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Conducting a Legal Experiment at Victims' Expense

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I am writing to share my thoughts on the Extraordinary Chambers' present reassessment of the role of civil parties. As has been known to all involved since the beginning, the suspects in detention are old and frail and the ECCC has limited time and money and is therefore under pressure to reach judgment as quickly as possible. With an estimated 5,000,000 survivors still living, any serious attempt to include victims in the process would have resulted in submission to the ECCC Victims Unit of at least 1,000,000 complaints and a far greater number of civil party applications than the 2000 received so far. The VU was nevertheless established late without sufficient staffing and financial resources and was never able to catch up with processing the proportionately small number of applications it received. Moreover, I agree with the concerns expressed by Dr. Ear in Wall Street Journal's paper ("Cambodian 'Justice' -- Without major personnel changes, the Khmer Rouge trial risks descending into farce.") that recent changes in personnel have placed unqualified persons in charge of the VU's critical tasks. The Court's administration of victim participation has therefore always been inadequate.

In addition, no attempt was ever made by the Co-Investigating or Trial Judges in the *Duch/S-21* case to limit the number of civil parties by applying the qualifying criteria or otherwise vetting the applications. A number of civil parties who have spoken during the trial have had their accounts dismissed by the defense and publicly questioned. With trial almost over, the defense is seeking to dismiss 24 out of 93 civil parties from the case. The affected civil parties have no doubt been traumatized to some extent by these events. Efforts from the start to regulate civil party recognition would have avoided some of these challenges and led to earlier discussion of the problems the Court is now belatedly attempting to address.

The ECCC Judges now stand ready to substantially reduce or eliminate the role of civil parties in advance of the second trial due concerns about the time involved in adjudicating the large number of expected defense challenges. The unfortunate result of this is the impression that the *ECCC has conducted a legal experiment at victims' expense*. My overriding concern is therefore how to remedy the harm caused to the nearly 2,000 victims who have already applied for civil party status in the second case.

It is true that many civil parties do not fully understand the meaning of the term "civil party" and the scope of their role in the proceedings; however, it would be disrespectful for the Court to hide behind this outreach failure. If the Court wants to limit civil party

rights, it has an obligation to explain the full legal implications both to the public at large and to the applicants before a final plan is adopted.

I would encourage the Court to write civil party applicants individually to acknowledge their applications, notify them of any anticipated change in procedure, and assure them that their participatory role will remain historically significant. Additionally, I believe that the Court should engage each applicant in person by inviting them in small groups to Phnom Penh to hear about proposed changes from judicial officials and be given an opportunity to voice their opinions either verbally or by filling out a written questionnaire. Finally, if representative victims are called to testify during the second trial, I feel strongly that a number of these persons should be voted for by the current civil party applicants from among a group pre-selected by a Victim's representative.

Whatever the Court's ultimate decision about the scope of victim participation in the second trial, it has the obligation to explain the changes directly to affected victims and to respectfully hear their views. If called upon, DC-Cam will be more than happy to contribute logistical support for such meetings, including securing a meeting place, arranging for artistic performances, and assisting with the creation of a questionnaire.