



“LEAVING A LASTING LEGACY FOR VICTIMS”

PRACTICAL WORKSHOP FOR ECCC VICTIMS’ REPRESENTATIVES

Tuesday, 10 March 2009, at Sunway Hotel

Workshop Report

The workshop, “Leaving a Lasting Legacy for Victims,” organized by the Victims Unit of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the International Center for Transitional Justice (ICTJ) in coordination with the Cambodian Human Rights Action Committee (CHRAC) took place at the Sunway Hotel in Phnom Penh on 10 March 2009.

Over 75 people attended this all day workshop. Participants from the ECCC included: Co-Investigating Judge Marcel Lemonde, Supreme Chamber Judge Motoo Noguchi, ECCC Chief of Public Affairs Dr. Helen Jarvis, staff from the ECCC Victims Unit, and a variety of other units of the ECCC. Participants also included representatives of OHCHR, Civil Party lawyers, CHRAC, the Cambodian Defenders Project (CDP), the Center for Social Development (CSD), the Documentation Center of Cambodia (DC-Cam), the Khmer Institute for Democracy (KID), Legal Aid of Cambodia (LAC), the Asian International Justice Initiative (AIJI), CAMBOW, Khmer Kampuchea Krom Human Rights Organization (KKKHRO), the Cambodian Human Rights and Development Association (ADHOC), Open Society Justice Initiative (OSJI), Transcultural Psycho-Social Organization (TPO), Avocats Sans Frontières (ASF), German Development Service (DED), and the ICTJ.

Introduction and Welcome

The conference opened with welcome remarks from Ms. Keat Bophal, Head of the ECCC Victims Unit, Ms. Caitlin Reiger, ICTJ Deputy Director of Prosecutions, and Ms. Seng Theary, Representative of CHRAC and Executive Director of CSD. The three organizers stressed the importance of bringing the stakeholders of victim participation in the ECCC together to encourage a dialogue to identify and address the various opportunities and challenges presented by victim participation, particularly as Civil Parties, in ECCC proceedings.

Session 1: Overview of Victim Participation in Latin American Prosecutions

Mr. Michael Reed, Head of Office from ICTJ Colombia, hosted the workshop’s initial session which aimed to shed light on lessons learned from victim participation in criminal proceedings for mass crimes in several transitional societies in Latin America.

Before beginning his discussion, Mr. Reed emphasized that we must be careful to recognize the shortcomings of comparative analyses. Despite similarities, no two systems are the same and any

lessons learned must take into account the myriad differences in historical and legal contexts between countries.

Mr. Reed then proceeded to discuss the basic elements and guiding principles of victim's rights in the criminal process in Latin America. In particular he highlighted five classifications of rights for victims in the criminal process: the rights to information, participation, assistance, protection and reparation. He also noted the importance of victims' psycho-social considerations when they become involved in the criminal process.

After providing this background Mr. Reed presented information on the procedural and substantive rights of victims in the criminal process in Latin America. This discussed the traditional mechanisms for participation as an: accuser, complainant or petitioner, civil party, or witness. He also mentioned that victim participation has been growing in relation to seeking and determining reparations, formal participation in investigations and hearings, and having victims' rights recognized regardless of formal participation in the criminal process.

Lastly, Mr. Reed discussed a case study of the Justice and Peace Law as a special prosecutions initiative in Colombia. He provided the historical context for this law, including the crimes it created the jurisdiction to consider. He then noted the roles that NGOs, the Public Defender's Office and victims were able to play in the process as well as the types of remedies that were made available.

The presentation was followed by a question and answer period, which brought to light the following points:

- When there is a lack of trust in state institutions, human rights NGOs can play a valuable role as advocate and monitor for trials which seek to use state courts to hold state actors and state institutions responsible for past actions.
- Providing legal representation to victims is not an end unto itself but rather a means to an end. Lawyers and their clients should discuss and define desired outcomes, and strategize on the best way to achieve these goals.
- Lawyers should help set their clients expectations appropriately by not only knowing what their clients are looking for but also knowing and communicating what can realistically be achieved given the system they are working within.
- Lawyers should work to build trust with their clients and move away from the hierarchy often inherent in lawyer/client relationships.
- Judges and prosecutors can help safeguard the dignity of victims and witnesses who choose to actively participate in the proceedings by exerting just enough control over proceedings to quickly halt abusive behavior, but at the same time not prevent the examination of important legal issues.
- The issue of how to best group victims as parties is an issue of how to provide the best quality representation. This is not just about numbers, but also the historical context as well as technologies available to help manage victim participation.
- Voluntary coordination amongst and between parties and lawyers can be a useful way to provide benefits to all parties. It can prevent the court from forcing coordination, cooperation or grouping. Coordination does not mean that everything has to be agreed upon, but is often a matter of dealing with details rather than overall strategy or policy.

