

Victim demands heard

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Lawyers for civil parties outlined reparations requests yesterday at the Khmer Rouge tribunal, demanding compensation for the suffering of their clients as the court's historic second case stretched into its third day.

Civil party participation has long been touted as a distinctive feature of the tribunal, the first international war crimes court to allow for direct victim participation. Some 3,850 civil parties are participating in Case 002, including 1,728 whose applications were originally rejected but who were accepted on appeal in a decision released last week.

Speaking towards the end of the hearing yesterday, civil party lead co-lawyer Pich Ang offered a list of proposed reparations that he said would hopefully help victims "heal their psychological wounds".

"Those who applied to be civil parties have the intention to seek the truth and justice, and to seek reparations awards for the victims as well as for the society as a whole," Pich Ang said.

Among the requests he listed were the construction of stupas and a memorial site, the establishment of a national day of remembrance of some kind, the preservation of crime sites for historical purposes and the establishment of a museum and archive related to Khmer Rouge history.

Pich Ang also called for the expanded teaching of Khmer Rouge history in Cambodian schools, the establishment of centres where victims can seek psychological treatment, the provision of citizenship to Vietnamese victims of the regime and an education programme for children born as a result of forced marriages during the KR period. A trust fund, he said, could be established to fund the proposed awards.

Trial Chamber president Nil Nonn noted that financial awards were not feasible given the large number of civil parties, and in any case, the court's rules empower it to grant only "collective and moral" reparations.

Pich Ang's foreign counterpart, civil party lead co-lawyer Elisabeth Simonneau Fort, said the reparations proposals named yesterday represented only preliminary suggestions, and that further consultation with victims and other lawyers was necessary.

"We have the possibility of modifying our request and adding, and it's obvious that we

will be obliged to do so,” Simonneau Fort said, noting the large number of civil parties that were admitted only last week.

Reparations were one of the more contentious aspects of the tribunal’s first verdict, which came last year in the case of former S-21 prison chief Kaing Guek Eav, better known as Duch.

In the Duch judgment, the court’s Trial Chamber granted a pair of reparations requests from civil parties: It printed the names of accepted civil parties in the verdict and pledged to collect and publish all statements of apology made by Duch during the proceedings.

Civil party lawyers and court monitors criticised these reparations as unimaginative and insufficient, though the judges said in their decision that they did not have the power to fund projects or make recommendations to the government.

At a plenary session in September, the court thus amended its rules to allow for more expansive reparations options that will be available to judges in Case 002. The court can now make non-binding recommendations to the government regarding reparations and design projects that can be implemented with external funding.

Sou Koeun, a Case 002 civil party from Kampong Speu province, said outside the court yesterday that he approved of the proposed awards.

“The most important for me is the memorial stupa for civil parties,” he said. “These reparations can help the victims recover from what happened a long time ago and the mental problems they have had since a long time ago.”

Also yesterday, the court heard arguments on whether the statute of limitations for crimes in the 1956 Cambodian Penal Code had expired by the start of investigations in the case.

While such crimes originally carried a 10-year statute of limitations, the 2001 law on the establishment of the tribunal extended this statute by an additional 20 years for crimes falling within the court’s jurisdiction. The 2004 amended tribunal law carried an additional 10-year extension.

Cambodian deputy prosecutor Seng Bunkheang said the original 10-year statute of limitations did not apply due to the weakness of the Cambodian court system in the years following the Khmer Rouge reign.

“Time was needed to ensure that a proper and functional judicial system could be reestablished,” he said.

But Michael Karnavas, a defence lawyer for former Khmer Rouge foreign minister Ieng Sary, said the extension of the statute of limitations represented an unjustified, retroactive alteration of the law. Trials were indeed conducted during the 1980s, however imperfectly, he added.

“Was it a perfect situation? No. But if you pick up the newspapers and you read the reports on Cambodia today, you hear the same refrain – political interference, lack of independence and so on,” he said.

Sa Sovan, a lawyer for former KR head of state Khieu Samphan, echoed the Ieng Sary team in arguing against the retroactive altering of the statute, though he acknowledged finding portions of the discussion inscrutable.

“Sometimes the words used here are so technical and sometimes it is hard for me to follow and to understand,” he said.

In the Duch judgment, the judges were divided on whether the statute of limitations for crimes outlawed in the 1956 Penal Code had expired, and thus ruled only on the basis of international law.

Ieng Sary left the hearing yesterday morning due to back pain, while KR Brother Number 2 Nuon Chea walked out for the third day in a row as his own case was not being considered. The other defendants, Khieu Samphan and Ieng Sary’s wife, former KR social action minister Ieng Thirith, stayed for the duration.

After running behind schedule earlier this week, the tribunal is set to conclude this round of initial hearings today with a discussion of proposed witnesses. Hearings involving evidence and witness testimony are not expected until August or September.

Defence lawyers have called for the testimony of King Father Norodom Sihanouk and six senior government officials including National Assembly President Heng Samrin and Senate President Chea Sim, all of whom have apparently ignored summonses issued by the tribunal. Nuon Chea’s lawyers have also called for witnesses in relation to the roles of Vietnam and the United States in the DK period.

Nuon Chea excused himself early from hearings on Tuesday and Wednesday because his own case was not on the agenda. Koppe said following the hearing yesterday that his client was likely upset his lawyers had been cut off, and that the team was considering whether it would be “fruitful” for him to participate in the trial in the future.

“I would say that if we continue like this – an initial hearing ... where an agenda is set and where there’s no room to have a proper debate – then there might come a point in time that there seems to be no point for him to be present,” Koppe said.

Others were more sanguine. Co-prosecutor Andrew Cayley said it had been “an extremely positive week”, and that the court was “in a place where a lot of people said we never would be”.

“A lot of people said this trial would never happen, and actually, it’s going to trial and it appears, from what we’ve seen of the recent hearing, and also the accused and their level

of cooperation, that it's more than many, many people could have hoped for," he said.