

**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
BEFORE THE TRIAL CHAMBER**

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**CO-LAWYERS' FOR CIVIL PARTIES (GROUP 2)
FINAL SUBMISSION**

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Trial Chamber

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I. BACKGROUND

1. On 27 August 2009, the Trial Chamber issued its “Direction on Proceedings relevant to Reparations and on the filing of Final Submissions”¹ (“*Direction*”). According to this Direction, the Parties to the proceedings are invited to submit Final Submissions in preparation of the Closing Statements.²
2. Further, the Trial Chamber directed that “[t]he final written submissions, if any, of the Civil Parties shall indicate the legal and factual basis for Civil Parties' applications to participate as a Civil Party and their claims for reparations. Such submissions will supersede previous requests made by individual Civil Parties for reparation.”³
3. Co-Lawyers for Civil Parties observe that the filing of a Final Submission is voluntary and does not affect the right to submit the Closing Statement. Therefore, Co-Lawyers for Civil Parties conclude that the content outlined in the Direction, with regard to the submission of ‘the legal and factual basis for Civil Parties’ applications’ is a recommendation rather than binding or mandatory.

II. SCOPE OF THIS FINAL SUBMISSION

4. By submission⁴ of all Civil Party groups, Co-Lawyers for Civil Parties have generally outlined the forms of reparation orders and awards according to the Internal Rules (“*IR*”) as ‘collective and moral reparation. Co-Lawyers for Civil Parties (group2) limit this Final Submission to a more specified request for reparations, but within the framework of our general motion.
5. The requested reparations are the result of long-term discussions among Civil Parties over the course of 15 months. This request is filed on behalf of all 17 clients of Civil Parties (group 2) and expresses only *their* desires. Specifically, the motion is dedicated Group 2 clients as direct victims, on behalf of their relatives, and on behalf of indirect victims, and themselves as Civil Parties.

¹ *Case against Kaing Guek Eav*, 001/18-07-2007/ECCC/TC, Direction on Proceedings relevant to Reparations and on the filing of Final Submissions, 27 August 2009, E159.

² *Ibid.*, para 2.

³ *Ibid.*, para 5.

⁴ *Case against Kaing Guek Eav*, 001/18-07-2007/ECCC/TC, Co-Lawyers’ For Civil Parties’ Joint Submission On Reparation, 14 September 2009, E159/3.

Civil Party E2/77 withdrew her application because she had felt that she was badly treated by the Office of the Co-Investigating Judges, and did not feel comfortable pursuing the case with the Court.

III. CIVIL PARTIES INVOLVED

6. Those Civil Parties, who have only had an interim status⁵ since the beginning, including those who were contested by the Defense,⁶ need to be considered as recognized Civil Parties.

On 5 December 2008, the Trial Chamber officially received the case file, but has not decided on the outstanding Civil Party applications. Additionally, Co-Lawyers for Civil Parties submitted supplementary material on 3 September 2009 on the admissibility of the contested applications and are still awaiting a ruling.

The lack of a ruling by the Trial Chamber has been detrimental to the Civil Parties who have been awaiting the acknowledgment of their full participation rights throughout the entire proceeding.

The Trial Chamber's lack of ruling has impeded the general and fundamental rights afforded to a Civil Party, which is the right to an expeditious and reasoned decision on any of his/her application, especially, if such application concerns the general status of a party. The Trial Chamber has violated this right by failing to making a decision for ten months.

The Civil Parties again request that the Trial Chamber make an expeditious and reasoned decision concerning their status in order to assure their full participation and uphold the integrity of the proceeding.

7. As a result of the Trial Chamber's silence on the issue for the duration of the case, the Civil Parties who remain in "Interim" status, without the knowledge of knowing whether they have the right to reparations or not, but who have enjoyed equal rights as Civil Parties, should be afforded the status of Civil Parties. The lack of a ruling coupled with the ability given to them to participate, should amount to a tacit assumption of granting status.
8. Such an implicit acknowledgment of being a party to the proceedings does not infringe on the rights of the Accused in any manner that could be considered as

⁵ E2/32; E2/21; E2/35; E2/22; E2/25; E2/24; E2/66; E2/62; E2/83.

⁶ E2/22; E2/62; E2/66; E2/35; E2/83.

prejudicial. On balance, the harm done to the “Interim” Civil Parties by remaining without status for all these months, coupled with the impact of being acknowledged by the Accused, outweighs any negative impact on the Accused. The Accused has faced each of the “Interim” Civil Parties in the same manner as acknowledged Civil Parties, such that a reparation request from the “Interim” Civil Parties would not have any large or detrimental effect on the Accused.

Therefore, we conclude and submit this request on behalf of our 17 clients, who are for the foregoing said all considered to be Civil Parties.

III. REPARATION REQUESTS⁷

State Apology

9. The crimes committed by the Accused are not only crimes committed by an individual but are the crimes committed by the State of Democratic Kampuchea (DK). The current state, The Royal Kingdom of Cambodia, is the successor state.
10. Political apologies given by States for wrong-doings committed in the past has become an increasing political phenomenon both nationally and internationally in the last century, especially over the last 20 years.⁸

The practice of a public apology is not limited to the West. Historically, an apology is frequently traced back to Western Christianity and humanism, but it is by no means an invention of the West. Non-Western home-grown apologetic mechanisms exist,

⁷ The order of the particular forms of reparation does not express any ranking.