Since working together requires trust, cooperation should start small, and start from as early in the process as possible. Latin America has a history of socialization of victims which made grouping easier, but grouping of victims in Cambodia needs to take into account the social and historical context of Cambodia. This is often best accomplished by working from the bottom up, so as not to impose alien structures.

Session 2: Identifying Common and Differing Aims

The second session of the workshop concentrated on setting the stage for the day's discussions by identifying the goals and aims of victim participation in the various stages of the ECCC process. During this session participants were split into five random groups. Every group was asked to discuss and answer one common question: Why is victim participation important before the ECCC? Then each group was asked to discuss and answer a different specified question. At the end the groups reported back to the entire workshop regarding their responses. Below is an outline of the questions and responses provided by the participants.

Common Question: Why is victim participation important before the ECCC?

- Truth Seeking
 - It provides greater information/evidence to the court and the public (national and international) about what happened
 - It helps the court pursue justice
- Dignity of Victims
 - Participation empowers victims (individually and collectively)
 - Participation ensures victims voices will be heard
 - It ensures victims can participate in the process
 - It provides acknowledgement
 - Participation can help victims heal/deal with their past experiences
- Providing an Example/Legacy
 - It provides example for Cambodian courts
 - It provides example for international legal proceedings
- Strengthens the Legitimacy of the ECCC
 - Participation in proceedings will lead to greater acceptance of the courts findings/judgments
- Supports Reconciliation

Group One: What is the goal of victim participation during the investigative phase?

- Support the case by helping to provide evidence
- Help expand the investigation
- Respond to various legal issues
- Help the court obtain information
- Allow victims to confront what happened in relation to the facts raised by case

Group Two: What is the goal of victim participation during the trial phase?

- Permit victims to express their suffering (personally or through their lawyers) in court
- Help victims obtain answers to their question by listening to proceedings
- Provide important information to victims about historical context of their suffering
- Allow victims to seek punishment for the accused

- Help victims seek and obtain reparations
- Provide peace and healing to victims which the court can not provide by judgment alone

Group Three: How can representatives know what victims expect from the process?

- Through direct and regular contact between victims and their representatives
- Conduct surveys with victims
- Host a call-in radio program
- Through victim complaint/registration forms submitted to the Victims Unit which says what they expect from process

Group Four: What do victims understand “moral and collective reparations” to mean?

- Victims have little knowledge of what moral and collective reparations mean
- They think they are about the government building infrastructure projects or building roads, schools, or monuments
- They believe moral and collective reparations are not enough because they want individual reparations which could include monetary reparations or public services, i.e. free health care and free schooling for them and families

Group Five: List the main risks of victim participation before the ECCC?

- Equality of arms, especially for the defense
- Balancing legal and non-legal concerns
- Re-traumatization of victims (questioning or just listening)
- Not meeting victim expectations (which may or may not conform to reality)

Session 3: Practical and Legal Challenges

The third session of the workshop focused on identifying a range of practical and legal challenges facing the various stakeholders involved in victim participation at the ECCC. For this session, participants were split into three groups based on their stakeholder affiliation: NGO intermediary representatives, legal representatives for victims, and officials from the ECCC (including the Victims Unit). Each group was asked to discuss and present back to the entire workshop the greatest practical and legal challenges facing their group. Below is a listing of the various responses.

NGO Intermediary Representatives

- Practical challenges
 - The victim application/registration form is too long and too complicated
 - There is a lack of accurate and consistent information from the ECCC
 - It has been difficult to get responses and replies to questions from the ECCC, as there is no clear person from the ECCC in charge of being the main point of contact for victims’ issues
 - There are not enough resources for outreach efforts throughout Cambodia
 - NGOs have limited capacity to play many of the roles they are being asked to play in this process
- Legal challenges
 - The lack of strategic planning
 - The limited temporal and personal jurisdiction of the ECCC

- The role of the court is limited to prosecuting and delivering a verdict, and does not include other important social and cultural considerations
- Some Civil Party lawyers are not prioritizing the interests of victims but are rather focused on promoting themselves

Civil Party Legal Representatives

- Practical challenges
 - Managing differences of opinion and ideas between and amongst lawyers, by seeking common goals and identifying disparate goals; and figuring out how to coordinate
 - Getting access to victims in rural areas in regards to applications and providing information about their claims and cases.
 - A lack of budget and resources for proper notification, communications with the Civil Parties and, bringing the Civil Parties who want to come to the proceedings to the proceedings.
 - There is not enough space in the court for all the Civil Parties and their lawyers
- Legal challenges
 - Inconsistency between Internal Rules of the ECCC and the Criminal Procedure Code of Cambodia which need to be harmonized

