

Reparations for Khmer Rouge Crimes

SEPTEMBER 2013

Funding Reparations for Victims in Case 002 is Critical to the Legacy of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

The Khmer Rouge tribunal in Cambodia was the first international court to give victims a formal voice in a major atrocities trial. Victims of the Khmer Rouge atrocities committed in Cambodia from 1975-1979 are civil parties to the trial process, participating with many of the same rights as the prosecutors and the defense. They may also request the court to order reparations. In Case 002.1, nearing completion on crimes against humanity charges against the surviving senior leaders of the regime, 3,866 victims have been admitted as civil parties.

The ECCC has adapted the Cambodian domestic civil party participation system to address both the logistics of dealing with the large number of victims involved, and the fact that the accused have each claimed to be indigent, thus eliminating them as a source of funds for reparations.

At the ECCC, reparations are limited to “collective and moral reparations,” to “acknowledge the harm suffered by civil parties as a result of the commission of the crimes...and provide benefits to the civil parties which address this harm.” The court rules say that these benefits shall not take the form of monetary payments to civil parties themselves, and that sufficient funding shall be secured from outside sources if the accused cannot pay for reparations. Civil parties are represented collectively at trial and for purposes of requesting reparations by a team of lawyers designated as the Co-Lead Lawyers.

The Co-Lead Lawyers have already submitted a description of priority reparation projects for initial approval by the chamber if there is a guilty judgment in the case, proposing seven projects which address remembrance and memorialization, rehabilitation, and documentation and education. The Trial Chamber has indicated that it would be prepared to endorse these proposals. But it has emphasized that it can only include reparations projects in a judgment “where sufficient funding is secured.”

The court has requested verification of funding for the projects from the Co-Lead Lawyers by September 26, 2013.

The Co-Lead Lawyers worked with the individual civil parties and their lawyers, the Victim Support Section (VSS) of the court, and the NGO community to develop proposals they believe are reasonable in terms of costs and implementation. The reparations projects proposed include a remembrance day, a public memorial Initiative, rehabilitation projects that include testimonial therapy and self-help groups, and documentation and education projects that include a mobile exhibition and education project, a permanent exhibition, and a booklet on adjudication of fact in the case. Approximately \$2.5 million must be raised to launch the proposed projects and satisfy the Trial Chamber's requirement that sufficient funding has been secured.

Raising funds for reparations is extremely difficult for the Co-Lead lawyers and the VSS for several reasons. First, they are tasked with representing or supporting 3,866 victims in an ongoing trial and have inadequate staff and expertise to do active fundraising. Second, it is difficult to interest donor states and entities in these projects in advance of a judgment in the case (which is a necessary precondition for a final reparation award from the court) and under circumstances where the court is having difficulty raising funds for core staff expenses. The court's funding mechanisms puts these costs outside of the core budget and thus place an unfair burden on the Co-Lead lawyers and the civil parties they represent. The court is negligent in inadequately supporting the Co-Lead lawyers and the VSS with staff and high-level institutional leverage to secure funds and political support for reparations.

The court's latitude in awarding reparations is extremely narrow. No one expects that the court can order reparations to make victims of the Khmer Rouge whole. Yet, some significant reparations to symbolize that the court is truly serving victims of the Khmer Rouge crimes is essential if the ECCC civil party process is to have meaning. The court's legacy as a leader in victim participation is at risk. If funding is not secured immediately for the extremely reasonable and modest proposals put forth by the Co-Lead Lawyers, not only will the legitimate expectations of the civil parties be dashed, but the ultimate reputation of the court will be diminished and the opportunity to establish a meaningfully best practice for other atrocity courts will be lost.

The donors to the ECCC justifiably laud the court for its leadership role in supporting victims by way of its innovative civil party procedures. It is time they now step up and fund the reparations projects that put real meaning to that system. Such funding is a tiny portion of the overall costs of the ECCC, yet its absence would disproportionately diminish the legacy of the court. We understand that the court's very existence is threatened by a failure of the Cambodian Government to provide or raise funds for its share of the budget. While this priority must be dealt with immediately, international donors should not overlook the essential role that funding reparations requests will play in the ability of the court to meet the expectations of Cambodian victims.

We urge the donors of the court and other interested parties to immediately commit to funding the reasonable reparation requests put forth by the lawyers representing the civil parties in Case 002.