

August 15, 2011

Dear Sir or Madam:

This is an update on the recent developments in the Extraordinary Chambers in the Courts of Cambodia (ECCC). Both ASRIC and CJA attended the first hearing, which lasted from June 27 to June 30. Some of you have been contacted individually by ASRIC's legal partner, the Center for Justice & Accountability (CJA). ASRIC recruited CJA to represent ASRIC's survivors at the ECCC and we will be working together to update you as the proceedings move forward. Because you are a Civil Party in Case 002, CJA will be representing your interests before the Court as well as seeking recognition and justice on behalf of Cambodian survivors of the Khmer Rouge living in the U.S. ASRIC and CJA will also work to secure reparations from the Court which address the harms you suffered under the Khmer Rouge.

As you may have heard, initial hearings concerning the four defendants in Case 002, Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan, were held in June. These hearings provide an opportunity for the Judges to consider challenges to the Court's law or procedure before the facts and evidence are presented in Case 002. In addition, the Court uses the initial hearings to discuss matters in preparation for the trial, such as reparations for Civil Parties, the types of evidence they will allow at trial, and the witnesses and experts that will be called to testify before the Court. The facts and evidence portion of Case 002, the "trial," will likely begin in September or early October. There may be several hearings before this trial and ASRIC and CJA will notify you once the official trial is set to begin.

During the hearing, we observed several arguments raised by the defendants in this case. The following paragraphs are a summary of the arguments that were raised by the attorneys for the defendants and the responses by the prosecutor and the attorneys for the Civil Parties. You can find a definition of the legal terms marked with a [*] on the last page of this update.

First, the lawyer for Ieng Sary argued that his client was already tried before the People's Revolutionary Tribunal of Cambodia in 1979 and therefore cannot be put on trial again by the ECCC. Normally, individuals are protected from being tried twice for the same crimes. This protection is called "double jeopardy" or *Ne Bis in Idem*.* The Prosecutor* and Lawyers for Civil Parties* responded by saying that the 1979 trial did not meet standards for a fair trial and, therefore, that judgment should not prevent this trial from moving forward.

Second, the defense for Ieng Sary argued that their client was pardoned for his crimes by King Sihanouk and the National Assembly in 1996. This kind of protection from prosecution is known as an "amnesty."* The Prosecutor and the Civil Party lawyers responded by saying that the Royal Pardon does not apply to crimes of genocide and torture that are being heard by the

ECCC. Moreover, they argued that, under international law, such severe crimes cannot be pardoned and people that commit these crimes must still face prosecution.

The third argument raised by the defendants* (the people accused of the crimes in Case 002) concerned whether or not the period of time allowed for bringing such a case has run out. Under Cambodian law, a person cannot be brought to trial for a crime that was committed more than ten years ago. Such a rule is called a “statute of limitation.”* However, the prosecution and Civil Party Lawyers argued that this limitation only applies to cases in national Cambodian Courts. Since the ECCC is a special court that hears cases of international law, they argued that such a limitation should not apply.

Fourth, on the final day of the hearings, the Judges discussed potential witnesses and experts that might be heard during the first part of the trial. These witnesses and experts would speak on the structure and policies of the Communist Party and Democratic Kampuchea, as well as the role and responsibilities of each of the defendants from 1975 through 1979. At this point, the defendant Khieu Samphan (former Head of State of Democratic Kampuchea) greeted the audience and said that he has been waiting for this trial to begin for a long time and vowed to assist the work of the Court to determine the truth. Each of the defendants requested the Judges to permit their witnesses to testify during the trial. The Judges will make a decision on these issues within the next one or two months. ASRIC and CJA will notify you of any significant changes made as a consequence of these decisions.

Lastly, the Judges heard statements made by Civil Party Lawyers on reparations.* As a Civil Party in this case, you have a right to receive non-monetary reparations from the Court if the defendants are found guilty. These reparations are collective and symbolic, meaning that they are designed to benefit a large group of survivors and are intended as a symbolic gesture that seeks to address the harm suffered by victims of the Khmer Rouge regime.

ASRIC and CJA sent out a survey to you in March 2011 on reparations. After tabulating the results, we determined that most of the Civil Parties want reparations 1) that will preserve the evidence of the crimes committed by the Khmer Rouge; and 2) that will ensure that the general public is educated about the nature and extent of the crimes. In particular, there was very strong interest in the creation of museums to educate the public on the Pol Pot regime and its victims as well as a memorial to honor the victims of the Khmer Rouge.

During the initial hearing, Civil Party Lawyers explained to the Court that reparations are a right of the victims and described the four categories of reparations under which Civil Party requests will fall: (1) memorialization and remembrance; (2) rehabilitation; (3) compilation of documents and education; and (4) other awards. Some of the reparations projects given as examples under these categories included memorial sites, preservation of the killing fields, psychological treatment services for victims, educational programs on the history of Democratic Kampuchea, the creation of an archive for the evidence and testimony of the victims, a victim registry, and a museum that educates the public on the Khmer Rouge. Lawyers for Civil Parties emphasized that this is not the final reparations request and that the request can change after further consultation with Civil Parties before the end of the trial.

If you have any questions or concerns regarding the reparations request, please feel free to contact Leakhena Nou of ASRIC. We welcome your input and ideas and assure you that ASRIC will submit whatever information you provide to your attorney, Nushin Sarkarati of CJA, who will include these ideas in the discussion on reparations before the ECCC.

As we explained before, CJA will provide you legal representation in these proceedings at no cost to you. Please do not hesitate to contact CJA lawyer **Nushin Sarkarati** if you have any questions or concerns about the legal proceedings or your role as a Civil Party at **(415) 544-0444, extension 318** or by e-mail at **nsarkarati@cja.org**. CJA looks forward to representing your interests in the upcoming trial.

If you would like to discuss matters related to your personal and/or social recovery process or community issues related to the Tribunal, please feel free to contact **Dr. Leakhena Nou/ASRIC** at **(212) 300-5775** or by e-mail at **apa.asric-khmer.justice@nyu.edu**

Sincerely,

Legal Glossary

Civil Party: Civil Parties are formal participants in the proceedings against those allegedly responsible for the crimes under investigation by the ECCC, and they enjoy rights broadly similar to the prosecution and the defence. Becoming a Civil Party not only gives Victims the right to actively participate in the proceedings, but it also allows Victims to ask the court for collective and moral reparations from the convicted persons through their attorneys.

Complainant: Any person or legal entity who has useful information regarding the crimes of the Khmer Rouge under the jurisdiction of the ECCC can file a complaint by filling out the Victim Information Form and submitting it to the Victims Support Section (VSS). The information in the complaint may then be used to help in the investigations. Complainants do not participate as parties in hearings, and they are not entitled to ask the court for reparations. They may however be requested to give evidence or testify as witnesses.

Statute of Limitations: A law which restricts the time within which legal proceedings may be brought in a given case.

Double Jeopardy: A legal principle which establishes that a person may not be tried for a criminal offense for which she has already been convicted or acquitted.

Prosecutor: The prosecutor is the legal party responsible for presenting the case in a criminal trial against an individual accused of breaking the law.

Lawyer for civil parties: At the ECCC, this is the lawyer who is responsible for representing the legal interests of Civil Parties and supporting the prosecution's case against the defendant.

Amnesty: An official act usually made by a government which guarantees one or more persons who are accused of having committed a criminal offense that they will not be prosecuted for that offense.

Defendant: In criminal cases, such as those before the ECCC, this is the person or persons accused of committing the crime.

Reparations: In the law, reparations are measures ordered by the court in order to repair the harm or injury caused to the victim of a crime by the perpetrator of that crime.