⁸ Apology can take place in a variety of ways: within borders (from the state to the individuals who have been wronged, for example indigenous populations), among Western actors (e.g. Germany for the genocide of the European Jews during World War II), non-Western actors (e.g. Japan for its crimes in Korea and China in the context of World War II), and among Western and non-Western actors (e.g. Western countries for the colonization of non-Western countries or the slave trade).

A few recent examples of apologies:

In February 2005, the US Senate apologized for standing by during lynching campaigns against African-Americans throughout much of the previous century.

On 13 February 2008, the newly elected Australian Prime Minister Kevin Rudd offered a formal apology for the past wrongs inflicted by successive Australian governments upon the country's Aboriginal population. Prime Minister Rudd apologized in the Parliament to all Aborigines for laws and policies that 'inflicted profound grief and suffering and loss'.

In June 2008, Canadian Prime Minister Stephen Harper apologized on behalf of the Canadian government for a similar program initiated in the late nineteenth century that forced the removal of indigenous children from their families.

The US Senate had apologized, in February 2008, for atrocities committed against Native Americans.

In late August 2008, Italian Prime Minister Silvio Berlusconi apologized to Libya for damage inflicted by Italy during the Colonial era.

See the chronological list of political apologies compiled by Graham G. Dodds, updated on 23 January 2003, <http://www.upenn.edu/pnc/politicalapologies.html>.

and have their own unique characteristics and importance. Therefore, there is no cultural reason for the political non-Western world to evade apologizing.⁹

11. Cultural diversity should not be a justification for non-Western countries to evade a public apology for their human rights violations, especially when apologizing would be cathartic for the clients and would contribute to the quest of justice.¹⁰
12. However, any (state) apology has to be sincere, genuine and truthful in order to contribute to the (national) reconciliation process and for the victims to rebuild their dignity. If it is used only for political interests and benefits, then non-serious apologies must be avoided in order to avoid greater harm for the victims.
An apology could have immense power, when addressed to victims for serious crimes perpetrated against them by the State as the wrong-doer.
Humanization is an important tool for reconciliation, in contrast to the method of de-humanization which serves as a powerful tool of war, the tool of humanization contributes to the healing process. An apology is one of the ways in which humanization is attempted.¹¹
13. For the foregoing reasons, the Civil Parties believe it is time for the Cambodian government after over 30 years of silence to apologize sincerely, genuinely and truthfully for the heinous crimes committed during the DK period.
14. The Accused should contribute to this process by writing an open letter to the Royal Government, on behalf of the Civil Parties requesting an official, serious, genuine and truthful apology for the foresaid reasons.

***Memorials for Civil Parties and their Relatives placed at S-21
and Choeng Ek***

15. To preserve the memory of the first trial before the ECCC and to commemorate the first group of Civil Parties to the proceedings, the names of the Civil Parties who are direct survivors and the names of Civil Parties with relatives who were killed or died at S-21 and/or Choeng Ek should be carved with black lettering on white marble. In addition to their names, the carving should include the date of their entry into S-21 and/or the date of their death, and/or the reason for and/or the location of their death.

⁹ Coicaud, Jean-Marc, Apology: A small yet an important part of justice, *Japanese Journal of Political Science* 10 (1) 93–124, at p.123.

¹⁰ *Ibid.*, at p.124.

¹¹ *Ibid.*, at p.124.

Also, some information regarding the character and life of the victim's should be included. The text, written by the respective Civil Party, should not exceed 200 words and shall be displayed on additional tablets (one per each person/family) bearing the story and one photo of the victim. The text should be written and provided as well in audio in Khmer, English and French, the working languages of the ECCC.

The memorial should be placed in the courtyard of the Tuol Sleng museum, and on the left and right hand side of the Stupa at Choeung Ek.

Each of the memorials should include a short summary and result of the first trial at the ECCC (not exceeding 300 words) for the memory of the Civil Parties and their relatives who lost their lives under the orders of the Accused KAING Guek Eav.

Memorials for Civil Parties at Prey Sar

16. Prey Sar (S-24), the former re-education center has yet to become a memorial site. The future memorial site should be a place to remember, pay respects, and conduct Buddhist ceremonies. Additionally, it should provide information on the history and serve as a center for future education

The site design should be decided by holding an international architectural competition. After collecting national and international proposals, the Civil Parties would decide which proposal they prefer. The vision for the memorial is a combination of tradition and modernity and to fulfill the requirements of memorialization, religious ceremony, and education.

At least the following should be included: For the site to serve as a memorial, under the order of the Accused, a Stupa should be built. The size should be at least 35 meter height and 20 meters by 20 meters in size. The interior room of the Stupa should be able to hold Buddhist ceremonies for the killed, dead and ill-treated victims can be held.

