

Response by Dr Helen Jarvis to Call for Contribution of Ideas ECCC Residual Functions Related to Victims

In advance of presenting my ideas, I wish to express appreciation to Judges Ottara and Fenz for issuing this call, thereby opening the door hopefully to a full and transparent discussion of this matter, which is of vital concern to Civil Parties, to all victims of the Khmer Rouge regime, to the wider population of Cambodia as a whole, as well as to those in the international community engaged in the search for justice.

It appears to me that the following residual functions relating to victims have been identified in the Secretary-General's Report *Extraordinary Chambers in the Courts of Cambodia – residual functions (A/75/809)*, dated 2 March 2021, and the Proposed Addendum to the UN-RGC Agreement.

1. Archives and Information

- maintain, preserve and manage its archives, including declassification;
- respond to requests for access to documents;
- disseminate information to the public regarding the ECCC

In my opinion, these functions can and should be discharged by the Legal Documentation Centre (LDC), in the light of the fact that the Royal Government of Cambodia established this body by *Sub-Decree No.: 159 ANKR-BK*, dated 16 November 2015, with generous financial support from Japan, and mandated it to carry out such functions relating to the ECCC.

Further, it should be recalled that this body was approved by the *ECCC Trial Chamber Judgment on Case 002/02*, pronounced on 16 November 2018, as a reparations project proposed by the Lead Co-Lawyers for Civil Parties, *Access to the Judicial Records of the Khmer Rouge Trials and Civil Party Materials at the Legal Documentation Centre relating to the ECCC (LDC)*.

All documents classified as Public relating to Case 001 and 002/1 have already been transferred, and the remaining public documents are expected to be transferred in the future, as directed by the Judicial Officers following judicial review of current classification levels of documents on the case file. It would be expected that a considerable number will be reclassified as public once the trial proceedings in other cases are concluded (as they were in Case 001). It is suggested that this review might also consider recommending the return of original documents to their owner, generating institution or successor (such as from S-21 to Tuol Sleng Genocide Museum) with copies retained in the ECCC archives.

Discussions on the disposition of documents still classified as Confidential or Strictly Confidential need to be undertaken as part of the completion process, in light of the existing Cambodian law and procedures in force. This transfer would logically also include administrative records and documents from other units of the Office of Administration, including the Public Affairs Section, Victim Support Section and the Library.

In order to prepare for such transfer, would suggest that staff from the LDC be seconded to the ECCC to work closely with its Record and Archives Unit so that they may better understand the structure of the case file and the procedures followed in reclassification. Such secondment would desirably be arranged as soon as possible. Further, it is suggested that discussions commence forthwith regarding the software used for managing the case file, in particular whether the current Zylab software will be made available to the LDC for continued management of these archives and, if so, under what conditions and with what kind of financial and technical support for continued operations, or for acquisition of alternate and more reasonably priced software.

2. Reparations

Although in most civil law countries, including Cambodia, reparations awarded by criminal courts are executed under judicial control, the ECCC has mandated a different regime, by which reparations may be proposed by third parties and, if approved as part of the judgment, are to be voluntarily executed by the proposing party, with possible support from others. It will be interesting to understand to what extent and for how long the ECCC judiciary will decide to play any role in monitoring the implementation or assessing the effectiveness of reparations awarded.

It therefore is necessary to discuss the parameters of this function. It is suggested that a review be conducted of the current status of all reparations projects recognised to date. While many of these projects were envisaged to have a limited life span, and indeed some have already come to an end, for the remaining projects that are continuing, any ongoing monitoring and reporting (as well as exploring the feasibility of and source of funds for their continuation) might also be appropriately discharged by the LDC, given its specific mandated relationship and responsibilities to Civil Parties, if its structure were broadened to add a Reparations Department (perhaps for a certain period of time and possibly in conjunction with officials, staff and legal officers now in the Victim Support Section and/or Civil Party Co-Lead Lawyers Section).

It should be noted that some activities outside the ECCC reparations program have also served to provide redress to victims of the Khmer Rouge regime, for instance, the Tuol Sleng Genocide Museum project to digitise and preserve the S-21 archives, ongoing mental health care especially by TPO, research and cultural programs and also, notably, independent and community efforts to construct memorials and stupas. It would be valuable to initiate a compilation of such activities, in order to create a record to show the wider picture of how the existence of the ECCC has stimulated and enabled such positive achievements.

Concluding Comment

May I take this opportunity to make a somewhat broader comment regarding the draft Addendum? It is proposed therein that after the ECCC completes its caseload, a reduced size ECCC should continue to operate, initially for three years, to carry out residual functions with a projected budget of almost \$3 million dollars per year (international component \$1,974,500 per year and the national component approximately \$1,020,500) for a staff of 33 (11 international and 22 national).

Of course, as part of the Completion Strategy for the ECCC, it is necessary to discuss and reach agreement on the mechanisms for discharging any residual functions, (not only those relating to victims discussed above, but also the various judicial functions outlined in the Addendum as well as on other matters not mentioned, such as disposition of assets, schedule for winding down staffing etc). I wonder if alternative approaches could be investigated that would not diverge from the ECCC Law's sunset clause (Article 47), and were designed to be less elaborate and costly than the proposed prolongation of the ECCC (albeit in reduced form) for at least three years after the completion of its caseload.



Dr Helen Jarvis, Phnom Penh, 14 October 2021