

# VICTIMS' RIGHT TO REMEDY: AWARDING MEANINGFUL REPARATIONS AT THE ECCC

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**The International Human Rights Law Clinic**, University of California, Berkeley, School of Law marshals the resources of the faculty and students of UC Berkeley to advance the struggle for human rights on behalf of individuals and marginalized communities. Chief contributors to this report include clinic interns Shayla Johnson '13, Saira Hussain '13, and Peggy Li '13, under the supervision of Laurel E. Fletcher, Clinical Professor of Law and Director, International Human Rights Law Clinic. For more information, see: <http://www.humanrightsclinic.org>.

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## TABLE OF CONTENTS

Introduction and Executive Summary.....	1
Discussion.....	3
a. Requirement that Reparations Requests be ‘Clearly Specified’ Should Not be Onerous.....	3
b. Convicted Person(s) Must Provide Reparations Regardless of Purported Indigence .....	6
c. The Nature & Scope of Collective Reparations Must be Properly Understood.....	7
d. Clarify Impact of Severance Order on Nexus Requirement .....	9
e. Take Practical Steps to Enhance Procedural Forms of Reparation.....	10
Conclusion & Recommendations.....	12

## Introduction and Executive Summary

Monday 21 November 2011 marks the start of the long-awaited trial of Khmer Rouge senior leaders ("Case 002") for genocide, war crimes and crimes against humanity before the Extraordinary Chambers in the Courts of Cambodia ("ECCC"). The trial is a historic step forward in Cambodia's search for justice. After years of pre-trial investigations, the Extraordinary Chambers of the Courts of Cambodia (ECCC) has brought charges of mass atrocity crimes against Nuon Chea, Ieng Sary, Khieu Samphan, and Ieng Thirith. The four Accused occupied key positions in the Democratic Kampuchea government which ruled Cambodia in a bloody reign of terror from 1975 to 1979.

As UN Secretary-General Ban Ki-moon noted last month, "reparations are arguably the most victim-centered justice mechanism available and the most significant means of making a difference in the lives of victims. UN experience demonstrates that reparations may facilitate reconciliation and confidence in the state, and thus lead to more stable and durable piece in post-conflict societies"<sup>1</sup> (para 26 end note)

The ECCC's reparations scheme has the potential to be the Court's most remarkable contribution to Cambodian victims and the development of international law. Reparations can be sought by victims who participate in the proceedings as 'Civil Parties.' If the Accused persons are convicted, Civil Parties may seek "collective and moral reparations."<sup>2</sup> The United Nations-backed court is one of several ad hoc international tribunals designed to support international criminal accountability and provide a measure of justice for victims.

Yet the promise of justice for Cambodian survivors participating in the trial is only as enduring as the Court's ability to acknowledge their harm and provide redress. Yesterday, on 17<sup>th</sup> November 2011, the Court declared Ieng Thirith unfit to stand trial, severed her from

proceedings in Case 002 and ordered her release from the ECCC Detention Facility.

As the first internationalized court to offer reparations to Civil Parties and victims of mass atrocities, the ECCC is a global standard-setting institution. Yet its success depends on the extent to which it learns from previous missteps and ensures that it can deliver justice for Cambodian victims and serve as an exemplar for other international tribunals.

Submitted by non-profit organizations with extensive experience working on behalf of victims of human rights abuse,<sup>3</sup> this report offers suggestions on how reparations can be administered clearly, effectively, and in a principled manner.

It is particularly important that the ECCC re-examine its reparations framework now, as Case 002 begins. Because of the lack of substantive reparations awarded to victims in Case 001 and the declining health of the defendants being prosecuted in Case 002, it is critical that the ECCC apply internationally accepted reparations standards at the first opportunity in this proceeding.

On 26 July 2010, the Court issued its first judgment against KAING Guek Eav *alias* Duch. Yet, only a small fraction of the twenty-eight reparations requests put before the Trial Chamber by Civil Parties were granted. Applying a stringent test that was not contained in its Internal Rules ("Rules"),<sup>4</sup> the Court issued only a few reparations awards, including publicly listing the names of all accepted Civil Parties and the name of any family member who died at S-21 prison; and ordering a compilation of all statements of apology and acknowledgments of responsibility made by Duch during the course of the trial.

Other requested reparations, such as memorials and access to free medical care and educational measures, were rejected because they either "lacked specificity" or "were beyond the scope of available reparations before the ECCC." Specifically, the Court held that "proof would be required as to the

link between the measure...and the crimes for which [Duch] has been found responsible.. In addition, the Court found that: “The number and identity of all intended beneficiaries of these requests, the nature of the measures sought and the cost of their provision are neither particularized nor readily quantifiable within the available resources of the Chamber.”<sup>5</sup> Further, the Court defined the “collective and moral” reparations which it could award to exclude any form of monetary payment.<sup>6</sup>

As a result, legal observers noted that the reparations judgment in Case 001 offered “nothing of real value for Civil Parties.”<sup>7</sup> Indeed, in our experience, some Civil Parties feel that restricting reparations in this manner amounted to “publishing half-hearted apologies on pieces of paper (that) insults the memory of the departed”.<sup>8</sup>

Where mass atrocity is concerned, impunity is defined as the “impossibility,” in fact and in law, of “bringing perpetrators to account.” Wrongdoers evade justice because they are not subject to any inquiry that might lead to their being tried and, if found guilty, sentenced and subject to “making reparations to their victims”.<sup>9</sup> This final obligation—to make reparations to victims—is perhaps the most important aspect of the international justice process, upon which the legacy of an international tribunal will undoubtedly be judged.

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Despite amendments to the Rules, which were adopted throughout Case 001 and in the time since, significant ambiguities still surround the norms and practices governing reparations awards at the ECCC.

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The standard of proof Civil Parties must meet in making reparations requests remains unclear. The Rules do not articulate the information Civil Parties must provide to specifically identify the reparations awards they seek. The judgment in Case 001 did not meaningfully discuss the ‘harm’ victims had endured. The Chamber did not issue a reasoned decision for accepting and rejecting individual reparations requests. Such a

reasoned decision would itself have amounted to a form of procedural reparation for Civil Parties. The Court missed an opportunity to award reparations that would have required little additional time or expense.

Although Duch’s purported indigence gave the Court pause when awarding reparations against him in Case 001, this consideration should be given little or no weight in the Court’s judgment on reparations in Case 002. Neither Cambodian nor international law recognizes indigence as a ground upon which reparations awards may be restrained or rejected. Further, the judgment in Case 001 takes a narrow view of “collective and moral” reparations that is wholly inconsistent with international law and the object and purpose of these types of reparations.

The lack of clarity regarding reparations standards impinges on the rights of Civil Parties and creates uncertainty in Cambodian and international law. Civil Parties wish to avoid the problems and missteps that arose in Case 001. They seek to satisfy the legal requirements that will result in substantive awards being granted—awards that adequately acknowledge the harm they suffered. In Case 002, the Court has a fresh opportunity to provide an important measure of satisfaction to victims by rendering a judgment on reparations that is well-reasoned, transparent, and highlights victim experiences.

