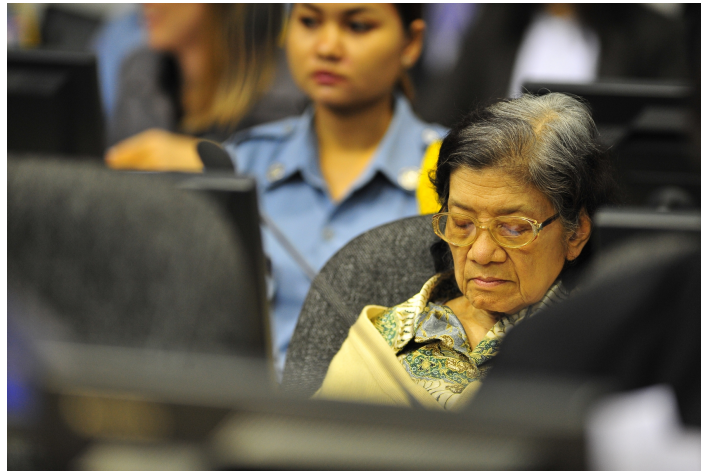


A Day on Limitations and Reparations

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Ieng Thirith in the ECCC courtroom on the third day of initial hearings in Trial 002

After nearly two days devoted to the preliminary objections of accused Ieng Sary, Day 3 in Trial 002 finally gave the other three accused – Nuon Chea, Ieng Thirith, and Khieu Samphan – the opportunity to voice some of their arguments against their prosecution in the ECCC as the court devoted the majority of the proceedings to the accused’s preliminary objections on the statute of limitations in relation to the 1959 Cambodian Criminal Procedure Code. But, as the day unfolded, it quickly became clear that the defense team for Ieng Sary would again perhaps be the lone voice for the accused against the co-prosecutors and civil parties.

Given the previous day’s exhaustive and exhausting legal arguments, it would not have been surprising if the public had stayed away from the courtroom today. Yet, on the contrary, the public gallery quickly filled to capacity this morning. A much larger group of secondary school students packed the seats than on Monday or Tuesday, perhaps having been bused in to fill the space left by the decreasing number of foreign observers. As the audience filed into the gallery, security guards tasked with controlling the seating arrangements continuously contradicted each other, requiring some observers to move again and again and even causing a few to walk out in frustration. Despite this initial irritation, however, the courtroom remained packed for the entire day.

All four accused again were present at the beginning of the hearings, though, as with previous sessions, Nuon Chea and Ieng Sary each exited the courtroom in turn. By the end of the morning session, Ieng Thirith and Khieu Samphan were the only accused remaining, and it would remain this way for the rest of Wednesday's proceedings.

Perhaps in an attempt to bring the hearings back on schedule, the judges entered the courtroom promptly at 9:00 a.m. this morning. President Nonn immediately called the court to order and passed the floor to the civil parties' lawyers to continue oral arguments on the issue of the applicability of statute of limitations to Grave Breaches of the Geneva Convention that had begun the previous day.

Before the civil parties could begin, Nuon Chea stood and was recognized by the court. As on the previous day, Chea requested to return to the detention facility as the scheduled hearings related to Ieng Sary's and not his case. He stated that he would only return to the courtroom and participate actively when the hearings involved his case. Citing ECCC Internal Rule 81.4, President Noon found the request to be relevant and granted Nuon Chea's request. Considering that the court had scheduled oral arguments by all accused on the statutory limits to the domestic offenses charged, Nuon Chea's statement that the hearings would not involve his case suggested that his defense team again would not be participating the day's proceedings.

Before the Trial Chamber could return to the civil parties, Diana Ellis, international co-lawyer for Ieng Thirith asked to make a request of the court. She first noted that the court had notified the parties during Tuesday's proceedings that the hearings may need to be extended to Friday, 1 July, given that the court was behind schedule. Stating that she may need to return to Europe on Thursday night, Ellis requested that the court schedule the remainder of the hearings so that the objections to the witness list could be heard on Thursday. President Noon responded that the court expected all parties' lawyers to be present on Friday, if the hearings are extended. But he stated that the court was "seized with [her] request" and would take it into consideration.

