

KR victims face rocky road to reparations

Written by Bridget Di Certo

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Former Khmer Rouge social action minister Ieng Thirith listens during a hearing at the Khmer Rouge tribunal on the outskirts of Phnom Penh in June. **Photo by: Eccc/Pool**

It's time for the Khmer Rouge Tribunal to cease treating victims as an afterthought and work to empower those that suffered under the brutal Democratic Kampuchea regime, a prominent rights organisation said today.

Access to Justice Asia (AJA), the Centre for Justice & Accountability (CJA) and the International Human Rights Law Clinic at UC Berkeley today released their report "Victims' Right to Remedy: Awarding Meaningful Reparations at the ECCC", calling for the tribunal to re-examine its inadequacies in granting reparations.

"There is cause for concern that the Court will take an unnecessarily narrow view of reparations in Case 002," AJA said. "It was, and remains unsettling to so many Cambodian victims that the Court awarded such a limited range of reparations in Case 001."

Reparations denied in Case 001

In Case 001 against Kaing Guek Eav, alias Duch, the security chief at the Tuol Sleng interrogation and execution facility in Phnom Penh, the majority of reparations were refused.

Victims whose family members had been tortured and/or executed at S-21 requested reparations including the construction of pagodas, and educational, psychological and medical programs for victims.

However, the only relief the Trial Chamber awarded those victims of mass atrocities was the publication of their names in the final judgment of the tribunal and a compilation of Duch's apologies, which constituted "nothing of real value for civil parties," AJA reported.

Tribunal affiliates must "examine the reparations scheme at the court at the very outset of the trial, not merely treat it as an afterthought," international civil party lawyer Mahdev Mohan said

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on the release of the Access to Justice Asia report.

“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,” the report said.

“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,” Nushin Sarkarati, a fellow international civil party lawyer, said.

“For many victims, justice is more than convictions of the defendants,” UC Berkeley Law Professor Laurel Fletcher said.

Reparations in Case 002 up in the air

Civil Parties in Case 002, against three of the senior leaders of the Khmer Rouge regime, are requesting four categories of reparations.

The first are remembrance and memorialisation requests, the second is rehabilitation and health services, the third is documentation and education, and the fourth is other projects such as stupas and monuments and preservation of crime sites.

The tribunal’s reasoning for denying so many of the reparations requests in Case 001 was the lack of specificity with which the reparations were requested by lawyers representing the civil parties, and also the indigency of the accused.

The tribunal has provided no clear or practical guidelines on specificity of reparations requests and its consideration of the indigency of the accused flies in the face of international legal norms, AJA said.

Civil Party unrest

Today’s AJA report comes on the back of a wave of vocal outcry by civil parties in Case 002 against the tribunal’s attitude toward and treatment of those that suffered under the Khmer Rouge regime.

On Tuesday, prominent victims’ advocate Theary Seng withdrew her civil party status in Case 002, denouncing the tribunal as a farce that would never provide real justice to victims.

Today, the deputy president of the Association of Khmer Rouge Victims in Cambodia, Chey Theara, who was orphaned by the Khmer Rouge, followed suit and withdrew his civil party status also.

“Victims feel the absence of justice at the tribunal,” Theary Seng told the Post today. “Right now victims are being herded like sheep, with a low quality of participation and representation.”

“It is only a matter of time before more and more civil parties withdraw,” she said.

On Wednesday, co-lawyers for the civil parties, and the international lead co-lawyer accused

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the tribunal of silencing civil parties “once again.”

The civil party lead co-lawyers had applied to give opening remarks of no more than 30 minutes at some point during the three days of opening statements in Case 002, set to begin Monday.

The Trial Chamber denied this request, in contradiction of provisions in the Cambodian Procedural Code.

“Other parties, supposedly equal in status, have the opportunity to build their cases, while Civil Parties are not even allowed brief preliminary remarks,” the stinging statement from the civil party team said.

“The Trial Chamber could have exercised its discretion to grant the right to Civil Parties to brief preliminary remarks at the beginning of the trial, in order to introduce to the Chamber, the parties and the public at large the nature of the consolidated group of 4,000 civil parties, their distinct identities and multiple sufferings.

On the contrary, the Trial Chamber has decided to silence the Civil Parties and through them all the victims they symbolically represent,” lawyers said.

International lead co-lawyer Elisabeth Simonneau Fort told the Post today that there had been no change in the Trial Chamber’s decision to silence civil parties at the opening of Case 002.

“I can tell you I know for a fact that all the other parties are very surprised the Trial Chamber would decide like this,” Simonneau Fort said. “We have not heard of any change, so all we can do is wait.”