another example can also be found also in the UN-administered fund for torture victims, which receives voluntary contributions from governments, non-government organizations and individuals for distribution to non-government organizations providing humanitarian assistance to victims and their families.³⁴

38. Domestic examples include the Canadian and British domestic legal systems, which offer trust funds for victims through their Crimes Against Humanity and War Crimes Acts. The Crimes Against Humanity Fund accepts donations, all of which are placed in the fund for victim reparations.³⁵ In Malawi, donors set up funds to provide outreach and to hold events for the local population. Although the funds did not offer compensation to victims of human rights abuses or their families, the outreach raised awareness among the population and gave victims a forum in which to tell their stories.³⁶ Compensation funds are clearly significant due to their establishment of collective camaraderie and confidence in the community.

39. Clearly this Court is, at a minimum, in the unique position in which it can order the Victims Unit to set up a voluntary trust fund and strongly encourage, through its reparation judgment, the Kingdom of Cambodia to take the lead in providing reparation to victims as well as to report back to Court on any progress concerning such a fund. Further, the Court should take a prominent role in ensuring that the necessary institutional framework is created to ensure that any trust fund is administered in a transparent, efficient, flexible and independent fashion.

V. IMPLEMENTATION AND ENFORCEMENT OF REPARATIONS ORDERS

40. Internal Rule 113(3) provides that the Co-Prosecutors ‘may seek the assistance of the law enforcement authorities to ensure the execution of sentences.’ While the enforcement action relating to the penal aspect of the final judgment envisages the

³³ Rome Statute, Article 79.

³⁴ Office of the High Commissioner for Human Rights, *UN Voluntary Fund for Victims of Torture*, <http://www.ohchr.org/EN/Issues/Pages/TortureFundMain.aspx> (last accessed 2 June 2009).

³⁵ Carla Ferstman, *The Reparation Regime of the International Criminal Court: Practical Considerations*, (2002) 15 *Leiden Journal of International Law*, page 685.

³⁶ Diana Cammack, “Reparations in Malawi,” in Pablo De Greiff, *The Handbook of Reparations*, supra n 25, page 228.

pre-existing criminal and penal structures of the Cambodian Government being utilized, the Internal Rules merely state with regards to Civil Parties' reparations that the '...enforcement of reparations shall be made at the initiative of a Civil Party'.³⁷

41. When the Court stipulates the forms of reparations awarded to Civil Parties it should stipulate the actor responsible for the implementation of the reparation award. The Court must also ensure that Civil Parties may file non-implementation complaints against the responsible actor with the Court, which remains the primary enforcement mechanism during its existence. Further, provision must be made to ensure the continued implementation of Civil Party reparations and the effective oversight and enforcement procedures beyond the existence of the Court.

VI. CONCLUSION

42. The devastation caused by Khmer Rouge crimes, and particularly those at S-21, has generated far-reaching, long-term consequences for the Civil Parties and Cambodian society in general. Providing meaningful reparative justice in the aftermath of the Khmer Rouge atrocities involves identifying remedies that best respond to the rights, needs and priorities of targeted beneficiaries, namely the Civil Parties.

43. Given the impossibility to fully remedy the harm that was caused, the substantial number of victims involved, and the divergences in victims' experiences and needs, there is a prevalent view that providing meaningful reparations in the Cambodian context should be of a collective and moral nature.

44. The process of creating and implementing a successful reparations award requires careful consideration of Civil Party requests and goals of a reparation program.³⁸ This Court should try to maximize the impact of its reparations mandate, by working with the Government of Cambodia and established NGOs to provide the most appropriate forms of collective and moral reparations for the Civil Parties in this case.

³⁷ Internal Rule (Rev.3) 113(1).

³⁸ M. Brinton Lykes, Marcie Mersky, "Reparations and Mental Health: Psychosocial Interventions Towards Healing, Human Agency, and Rethreading Social Realities," in Pablo De Greiff, *The Handbook of Reparations*, supra n 25, page 604.

45. In line with the above, the Co-Lawyers for the Civil Parties respectfully request the Trial Chamber, at a minimum, to award Civil Parties the following:

-the compilation and dissemination of apologetic statements made by Duch throughout the trial which acknowledge the pain and suffering of victims, including the comments of Civil Parties on these apologies;

-access to free medical care, including psychological and physical care and transportation to medical facilities;

-the funding of educational programs, both in schools and museums, that inform Cambodians of the crimes that took place under the Khmer Rouge and at S-21 in particular;

-the erection of memorials, pagodas and pagoda fences both at S-21 (Cheung Ek and Prey Sar) as well as in the local communities of Civil Parties;

-include the names of all the Civil Parties in this case in any final judgment, including a specification as to their connection with S-21.

46. The Co-Lawyers for Civil Parties stress that the above requests are the minimum requested by the Civil Parties and welcome additional reparation awards that the Court finds appropriate and which are in line with requests made by Civil Parties. As this is a joint filing of all Civil Party Groups, each Civil Party Group respectfully reserves the right to make further specific claims of reparations in their final briefs, as directed by the Trial Chamber.³⁹

47. Should the convicted accused be unable to bear the costs of the above mentioned reparation awards, the Court can ensure that either the Government of Cambodia, in accordance with its state obligations, implements the awards or the Victims Unit, through the creation of a voluntary trust fund, carries out the awards.

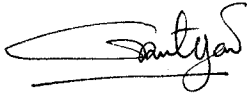
³⁹ *Case of Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions, 27 August 2009, para. 5 (“The final written submissions, if any, of the Civil Parties shall indicate . . . their claims for reparations.”).
Civil Party Submission on Reparations

E159/3

Respectfully submitted by

Civil Parties.

Signed in Phnom Penh on 14 September 2009.



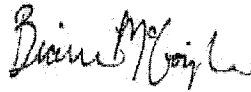
Ms. TY Srinna



Mr. Alain WERNER



Mr. Karim A.A. KHAN



Ms. Brianne MCGONIGLE

For 

Mr. KONG Pisey



Mr. HONG Kimsuon

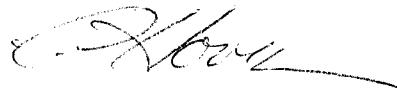
For 

Mr. Pierre-Oliver SUR

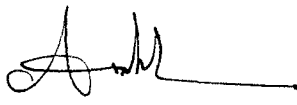
For 

Mr. YUNG Panith

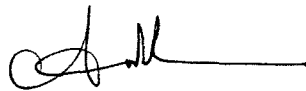
PER ORDER



Ms. Silke STUDZINSKY

for 

Mr. KIM Mengkhy



Ms. MOCH Sovannary

Pour elle

Ms. Martine JACQUIN

Pour elle

Mr. Philippe CANONNE

elle

Ms. Christine MARTINEAU

Pour elle

Ms. Fabienne Trusses NAPROUS

Pour elle

Ms. Annie DELAHAIE

Pour elle

Ms. Elisabeth RABESANDRATANA