Civil Parties' Response to Preliminary Objections on Statute of Limitations in Relation to Grave Breaches of the Geneva Convention

After these preliminary matters, the civil party lawyers proceeded with their oral arguments on the applicability of statute of limitations to Grave Breaches of the Geneva Convention. The first civil party co-lawyer argued that the defense's argument on this issue is irrelevant in relation to the Establishment Law of the ECCC. The framers of the law would have been well aware of the 1956 Cambodian Criminal Code at the time the law was written, he asserted. The defense counsel claims that the silence on statutes of limitations in Article 6 of the Establishment Law therefore means that the statute of limitations applies to Grave Breaches. The defense's claim, the civil party lawyer argued, creates an "absurd outcome": if the statute of limitations applies to Grave Breaches, then no accused could be prosecuted for these crimes as of 1989, nearly 14 years before the Establishment Law was even written. He contended that the framers would not have bothered to include the Grave Breaches provision if they expected that the ten-year statute of limitations would apply.

The second civil party co-lawyer then continued the civil party's arguments by submitting that Grave Breaches of the Geneva Conventions had reached *jus cogens* status by 1979. *Jus cogens* norms, she stated, are those from which no derogation is permitted, creating an "incontrovertible obligation" that applies to all States. By the time period in question (1975-79), 96 percent of all United Nations member States were parties to the Geneva Conventions; Cambodia itself had become a party to the Conventions as of 1958, notably without making a single reservation to any provision. The lawyer argued that this overwhelming support for the Geneva Conventions solidifies their status as customary international law and provided *jus cogens* status to Grave Breaches of these conventions. Citing the 1969 Vienna Convention on the Law of Treaties, she submitted that a *jus cogens* norm may only be invalidated by another norm of the same level, and not by a conflicting domestic procedural statute. She contended that the statute of limitations provision of the 1956 Cambodian Criminal Code undermines the *jus cogens* nature of Grave Breaches and the corresponding duty to prosecute; therefore, she concluded, it cannot be applied to Grave Breaches in Article 6 of the Establishment Law.

Giving the final argument for the civil parties on this issue, the third civil party co-lawyer reiterated many of his colleagues' arguments. He cited the fact that the Geneva Conventions are silent on statutes of limitations on Grave Breaches and noted that none of the reservations made by States Parties to the Conventions refer to statute of limitations. These facts, he submitted, bolster the argument that statutes of limitations do not apply to Grave Breaches, and he urged the court to dismiss the defense's objections.

Ieng Sary's Reply to Co-Prosecutor and Civil Parties on Grave Breaches

Ieng Sary's international co-lawyer Michael Karnavas, appearing fatigued after two days of extensive oral arguments, rose to reply to the co-prosecutors' and civil parties' oral arguments. The presentation of the co-prosecutors and the civil parties, he said, was "excellent" and perhaps even persuasive. But he indicated one point of fundamental disagreement: "We do not agree that Grave Breaches had reached *jus cogens* status by 1975 to 1979." Pointing to the relatively small number of signatories to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity in 1975, he argued that, at that time, there was an ongoing debate about the applicability of statutes of limitations to Grave Breaches that undercuts its status as a *jus cogens* crime. Keeping his reply very brief, Karnavas concluded by referring to the parties' extensive written submissions on this issue and by telling the court, "I am sure you will reach the right decision."

Oral Arguments on Accused's Preliminary Objections on Statute of Limitations in Relation to Offenses Contained in the 1956 Cambodian Criminal Code

The court then turned its attention to the final preliminary objection to be argued during these initial hearings: the statute of limitations in relation to offenses contained in the 1956 Cambodian Criminal Code ("1956 Code"). All four accused have been charged with the crimes of homicide, torture and religious persecution under the 1956 Code and have filed written objections on the grounds that the statute of limitation contained in the Code barred their prosecution on these charges. The court allocated two hours for the defense arguments, providing each defense team 30 minutes to give its oral submission.

Before starting oral arguments, Michael Karnavas informed the court that the defense team for Nuon Chea had chosen not to speak on this issue and would instead pass to Ieng Sary's team. No reason was given at the time for this decision, though it did prompt some confused looks from the judges and whispering among the other parties.

