

អង្គការសហមេធាវីតំបន់កំណាចដើមបណ្តឹងរដ្ឋប្បវេណី  
Civil Party Lead Co-Lawyers' Section  
Section des co-avocats principaux pour les parties civiles

05 October 2021

Dear Co-Rapporteurs on Residual Functions related to Victims,

The Civil Party Lead Co-Lawyers welcome the call to provide submissions in relation to the legacy activities of the ECCC and commend its solicitation for initiatives which “would be of meaningful and lasting assistance for civil parties, victims of the Khmer Rouge regime and the general public.” The Lead Co-Lawyers make these submissions publicly, in the interests of transparency, and in the hope of encouraging responses from any further contributors.

The following observations focus on the *process* of identifying and implementing initiatives which provide meaningful and lasting assistance:

**First**, the Lead Co-Lawyers recommend that all undertakings are conducted within a clear and permanent institutional structure with appropriate resourcing. Ensuring that one entity has **institutional oversight** of all initiatives will enable coordination, consistency, and maximize fairness in the distribution of assistance across civil parties and victims. Collaborating with a permanent institution would ensure **sustainability** of the initiatives and their impacts. In this respect the Lead Co-Lawyers **support the undertakings of the Legal Documentation Center (LDC)** as a permanent state repository for information relating to the proceedings of the ECCC, and note that the LDC has already developed some outreach and civil party support programming.

**Secondly**, the Lead Co-Lawyers appreciate the efforts of the Co-Rapporteurs to undertake their work in a transparent and consultative manner. They suggest that the Co-Rapporteurs should make particular efforts to ensure that **victims themselves are heard** on legacy issues, including the development of initiatives intending to provide meaningful and lasting assistance. This is particularly important and feasible for **civil parties**. While civil parties are part of a wider community of victims, they are represented parties before the ECCC and should be treated as such. Likewise, where civil parties are to be among the beneficiaries of an initiative, this should continue to be facilitated with involvement of their legal representatives. The Lead Co-Lawyers and civil party lawyers should therefore be kept informed and involved.

**Thirdly**, the Lead Co-Lawyers urge the Co-Rapporteurs to prioritize the principle of “**do no harm**” in their recommendations, to **prevent the re-traumatization** of victims and civil parties, as well as to ensure that any and all participation in projects is **based on consent**, is **non-exploitative** and **respects privacy**.<sup>1</sup> The Lead Co-Lawyers suggest that these principles be reflected in the selection of collaborating partners and incorporated into any contracts or letters of engagement with organizations which will have contact with victims and civil parties. Consideration could be given to offering trainings on working with victims or on relevant aspects of the Cambodian context (for foreign organizations). Contact with civil parties should continue to be made through the their legal representatives.

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<sup>1</sup> See for example, [Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), A/RES/60/147, 16 December 2005, Article 10 (“Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”).

Additionally, the Lead Co-Lawyers make the following observations regarding the *types of initiatives* which the Co-Rapporteurs may want to consider recommending:

**First**, it is imperative that funds are allocated for the **legal representatives of civil parties to meet with their clients**. These meetings are an indispensable part of civil party participation but many Civil Party Lawyers are dependent on limited external donor funding. Donor funding for these activities should continue. And where the Court itself is (or could be) in receipt of funds intended for the benefit of victims, the Lead Co-Lawyers urge that a portion of this funding be used to support civil party engagement. This work is crucial at the current stage of the Court's work. For case 002/02, it is essential that after the appeal judgment is issued, civil parties are able to meet with their lawyers to understand the case's outcomes, consistent with the practice following the delivery of the case 002/01 appeal judgment and the case 002/02 trial judgment. This protects civil parties' right to be informed, and ensures that they are not abandoned at the end of the Court's work without being able to understand how the proceedings in which they are parties have concluded. At the conclusion of other cases before the Court, a similar process should be undertaken for the civil parties who participated in those cases.

**Secondly**, the Lead Co-Lawyers recommend that where initiatives are based on reparation projects already implemented, that consideration be given to whether there is added value in expanding or further developing those projects.

**Thirdly**, the Lead Co-Lawyers suggest that proposals directed towards **accessing, explaining, and preserving the ECCC's work** would be appropriate, and consistent with civil parties' and victims' rights to "[e]qual and effective access to justice" and "[a]ccess to relevant information concerning violations".<sup>2</sup> The Lead Co-Lawyers therefore encourage efforts to produce materials (in varied formats) about the proceedings and their results. Several actors have been involved in such work to date, including the Lead Co-Lawyers who produce material of specific relevance to civil parties. Collaboration and information sharing could enable efficiencies and form the basis for wider projects aimed at victims and communities as a whole. The Lead Co-Lawyers would also value initiatives which encourage and support victims to access the ECCC's archive and related collections created by the LDC.

**Fourthly**, the Lead Co-Lawyers recall that many civil parties have long called for the **construction of stupas** to honor the victims of the DK and this has not yet been accomplished.

We hope that you find these recommendations useful and stand ready to provide any other input or support as may be required.

Sincerely,



Ang Pich  
National Lead Co-Lawyer



Megan Hirst  
International Lead Co-Lawyer

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<sup>2</sup> [Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), A/RES/60/147, 16 December 2005, Articles 11, 12, 22 (b) ("Verification of the facts and full and public disclosure of the truth..."), 22 (g) ("Commemorations and tributes to the victims"), 22 (h) ("Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.").