This timely report coincides with the start of evidentiary hearings in Case 002 that will determine, among other things, Civil Parties’ right to reparations. The report calls upon the Court to enable Civil Parties to exercise their fundamental right to request, and receive, meaningful reparations.

Informed by the legal and practical issues that arose in Case 001 and recognizing the important amendments to the reparations framework instituted since, this report seeks to encourage discussion and debate on issues salient to reparations in Case 002. It provides discussion points and analysis of potential obstacles which may obstruct the Court in awarding adequate and meaningful reparations. It also offers recommendations to

the Court for reform of its reparations request procedures consistent with the rights of victims under international law.

Specifically, we recommend the following in the event of a conviction in the cases before the Court:

- The Court's Standards for granting reparations requests, particularly those governing the nature of proof and degree of specificity, should conform to the law and practice of other international(ized) tribunals and have resonance for Cambodian Civil Parties and victims, bearing in mind their contemporary context and historical, cultural, and religious background.
- The Court should adopt a definition and understanding of "collective and moral" reparations that comports with those applied in international(ized) tribunals and collective reparations programs around the world.
- The Court should not consider the indigency of the Accused persons in reaching a decision on Civil Party reparation requests. International law requires that human rights violators provide reparations to their victims and the Rules provide a clear and appropriate process and forum for dealing with procedural matters arising from and in connection to the indigency of an Accused person in the event s/he is convicted.
- The Court should appoint an eminent expert or working group of experts to liaise with the Court Administration, Victim Support Section, and the Lead Co-Lawyers to determine the nature and scope of permissible reparations and the modalities of any independent implementing or residual body outside the rubric of the ECCC. This body would hold primary responsibility for collecting, managing, and disbursing funds both leading up to, but more critically following, the closing of the Court.
- The Court should dedicate a section in the reparations judgment to the Chamber's

evidentiary findings on the harm caused to Civil Parties as a consequence of the offenses proved. This section should pay special attention to vulnerable victims, such as victims of sexual violence and gender based crimes.

- The Court should incorporate Civil Party and expert testimony and evidence where appropriate in the judgment, and particularly in its consideration of the relationship between the harm endured by victims and the actions of the convicted persons or what we term the "nexus requirement."
- The Court should include express and detailed analysis of each reparation request, including a reasoned determination on the nexus requirement, including relevant facts, evidence, or testimony, offered by Civil Parties and experts.

## Discussion

### a. Requirement that Reparations Requests be 'Clearly Specified' Should Not be Onerous

In Case 001, the Court's Trial Chamber stated that a "prerequisite to the grant of an award is the *clear specification* of the nature of the relief sought."<sup>10</sup> In its ruling on reparations, the Chamber rejected a number of Civil Parties' reparation requests on ground that the requests lacked specificity.<sup>11</sup> For example, with regard to requests for the construction of pagodas and other memorials, the Chamber stated that the request lacked specificity as to the "exact number of memorials sought and their nature, their envisaged location, or estimated cost."<sup>12</sup>

The Chamber's ruling on reparations suggests that it requires a high degree of specificity in these requests, yet the Chamber did not articulate what would constitute a sufficiently clear specification. It bears mentioning that there is no reference to a "clear specification" requirement in either the applicable Rules

(Revision 3) or the Chamber's Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions.<sup>13</sup> In fact, the Chamber did not cite any rule, precedent or other legal basis to justify how it arrived at this requirement.

Specificity continues to be an issue for Civil Parties in Case 002. While Revision 8 of the Internal Rules refers to the terms "specify"<sup>14</sup> and "specific"<sup>15</sup> in passages related to reparations, the Rules do not give clear guidance as to what would constitute a sufficiently specific request. In its recent Memorandum to Civil Party Lead Co-Lawyers dated 23 September 2011, the Chamber once again merely reiterated the obligation of Civil Parties to provide sufficient specificity without defining, enumerating, or clarifying these terms.<sup>16</sup>

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Without clear direction from the Chamber or the Rules, Civil Parties are hard-pressed to tailor their reparations requests to satisfy what the Chamber asks of them.

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Fortunately, where the ECCC's procedures and standards are vague, the Court's statute<sup>17</sup> and prior rulings<sup>18</sup> permit recourse to relevant international law standards and jurisprudence for guidance. Our brief survey of these sources suggests that the standard that the Chamber applies when determining what constitutes *sufficiently specific* reparations requests does not reflect international law on this point and places an onerous burden of proof on Civil Parties.

The Rules of Procedure and Evidence of the International Criminal Court (ICC) are instructive. The ICC Rules state that reparations requests must contain a description of the injury, loss, or harm,<sup>19</sup> as well as claims for rehabilitation and other forms of remedy.<sup>20</sup> Nowhere in the rules are the terms *sufficiently specific* or *specificity* employed.<sup>21</sup> Based on these rules, it appears that as long as the Civil Parties request reparations awards appropriate to the harm,<sup>22</sup> the Chamber will consider them viable.<sup>23</sup> As these rules have not yet been put into practice, there is no case law

demonstrating how the ICC interprets its mandate regarding reparations. Nevertheless, the ICC Rules plainly do not require reparations requests to contain a high degree of specificity.

Furthermore, with regard to the development of claims for remedy, the ICC rules of procedure vest the Chamber with the authority to "appoint appropriate experts to assist [them] in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations."<sup>24</sup>

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Any obligation that exists to make appropriate requests for awards is therefore borne not only by victims, but also by the ICC itself through the appointment of and consultation with reparations. This is a sound option which the ECCC should codify and/or adopt as a matter of practice.

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In fact, the ICC is not alone in this regard. Procedural rules at the Inter-American Court of Human Rights (IACHR) stipulate that "the brief containing pleadings, motions, and evidence shall contain: a description of the facts... and all claims, including those relating to reparations and costs."<sup>25</sup> Like the ICC, the IACHR requires that victims include claims for reparations in their initial pleadings for relief, but its rules do not require specificity. In practice, the IACHR has also relied upon experts to assist in determining the cost of reparations awards.<sup>26</sup> In addition, the IACHR court has not shied away from determining reparations awards on the basis of equity,<sup>27</sup> even in determining the quantum of contributions States have been ordered to make to collective reparations projects.<sup>28</sup>

The IACHR's case law demonstrates that courts do not always require victims to request reparations with a requisite level of specificity.

In "*Mapiripán Massacre*" v. *Colombia*, the court reasoned that:

*[G]iven the gravity of the facts in the instant case (the killings, disappearances, and forced*

*displacement of the Mapiripán people), and the situation of partial impunity, the intensity of the suffering caused to the victims, changes in the conditions of their existence and other pecuniary or non-pecuniary consequences, the Court deems it necessary to order payment of compensation for non-pecuniary damages, in fairness.*<sup>29</sup>

In its decision, the Court stated that the State must build an “appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre . . . [and it must] be placed in an appropriate public space in Mapiripán within a year.”<sup>30</sup>

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Significantly, the IACHR did not require victims to state “the exact number of memorials sought... their envisaged location, or estimated costs,” which were the very onerous requirements the ECCC imposed on Civil Parties who made similar requests for memorials and pagodas in Case 001.