In addition, a permanent exposition should be installed where the function and role of Prey Sar should be explained, as revealed in the first trial at the ECCC and in accordance with scientific research results. The historical truth should be demonstrated in all three working languages of the ECCC— available in written form and audio. The role and responsibility of the Accused should be explained on tablets and include a map with a description of the site.

Additionally, the names of the Civil Parties should be displayed with an explanation of the role they played in the case against the Accused. This text should be written by the Civil Parties.

***Visits of the memorial sites Tuol Sleng, Choeung Ek and Prey Sar
by Civil Parties***

17. Given the fact that not all Civil Parties reside in Phnom Penh or close to the mentioned memorial sites, the Civil Parties should have the paid opportunity to visit the memorial sites at Tuol Sleng, Choeung Ek and Prey Sar three times per year, each time for four days. This benefit should include the right to have the Civil Party be substituted by an authorized person or/and accompanied by one person, if necessary.

Medical treatment and psychological services for Civil Parties

18. Direct survivors of S-21 and S-24 request to have the general right to receive all medical treatment including psychological support, if any. The Accused should bear the costs for the treatment itself, medication and if necessary for transportation to the appropriate locations.

Indirect victims of S-21 and S-24 who did not suffer personally and directly of the Khmer Rouge regime would have to demonstrate that their suffering is caused or might be caused by the DK regime. If prima facie proof is provided, then they should be given the same right to medical and psychological treatment as the direct victims.

Awareness building on the background and outcome of the trial

19. Audio and video of the main components of the trial should be produced and summarized, at least 100 hours. The video and audio should include footage of the Accused on Judgment day. The video and audio should also include an explanation of the role of the Civil Parties, with editing rights given to them. .
- The audio and video should be copied five times and distributed to each province and and communes to educate and inform the Cambodian people.
- At least ten photos of the trial should be distributed to each commune and displayed in the

in a local pagoda with ten written and audio documents of the final judgment placed in a pagoda of each commune.

Memorialization of victims by naming public buildings with victim's name

20. Each Civil Party should have the right to choose a public building like a hospital or school to be named on behalf of the victim for whom he/she represents. This process should be commemorated with a public ceremony. A physical memorial should be included, with the name of the victim and a speech with his/her story delivered at the time. The physical memorial should include information on the victim's fate at S-21, Choeung Ek and/or Prey Sar. The ceremony should be broadcasted and a copy of the broadcast should be held at Tuol Sleng museum, Choeung Ek documentation and the new Prey Sar museum.

Judgment to include Accused's Request to the Government for Reparation

21. The Civil Parties should be awarded monetary compensation, along with the above-mentioned reparations. We request that the Accused submit a public letter to the Royal Government of Cambodia ("RGC") requesting them to participate in the reparation process by setting aside funds for the Civil Parties. Currently, there is an entrance fee charged at both Tuol Sleng and Cheung Ek, this fee should be used to compensate the Civil Parties for the crimes that occurred against them at each site. The Accused should be ordered to submit a public letter to the Cambodian Government requesting that the Civil Parties become the beneficiaries of 1/3 of the entrance fees at these sites. We request that the 1/3 of the fees be used toward funding the above-mentioned reparation requests and that the remainder be divided as a monetary award among the Civil Parties.

Therefore, Co-Lawyers for Civil Parties (group 2) request the Trial Chamber,

(1) to declare immediately all "Interim" Civil Parties admissible as a result of the implicit assumption of admissibility;

(2) to convict the Accused, regardless of his current income and/or property to bear the costs for following reparations which are described in detail above:

- (i) writing and sending a letter to the Royal Government of Cambodia requesting a genuine, truthful and sincere State apology on behalf of the Civil Parties;
- (ii) installing memorial stones for the Civil Parties and their relatives and the production of information tablets including the provision of the audio and the translation;
- (iii) organization of the international architectural competition; construction of a stupa and a museum on the former site of the re-education site at Prey Sar;
- (iv) paid visits for at least 13 Civil Parties with accompanying person, if necessary who are not from Phnom Penh to Tuol Sleng, Prey Sar and Choeng Ek three times a year for four days each visit;
- (v) medical treatment, medication and psychological services for all direct survivors of Tuol Sleng, Prey Sar and Choeng Ek, if any, and for indirect survivors if the illness is related to the committed crimes;
- (vi) production of at least 100 hours film summary of the trial, producing at least 10 written and audio judgments for one pagoda in each commune; organizing the transfer to the provinces and showing the films regularly;
- (vii) 17 ceremonies commemorating the naming of a public building and the production and installation of information tablets.
- (viii) An open letter submitted by the Accused to the Royal Government of Cambodia requesting that 1/3 of the entrance fees from S-21 and Cheong Ek be used for the above-mentioned reparations first, and then to be distributed as a monetary award divided among the Civil Parties.

Respectfully submitted by Co-Lawyers for Civil Parties (group 2),

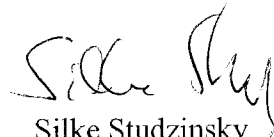


Hong Kimsuon



Kong Pisey

✓
Yung Panith


Silke Studzinsky

Signed in Phnom Penh on 5 October 2009.