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**PRESS RELEASE:**

**"Victims' Right to Remedy: Awarding Meaningful Reparations at the ECCC"**

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"). 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.

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.

Access to Justice Asia (AJA) and the Center for Justice & Accountability (CJA), in cooperation with the International Human Rights Law Clinic at University of California, Berkeley School of Law are releasing "Victims' Right to Remedy: Awarding Meaningful Reparations at the ECCC", a comprehensive report with recommendations to the Court to bring its procedures to grant redress in line with international practice.

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.

"Our interactions with Cambodian victims of mass atrocity fortify our conviction that meaningful reparation awards are the touchstone of international justice and accountability", said Mahdev Mohan, AJA Co-Founder and International Civil Party Lawyer. "Our report calls on ECCC affiliates to examine the reparations scheme at the court at the very outset of the trial, not merely treat it as an afterthought".

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. Although monetary reparations are not available to Civil Parties, the Court has the ability to award victims specific remedies ('collective and moral' reparations) for the harms they suffered as a result of crimes attributable to the defendants. "Not only are substantive reparations important for the survivors of Khmer Rouge atrocities, but they are important for the legacy of this Court and the international precedent on reparations as well" says Nushin Sarkarati, CJA staff attorney and International Civil Party Lawyer.

This report 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.

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.

“For many victims, justice is more than convictions of the defendants. Victims demand, and deserve, the acknowledgment and dignity that reparations measures can provide,” said Laurel Fletcher, director of the International Human Rights Law Clinic at University of California. “The Court should establish a generous framework for these victims to state what redress means to them. It’s time for the Court to work to empower victims.”

Looking forward, this report acknowledges that there is more to redress than the trials alone. It recommends that the Court appoint an expert or working group of experts to liaise with the Court Administration, Victim Support Section, and the Lead Co-Lawyers to determine what type of independent body should be established to manage and oversee reparations funds and projects that will outlast the life of the Court.

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*The Full Text of the Report is available at [www.accessjusticeasia.org](http://www.accessjusticeasia.org) ; [www.cja.org](http://www.cja.org) and <http://www.law.berkeley.edu/ihrhc.htm>.*

*A Summary of the Report is provided below.*

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Access to Justice Asia LLP (AJA) is dedicated to assisting underserved communities and post-conflict countries move forward from conflict and mass atrocity. The Center for Justice & Accountability (CJA) is dedicated to deterring torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress. 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.

## SUMMARY OF REPORT

### *Case 001 Judgment on Reparations*

In the first case to reach verdict before the Court, against KAING Guek Eav *alias* Duch, only a small fraction of the twenty-eight reparations requests put before the Trial Chamber by Civil Party Lawyers were granted, in part due to the Court's application of a stringent test that was not contained in the Internal Rules ("Rules"), causing some observers to note that the reparations judgment in Case 001 offered "nothing of real value for civil parties."<sup>1</sup> The reparations granted included the publication of the names of the Civil Parties in the final judgment, including descriptions of their connection to S-21, as well a compilation of Duch apologies.

The remaining 26 reparations requests were rejected. Some of these requests included construction of pagodas, educational programs, and psychological and medical care for victims. The requests were either explicitly denied or simply not included with the granted awards and frequently without related discussion or analysis. The Chamber's rationale for its rejection of reparations claims in Case 001 can be broken down into the three main categories: lack of specificity; insufficiently moral, collective (or symbolic) in nature; and overreaching the mandate of the Court by compelling governmental action or involving the Court in the enforcement and/or implementation of reparations awards.<sup>2</sup>

The Chamber's decision on reparations in Case 001 is currently under appeal before the Supreme Court Chamber. Oral arguments on the reparations appeal were heard in late March 2011. The Chamber has recently announced that its decision on the appeals to Case 001 will not be rendered until February 2012.<sup>3</sup>

### *Update on reparations for Case 002*

On 19-20 October 2011, the Trial Chamber for Case 002 heard an oral presentation on the initial reparations requests, presented by the Lead Co-Lawyers (LCLs) for civil parties. At this time, the LCLs stated that civil party reparations requests will fall under four broad categories: (1) Remembrance and Memorialization Requests; (2) Rehabilitation and Health Services; (3) Documentation and Education; and (4) Other Projects. Some of the projects for Remembrance and Memorialization include: stupas and monuments designed as tributes to victims of the Khmer Rouge, the creation of an annual memorial day dedicated to the remembrance of victims, commemoration of the names of victims of the Khmer Rouge; and preservation of the crime sites.

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<sup>1</sup> Heather Ryan, *What Makes Justice for Cambodia?*, OPEN SOCIETY FOUNDATIONS (28 July 2010), <http://blog.soros.org/2010/07/what-makes-for-justice-in-cambodia/>.

<sup>2</sup> Requests for the Court's involvement in implementation and the request for a national commemoration day both appear to have been rejected on this basis with the Chamber stipulating that "[t]he Chamber has no jurisdiction over Cambodian or other national authorities or international bodies. Nor can it properly impose obligations on or grant rights to persons or entities that were not parties to the proceedings before it." Case 001 Judgment, para. 663.

<sup>3</sup> ECCC Press Release, "Kaing Guek Eav (Duch) Supreme Court Chamber Judgement to be Pronounced on Friday, 3 February 2012," 17 November 2011, available at [http://www.eccc.gov.kh/sites/default/files/media/PR-KAING%20GUEK%20EAV%20\\_DUCH\\_%20SUPREME%20COURT%20CHAMBER%20JUDGEMENT%20TO%20BE%20PRONOUNCED%20ON%20FRIDAY,%203%20FEBRUARY%202012-ENGLISH.pdf](http://www.eccc.gov.kh/sites/default/files/media/PR-KAING%20GUEK%20EAV%20_DUCH_%20SUPREME%20COURT%20CHAMBER%20JUDGEMENT%20TO%20BE%20PRONOUNCED%20ON%20FRIDAY,%203%20FEBRUARY%202012-ENGLISH.pdf).

