

# ADVISORY REPORT

1/12/2021

## VICTIM-RELATED ACTIVITIES OF THE ECCC DURING THE RESIDUAL PHASE

Co-Rapporteurs on Residual  
Functions related to Victims

Judge YOU Ottara  
Judge Claudia FENZ



Extraordinary Chambers  
in the Courts of Cambodia

# TABLE OF CONTENTS

Message from the Director and Deputy Director of Administration	6
Message from the Co-Rapporteurs	8
Co-Rapporteur Profiles	10
Background and History	12
Victim related Activities at Internationalised Criminal Tribunals during the Residual Phase	15
Concept Analysis	23
Discussion of Proposals	28
Recommendation on the Way Forward	32

<b>Annex 1</b> <b>Addendum to the UN-RGC</b> <b>Agreement on the ECCC</b>	<b>36</b>
---------------------------------------------------------------------------------	-----------

<b>Annex 2</b> <b>List of Contributors</b>	<b>42</b>
-----------------------------------------------	-----------

David Scheffer  
Documentation Center of Cambodia  
GIZ  
Helen Jarvis  
Kdei Karuna Organization  
La Trobe University  
Lead Co-Lawyers (Civil Parties)  
Legal Documentation Center  
Marie Wilmet  
Nathan J. Chan  
REDRESS  
Royal University of Phnom Penh  
SIM Sorya  
Transcultural Psychosocial Organization  
Tuol Sleng Genocide Museum  
Victims Support Section (ECCC)  
Witness and Expert Support Unit (ECCC)  
Women Peace Makers  
Youth for Peace  
Youth Resource Development Program Organization

# MESSAGE FROM THE DIRECTOR AND DEPUTY DIRECTOR OF ADMINISTRATION

“...with the dignity  
of victims of the  
Khmer Rouge  
regime at the  
forefront of mind.”

The new residual mandate of the Extraordinary Chambers in the Courts of Cambodia offers a unique opportunity to continue the crucial work of recognizing the suffering of the victims of the Khmer Rouge regime, to provide essential contributions to the much-warranted reconciliation following this catastrophic period and to enhance the remembrance of the unprecedented suffering, especially with the post-regime generations.

It was in this spirit that last year we sought the advice of the *Co-Rapporteurs on Residual Functions related to Victims*, Judges YOU Ottara and Claudia FENZ. In July 2021, we requested their recommendations on possible undertakings which may be appropriate to, and meaningful for, victims of the Khmer Rouge regime.

The Co-Rapporteurs engaged broadly and actively with stakeholders of the ECCC in the course of their work, and we are truly grateful to all those who took the time to share their views and proposals with us. We are equally appreciative of the recommendations presented to us in December 2021 by the Co-Rapporteurs, in the form of the enclosed Advisory Report.

The Advisory Report's recommendations and overwhelmingly positive feedback we received during the Co-Rapporteurs' consultations have strengthened our resolve to chart an appropriate way forward collaboratively, and with the dignity of victims of the Khmer Rouge regime at the forefront of mind. We are confident that only by reaching out and synergizing can the Extraordinary Chambers develop truly meaningful and sustainable initiatives.





**H.E. Mr. KRANH Tony**

**Acting Director  
of Administration**



**Mr. Knut  
ROSANDHAUG**

**Deputy Director  
of Administration**

**“We are confident  
that only by  
reaching out and  
synergizing can  
the Extraordinary  
Chambers develop  
truly meaningful  
and sustainable  
initiatives.”**

The Victims Workshop in May 2022 presents an inclusive further step in shaping the outreach activities of the ECCC in its initial three-year residual term. We strongly encourage the widest possible participation at the Victims Workshop and engagement with the Workshop team, which will be organizing the event and advising the Office of Administration on appropriate initiatives arising from the dialogue at the Victims Workshop.

We look forward to hosting what we hope will be fruitful discussions leading to actionable initiatives. To echo the Co-Rapporteurs: “The door to this exciting new phase in the ECCC’s history has only just been opened.”

# MESSAGE FROM THE CO-RAPPORTEURS

**“...an idea whose time has come.”**

We welcome the publication of our report.

We accepted this assignment because we are deeply convinced that making victims a focus of the residual phase of this and any future international court is an idea whose time has come.

When we prepared the report, we were encouraged by the positive feedback we received. This found its ultimate expression in the number and variety of proposals submitted. Since the short deadline for submissions expired, we have been contacted by various additional stakeholders who have announced their intention to participate in the process. We told them what we wish to reiterate here and now: this report is just the starting point.

