



**Losing Civil Parties in Cambodia**  
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**January 18, 2012**

Rithy was excited when, in mid-2010, he was formally accepted as a civil party in Case 002, the Khmer Rouge tribunal's biggest and most important case, in which four senior regime leaders are accused of genocide, war crimes and crimes against humanity. Like many victims, the formal recognition of his suffering and the idea that he could play a role in convicting the leaders whose policies led to his torment, meant a great deal to him.

The Extraordinary Chambers in the Court of Cambodia (ECCC) is the first internationalised court to allow victims of mass crimes to participate fully in proceedings as civil parties - a concept borrowed from French-influenced Cambodian criminal procedure. Civil parties are able to file claims for damages against the court's defendants and support the prosecution during proceedings, exercising nearly full procedural rights. They may also receive "collective and moral" reparations from the accused.

But since the hybrid court's inception in 2006, these victims' rights have been gradually chipped away at, in an effort to streamline and simplify court proceedings - to the point where many observers no longer consider them to be true civil parties anymore. Although he has little formal education, Rithy has attended every single day of the trial in Case 002 and watched the proceedings closely. He is frustrated by what he sees as a steady erosion of his lawyers' ability to represent him. "Civil parties have limited rights to speak on the floor of the court, and our civil party lawyers don't get much chance to argue on the floor," he said.

"Victims do not participate as civil parties at the ECCC; they act as victim participants, same as at the International Criminal Court (ICC). In fact, in some instances victims at the ICC have more robust participation rights," said Anne Heindel, an expert in international law who monitors the trial for DC-Cam, the archive centre of the Khmer Rouge regime. She said the court should be more honest about the fact that its experiment in civil party participation has been scaled down, and suggests the court should perhaps even stop calling its victim participants "civil parties."

**First blows in Duch trial**

The first blows were relatively minor. During a pre-trial hearing in 2008, civil parties were denied the right to directly address the bench. Victims and their lawyers boycotted part of the 2009 trial of Khmer Rouge prison commandant Kaing Guek Eav, known as Duch, after they were refused the right to question character witnesses or make

statements on sentencing - particularly important in that case given that Duch based his defence on a tearful bid for leniency.

In a passionate dissent to the trial judges' decision on that issue, Judge Jean-Marc Lavergne of France asked, "How far can one go without breaching the spirit of the law, or fundamentally distorting the meaning of the involvement of civil parties before the ECCC and the purpose of the trial as a whole, characterised by the coexistence of two interrelated actions, namely criminal and civil actions?" At the end of the Duch trial, victims were stunned when the verdict was read out to find that they had been awarded no reparations at all, save for the right to have their names listed in the judgement.

More recently, civil parties were completely denied the right to give opening statements when substantive hearings in Case 002 began in November. The decision was handed down by trial judges in a peremptory memo over the vocal protests of civil party lawyers, who begged for just 30 minutes to present their clients' perspective.

But the most frustrating step for many victims came when civil party participation was "consolidated" in early 2010. Thereafter, all victim participation in court would be channelled through two "lead co-lawyers," while the victims' personal lawyers would not be able to speak. The civil parties would have to file one joint claim for reparations. This change was a direct response to the civil party system's chaotic first outing during the Duch trial, which saw the case's 90 civil parties divided into four groups, each of which was led by multiple foreign and Cambodian lawyers. Lawyers for all four groups were granted the right to speak in open court, raising concerns over equality of arms and making it difficult for judges to effectively manage the trial. Since the ranks of civil parties in Case 002 have swollen to nearly 4,000 victims, it was obvious that something would have to change.

### **Lead Co-Lawyers - "uncontrolled power"**

Despite the fact that the new system has been in place for nearly two years, victims and their personal lawyers are still struggling to adjust to what they say are frustrating constrictions on their rights, and a fundamental shift in the attorney-client relationship. There is no mechanism to deal with disputes between Lead Co-Lawyers and the 30-odd personal lawyers, which has also created friction. Silke Studzinsky, a German lawyer representing hundreds of civil parties, including many victims of sexual violence, said she was frustrated by the lead co-lawyers' seemingly arbitrary rejection of submissions she wanted to file on behalf of her clients.

Under the old system, Studzinsky filed a request for investigative action that led to the inclusion of forced marriage in the Case 002 indictment, something that she said would be difficult now. "We have NO body to complain to about whatever decision they take. We are fully in their hands. They do not have only a coordinating role, they decide which content is submitted and which is excluded. They have uncontrolled power."

Another blow to victims was struck late last year, when trial judges decided to "sever" Case 002 into multiple mini-trials over serious concerns that another one of the elderly

accused might die or become incapacitated before a verdict (Khmer Rouge Social Action Minister Ieng Thirith was recently declared unfit for trial due to age-related dementia.) But the effect of this severance on civil parties has not yet been completely considered. In the first mini-trial, only forced evacuations and population movements will be considered. The three-quarters of civil parties whose grievance is not connected to these evacuations may never get their day in court, and they will be excluded from any reparations awarded in the judgement.

Theary Seng, a Cambodian-American lawyer who was imprisoned under the Khmer Rouge as a child and lost her parents to the regime, has been one of the most prominent civil parties since 2007, when she became the first victim to submit an application to participate in Case 002. In November, she theatrically withdrew her civil party status by handing the court a sheet of paper that said, simply, “ENOUGH.” She said she was frustrated with government interference at the court, but also lashed out at the lead co-lawyer system, calling Ms. Simonneau Fort an “incompetent neophyte” and saying she had found it impossible to work with her. “The court has created a disempowering process for victims,” she said.

This is precisely the role the lead lawyers were intended to take on - gatekeepers to thousands of occasionally fractious victims and their lawyers, who tend to have widely disparate legal strategies and goals. “It can permit a kind of coherent and strategical defence, avoiding opposite positions or repetitive pleadings. Referring to the number of civil parties, it was necessary to create that organisation,” Simonneau Fort responded.

Still, she too has felt that the court is unnecessarily constricting the rights of victims. “Sometimes it is clear that the [Trial] Chamber considers that civil parties have not such an important role as a party,” she said. “Some oral or written decisions have limited our rights: right to speak, right to answer on specific items, time to do it.” Rithy understands well that he may never see concrete reparations, but he is still hoping for the court to take a broader view of civil party rights. “We want the rights of civil parties to be respected and treated equally on the floor of the tribunal because only victims can describe how that physical and emotional suffering was when we lost our close relatives,” said Rithy.