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Similarly, in *Barrios Altos v. Peru*, the Court assessed:

*whether the agreement on reparations [between the parties was] fully compatible with the relevant provisions of the American Convention, and verify whether it guarantees payment of just compensation to the victims and, where appropriate, to their next of kin, and if it repairs the consequences of the situation resulting from the violation of their human rights.*<sup>32</sup>

In *Barrios Altos*, the IACHR approved and confirmed the agreement on reparations rewards, which included health benefits,<sup>33</sup> education benefits,<sup>34</sup> and the erection of a monument,<sup>35</sup> without requiring a high level of specificity at the stage when the order was made. In contrast to the approach taken by the ECCC in Case 001, the agreement in *Barrios Altos* did not require the parties to indicate the

number and identity of the individuals who would benefit from the health services, or the cost of these reparations.<sup>36</sup>

In light of the above, the ECCC’s insistence<sup>37</sup> that requests for reparations be sufficiently specific seems all the more stark. The ECCC’s high standard for specificity finds no support in international law.

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Elsewhere, victims are typically required only to prove harm suffered as a result of crimes they allege, and to make claims for reparations that address that harm, whereas the ECCC asks Civil Parties to provide details as to the design and implementation of the awards sought.

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The European Court of Human Rights’ (ECHR) Rules of Court, for instance, state that in order to obtain an award of just satisfaction,<sup>38</sup> a “clear causal link must be established between the damage claimed and the violation alleged.”<sup>39</sup> An applicant “must make a *specific claim to that effect* [by submitting] itemized particulars of all claims, together with any relevant supporting documents, within the time-limit.”<sup>40</sup> Apart from the fact that the ECHR primarily issues monetary damages to individuals and rarely makes awards of a non-monetary nature, the ECHR’s use of the term *specific claim* is important. It is used in the context of the need for a “clear causal link (to) be established between the damage claimed and the violation alleged,”<sup>41</sup> not the intricacies of the request as the ECCC apparently requires.

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Simply put, the ECCC seems to have put the cart before the horse, and this should be remedied.

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International standards guarantee the right of reparation to victims of gross human rights violations. The ECCC, therefore, should seek guidance from procedural rules, norms, and practice established at international courts in accordance with Article 33 of the ECCC Law.

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Because Civil Parties are mostly rural Cambodians, the Chamber cannot expect them to solely assess the potential costs of a particular request and suggest with confidence how these requests should be funded and implemented. To require such a degree of specificity of the Civil Parties would be to strangle the ECCC's reparations scheme at birth.

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Such a high degree of specificity places an onerous burden on Civil Parties and further places them in conflict with each other. As a practical matter, it is unreasonable to expect thousands of Civil Parties to reach a consensus on the specific modalities of individual reparations requests. Yet currently, the Rules require Civil Parties to file a unitary Final Specification on behalf of the group as a whole.

The ECCC should adopt the sensible approach taken by the ICC, which places a minimal burden on the parties and permits assistance from experts to develop and implement the requests.

**b. Convicted Person(s) Must Provide Reparations Regardless of Purported Indigence**

***Indigence is not determinative of the duty to make reparation***

In its judgment in Case 001, the Chamber noted the "unlikelihood" of recovery from [Duch].<sup>42</sup> The Chamber did not come to this conclusion on the basis of a considered inquiry into Duch's assets and financial background; rather, it supported its assertion with a Declaration of Means made by Duch in 1999 and reference to the fact that Duch had been incarcerated for a lengthy period of time.<sup>43</sup> The Chamber's observation suggests that it may have been reluctant to order reparations against Duch that would have, in its opinion, been unenforceable.

Nevertheless, a court need not consider the likely indigence of a convicted person in deciding whether to grant reparations.

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It is a general principle of international law that considerations of a convicted person's indigence cannot impair a victim's right to obtain reparation from the individual responsible for the harm.<sup>44</sup>

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The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("UN Basic Principles on Reparation") emphasize the victims' right to reparations against the individual(s) responsible for the harm they have suffered. These principles further reiterate the State's obligation to enforce these judgments, whether emanating from foreign or domestic courts "in accordance with domestic law and international legal obligations."<sup>46</sup>

In *Aloeboetoe v. Suriname*, the respondent State submitted that reparations and costs recommended by the Commission were excessively burdensome and "a distortion of the meaning of the provisions of Article 63(1) of the Convention."<sup>47</sup> It added that the Commission's recommendations were "not in line with the current social and economic circumstances in Suriname,"<sup>48</sup> asserting that such orders would "only impoverish [Suriname] further."<sup>49</sup>

The IACHR was not persuaded by these arguments and reaffirmed the right to reparation is a customary norm in international law. It held that "the compensation paid by Suriname shall be in an amount sufficient to remedy all the consequences of the violations that took place."<sup>50</sup> Although the *Aloeboetoe* decision concerned a State as opposed to an individual, the underlying reasoning applies with equal force to convicted persons before the ECCC.

***Rule 113 should be given effect***

Since the judgment in Case 001, the ECCC's Rule 113 has been amended to provide Civil

Parties recourse to enforce reparations awards. The Rule establishes that reparations granted by the Court can be enforced in Cambodia's domestic courts on the initiative of a Civil Party.<sup>51</sup> Furthermore, Cambodian law guarantees Civil Parties' right to receive compensation for injury<sup>52</sup> and sets forth both the process<sup>53</sup> and means<sup>54</sup> by which orders against a convicted person can be given effect.

There is clear precedent for relying on domestic courts to enforce and give effect to reparations awards. Rule 106 of the International Criminal Tribunal For Rwanda (ICTR)'s Rules of Evidence and Procedure provides that "judgments establishing guilt are to be binding as to the criminal responsibility of the convicted person for the purpose of an action of compensation, which might be brought by victims in national court."<sup>55</sup> The national court then decides the appropriate reparations for victims and issues a judgment against the convicted person.

Given that the Internal Rules now expressly state that the enforcement of reparations shall be made at the initiative of a Civil Party, a determination of indigency on the part of a convicted person should not preclude or unduly influence the award of reparations. Even with recent revisions to Rule 23quinquies 3(a) and (b) permitting third parties to satisfy awards for reparation, such financial support should not preclude a judgment of reparations against a convicted person. Doing so would undermine Rule 113 and contravene international precedent on reparations.

### **c. The Nature & Scope of Collective Reparations Must be Properly Understood**

The Rules state that "[t]he purpose of Civil Party action before the ECCC is to...[s]eek collective and moral reparations."<sup>56</sup> Rule 23quinquies(1) further states that such reparations must: 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,

but they "shall not take the form of monetary payments to Civil Parties."<sup>57</sup>

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Indeed, collective reparations are not limited to awards that only 'symbolically' benefit a community. Rather, they can provide tangible redress to communities, in whole or in part.