**“This report is just the starting point.”**

We have learned that the Office of Administration is already building on the momentum created by the drafting process. 2022 is designed as a transitional year. According to the legal framework, the residual phase can only start once judicial proceedings are completed. This is currently envisaged by the end of 2022.

We are pleased to learn that as a major first undertaking a workshop scheduled for May will bring together various stakeholders.

We understand that the approach there, as for the entire process, will be participatory, inclusive and ensure local ownership. We consider these to be preconditions to achieve a major aim of the whole process: sustainability of initiatives started during the residual phase.

The ideas and projects discussed at the workshop will be manifold. Given that gender-related crimes (e.g. rape in the context of forced marriage) were key issues at

**‘Establishing victim related initiatives as an accepted corner stone of the residual phase of any future international court would be a desirable long term outcome.’**

trial, and taking into consideration the Cambodian and international context when it comes to gender issues, we believe that gender sensitive/transformational projects would fit particularly well into the concept.

While local ownership will be key for implementation, this initiative will ideally have far wider implications. If successful it can serve as a blueprint for future international courts. Establishing victim related initiatives as an accepted corner stone of the residual phase of any future international court would be a desirable long term outcome.

This outlook should make participation in the process even more exciting.

**We wish the workshop and the overall initiative the success it deserves.**

*Judge YOU Ottara  
Judge Claudia FENZ*

# CO-RAPPORTEUR PROFILES



**Judge  
YOU Ottara**

Judge YOU Ottara obtained a master's degree in Law from Kazakhstan National University.

He has worked in the Ministry of Justice as Official of the Department of Criminal and Civil Affairs (1995-1996), as Bureau Chief in charge of ASEAN and International Cooperation (1996-2001), as Judge and Director of the International Affairs Department (2001-2002).

Since 2002, he serves as a Judge of the Supreme Court. He has conducted research in national and international law and participated in many programs and conferences relating to law issues, including as a lecturer. He is also a professor at the Royal Academy of Judicial Professions.

Judge You was appointed as a Judge of the ECCC Trial Chamber in 2006.



## Judge Claudia FENZ

Judge Claudia FENZ holds a Doctor of Law from the University of Vienna.

In 1984 she was appointed as a judge in the Austrian criminal justice system, holding judicial office for over 20 years in investigation, trial and appeals courts.

In 2004, she was appointed an international judge with the UN Interim Administration Mission in Kosovo, dealing with organized crime, serious ethnically-motivated crimes and war crimes. Between 2006 and 2008, Judge Fenz served as Head of the Rule of Law section within the EUPOL COPPS Mission in Palestine, which provides support to the Palestinian police and criminal justice sector.

Judge Fenz was appointed as a Reserve Judge of the ECCC Trial Chamber in 2006, and as a sitting judge in 2014.

# BACKGROUND AND HISTORY

The United Nations General Assembly requested the Secretary General to identify, in consultation with the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) and the Royal Government of Cambodia, residual functions of the ECCC following the completion of its mandate, and to develop and finalise an appropriate framework accordingly.<sup>1</sup>

<sup>1</sup> See General Assembly Resolutions A/RES/73/279, A/RES/74/263, and A/RES/75/257

The developed framework in the form of the Draft Addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea on the Transitional Arrangements and the Completion of Work of the Extraordinary Chambers,<sup>2</sup> was commended by the Secretary General for approval, who did so 7 July 2021. On 11 August 2021 and 26 August 2021, representatives of the United Nations and the Royal Government of Cambodia respectively signed the Addendum.

<sup>2</sup> General Assembly Resolution A/75/809, Annex

Where it concerns victims, the Addendum recognizes that reduced but essential functions will need to be undertaken with respect to them once judicial proceedings have been completed by the ECCC. Article 2 requires the ECCC “to continue to...provide for the protection of victims”, “disseminate information to the public regarding the Extraordinary Chambers”, and to “monitor the enforcement of reparations awarded to Civil Parties”.

Accordingly, the Director and Deputy Director of the Office of Administration decided to seek advice on the implementation of the proposed mandate from two Co-Rapporteurs among the Judges of the ECCC, who would exercise this function in their individual capacity, independently of their judicial appointments. They were tasked to provide specifically “...*explanations for and*

**“Article 2 [of the Addendum to the UN-RGC Agreement] requires the ECCC “to continue to...provide for the protection of victims”, “disseminate information to the public regarding the Extraordinary Chambers”, and to “monitor the enforcement of reparations awarded to Civil Parties.”**

<sup>3</sup> Call for Contribution of Ideas on the Extraordinary Chambers in the Courts of Cambodia (ECCC) Residual Functions Related to Victims, 02 September 2021. See <https://www.eccc.gov.kh/en/articles/call-contribution-ideas-extraordinary-chambers-courts-cambodia-eccc-residual-functions>

*recommendations on possible undertakings appropriate to and meaningful for victims encompassed in the jurisdiction of the Extraordinary Chambers”. The Co-Rapporteurs are Judge YOU Ottara and Judge Claudia FENZ.*

On 2 September 2021, the Co-Rapporteurs publicly issued a “*Call for Contribution of Ideas on the Extraordinary Chambers in the Courts of Cambodia (ECCC) Residual Functions Related to Victims*”.<sup>3</sup> The Co-Rapporteurs reached out to all stakeholders of the ECCC to submit, in writing, ideas for possible victim-related initiatives which could be implemented by the ECCC.