For “Rehabilitation Projects”, the LCLs called for the creation of a health center specifically dedicated to providing assistance to elderly victims; the provision of mental health services to vulnerable victims; access to health services for low-income Cambodians and victims; and the facilitation of self-help groups, focused on bringing victims of specific crimes together. A few of the “Documentation and Education Projects” include: the preservation of Khmer Rouge documents and their use to teach the history of the Khmer Rouge period in Cambodia; incorporating the ECCC experience and judgments into the current Khmer Rouge history curriculum as a legacy of the Court; and the creation of museums and libraries dedicated to the history of the Khmer Rouge period in Cambodia. Under “Other Projects”, the Civil Parties reiterated a request to establish a trust fund to manage voluntary monetary donations for implementing reparations.

Following this hearing, Civil Party Lawyers must prepare a final submission on reparations for the end of the trial. The submission will include the final list of reparations requests as well as detailed description of the intricacies and modalities of implementation for the reparations requested.

### **RECOMMENDATIONS FOR REPARATIONS IN CASE 002**

As the first internationalized court to offer reparations to victims of mass atrocities, the ECCC is an international standard-setting institution. In spite of amendments to the Rules, which were adopted throughout Case 001 and in the time since, significant ambiguities and contradictions still surround the norms and practices governing reparations at the ECCC.

Civil Parties, through their lawyers, want to avoid the problems that arose in Case 001 and meet pleading standards for reparations that will result in substantive awards that adequately acknowledge the harm to the parties. However, the standard of proof required of Civil Parties in submitting reparations requests remains unclear. Namely, the Rules do not articulate the information Civil Parties must provide to identify, with specificity, the reparations awards they seek. Moreover, though the purported indigency of the Accused seems to have given the Chamber pause in awarding reparations against Duch in Case 001, it must ensure that such considerations are given no weight in their judgment on reparations in Case 002, given that neither domestic nor international law recognize indigence as a grounds upon which such awards can be rejected. Further complicating matters, the judgment in Case 001 takes a narrow view of “collective and moral” reparations that neither comports with international law and practice, nor the object and purpose of these types of reparations. The Court should refine its understanding of this term to include the wide range of reparations routinely awarded by international courts and implemented through reparations programs.

In addition, the judgment in Case 001 failed to provide a meaningful discussion on the harm of the victims and the Chamber did not issue a reasoned decision either accepting or rejecting each reparations request. Such a reasoned decision would have amounted to procedural reparations in and of itself and the Chamber missed an opportunity to provide an award that would have come at little additional cost in terms of time or expense to the Court. In its next case, the Chamber has a fresh opportunity to provide some measure of satisfaction and closure to victims. The accused persons should be present for key stages in the proceedings where victim experiences are expressed. The judgment should clearly make reference to and highlight these experiences.

Not only does the lack of clarity regarding reparations standards impinge on the rights of Civil Parties and create uncertainty in Cambodian and international law on the applicable norms, but the lack of attention paid to procedural reparations for Civil Parties and victims represents an important lost opportunity which must not be repeated. Informed by the legal and practical issues that arose in Case 001 and recognizing the important amendments to the reparations framework instituted since, the report seeks to foster discussion and debate on issues salient to reparations in Case 002.

In view of the issues identified in this report, there is cause for concern that the Court will take an unnecessarily narrow view of reparations in Case 002. This would diminish its ability to provide meaningful relief to Civil Parties. It was, and remains, unsettling to many Cambodian victims that the Court awarded such a limited range of reparations in Case 001. To pave the way for the Case 002 judgment to translate into justice for Cambodians, the report offers recommendations to the Court for the reform of its reparations request procedures consistent with the rights of victims under international law:

- The Court should conform to the law and practice of other international(ized) tribunals that have traditionally required less specificity for reparations requests than is currently imposed on Civil Parties by the ECCC.
- The Court should not consider the indigency of the Accused 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 an appropriate process and forum for dealing with procedural matters related to the indigency of a convicted party subsequent to the judgment.
- The Court should appoint an expert or working group of experts to liaise with the Court Administration, Victim Support Section, and the Lead Co-Lawyers to determine what type of body should be established to manage and oversee reparations funds and projects that will outlast the life of the Court. This will be especially critical in the event the Court orders the costs of one or more award(s) to be borne by the convicted person per Rule 23*quinqies*(3)(a), as the funds can only be collected once the judgment is issued and any appeals decided. They can advise the Court on institutional measures to be taken and infrastructure to be established which will ensure that the potential for adequate and meaningful reparations.
- The Court should adopt a definition and understanding of “collective and moral” reparations that coincides with those applied in international(ized) tribunals and collective reparations programs around the world. The Court should acknowledge that such reparations may include those that provide benefits and services to individuals within the larger collective.
- 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 of the Accused.
- The Court should incorporate victim and expert testimony and evidence where appropriate in the judgment, but particularly in discussions of nexus between the harm inflicted and the actions of the Accused.
- The Court should include explicit and detailed analysis of each reparation request, individually considered and including a reasoned determination on the nexus

requirement, including relevant facts, evidence, or testimony, particularly concerning impact, offered by Civil Parties and experts.