



IMAGINING THE POSSIBILITIES FOR REPARATIONS IN CAMBODIA

Ruben Carranza¹

At first glance, the ECCC's (Extraordinary Chambers of the Courts of Cambodia) reparations mandate appears narrow and restrictive. Its Internal Rules allow victims to claim reparations only by formally appearing through a "civil party action" (*l'action civile*).² The same Rules also limit the kind of reparations that the Court may award only to "collective and moral reparations."³ Yet, there are potentially several ways in which the Court can make the right to reparations meaningful, for civil parties as well as for many other Cambodians who do have the means or possess the legal requirements to come before the court.

In exploring its reparations mandate, it may be useful to take note of some relevant distinctions between court-awarded reparations and administrative reparations programs. First, in many administrative programs, flexible and liberal standards are used in deciding whether specific victims are entitled to reparations.⁴ Second, administrative reparations can range from financial compensation to health, education and other social services, the identification and reburial of victims' remains, along with symbolic reparations, such as public apologies, ceremonies and other forms of commemoration. Finally, administrative programs are implemented by State agencies, with the State itself finding means to finance them.

¹ Senior Associate, Reparations Unit, and Asia Regional Office, ICTJ

² Rule 23 par. 1(a) and (b) ECCC Internal Rules

³ *Ibid.* par. 11

⁴ See the accompanying summary of the reparations program in Chile and for forced labor in Germany.

By comparison, the Court's Rules require that every civil party application must contain details that "specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator."⁵ As already mentioned, the court can award only "collective and moral" reparations. However, the Court's rules state that these can include ordering a convicted perpetrator to "publish the judgment in any appropriate news or other media,"⁶ or to "fund any non-profit activity or service that is intended for the benefit of victims"⁷ or "other appropriate and comparable forms of reparation."⁸ These examples suggest some room for the court to design certain collective and symbolic forms of reparations that have *material* impact (for example, ordering perpetrators to perform community service⁹) or have a wider reach (such as construing "publish" to mean appearing before communities, instead of relying on conventional media that may not be available to victims.)

In implementing reparations, the court's rules state that it be "borne by convicted persons."¹⁰ It may be useful to have some clarity regarding the source of funding for reparations; the rule allowing the Court to confiscate a perpetrator's criminally-acquired assets also requires that these assets be "returned to the State."¹¹ This limitation demonstrates the need for looking at reparations beyond the ECCC's mandate and to remember that, in the end, reparations is a State obligation. In the United Nations General Assembly's "*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*,"¹² the State has the obligation to "establish national programmes for reparation and other assistance to victims *in the event that the party liable for the harm suffered is unable or unwilling to meet their obligations.*"¹³

⁵ Rule 23, paragraph 5, ECCC Internal Rules

⁶ Rule 23 paragraph 12(a), ECCC Internal Rules

⁷ Rule 23 paragraph 12(b), ECCC Internal Rules

⁸ Rule 23 paragraph 12(c) ECCC Internal Rules

⁹ See the accompanying summary of the East Timor urgent reparations program; the CAVR's concept of symbolic reparations allowed low-level perpetrators to offer manual labor and help rebuild damaged houses in violence-stricken communities.

¹⁰ *Ibid.*

¹¹ Chapter XI, Article 39, ECCC Law

¹² C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005)

¹³ Paragraph IX (16), UNGA Basic Principles on Reparations

Overall, in the absence of a broader administrative reparations program, the ECCC is in a position to lay the foundations for such a program. The court can consider admitting the testimony and other evidence that victims may offer to support their claim for reparations, in contemplation of a possible extra-judicial administrative alternative. The very act of letting victims come forward to tell their story has its own reparative value. While the Court's jurisdiction has specific limits, it still has the potential, through its judgments and practice directives, to influence the implementation of reparations beyond its temporal mandate.