

Reparation in Question

Report by: Ly Sok-Kheang

Judicial justice at the Extraordinary Chambers in the Courts of Cambodia (ECCC) has drawn great attention from Cambodians and the rest of the world. Both the ECCC and other institutions are taking great pains in outreach activities and this has resulted in citizen engagement in the process in many different forms.



Villagers attend a pre-hearing meeting

Given the tough legal battle, it is necessary for the general public to keep a close watch on the proceedings. Although Case 001 related to Kaing Guek Eav, alias Duch, the former chief of S-21, completed its 77-day trial, the more pressing Case 002 of four former Khmer Rouge (KR) leaders, including Nuon Chea, Khieu

Samphan, Ieng Sary, and Ieng Thirith, has started with an examination of the mental status of two of the accused, namely Nuon Chea and Ieng Thirith. Ieng Thirith’s mental status has become a grave concern among the Cambodian public and the international community over whether or not she would be found fit to stand trial. If unfit, Ieng Thirith may be transferred to a secure treatment facility. Nuon Chea also argued that he be exempted from prosecution because he has difficulty in “concentration.”

Since 2006 the Documentation Center of Cambodia (DC-Cam) has tried its best to keep thousands of people engaged in the accountability process. The prime objective is to let villagers witness the justice mechanism with their own eyes and to educate them about the process. For the October 19-20, 2011 ECCC Trial Chamber hearing, DC-Cam invited prominent representatives from various communities of three provinces—Kampong Speu, Kandal and Takeo—to participate. Among them, nearly ten are civil parties of the Case 002, in which Ieng Thirith is one of the accused persons.

Highlights from the Pre-Hearing Meeting

One day prior to the court hearing DC-Cam staffers helped villagers to prepare for the hearing. All the villagers gathered together inside DC-Cam's Accounting Room to listen to a series of presentations, which introduced basic information about what they would see at the ECCC, a film screening, and discussion. This is critical to ensure that the villagers are able to understand the court proceeding. Without this, they would find it hard to follow the court proceeding and, worse; they might lose interest in obtaining information about the trial.

At the start of the pre-hearing meeting, Ly Sok-Kheang presented the Living Documents Project's objectives, which are to foster community participation and understanding of the rule of law, human rights, and democracy through trainings and forums on the ECCC and the related topics of genocide, reconciliation and transitional justice in Cambodia. DC-Cam anticipates that these villagers will act as messengers or discussants about topics on ECCC for their home communities. Afterward, Men Pechet briefed the villagers on DC-Cam's Victim Participation Project (VPA), which is designed to assist people to fill out complaints and find lawyers to represent civil parties during the accountability process.



Chan Prathna (left) and Lim Cheytoat (right)

Lim Cheytoat and Chan Prathnar of DC-Cam's Court Observation Team members spoke about the "Observation" bulletin, in which they, along with Ms. Dy Socheata and Kim Maryan, observe ECCC proceedings and write basic explanations of legal issues that arise in language villagers can easily understand. Chan Prathnar stressed the Trial Chamber's focus on a few key points, such as reparations and Ieng

Thirith's fitness to stand trial. In regard to compensation, a participant raised the question about what would happen if the Trial Chamber found that Ieng Thirith genuinely suffers from mental impairment. This reflected the concern of many people. For sure, she would be sent to a hospital to be treated. Thereafter, her trial would proceed. However, some maintained doubts about the feasibility of her trial.

For example, DC-Cam Observation Project legal consultant Randle DeFalco has previously raised three concerns: first, there is no suitable medical center in Cambodia; second, the accused's fitness is hard to restore because of her old age and degenerative nature of her condition (Alzheimer's disease); third, the ECCC has a limited mandate to prosecute the KR leaders, meaning that the Court cannot wait indefinitely to monitor her fitness. After hearing these possible consequences, another participant kept wondering why her prosecution has taken so long to date. Some expressed their fear that some or all ECCC accused might die unpunished.