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In the Court's Judgment in Case 001, requests for free access to medical care and educational measures were rejected, in part, on the basis that "requests of this type—which by their nature are not *symbolic* but instead designed to benefit a large number of *individual victims*—are outside the scope of available reparations before the ECCC."<sup>58</sup> Although the Chamber went on to provide other reasons for the rejection of these requests,<sup>59</sup> it is unclear what the Chamber meant by the term "symbolic" and what relevance that has to the number of individuals benefiting from an award. Indeed, collective reparations are not limited to awards that only "symbolically" benefit a community. Rather, they can provide tangible redress to communities, in whole or in part. Collective reparations may, as a corollary of attempting to remedy a shared or collective harm, directly benefit members of that community in their individual capacity—an outcome that should be welcomed by the Court.

In fact, the UN Basic Principles on Reparations expressly state that reparations should include, among other things, "medical and psychological care as well as legal and social services."<sup>60</sup> Moreover, collective reparations may also be interpreted to include benefits and services that have a monetary value, even if they are not awarded in the form of a particular monetary payment.

With regard to requests for the establishment of a victims' fund that would be used for business and vocational training and micro-enterprise loans, the Chamber in Case 001 found that "[a]ll requests which, directly or indirectly, seek individual monetary award for Civil Parties, or the establishment of a trust fund for victims, are beyond the scope of available reparations before the ECCC."<sup>61</sup>

Yet, the fact remains that none of the reparations requested by the Civil Parties in Case 001 called for individual monetary award.<sup>62</sup> That the implementation of benefits and services requested may involve monetary costs is immaterial - that is true of almost any form of reparation, including the publication and circulation of core court documents which was ordered..

The Chamber's restrictive interpretation of the nature and scope of "collective and moral" reparations does not comport with international law or relevant domestic law relating to reparations. The IACHR, for instance, has a well-established practice of awarding a broad range of collective reparations in response to both collective harms experienced by communities as a whole, and personal harms that reparations seek to address through collective means. In *Plan de Sanchez v. Guatemala*, involving the massacre of a Mayan indigenous community by the army, the IACHR ordered a housing program for displaced victims; programs providing specialized medical and psychological care; and development programs to assist in health, education, development, and infrastructure.<sup>63</sup>

Similarly, in *Moiwana Community v. Suriname*, involving a massacre of an indigenous community by agents of the military, the Court ordered the creation of a development fund "directed to health, housing and educational programs for the Moiwana community members"<sup>64</sup> the planning and administration of which was put in the hands of an implementation committee that included community and state representatives.<sup>65</sup>

Likewise, in *Juvenile Reeducation Institute v. Paraguay*, the Court found extensive human rights violations of the over 3,000 youth that lived in the facility between 1996 and 2001.<sup>66</sup> It ordered collective reparations including psychological care, vocational training, and special education to be administered through a committee including civil society.<sup>67</sup> Notably, the Court also granted collective reparations in the form of specialized medical care to a subset of the collective group of victims who had experienced burns in a fire at the facility.<sup>68</sup>

Additionally, in certain instances, collective reparations have been awarded to those who have a co-extensive or shared right to receive remedy. In *19 Merchants v. Colombia*, the IACHR ordered the state to provide medical and psychological care, including alcohol and drug treatment, to the next of kin of victims on the basis of their shared trauma experience, rather than any community status.<sup>69</sup>

In Colombia, collective reparations are understood by national authorities as a fundamental right of groups, villages, social and political organizations that have been affected by the damage caused by the violation of collective rights, the grave and flagrant violation of individual rights of members of groups or the collective impact of the violation of individual rights.<sup>70</sup> In particular, the Institutional Collective Reparations Program recognizes the right to collective redress for the "systematic and widespread violations of individual rights that affect several members of a community or group and cause a collective impact...[by] acts such as massacres, mass displacements, and so on."<sup>71</sup> Diverse reparations projects have been piloted through this program, including vocational training in agricultural production and marketing and infrastructure projects,<sup>72</sup> as well as mental health services (psycho-social accompaniment).<sup>73</sup>

Colombia is not alone in this regard. The National Commission for Social Action (NaCSA) in Sierra Leone is also tasked with implementing collective reparations including the provision of educational and specialized healthcare services, as well as housing to individual victims falling into certain groups such as: amputees, the war wounded, victims of sexual violence, and children.<sup>74</sup> NaSCA is mandated to provide free mental health services in all chiefdoms in the country and to implement community/symbolic reparations such as commemoration ceremonies, memorials, and symbolic reburials.<sup>75</sup>

Significantly, the set of collective reparations which NasCA provides are both symbolic and offer tangible benefits to individuals within communities because these reparations are mutually reinforcing, not exclusive.

These are but a few examples of the many domestic and international(ized) collective reparations programs carried out across the world which benefit both individuals and the wider community, while incorporating measures that might be said to have mainly “symbolic” value.<sup>76</sup>

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Without a clear understanding of the number and identity of Civil Parties in the first mini-trial and the nature of their reparations claim, it is exceedingly difficult for Civil Parties to establish the link between those victims’ harms and the specific awards sought.

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The empirical research on reparations conducted by several organizations, including the authors of this report, should be complemented by additional research on collective reparations. Leading researchers at institutes such as the University of Essex and the International Center for Transitional Justice have engaged in innovative comparative research and analysis regarding reparations. The Court should have access to the most recent and representative data regarding reparations to inform its judgment regarding the scope of collective reparations.

#### **d. Clarify Impact of Severance Order on Nexus Requirement**

In Case 001, the Chamber required that: “Civil Parties must satisfy the Chamber of the existence of wrongdoing attributable to the Accused which has a direct casual connection to a demonstrable injury personally suffered by the Civil Party.”<sup>77</sup> This nexus requirement has been modified and retained in the Chamber’s most recent revision of the Internal Rules. However, as a result of the Court’s severance order, it is now unclear which particular Civil Parties will be included in the first “mini trial.” Without a clear understanding of the number and identity of Civil Parties in this trial and the nature of their reparations claim, it is exceedingly difficult for Civil Parties to establish the link between those victims’ harms and the specific awards

sought. Since the victims represented in the first mini-trial will only encompass a small sample of the entire class of Civil Parties admitted in Case 002, as a matter of policy, the Court should interpret the nexus requirement generously so as to ensure as much satisfaction as possible for all Civil Parties who have been admitted in Case 002.

A broad interpretation of the nexus requirement in the first mini-trial of Case 002 is particularly important since it is uncertain whether future mini-trials will take place due to the Accused persons’ failing health.

While the Chamber asserts the order has no impact on the nature of Civil Party participation at trial, it is impossible to “acknowledge the harm suffered” as a result of the Accused persons’ conduct,<sup>78</sup> without a preliminary identification of the victims represented during each stage of Case 002. The severance order reiterates the form of Civil Party representation laid out in the Internal Rules, noting that “Civil Parties no longer participate individually on the basis of their particular harm suffered, but instead comprise a *consolidated group* whose collective interests are represented by the Civil Party Lead Co-Lawyer during the trial stage and beyond.”<sup>79</sup>

Going forward, this vision of Civil Party representation necessarily requires analysis different from that previously conducted by the Civil Party Lawyers in order to link the victims’ harms to the conduct of the Accused persons.