Oral Arguments by the Defense

Karnavas then turned the floor over to his co-counsel, Ang Udom, to begin the defense's oral arguments. Under the 1956 Code, Udom explained, the crimes of homicide, torture and religious persecution are subject to a ten-year statute of limitations that prohibits prosecution for any of these crimes more than ten years after the crime was committed. Udom urged the court to find that this statute of limitations therefore prohibits the current prosecution of the accused for these crimes since the time period under which the domestic crimes covered by the ECCC had expired by January 1989.

Turning to the ECCC Establishment Law, Udom explained that, when it was originally written in 2001, Article 3 of the law granted the ECCC jurisdiction over the 1956 Code crimes of homicide, torture and religious persecution and extended the statute of limitations in the Code to 20 years. In 2004, the Article 3 was amended, becoming Article 3 *new*, to extend the statute of limitations to 30 years, as the original extension would expire before all prosecutions contemplated under the ECCC would begin. "The Establishment Law essentially goes back in time and makes it as if the statute of limitations never expired," Udom stated. He contended that this extension creates two problems for the ECCC: (1) it violates the principle of legality that prohibits the retroactive application of criminal laws, and (2) it violates the principle of equal treatment under the law, in that a similarly-situated defendant in a court other than the ECCC could not be charged with these crimes.

Udom stated that this issue had created a "procedural stalemate" among the co-investigating judges in the present case. In their closing order, they stated that they tried to issue a common decision on this matter but were not able to. The judges chose not to employ the mechanism for resolving disputes of this type, believing it would "put into peril the entire legal process" under the ECCC, so they chose instead to leave it to the Trial Chamber to decide what procedural action to take.

Udom concluded by submitting that the extension of the statute of limitations under Article 3 *new* does not apply to the present case because (a) the co-investigating judges disagreed on its application; (b) application of the extension violates the fundamental right to be treated equally before the law; and (c) application of the extension violates the legal principle of non-retroactivity of criminal law.

Before allowing Ieng Sary's defense to continue, President Nonn asked the other defense teams to clarify whether they will take the floor at all on this issue so that the time allotted for the arguments may be reallocated as needed. The defense teams for both Nuon Chea and Ieng Thirith stated that they will not make oral arguments as they have already submitted written arguments. Khieu Samphan's Cambodian co-lawyer Su Sovan appeared confused by the

question, looking to the other Cambodian lawyers on the defense side and stating, “Sometimes the words used here are so technical and hard for me to understand.” (Samphan’s international co-lawyer, Jacques Verges, was not present in court today.) After the court clarified its request, Sovan stated he would require only 20 minutes for his argument, prompting the court to reallocate the rest of the time to Ieng Sary’s defense team.

Michael Karnavas then continued the defense’s oral arguments, noting at the outset that he was grateful for the generosity of the Trial Chambers and assuring the judges that he would not “abuse this generosity” by using all of the allotted time. Karnavas then submitted that the Constitutional Council of Cambodia, which determined that the extension of the statute of limitations in Article 3 *new* of the Establishment Law was constitutional, was in error. He acknowledged, however, that the ECCC and, in particular, this Trial Chamber was not able to review or overturn this decision.

Karnavas then turned to address the co-prosecutor’s arguments laid out in their written submission. The co-prosecutor had argued that Article 3 *new* may be applied because the statute of limitations under the 1956 Code had been tolled from 1979 to 1992, and therefore the statute of limitations had been officially extended before the original time limit had expired. Karnavas submitted that the statute of limitations had not tolled during this period because the 1956 Code was indeed in force and the judicial system was functioning during that time, but that the government of Democratic Kampuchea and later the Kingdom of Cambodia lacked the political will to investigate. (Much like it now lacks the political will to investigate Cases 003 and 004 in the ECCC, he remarked.) “Lack of political will is not an exception” to a statute of limitations, he argued.

Karnavas also addressed the argument that an extension of a statute of limitations does not violate the principle of retroactivity because it is merely deals with procedural, not substantive matters. He stated that a statute of limitations bears especially on the prosecution and sentencing in ways that affect the accused’s substantive justice. Besides, he contended, the accused is “just as much entitled to procedural justice as he is to substantive justice.” For these reasons, he urged the court to find that the statute of limitations under the 1956 Code barred the prosecution of Ieng Sary for the domestic crimes with which he is charged.