Film Screening "Mass Graves near Pagoda"

A short introduction to the film was made before the screening. The film concerns a former KR cadre, named Ta Kin, living side by side with family members of victims whom Ta Kin had killed during the KR period. It depicted the nature of tolerance between both sides, which was arrived at ultimately after much pain. The children of the victims spared the life of Ta Kin, who is now a clergyman at a pagoda in the community. Ta Kin confirmed that he also faced being killed if he dared to disobey the orders of his KR superiors. The film also showed how each KR survivor used Buddhism as a way to seek personal healing.

Ly Sok-Kheang reiterated how each individual must find their own way to reach reconciliation at the personal and community levels. A participant from Kampong Speu Province resonated with the film by commenting that he clearly knows a perpetrator and while he has decided to co-exist with the former cadre, he has not chosen to reconcile. Similarly, Mr. Chan Chhan survived the KR regime only to find that his father was killed by the regime's commune chief. After the regime was toppled, Ms. Chan was promoted to village chief, and was allowed to possess a gun. With the gun in hand, Mr. Chan had the full capacity to shoot to death the former commune chief who was in charge when her father was killed. However, Mr. Chan reiterated that: "I told myself not to take any vengeful acts." These are among the reactions of some participants to the film, while others watched the film attentively and commented by murmuring quietly about the approach of both sides—victims and perpetrators—that the community adopted.

The Court Hearing: October 19

On the morning of October 19, 2011, all the participants embarked on a bus bound for the ECCC an hour before the court hearing began. The hearing started at 9:00 a.m. with the entire morning dedicated to the examination of what kinds of reparation would be possible for KR survivors, especially civil parties to Case 002. The legal debate touched on the issue of how reparations regimes were created and implemented by other international courts, for example the International Criminal

Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). This was followed by the pressing appeal for the government to fulfill its reparative obligations under international law generally. According to the ECCC Internal Rules (REV.8), Rule 23(1) stipulates that:

“If an Accused is convicted, the Chambers may award only collective and moral reparations to Civil Parties. Collective and moral reparations for the purpose of these Rules are measures that:

- a) Acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted, and
- b) Provide benefits to the Civil Parties which address this harm.

These benefits shall not take the form of monetary payments to Civil Parties.”

Despite the clear stipulation, the previous Case 001 against Kaing Guek Eav, alias Duch, chief of “S-21” Tuol Sleng Prison, resulted only in the names of the civil parties being written down, published, and distributed to the public as reparation. However, there was no explicit mechanism to ensure that the civil parties could obtain any sort of reparation and the Trial Chamber in that case rejected numerous other reparations requests from Civil Parties. That is why Judge Nil Non, president the Trial Chamber, allowed lead co-lawyers of the Civil Parties to present their proposals for compensation at this pre-trial juncture. As argued, the proposals from Civil Parties were created in order to commemorate the dead and hold ceremonies.



Taing Kim, a KR survivor, attend court-hearing at ECCC

First, the Civil Parties will request creation of a “National Day of Remembrance” with international acknowledgement. This award would benefit the civil parties and all the Cambodian people, and could include both a religious and non-religious ceremonies. Further, both state and non-state parties could be acknowledged in the

ceremony. The day could be celebrated on April 17, the first day of Phchum Ben, or on May 20, the current day of remembrance. However, more discussion needs to be held regarding specific dates.

The second proposal includes the erection of a *Stupa* religious or non-religious memorial. Almost all Civil Parties raised this suggestion, which would benefit all victims. The location of the memorial could be at the state, provincial, district, or commune level. Therefore, the civil parties seek cooperation from the ECCC in making location decisions.

The third proposal includes a ceremony to be held after issuing a final verdict, at which victims could express their voice in regard to their suffering. The time and date would be confirmed later, but there was no practical implementation information for this proposed initiative has been provided as of yet.