Further, this analysis is currently impractical considering the severance order is “limited to a determination of the subject-matter of the first trial”<sup>80</sup> and fails to define the parameters of the consolidated groups. Amidst these potentially arbitrary classifications for the purposes of the mini-trial, Civil Parties are at a loss as to how to inclusively and effectively request reparations in Case 002.<sup>81</sup> The Chamber should clarify how the Civil Parties are to be grouped and how it will subsequently consider reparation requests for these groups. This guidance will allow Civil Party Lawyers to submit reparation requests that are in line with the Court’s rules and practice directions and

that may be incorporated into the Chamber's order.

**e. Take Practical Steps to Enhance Procedural Forms of Reparation**

In the context of mass atrocity, procedural reparations refers to the process (rather than the substantive outcome) of investigation and adjudication of human rights abuses that leads to a judgment or determination of responsibility.<sup>82</sup> Procedural reparations play a crucial role in providing remedies to victims. The IACHR has repeatedly asserted in its jurisprudence that the judgment is a form of reparation in itself.<sup>83</sup> Moreover, experts note that:

*[t]he procedural handling of the reparation process therefore plays an important role in ensuring that the process is well received, accepted, indeed that the process is owned by victims and that it empowers them as survivors, eventually reinstating dignity, respect and their rightful place in society.*<sup>84</sup>

There are a several means through which procedural reparations can be enhanced in proceedings before the ECCC without requiring significant time or resources.

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Given the focus that procedural reparations place on the processes used in attaining justice and repairing harms done, the content and form of the judgment on reparations can play a vital role in restoring dignity to victims as well as providing much needed "official" acknowledgment of their suffering and the impact of human rights violations have had on their lives.

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The IACHR, widely recognized as a leader in innovative, imaginative, and victim-centered reparations, stands out among international(ized) courts for employing best practices in the form and substance of its judgments on reparations. The value and importance that the IACHR places on the judgment as a form of reparation is evident from the detailed and thorough treatment

reparations are given in the judgment for reparations, which often number over one-hundred pages. Apart from their length, these judgments are notable for their careful review of the documentary and testimonial evidence on reparations heard by the court and given by victims, relatives, and experts alike.<sup>85</sup>

At times, reparations judgments also include a section on proven facts specific to the issue of reparations<sup>86</sup> or otherwise incorporate this information elsewhere in the judgment. In addition, the court gives careful and thorough consideration to each reparation request individually and, in the case of a successful claim for reparation, frequently cites victim or witness evidence and testimony which establish the link between the harm suffered as a consequence of the offenses of the convicted party and the reparation granted.<sup>87</sup>

As a result, the complainants before the IACHR are provided with a detailed account of the court's understanding of their suffering and the measures appropriate to repair the harm inflicted on them. Not only does this provide important acknowledgment to victims whose experiences have often been ignored or denied. It also establishes the official or historical truth.

For example, in *Blake v. Guatemala*, the court included a section entitled "Proven Facts" that reviews information pertinent to the issue of reparations.<sup>88</sup> This includes testimonial evidence, such as statements from the injured party.<sup>89</sup> The court's decision to include this section in its judgment on reparations functions as an official acknowledgment of the facts presented by the victims, and the harm they have endured.<sup>90</sup> The court also chose to structure its judgment so that the harm suffered by each victim, and the reparation request put forward, were considered individually.<sup>91</sup> For example, the court devoted two entire sub-sections<sup>92</sup> to identifying the particular form of material and moral damages suffered by Mr. Blake's family as a result of his forced disappearance. This is a meaningful demonstration of the care the court taken to sensitively determine a reparations award appropriate to the specific circumstances of the case.

Having just emerged from genocide, and, for historical reasons, having little faith in any official information-gathering exercise, it has not been easy for Cambodian Civil Parties to speak freely about the atrocities they have suffered. The ECCC should take cognizance of this fact.

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The ECCC should take cognizance of this fact, especially since amendments to the ECCC's Internal Rules now require Civil Parties to prove the nexus between the harm they have suffered and the reparation sought.<sup>93</sup>

The Court's Judgment in Case 001 incorporates some of the elements included in the IACHR's judgments on reparations, particularly sections on "responsibility of the defendant vis-à-vis the Civil Parties," "Civil Party requests," "legal framework," and "analysis of the various categories of reparations requested."<sup>94</sup> The Chamber also recognized the importance of victim acknowledgment through the content and form of the judgment by heeding requests to include Civil Party names in the reparations judgment.<sup>95</sup>

However, there is no discussion of the evidence or testimony of Civil Parties or experts heard by the Chamber. Such evidence could go a long way to acknowledge Civil Parties' suffering and, by extension, that of the hundreds of thousands of other survivors of mass atrocities.

The ECCC can look to *Blake* as an example of how a judgment on reparations can serve as a form of reparation itself. While *Blake* involved only one victim, the first mini-trial before the ECCC involves hundreds of victims. This does not mean that the ECCC should delineate the nexus of each victim by reviewing the documentary and testimonial evidence of every single victim; that would be impracticable. Rather, *Blake* offers a model the Court may adopt and calibrate to provide more detailed insight on how it groups Civil Parties and the reasoning behind its treatment of their reparations requests.

Presenting its reasoning in a more transparent, sensitive and reasoned manner will allow the Civil Parties, their representatives, victims and the public at large to better understand and, perhaps, accept the Court's decisions rendered on reparations.

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A decision which resonates with Civil Parties will facilitate implementation and reception of the reparations awards beyond Case 002. It will play a key role in outreach efforts that, according to the Court's Judgment in Case 001, will "likely contribute significantly to reconciliation initiatives...and public education".<sup>96</sup>

The Court has another opportunity to provide reparations to victims through its management of the courtroom during trial. In its 28 October 2011 Memorandum to All Parties, the Trial Chamber confirmed that the Accused is entitled to "waive his right to be present at his trial and . . . cannot be compelled to remain in court" after he has made his initial appearance before the Chamber "prior to each day's hearing".<sup>97</sup> The Court qualified this statement by stipulating that the Accused may be ordered to attend the hearing when it is "necessary for the Chamber to discharge its duty to safeguard the rights of the accused, or where presence is indispensable for the effective conduct of proceedings."<sup>98</sup>

In deciding when to compel the Accused persons to attend proceedings, the Court should take into account the potential for providing procedural reparations to victims. In circumstances in which ordering the Accused persons to attend trial proceedings would prove particularly meaningful to victims, the Court should consider requiring the Accused persons to be present in the courtroom. Examples of when this might be appropriate include at points where Civil Parties, witnesses, and experts give evidence of the direct harm caused by the Accused persons' alleged crimes.