Next, Sa Sovan delivered the most inexplicable argument of the day, prompting laughter in the public gallery and looks of bewilderment within the courtroom. Gesticulating wildly and grabbing the microphone, Sovan urged both the court and the public to remember that his client, Khieu Samphan, is the former head of state, a title he received from the King when the King resigned in April 1976, and that at this time there was only one Constitution – the Khmer Rouge Constitution. Sovan then began to compare his client to current French President Sarkozy but abandoned this thought mid-sentence, instead turning to the public gallery and stating, “I am not trying to defend or protect any of the accused.”

At this point, President Nonn cut off Sovan’s rantings and admonished that he is only allowed to make oral statements at this time as to the statute of limitations under the 1956 Code and how the Code is applicable before the ECCC. “This is the primary agenda,” President Nonn forcefully stated, prompting quiet laughter in the public gallery.

Sovan continued his oral statement and at first appeared to be addressing the statute of limitations issue. He stated that every court must respect the non-retroactivity of criminal law. But then he quickly veered off track again, declaring, “We of course would like the society to forgive and forget. My father died. If any of the accused is found guilty, they should be prosecuted and sentenced.” Apparently appealing directly to the public gallery, Sovan concluded, “I am not trying to save anyone. I would like all Cambodian people to understand the truth.” As he took his seat, many in the audience laughed at the scene, while those in the courtroom looked at their desks or computer screens, waiting for the proceedings to continue.

Breaking the tension, Ang Udom rose and requested that the court allow Ieng Sary, due to his back problems, to return to the holding cell for the remainder of the day where he could participate remotely. The court granted this request and then requested the co-prosecutors’ office continue the oral arguments.

Co-Prosecutors Response to Accuseds’ Preliminary Objections on Statute of Limitations in Relation to Offenses Contained in the 1956 Cambodian Criminal Code

The national deputy co-prosecutor submitted that a statute of limitations may be extended if there are reasonable grounds. In this case, he argued, there are three grounds that justify extending the statute of limitations under the 1956 Code: (1) no statute of limitations existed from 1979 to 1992; (2) there was no functioning judicial system during this same time; and (3) error of the accused. He explained that, due to the targeting of judges, lawyers, and other professionals for extermination by the Khmer Rouge regime, the legal system of Cambodia and the ability of the people to rebuild it was essentially destroyed for many years after the fall of the regime. “Time was needed to ensure that a functional legal system could be established,” he stated.

The deputy co-prosecutor then highlighted the social instability in Cambodia after 1979, noting that a civil war was being waged in the country for many years. Despite the 1991 Paris Peace agreement and the establishment of the Kingdom of Cambodia in 1993, the fighting continued, with the accused taking an active leadership role on the side of the Khmer Rouge. Peace negotiations took a long time, and it was not until 1998 that the fighting truly stopped and that the accused Nuon Chea and Khieu Samphan finally agreed to reintegrate into the Cambodian government. It was only then, he maintained, that Cambodia could move forward with the Khmer Rouge tribunal.

Next, the deputy co-prosecutor emphasized that the accuseds’ actions after 1979, namely their leadership roles in waging war against the government, was partly responsible for the lack of a functioning judicial system in Cambodia until the early 1990s. He argued, “The accused cannot benefit from the passage of time if the accused is partially responsible for the incompetency of the judicial system and the inability to bring them to trial.”

Finally, the deputy co-prosecutor submitted that the decision of the Constitutional Council finding Article 3 of the Establishment Law constitutional was final and binding on the ECCC. He concluded, “As the law implementer, we must respect our obligation to implement the existing law as it is... and implement it wholeheartedly.”

At the conclusion of this argument, the court broke for morning recess and came to order promptly for the first time all week, signaling the court's newfound resolve to keep to its prescribed schedule.

International deputy co-prosecutor Vincent De Wilde d'Estmael continued the co-prosecutors' oral arguments after the break. Responding to the defense's non-retroactivity argument, d'Estmael insisted that there was indeed a difference between a procedural rule and a substantive rule, and specifically that the extension of a statute of limitations does not affect the situation of the accused in that he would still be prosecuted for the same crime.