The fourth proposal is focused on the preservation of crime sites, which are physical evidence of KR atrocity crimes. The civil parties could commemorate their relatives at the place where the crimes took place, and they could use such locations to educate the younger generation about the atrocities of the KR.



School children come in groups to participate in the trial process

The lawyers of the civil parties further explained the importance of reparation. First, mental and physical health care centers will be proposed to treat those who were direct victims of the crimes. The civil party lawyers argued that these victims should be issued an identity card that enables them to get free medical care. Only civil parties should enjoy

this right. This service could be established within the existing premises such as at the Transcultural Psychosocial Organization (TPO) or state-run hospitals. Second, a “Mutual Supporting Unit” should be established based on gender equality where victims could compare notes in order to relieve their pain and overcome their suffering. This would need to be implemented with the assistance of the Victims Support Section of the ECCC, TPO and other relevant entities. And, third, efforts should be made to compile documents and to educate the younger generation about the history. Thus, it is necessary to integrate the DK history and the current trial process into the school curriculum.

In addition to the abovementioned proposals, there was a further request by the civil party lawyers of Legal Aid of Cambodia (LAC) to set up a center to Preserve Cham Culture in Kampong Chhnang and Kampong Cham Provinces. The lawyers reasoned that the KR caused so much pain to the Cham community, which led to the near loss of their language, that such a center is necessary to create unity in Cambodia.

Nevertheless, it should be recalled that DC-Cam in collaboration with the Ministry of Education, Youth and Sports (MoEYS) has already made strenuous efforts to integrate the Democratic Kampuchea (DK) history into the school curriculum in Cambodia. Up to now, these collaborative efforts have trained 24 national teachers, 180 provincial teachers, over 3,000 commune teachers, and approximately 100 university lecturers on the DK period history. These teachers have learned a variety of teaching methods, which will enable them to teach their students about DK history in an effective way. Furthermore, DC-Cam's Cham Oral History project has also worked toward the preservation of Cham culture, language, religion, and identity and plans to develop two principal sites in Sihanoukville's O-Trav and Kampong Cham Province's Svay Khleang villages. The two sites are important initiatives that will set precedents for other Cham communities to set up their own cultural preservation centers.

Finally, there was a request that a list of victims and the crimes they suffered should be written down to commemorate their deaths. The list should be available and accessible online. As for civil parties, their names should also be recorded in the final verdict of the Case 002. This is a form of acknowledgement that each civil party and the people deserve.

To achieve these proposals, a trust fund has been proposed to raise funds in support of any projects aimed at compensating the victims.

In their remarks, the lawyers for the civil parties underlined that reparation could help the civil parties understand their importance and grace. They even stated the overall success of the ECCC is intimately associated with the success the provision of reparations. The proposals currently appear intentionally ambitious; if they were not deemed ambitious, it would mean that the civil party lawyers do not work for the civil parties. It is the lawyers' responsibility to propose a feasible compensation.

In a similar vein, national co-prosecutor Chea Leang pointed out that reparation is very important if the accused are found guilty, as they should be held accountable for their crimes.

The Defense Counsel for some accused challenged the proposals put forward by the Civil Parties. Mr. Kasar Vuth, defense counsel for Kaing Guek Eav (Case 001), said

reparation may not be possible unless the exact nature of damage could be clearly linked to a specific individual. The counsel even expressed doubts over the estimated 1.7 million deaths of Cambodian people during the DK period by asking “where does the figure come from?” In regard to ethnic minorities, the counsel underlined that Cham and also Vietnamese people commented that they deserved compensation. However, the counsel made a counter-argument in that Cham people are Khmer who only practice Islam. The counsel’s overall remark was that the civil party lawyers’ argument was not sufficiently clear.