## Conclusion & Recommendations

The Court's full power to provide justice to victims can only be realized if the Court takes immediate steps to correct interpretations of law and policy that caused the majority of reparations requests in its first case ("Case 001") to be rejected.

This report highlights important 'collective and moral reparations' requests put forward by the Lead Co-Lawyers for Civil Parties. These requests concern redress for elderly, vulnerable and low-income victims through increased access to mental and physical health services, education and memorialization.

This report also asks the Court to re-examine their narrow understanding of the term 'collective and moral reparations' and to consider the wide range of innovative reparation options, which are routinely awarded by international courts and implemented through reparations programmes.

Looking forward, this report acknowledges that there is more to redress than the trials alone. To pave the way for the judgement in Case 002 to translate into justice for Cambodians in the event of a conviction, we recommend that Court affiliates consider the following:

- The Court's Standards for granting reparations requests, particularly those governing the nature of proof and degree of specificity, should conform to the law and practice of other international(ized) tribunals and have resonance for Cambodian Civil Parties and victims, bearing in mind their contemporary context and historical, cultural, and religious background.
- The Court should adopt a definition and understanding of "collective and moral" reparations that comports with those applied in international(ized) tribunals and collective reparations programs around the world.
- The Court should not consider the indigency of the Accused persons in

reaching a decision on Civil Party reparation requests. International law requires that human rights violators provide reparations to their victims and the Rules provide a clear and appropriate process and forum for dealing with procedural matters arising from and in connection to the indigency of an Accused person in the event s/he is convicted.

- The Court should appoint an eminent expert or working group of experts to liaise with the Court Administration, Victim Support Section, and the Lead Co-Lawyers to determine the nature and scope of permissible reparations and the modalities of any independent implementing or residual body outside the rubric of the ECCC. This body would hold primary responsibility for collecting, managing, and disbursing funds both leading up to, but more critically following, the closing of the Court.
- The Court should dedicate a section in the reparations judgment to the Chamber's evidentiary findings on the harm caused to Civil Parties as a consequence of the offenses proved. This section should pay special attention to vulnerable victims, such as victims of sexual violence and gender based crimes.
- The Court should incorporate Civil Party and expert testimony and evidence where appropriate in the judgment, and particularly in its consideration of the relationship between the harm endured by victims and the actions of the convicted persons or what we term the "nexus requirement."
- The Court should include express and detailed analysis of each reparation request, including a reasoned determination on the nexus requirement, including relevant facts, evidence, or testimony, offered by Civil Parties and experts.

<sup>1</sup> The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General to the Security Council (S/2011/634), ¶ 26

<sup>2</sup> See Rule 23(1)(b), ECCC Internal Rules (rev. 8) (“The purpose of Civil Party action before the ECCC is to. . . (b) Seek collective and moral reparations, as provided in Rule 23quinquies.”)

<sup>3</sup> This report is authored by three organizations that have extensive expertise regarding the rights of victims in international law and the practice of the ECCC.

<sup>4</sup> In its judgment, the Court required that reparation requests provide a “clear specification of the nature of the relief sought, its link to the harm caused by the Accused that it seeks to remedy, and the quantum of the indemnity or amount of reparation sought from the Accused to give effect to it.” Case 001, Judgment ECCC at ¶ 665 (2010).

<sup>5</sup> *Id.* para. 675.

<sup>6</sup> See Rule 23 *quinquies* (1) ECCC Internal Rules (rev. 8) (“If an Accused is convicted, the Chambers may award only collective and moral reparations to Civil Parties.”).

<sup>7</sup> Heather Ryan, *What Makes Justice for Cambodia?*, OPEN SOCIETY FOUNDATIONS (28 July 2010), <http://blog.soros.org/2010/07/what-makes-justice-in-cambodia/>. Civil Parties Group 1 lawyer Karim Khan said the reparations ruling was “really the most minimal, most conservative, and perhaps it’s fair to say unimaginative that could have been ordered”. The Phnom Penh Post, July 27, 2010. See <http://www.phnompenhpost.com/index.php/2010072740791/Nationalnews/reparations-remain-a-key-issue.html>.

<sup>8</sup> Mahdev Mohan & Vinita Ramani, Survivors need a reason to live, TODAY (Jul 31, 2010).

<sup>9</sup> UN Doc. No. E/CN.4/2005/102, Promotion and Protection of Human Rights: Impunity, Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher, February 18, 2005, at <http://daccessdds-ny.un.org/doc/UNDOC/GEN/G05/111/03/PDF/G0511103.pdf?OpenElement> and Addendum – Updated set of Principles for the protection and promotion of human rights through action to combat impunity.

<sup>10</sup> Judgment Case 001 at ¶ 665 (emphasis added).

<sup>11</sup> See e.g. *Id.* at ¶¶ 668-9, 672-4.

<sup>12</sup> *Id.* at ¶ 672.

<sup>13</sup> “Direction on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions,” 27 Aug. 2009, Case of Kaing Guek Eav, 001/18-07-2007-ECCC/TC, ECCC Doc. No. E159.

<sup>14</sup> See Rule 23*quinquies*(2)(b), ECCC Internal Rules (rev. 8) (“This submission shall provide: . . . b) reasoned argument as to how they address[es] the harm suffered and *specify*, where applicable, the Civil Party group within the consolidated group to which they pertain[s].”) (emphasis added).

<sup>15</sup> See Rule 23*quinquies* (2)(c) (“This submission shall provide: . . . c) in relation to each award, the single, *specific* mode of implementation described in Rule 23*quinquies*(3)(a)-(b) sought.”) (emphasis added); Rule 23*quinquies*(3)(b) (“[T]he Chamber may, in respect of each award, either: . . . b) recognise that a *specific* project appropriately gives effect to the award sought . . .”) (emphasis added).

<sup>16</sup> “Trial Chamber Memorandum re: Initial Specification of the Substance of Reparations Awards Sought by the Civil Party Lead Co-Lawyers Pursuant to Internal Rule 23*quinquies*(3),” 23 Sept. 2011, Case File No. 002/19-09-2007-ECCC-TC, ECCC Doc. No. E125.

<sup>17</sup> Article 33new, Trial Proceedings, Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) (“If these existing procedure do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application or if there is a question regarding their consistency with international standard, guidance may be sought in procedural rules established at the international level. The Extraordinary Chambers of the trial court shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights.”). See also Article 20 (new) (concerning Co-Prosecutors) and Article 23 (new) (concerning the Co-Investigating Judges).

<sup>18</sup> See e.g. Judgment, Case 001, para. 30 (demonstrating the Court’s reliance on international law and jurisprudence to interpret the principle of legality).

<sup>19</sup> ICC Rules of Procedure and Evidence, Rule 94(1)(b).

<sup>20</sup> ICC Rules of Procedure and Evidence, Rule 94(1)(f).

<sup>21</sup> See also G.A. Res. 60/147 at ¶ 15, U.N. Doc. A/RES/60/147 (21 Mar. 2006) (stating that at the UN Committee of Human Rights, the Committee does not require any level of specificity. In regards to reparations, it seems that the main concern of the Committee is that reparation be “proportional to the gravity of the violations and the harm suffered.”).