Resuming his colleague's arguments that the statute of limitations of the 1956 Code did not apply from 1979 to 1992, d'Estmael then submitted that the 1956 Code had been officially abrogated or at least suspended as of 1979 by the Legislative Decree enacted in January 1979. He argued that this Legislative Decree, which criminalized only certain enumerated acts, mostly focused on treachery against the government, could not coexist with the 1956 Code and therefore replaced it. It was not until 1992, he contended, when the decree itself was replaced by new laws, that the statute of limitations could again be applied. Therefore, he concluded that when the ECCC Establishment Law was adopted, the statute of limitations on these crimes was still running and therefore could be lawfully extended.

D'Estmael then used the remainder of his time to reiterate many of his colleague's arguments, specifically that the statute of limitations did not apply from 1979 to 1992 due to a lack of a functioning judicial system, the situation of war, and the fact that the accused were themselves engaged in this war against the government. When the Khmer Rouge were removed, he stated, it appears that the priority of the people was to rebuild their society and end the war, not to create courts and bring perpetrators to justice.

D'Estmael concluded by urging the court to acknowledge the accuseds' responsibility for destroying the legal system of Cambodia during the Khmer Rouge regime from 1975 to 1979, destruction that severely affected justice in Cambodia for many years. "They obstructed justice," he declared, "and they should not be able to reap the benefits, [particularly] the benefit of impunity from national crimes."

Civil Parties' Response to Accuseds' Preliminary Objections on Statute of Limitations in Relation to Offenses Contained in the 1956 Cambodian Criminal Code

The civil parties next responded to the defense's oral arguments on whether the prosecution of the accused for domestic crimes is barred by the statute of limitations in the 1956 Code. Two civil party co-lawyers spoke on this issue before the lunch recess, essentially repeating the arguments already proposed by the co-prosecutors. The first civil party lawyer described again the context of Cambodia from 1979 to the 1990s, arguing, as the co-prosecutors had, that this situation justified the tolling of the statute of limitations during that time.

After the civil party lawyer completed his argument with an extensive historical timeline of the civil war, however, Ieng Sary's co-lawyer, Michael Karnavas, interrupted the civil parties'

argument to object, bringing to mind his warning on Tuesday morning to the civil parties regarding the appropriate advocacy for initial hearings. Karnavas stated that the civil parties seemed to be bringing out testimony on the experience of individuals and the factual situation in Cambodia after 1979, arguing that this was not a legal argument but evidence that should be reserved for trial. He then requested the Trial Chamber to caution all parties, including the defense, to limit their arguments to the legal question at issue.

Apparently ignoring Karnavas' objection, the Trial Chamber did not address his request or even acknowledge the interruption in any way. Rather, President Nonn moved the hearings forward, calling on the next civil party co-lawyer to proceed. Unlike the court, the second civil party lawyer chose to address Karnavas' objection, stating that the arguments on this issue cannot proceed without some reference to the facts as these facts, directly apply to the legal issues. Next, following the outline of the co-prosecutors' arguments, the lawyer also provided significant details as to the circumstances in Cambodia during and after the Khmer Rouge regime. He did diverge slightly from this pattern, however, by arguing that the extension of the statute of limitations was not only to bring the senior Khmer Rouge leaders to justice but also "to secure the right to justice and to the truth" for the victims. The need to rebuild their lives and their families after the fall of the regime and during the civil war had essentially eliminated any opportunity for the victims to seek reparations from 1979 to 1992, he argued. He concluded by submitting that the extension of the statute of limitations must be allowed in order to protect the rights of all the parties concerned.

At the conclusion of these remarks, the court adjourned for the lunch recess.

Upon returning from the lunch recess, President Nonn addressed the parties regarding the allocation of time among multiple lawyers who are arguing for the same party, revealing apparent irritation among the judges at the redundancy of the arguments in the morning session. "Where a number of lawyers will make arguments, you must make sure there is no repetition between each other and with your written submissions," he admonished. He also stated that the court suggested that each party have no more than two lawyers speak on each issue and that these lawyers appropriately allocate the time allotted among themselves. Ironically, Judge Jean-Marc Lavergne then proceeded to repeat what President Nonn had said, stating, "We need to make sure we work efficiently."