ECCC Officials

- Practical
 - Management of conflicts of interests between and amongst Civil Parties
 - Ensuring meaningful and effective participation with high numbers of civil parties
 - Ensuring that Civil Parties are able to participate in the investigation phase
 - Managing outreach activities to reach people in rural areas
 - Providing notification to unrepresented Civil Parties
 - Managing the expectations of the Civil Parties
- Legal Challenges
 - Providing legal advice to those who may be rejected as Civil Parties, especially concerning their right to appeal
 - Issues of confidentiality in an e-court environment
 - Necessity of conducting confidential investigations versus disseminating relevant information to the public
 - How to guarantee that evidence that Civil Parties provide is included in the investigation
 - Differences between the Internal Rules of the ECCC and Criminal Procedural Code of Cambodia, i.e. the scope of available reparations, and issues of succession after the death of accused

Session 4: Strategies and Grouping of Victims

After lunch the workshop continued with a fourth session aimed at identifying strategies to address the challenges raised in the third session. In the fourth session, the participants were presented with four questions for discussion. Each participant was able to choose the group they wanted to participate in based on the question they were most interested in exploring. The four questions and the groups responses are summarized below:

Question One: Is there an optimal number of groups of victims who could meaningfully participate in Case 002? If so, how can this be managed?

- It is hard to know how to define “optimal”? Optimal for who? How do you balance the need for an effective trial with the need for effective legal representation?
- For the investigative phase a large number of groups should not pose a big issue. But for the trial phase a large number of groups would be more difficult to handle.
- At the moment the Victims Unit only has enough funding for 2 teams of lawyers, but if victims groups can find their own funding they should be allowed to form separate groups.
- It is preferable not to have the same lawyer(s) assisting more than one group of victims.
- There is a need to have more lawyers available for victims, so there can be a larger number of groups.
- The current courtroom setup of only 8 seats for Civil Parties should not limit the number of victims groups. There may be a need to redesign the courtroom to accommodate more parties.
- Comments by other participants:
 - Without victim grouping the number of Civil Parties for Case 002 may get up to 2,500 civil parties given the current rate of applications.
 - To help ensure effective representation, larger group of victims could be represented by a team of lawyers.
 - Limiting the number of victims groups could help limit potential conflicts of interests between Civil Parties.

Question Two: What is the best way to ensure coordination between victims’ representatives and the ECCC?

- Identify a clear contact person and telephone number at the Victims Unit or ECCC for Civil Party lawyers
- Define the coordination role that the Victims Unit can play for legal representatives
- Conduct regular meetings between the Victims Unit and Civil Party lawyers
- Recognize the reciprocity of the relationship between Civil Party lawyers and the Victims Unit to ensure communication flows both ways
- Discuss the Victims Unit draft guidelines for legal representative and take steps to implement them
- Facilitate further discussion amongst Civil Party lawyers to enhance cooperation and increase transparency
- Develop a system of communication between lawyers and their clients in the remote rural areas

Question Three: How can victims’ expectations be kept realistic? How will you ensure ongoing and adequate communications with victims throughout the process?

- Listen to victims to identify their expectations
- Court must provide victims with accurate information about the process and available remedies through an effective outreach program
- Facilitate communication between victims and other stakeholders

- Help organize victim representatives at local levels who would be responsible for disseminating information more thoroughly in local communities
- Ensure that victims have legal representatives who can help explain the process and manage their expectations
- Guarantee minimum standards of victim participation
- Comments by other participants:
 - If you require Civil Parties to have legal representation then the court should provide a system of legal aid. You can't force victims to pay for legal representation
 - There is a disagreement between Civil Party lawyers about what expectations are appropriate. Many victims claim to want individual reparations, but Civil Party lawyers disagree whether expecting individual reparations is realistic given the discrepancies between the Internal Rules of the ECCC and the Criminal Procedure Code of Cambodia concerning reparations

Question Four: What are the dangers of imposed collective representation? How can this be avoided?

- The dangers of imposed collective reparations include: the loss of diversity between Civil Parties; the loss of the individuality of single Civil Parties; the limitation of each Civil Party's participatory rights; and creating lawyer-client relationships built on coercion rather than trust.
- Imposed grouping can be avoided by:
 - The Victims Unit and/or NGO intermediaries communicating to victims about existing groups in relation to their location, ethnicity, crimes suffered; recommending a group for each victim to join; and communicating to Civil Parties about the benefits of grouping
 - Civil Party lawyers finding the will to voluntarily cooperate and take joint action

Session 5: Leaving a Lasting Legacy for Victims

Session five of the workshop focused on how the ECCC could leave a lasting legacy for victims. This session was shortened due to participants' desire to spend a greater amount of time discussing strategies for addressing challenges in session four. Therefore, a short presentation on legacy issues was given by Ms. Caitlin Reiger of the ICTJ.