<sup>22</sup> Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 3 (ICC Statute), Art 75(2) (“The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.”).

<sup>23</sup> See also G.A. Res. 60/147 at ¶ 15 (stating that at the UN Committee of Human Rights, the Committee does not require any level of specificity. In regards to reparations, it seems that the main concern of the Committee is that reparation be “proportional to the gravity of the violations and the harm suffered.”).

<sup>24</sup> ICC Rules of Procedure and Evidence, Rule 97(2).

<sup>25</sup> Inter-Am. Ct. H.R., Rules Of Procedure of the Inter-American Court of Human Rights, Art. 40(2).

<sup>26</sup> See e.g. *Aloeboetoe et al. v. Suriname*, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 15 at ¶ 39 (10 Sept. 1993) (“In view of the fact that more detailed information was required in order to be able to fix the amount of the compensation and costs, the President . . . decided to have the Court avail itself of the services of Mr. Christopher Healy and Ms. Merina Eduards as experts.”).

<sup>27</sup> See e.g. *I/A Court H.R., Case of Bámaca-Velásquez v. Guatemala*. Reparations and Costs. Judgment of February 22, 2002. (Ser. C) No. 91 at ¶ 56 (stating that non-pecuniary damages are assessed “by means of the payment of an amount of money or by providing goods or services that can be appraised in monetary terms, to be determined by the Court through reasonable use of judicial discretion and in terms of equity.”). See also *I/A Court H.R., Case of Cantoral Benavides v. Perú*. Reparations and Costs, Judgment of September 3, 2001 (Ser. C) No. 88 ¶ 53; and *I/A Court H.R., Case of the “Juvenile Reeducation Institute” v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004 (Ser. C) No. 112 at ¶ 295 (asserting that the

Court will determine non-pecuniary damages, including services and benefits to the victims, using its discretion and guided by principles of equity.).

<sup>28</sup> See e.g. *I/A Court H.R., Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs, Judgment of June 15, 2005 (Ser. C) No. 124 at ¶ 214 (requiring the state to make a 1.2 million dollar contribution to a court ordered development fund for the community.).

<sup>29</sup> *Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 134 (15 Sept. 2005). Series C No. 134 at ¶ 285; See *Case of Acosta Calderón*, *supra* note 7 at ¶ 159 to 160; *Case of Caesar*, *supra* note 274 at ¶ 126, and *Case of Huilca Tecse*, *supra* note 274 at ¶ 97.

<sup>30</sup> *Id.* at ¶ 315.

<sup>32</sup> *Barrios Altos v. Peru*, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 87 (30 Nov. 2001) at ¶ 23.

<sup>33</sup> *Id.* at ¶ 42.

<sup>34</sup> *Id.* at ¶ 43.

<sup>35</sup> *Id.* at ¶ 44(f).

<sup>36</sup> See Judgment Case 001 at ¶ 674. (“Further, the number and identity of all intended beneficiaries of these requests, the nature of the measures sought and the cost of their provision are neither particularized nor readily quantifiable within the available resources of the Chamber”).

<sup>37</sup> Judgment Case 001 at ¶¶ 668-9, 672-4; Rule 23 *quinquies* (2)-(3); Memorandum from the Trial Chamber to Civil Party Lead Co-Lawyers (23 Sept. 2011).

<sup>38</sup> Eur. Conv. on H.R., Art. 41, available at [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf) (“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”).

<sup>39</sup> Eur. Ct. H.R., Practice Direction, at ¶ 7 (28 Mar. 2007), available at <http://www.echr.coe.int/NR/rdonlyres/8227A775->

CD37-4F51-A4AA-1797004BE394/0/PracticeDirectionsJustSatisfactionClaims2007.pdf.

<sup>40</sup> Eur. Ct. H.R., Rules of Court, Rule 60(1)-(2) (emphasis added), available at [http://www.echr.coe.int/NR/rdonlyres/6AC1A02E-9A3C-4E06-94EF-E0BD377731DA/0/REGLEMENT\\_EN\\_Avril2011.pdf](http://www.echr.coe.int/NR/rdonlyres/6AC1A02E-9A3C-4E06-94EF-E0BD377731DA/0/REGLEMENT_EN_Avril2011.pdf).

<sup>41</sup> *Supra* note 31.

<sup>42</sup> Judgment Case 001 at ¶ 666.

<sup>43</sup> *Id.* at fn. 1151.

<sup>44</sup> See Dinah Shelton, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 12 (2d ed. 2006); see also *International Criminal Tribunal for Rwanda*, REDRESS, <http://www.redress.org/international-criminal-tribunals/international-criminal-tribunal-for-rwanda> (last visited Nov. 16, 2011) (stating that more than 36 billion francs have been awarded to victims of the Rwandan genocide and against defendants, though none of it has materialized due to the defendants' indigence).

<sup>45</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, E/CN.4/2000/62 at ¶ 17-18 (Jan. 18, 2000).

<sup>47</sup> *Aloeboetoe et al. v. Suriname*, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 15 at ¶ 25 (10 Sept. 1993).

<sup>48</sup> *Id.* at ¶ 34.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at ¶ 47.

<sup>51</sup> ECCC Internal Rules (rev. 8), Rule 113(1) ("Enforcement of reparations granted under Rule 23 *quinquies* (3)(a) shall be done by appropriate national authorities in accordance with Cambodian law on the initiative of any member of the collective group, unless the verdict specifies that a particular award shall be granted in relation only to a specified group. In such case, any member of the specified group shall instead initiate enforcement of that award.").

<sup>52</sup> Code of Criminal Procedure of the Kingdom of Cambodia, Art. 14 (Sept. 2008) ("An injury can be compensated by paying damages, by giving back to the victim the property that has been lost or by restoring damaged or destroyed property to its

original state. The damages shall be proportionate to the injury suffered.")

<sup>53</sup> Code of Civil Procedure of the Kingdom of Cambodia, book V.

<sup>54</sup> Code of Civil Procedure of the Kingdom of Cambodia, books VI-VII.

<sup>55</sup> Carla Ferstman, *The Reparation Regime of the International Criminal Court: Practical Considerations*, 15(3) *Leiden J. of Int'l L.* 667, 671 (2002); see also *Int'l Criminal Tribunal for Rwanda*, Rules of Procedure and Evidence, Rule 106.

<sup>56</sup> ECCC Internal Rules (rev. 8), Rule 23(1)(a)-(b).

<sup>57</sup> ECCC Internal Rules (rev. 8), Rule 23 *quinquies*(1).

<sup>58</sup> Judgment Case 001 at ¶ 674 (emphasis added).

<sup>59</sup> Other reasons given by the Chamber for rejecting these requests included the Court's lack of jurisdiction over the government, insufficient nexus, and a lack of specificity in the requests. Judgment Case 001 at ¶ 674.

<sup>60</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, E/CN.4/2000/62 at ¶ 24 (Jan. 18, 2000).