The final two civil parties' co-lawyers completed their responses on the statute of limitations issue, failing to heed the court's reprimand and reiterating much of what had already been argued by their colleagues. Civil Party Lead Co-Lawyer Pich Ang concluded the remarks of the civil parties just as the electricity in the public gallery went out, prompting President Nonn to stop the hearings until it returned a few minutes later.

Defense Reply to the Co-Prosecutors and Civil Parties

As the security guards in the public gallery patrolled for students who had fallen asleep during the power outage, Michael Karnavas began the defense's reply to the co-prosecutors and the civil parties. Acknowledging the repetitiveness of many of the arguments by both party groups, Karnavas responded in turn to "the block issues" that were raised. Specifically in response to the

civil parties, he explained that the defense agreed that the ECCC is a special court created by special law, but that it should still be fair and provide equal protection under the law for all parties. The defense disagrees, he stated, that victims and civil parties must always benefit, because, if the law should go against them, then there can be no reparations. “Being a victim in and of itself is not a justifiable reason not to apply the law,” he maintained, “no matter how inconvenient it is.

Seeming a bit defensive, Karnavas then explained that the lawyers for the accused were merely “trying to do [their] jobs to determine the contours of the law before going forward” and that this was the reason why his team had filed what may seem like an “unprecedented number” of preliminary objections. We are not trying to deny anyone’s rights, he stated.

Turning to the substantive arguments, Karnavas next addressed the many statements made by both the co-prosecutors and the civil parties regarding the circumstances that they claimed indicated the lack of a functioning court system from 1979 to 1992. Many of these arguments came close to testifying, he argued. He characterized it as dangerous and inappropriate for the co-prosecutors to suggest that judges should rule based on their own personal experiences, rather than on the evidence in the record. This suggestion would make them witnesses and not judges, he maintained.

Karnavas then discussed the issue of equal treatment under the law, again stressing the defense’s position that Article 3 *new* violates this right. He stated that it did not appear that the Cambodian Constitution Council considered the right to equal treatment when it made its decision on the constitutionality of Article 3. He urged the court to correct this oversight by considering equal treatment when making its decision on the preliminary objections.

Karnavas then concluded his response by reiterating the reasons behind the many preliminary objections filed by Ieng Sary’s defense team. “The purpose of our filings is to ensure that we all understand what the law is before moving forward,” he maintained. Given that many of these matters are issues of first instance before the Trial Chamber, he stated, the law on these issues need to be well defined. Yet, he insisted, “we endeavor never to abuse the discretion” the court has granted us.

Ieng Thirith’s co-lawyer, Phat Pouy Seang, then requested an opportunity also to respond to the oral arguments of the co-prosecutors and the civil parties, providing the only actual defense argument on this subject that was prepared by Ieng Sary’s team. Perhaps because he had not planned to participate in the oral arguments today, Seang’s response was not as clear and organized as that of the Ieng Sary defense team; he hit many of the same points that Karnavas had already raised. Echoing Karnavas’ argument in the *non bis in idem* discussion on Monday, Seang responded to the claim that there was no functioning court system from 1979 to 1992 by stating that, during that time period, individuals were tried and many were sentenced to death. “We may not be able to say it was a fair court,” he stated, but it could hold trials and carry out its sentences. This was enough for it to qualify as a functioning court system.

Upon the conclusion of Seang’s argument, the court took a 20-minute recess to fix the internet connection, which had been interrupted during the power outage.

Preparing for Thursday

After returning from the break, President Noon advised the parties on what was expected by the court for the discussion that will take place in Thursday's session on the list of witnesses, civil parties and experts. Parties are expected to limit their comments as to each individual on the list and to bear in mind that this list applies to the first segment of the trial only. Finally, the court wished to remind the parties that, until a final decision is made, none of the witnesses, experts or civil parties proposed have been rejected by the court.

Initial Specification of the Substance of the Reparations for the Civil Parties

To complete the day's proceedings and finally catching up to the original schedule, the court turned to the initial specification of the substance of the reparations for the civil parties. President Nonn began the discussion by outlining the rules of the ECCC regarding reparations. As set out in ECCC Internal Rule 23 *quinquies* (3) (a)-(b), there are two distinct avenues for reparations for victims. The first is a civil claim against the accused, which is enforced by the ordinary Cambodian courts, not the ECCC. This method was the sole avenue available for civil parties during ECCC Trial 001, and it has been retained for the current trial.