Ms. Reiger proposed a defining "legacy" for the ECCC as the "positive long-term impact on national justice efforts." Such a legacy would include: the professional development of staff; the physical infrastructure, facilities and archives; the jurisprudential impact; the impact on national legal reform; the demonstration effect; and the creation of greater civil society engagement with justice issues. However, the ECCC must be careful to avoid creating a negative legacy, especially in regards to how the participation of victims is handled.

To help participants incorporate a lasting legacy for victims into their activities, Ms. Reiger posed three questions for consideration: 1) What are the main obstacles to victim participation in Cambodian Courts? 2) How might your work before the ECCC serve as a model or offer other links to the national system? 3) What are the risks of victim participation before the ECCC?

In response several Cambodian Civil Party lawyers noted that the Cambodian criminal process is different than the ECCC. In the Cambodian process: there is a right to counsel; Prosecutors often do not want to pursue charges, so victims lawyers are important because they pursue justice more rigorously; Civil Parties have more rights than they do in the ECCC; but Civil Parties do not know about their rights or how to claim them, and there is not a mechanism that makes it easy for Civil Parties to claim their rights.

Session 6: Conclusions and Recommendations

In the final session, all participants came together to review the compiled recommendations from the workshops first five sessions. The recommendations had been divided into recommendations for NGO intermediaries, Civil Party legal representatives, and the ECCC and Victims Unit. Participants were asked to review the recommendations, and mark which recommendations they believed should be made a priority for each group (number of votes noted below in parenthesis). Participants were also asked to add any additional recommendations which they considered important but may not have been discussed during the workshop (noted by an “*”). The summary of recommendations is listed below:

Recommendations for NGO Intermediaries

- Facilitate communication / outreach (14)
- Communicate to victims the necessity for grouping / criteria for grouping (7)
- Communicate to victims about existing groups, recommend what groups victims could join and inform them of benefits of grouping (7)
- Help establish relationship between lawyers and client early by helping victims choose a lawyer (6)
- Coordinate with ECCC to continue to disseminate information widely*

Recommendations for Civil Party Legal Representatives

- Each lawyer (or team) should only represent one group (9)
- Help establish a clear system of communication between victims and lawyers (7)
- Increase cooperation and transparency between and amongst other Civil Party lawyers (7)
- Maintain regular contact with their Civil Party (6)
- Follow-up with and implement the guidelines on lawyer cooperation created by the Victims Unit (6)
- Facilitate more regular contacts with the Victims Unit (5)
- Help define the role of the Victims Unit in relation to lawyers’ cooperation (2)
- Maintain participation in 002 investigation (-)
- Cooperate to represent the interests of victims and not compete amongst each other*

Recommendations for the ECCC and Victims Unit

- Follow-up on and implement lawyer cooperation guidelines (9)
- Identify who is responsible for disseminating information to Civil Parties (7)
- Ensure victims have legal representation (7)
- Communicate with victims about existing groups, recommend what groups victims could join and inform of benefits of grouping (7)
- Conduct regular meetings with Civil Party lawyers and relevant NGO intermediaries (5)

- Identify the expectations of victims and provide them with accurate information about the court and how it may or may not be able to meet these expectations (5)
- Create one focal person/contact from the Victims Unit/ECCC for Civil Parties and their lawyers to contact (4)
- Define the Victims Unit's role in relation to Civil Party lawyer cooperation (2)
- Guarantee minimum standards of victim participation (2)
- Re-design the court room to provide more seating for Civil Parties and their lawyers (-)
- Help organize victim representatives at local levels (-)
- Continue the discussions started today*
- Create/Provide a Legal Aid program*
- Coordinate with civil society to continue to disseminate information more widely*
- Disseminate more information related to the Court*
- The Victims Unit should play a greater role as coordinator and inform victims of their rights*

The organizers asked the participants to take these recommendations back to their respective groups, and noted that the organizers would be discussing the recommendations with high level stakeholders at the ECCC the following day.

In closing, Mr. Sok Sam Oeun, the Chairman of CHRAC and Executive Director of CDP thanked the participants and reiterated the importance of lawyers cooperating for the common interest of victims; civil society and the ECCC coordinating to help disseminate information more widely; and the Victims Unit playing a greater role in coordination and explaining to victims their rights.