<sup>61</sup> Judgment Case 001 at ¶ 670.

<sup>62</sup> See e.g. "Civil Party Group 1—Final Submission," 10 November 2009, Case File No. 001/18-07-2007/ECCC/TC, E159/7, para. 121 (requesting the provision of psychological services, but not seeking monetary payments to the Civil Parties.); "Co-Lawyers' for Civil Party (Group 2) Final Submission," 5 October 2009, Case File No. 001/18-07-2007/ECCC/TC, E159/6, para. 18 (claiming medical treatment and psychological services for 17 Civil Parties at the expense of Duch, but not calling for that to be in the form of monetary payment."); and "Co-Lawyers for Civil Parties (Group 3) Final Submission," 11 November 2009, Case File No. 001/18-07-2007/ECCC/TC, E159/5 para. 157-158 (calling for free medical and psychological care for the Civil Parties the expense for which was to be borne by Duch).

<sup>63</sup> *Plan de Sanchez v. Guatemala*, Judgment, 2004 Inter-Am. Ct. H.R. (Ser. C) No. 116 at ¶¶ 105-110 (19 Nov. 2004).

<sup>64</sup> *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, 2005 Inter-Am. Ct. H.R. (Ser. C) No. 124 at ¶ 214 (15 June 2005).

<sup>65</sup> *Id.* at ¶ 215.

<sup>66</sup> *Juvenile Reeducation Institute v. Paraguay*, 2004 Inter-Am. Ct. H.R. (Ser. C) No. 112 (4 Sept. 2004).

<sup>67</sup> *Id.* at ¶¶ 318-321.

<sup>68</sup> *Id.* at ¶ 319.

<sup>69</sup> *19 Merchants v. Colombia*, Merits, Reparations and Costs, 2004 Inter-Am. Ct. H.R. (Ser. C) No. 109 ¶¶ 276-278 (5 July 2004).

<sup>70</sup> *Proposals for the Design and Implementation of the Institutional Collective Reparations Program*, NATIONAL COMMISSION FOR REPARATION AND RECONCILIATION, <http://www.cnr.org.co/descargas/PROPOSALS-FOR-THE-DESIGN-AND-IMPLEMENTATION-OF-THE.pdf> (last visited Oct. 9, 2011).

<sup>71</sup> *Id.* at 3-4.

<sup>72</sup> *See, e.g. Collective Reparations Project for El Tigre-Putumayo*, NATIONAL COMMISSION FOR REPARATION AND RECONCILIATION, available at: <http://www.cnr.org.co/contenido/09e/spip.php?article3899>.

<sup>73</sup> *See, e.g. La Libertad Sucre Collective Reparations Project*, NATIONAL COMMISSION FOR REPARATION AND RECONCILIATION, available at: <http://www.cnr.org.co/contenido/09e/spip.php?article3902>.

<sup>74</sup> *The Rabat Report, The Concept and Challenges of Collective Reparations*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE at 34 (Feb. 12-14, 2009) available at: <http://ictj.org/sites/default/files/ICTJ-Morocco-Reparations-Report-2009-English.pdf>.

<sup>75</sup> *Id.*

<sup>76</sup> *See generally* *The Rabat Report* at 14-38 and Office of the High Commissioner for Human Rights, *Rule of Law tools for Post-Conflict States: Reparations Programs*, New York: 2008.

<sup>77</sup> Judgment. Case 001 Para. 639.

<sup>78</sup> 23 *quinquies* (1)(a).

<sup>79</sup> *Severance Order Pursuant to Internal Rule 89ter* (22 September 2011) ¶ 8.

<sup>80</sup> *Id.* at ¶ 4.

<sup>81</sup> This uncertainty is further compounded by the fact that “[t]he Trial Chamber may at any time decide to include in the first trial additional portions of the Closing Order in Case 002.” This leaves the identification of specific victim harm ambiguous.

<sup>82</sup> *See* Dinah Shelton, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* 6 (2d ed. 2006).

<sup>83</sup> *See e.g. Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs (para. 260).

<sup>84</sup> Redress, et al. “Reparations for victims of genocide, crimes against humanity and war crimes: Systems in place and systems in the making, Report of Proceedings,” March 1-2, 2007 (The Hague, Netherlands), 49 [hereinafter “Hague Report”].

<sup>85</sup> This takes a variety of forms, from sections dedicated to this information, *see e.g.*, *Bámaca-Velásquez v. Guatemala*, Reparations and Costs, Inter-Am. Ct. H.R., 22 Feb 2002 (Ser. C) No. 91 (presenting details of impact testimony provided by both the family of the victim and experts), to its inclusion in the discussion and analysis of discreet reparations requests, *see e.g. Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Inter-Am. Ct. H.R., 25 Nov. 2003 (Ser. C) No. 101 (discussing in detail the impact of the victim’s murder on family members in assessing compensatory damages); and *Las Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R., 24 Nov. 2009 (Ser. C) No. 211, paras. 284-285 (case involving 155 victims which cited impact testimony from victims and an expert).

<sup>86</sup> *See e.g. Bámaca-Velásquez*, para. 29.

<sup>87</sup> *See e.g. Bámaca-Velásquez*, ¶65(a) (“the state continuously obstructed [the victim’s wife’s] efforts to determine the truth about the events and about the hiding of her husband’s body...for which reason this Court reached the conclusion that [she] suffered cruel, inhuman, and degrading treatment.”); and the *Rochela Massacre v. Colombia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R., 11 May 2007, (Ser. C) No. 163 (citing the threats and persecution which perpetuated the suffering of one victim’s son).

<sup>88</sup> Blake v. Guatemala. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 48 (22 Jan. 1999) at ¶40.

<sup>89</sup> *Id.* at ¶40(A)-(B).

<sup>90</sup> *See also id.* at ¶20(e) (“the right to humane treatment . . . was violated by the State to the detriment of the relatives of Mr. Nicholas Chapman Blake, inasmuch as his disappearance caused his family suffering and anguish, a sense of insecurity, and frustration and impotence in the face of the Guatemalan authorities’ failure to investigate; and that the burning of the mortal remains of Mr. Nicholas Blake increased their suffering.”).

<sup>91</sup> *Id.* at ¶43-58, 75(2)(a)-(b).

<sup>92</sup> *Id.* at ¶43-58.

<sup>93</sup> Rule 23quinquies(2)(b), IRs (rev. 8).

<sup>94</sup> *See* Judgment Case 001, sections 4.3, 4.4.1, 4.4.2 and 4.4.3, respectively.

<sup>95</sup> Judgment, Case 001, para.667 (granting the reparation request of Civil Parties to include Civil Party names with descriptions of their connection to S-21).

<sup>96</sup> Judgment, Case 001, para. 669.

<sup>97</sup> “Trial Chamber Memorandum re: Trial Chamber Response to IENG Sary’s ‘Observations’ of 14 October 2011,” 28 Oct. 2011, Case File No. 002/19-09-2007-ECCC-TC, ECCC Doc. No. E130/3.

<sup>98</sup> *Id.*