The second avenue for reparations now available, President Nonn explained, are "reparation initiatives." This avenue does not result in enforceable claims against the accused and must rely on the ability of the Victims Support Section ability to obtain sufficient funding. President Nonn stated that these reparations are collective and moral and essentially "symbolic in nature." He then turned over the proceedings to the civil parties to provide their initial specification of the substance of the reparations for the civil parties.

The civil party lead lawyers took this opportunity as the sole party to participate in this segment of the initial hearings to express to the court, the other parties, and the public the importance of the civil party role in these criminal proceedings, as well as to define the right to reparations under both Cambodian and international law.

Pich Ang began by outlining the right of a victim to receive reparations. Under Article 39 of the Constitution of Cambodia, victims have a right to request reparations; this right is also provided in the Cambodian Criminal Procedure Code. Ang then reiterated what President Nonn had described in his remarks, specifically that the ECCC Internal Rules provide two separate and distinct avenues for reparations within its criminal proceedings.

Elisabeth Simmonneau Fort added to Ang's statements by outlining the right to reparations as defined in international human rights law. Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights entitle victims to seek reparations for violations of their human rights. Fort also cited two resolutions of the United Nations General Assembly that provide for the right of crime victims to seek recourse. These resolutions, she stated, also uphold the principle that if it is not possible to obtain full reparations from the defendant, the States must themselves shoulder the financial burden. The resolutions encourage States to establish and strengthen national funds for this purpose.

Peering over her glasses at the judges, Fort then expounded on the importance of the role of the civil parties in criminal proceedings. There cannot be any reparations without the civil parties, she said. “Civil parties are not invited guests. They have a right on equal footing of other parties,” she explained, and may file submissions, request documents, and make oral arguments as any other party. They may additionally, however, seek reparations. Treating reparations as separate from the criminal trial would remove an essential part of this process, since, without the victims, the crimes would not have existed.

Ang then continued the discussion by setting out the role of the Trial Chamber with regard to reparations. He stated that the ECCC Internal Rules require the civil party to show that the party directly suffered a harm, that the harms suffered are a direct result of the crime, and that there exists a link between the harm suffered and the awards sought. It is the responsibility of the co-investigating judges to find that the civil parties have met these elements. Therefore, Ang explained, the Trial Chamber may decide only on the correct award to be given.

Moving on to outlining the initial specification of the substance of the reparations, Ang reminded the court that the information the civil parties will provide today does not include the awards sought by the new civil parties recently allowed by the Pre-Trial Chamber. Once these civil parties have been consulted, the lawyers will then make a joint and collective request to the court for all of the civil parties. Ang then outlined the four major forms of reparations initiatives that the civil parties are currently contemplating:

- (1) Memorial and Remembrance:
 - a. Day of remembrance or official public holiday to remember the genocide;
 - b. Memorial site where appropriate; and
 - c. Preservation of the killing fields.
- (2) Rehabilitation:
 - a. Establishment of a framework of psychological treatment and services for victims;
 - b. Consultation program where victims can meet and interact with each other for support;
- (3) Compilation of Documents and Education:
 - a. Education program on the history of Democratic Kampuchea, some of which has already been implemented;
 - b. Establishment of archive or library;
 - c. Museum on the history of the Khmer Rouge, to be located in Phnom Penh; and
 - d. Compilation of a complete list of victims.
- (4) Other awards:
 - a. Project on the provision of citizenship to Vietnamese victims;
 - b. Educational project for those born through forced marriages;
 - c. Trust fund to pay for reparation awards; and
 - d. Public dissemination of the judgment in Trial 002.

Fort closed the initial specification hearings by stating that they obviously will need to modify these initial specifications in the future and by reminding the court and all the parties that, after the ECCC has completed its course, all that will remain will be the sanctions and the reparations.

As reparations are a fundamental right of which victims and civil parties may not be deprived, Fort urged the court to help the civil parties implement the reparations in such a way so that this right is preserved and does not become an obligation or burden to them.

As no other parties wished to make comments on the reparations issue, the court adjourned for the day, planning to address the final agenda item for the initial hearings – oral arguments on the proposed witness list during the Thursday, 30 June proceedings.