Hence, the defense counsels questioned the rationale of whether the ethnic Vietnamese and Cham people were eligible for special reparations programs, as argued by the lawyers of the civil parties. For example, Mr. Phat Peou Seang, national co-defense counsel for Ieng Thirith, found such types of reparation inappropriate. He argued, in what appeared to be solely his personal opinion, that all reparations activities should be designed to benefit all victims, not only for Vietnamese and Cham people. If ethnic minorities were the primary focus, he opined that this result could lead people concluding improperly that the suffering of the majority Khmer people under the KR is somehow less important. Furthermore, Mr. Micheal Kanavas emphasized that he was not convinced that the ECCC could afford to act on the civil parties’ proposals, opining that the ECCC cannot provide reparations projects that the Cambodian government should be doing on its own.

October 20, 2011: (Morning)

The morning session of October 20, 2011 concerned the fitness of Ieng Thirith to stand trial. At the start, Mr. Phat Peou Seang, national co-defense counsel for Ieng Thirith, confirmed the absence of Ieng Thirith, the accused who is having health difficulties. Nevertheless, the hearing proceeded without delay. The counsel posed many questions to medical doctors invited to testify at the hearing. Then, the prosecution lawyers took turns cross-checking information with the two medical doctors, who have expertise in mental health. The core goal of the prosecution appeared to be to ensure that Ieng Thirith’s illness is genuine and not just “pretend,” as many visiting villagers are worried that Ieng Thirith is intentionally evading justice. Thus, the prosecution posed questions about the possibility of reconstructing Ieng Thirith’s memory through various means such as visual video. Then the lead co-lawyers sought explanation from the experts. For example, how many older people usually suffer from cognitive impairment? The expert responded that it was normal for the elderly to develop “organic brain disease” at some point.

People’s Views on Reparation and Fitness to Stand Trial



Two villagers from Kampong Speu Province

The participants provided their reactions to the arguments by civil party lawyers, the prosecution, and counter-arguments by defense counsel with respect to reparations and Ieng Thirith's fitness to stand trial. While many nodded in agreement with civil party lawyers, others found the long presentation a bit confusing and hard to follow. Ms. Long Mary, civil party, fifty-three years old from Kandal Stung District, Kandal Province, found the lead civil party lawyers' basic proposals to be appropriate, and hoped that the ECCC will provide reparation in some way. What Ms. Mary suggested to the civil party lawyers was: first, the lawyer should stress the main points of arguments to enable her to grasp the meaning; second, if collective reparation may be possible, an irrigation system should be one of the important elements to address the severity of victims' economic plight and poverty throughout Cambodia. There were many demands that a series of compensations such as memorials and religious buildings be made. Chan Chhan was a case in point, as he proposed a memorial for his deceased wife.

In regard to Ieng Thirith's health condition, Ms. Yim Sa-Ut, sixty-seven years old, of Kandal Stung District, Kandal Province, Ms. Men Lay, eighty-three years old, of Koh Thom District, Kandal Province, and Ms. Mary suggested that a favorable condition be created for Ieng Thirith's case. The trio said that if Ieng Thirith suffered from mental illness, she should be sent for medical treatment. Personally, Ms. Mary said Ieng Thirith should be allowed to stay outside the court or before she died, she should be able to go to a pagoda. At the same time, Ms. Sa-Ut stressed that there should be no vindication for the other elderly leaders generally. Ms. Men Lay, eighty-three, from Koh Thom District of Kandal Province, said it would be impossible to get true reparation for those who died. She added that: "I do not know what would be appropriate compensation for my deceased son."

However ill the accused are, three villagers from Kampong Speu Province insisted on a trial for Ieng Thirith and the other former KR leaders. To them, no one should escape justice. By so doing, the younger generation could learn about this process.

Conclusion

As always, the Living Documents and Victim Participation Projects tried their best to engage the public in the ECCC process. This time, participants were able to hear the first discussion of how reparation should be provided to the KR survivors in ECCC Case 002. The feasibility of collective reparations would be meaningful for them. First, it represents public acknowledgement of their suffering. Second, it symbolizes a long-term prospect for further peaceful co-existence between and among former adversaries.

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