The Co-Rapporteurs required that the contributions contain a broad outline not exceeding two (2) pages in English and/or three (3) pages in Khmer, explaining how the proposed initiatives would be meaningful and of lasting assistance for Civil Parties, victims of the Khmer Rouge regime, and the general public. The contributors were requested to summarize key features of the proposal including rationale, target groups, and approximate timelines. The Co-Rapporteurs indicated that the term “initiatives” was not meant to limit the format and content of any proposal. The term “victim” was similarly to be interpreted broadly and not limited to those who participated in legal proceedings before the ECCC.

The Co-Rapporteurs noted that contributors should keep in mind factors including, but not limited to: the scope of the events and nature of crimes committed which impacted the majority of the population at the time, and whose consequences continue to be felt today; the fact that more than half of the Cambodian population today was not born at the time of the events; the existence of projects which might be built upon, including those which have already been implemented as reparation awards and non-judicial measures; the





Survivors of the Khmer Rouge regime and Civil Parties attend a 20 May Remembrance Day commemoration at the Tuol Sleng Genocide Museum.

initial period for the residual functions is envisaged as being three years; and that possible target groups of the initiatives might include, but are not limited to, direct victims and their descendants, teachers, domestic and international students and academics of various disciplines, the general public, and the media.

The Co-Rapporteurs received 20 submissions from various stakeholders. They actively encouraged and engaged with those stakeholders who reached out to them.



# VICTIM RELATED ACTIVITIES AT INTERNATIONALISED CRIMINAL TRIBUNALS DURING THE RESIDUAL PHASE

We have reviewed the legal framework and practice concerning the Residual Phase regarding victims of other international(ised) courts for possible guidance.

This includes Extraordinary African Chambers, International Criminal Tribunal for Rwanda (ICTR), International Criminal Tribunal for Yugoslavia (ICTY), Regulation 64 Panels in the Courts of Kosovo, Kosovo Specialist Chambers and Specialist Prosecutor's Office, Special Court for Sierra Leone (SCSL), Special Panels and Serious Crimes Unit in Timor-Leste, and Special Tribunal for Lebanon.

While most of those courts have developed a legal framework for a residual phase including provisions ensuring the protection of victims and witnesses, it would appear that **only the SCSL has ventured further when it comes to engaging with victims and the general population in a more in-depth manner.** The International Residual Mechanism for Criminal Tribunals (IRMCT) does not envisage further victims related residual activities. The SCSL was established under national law, like the ECCC. Both are “hybrid” courts when it comes to composition of panels and applicable laws. Both are located in the region of conflict in question. The SCSL transformed into the Residual Special Court for Sierra Leone (RSCSL) in 2013.

Between 2013 and 2020, the following residual functions were undertaken at the SCSL: Maintenance, Preservation and Management of the Archive; Witness Protection and Support; Assistance to National

Prosecution Authorities; Supervision of Prison Sentences/Pardons/Commutations/Early Releases; Trial of Johnny Paul Koroma; Review of Convictions and Acquittals; Contempt of Court Proceedings; Defence Counsel and Legal Aid Issues; Claims for Compensation; and Prevention of Double Jeopardy.

The process chosen by the court to organise the residual phase is instructive.

Anticipating the SCSL completion, European Union funded an independent evaluative survey of the SCSL's work while SCSL conducted outreach to the court's participants and updated their contact information.

We extract a description of the projects and/or publications from the SCSL and RSCSL<sup>4</sup> considered as residual because they may provide incentives for further project proposals for the ECCC residual phase and are instructive when it comes to the areas covered:

- The Special Court Made Simple, International Humanitarian Law made Simple, Glossary of Legal Teams, Best-Practice Recommendations for the Protection & Support of Witness.
- The Residual Special Court Made Simple, RSCSL Access Policy.
- **‘Bearing the Greatest Responsibility’**: Select Jurisprudence of the Special Court for Sierra Leone, was published by the Judges of the RSCSL on 2 October 2019, and consolidates the unique jurisprudence of the SCSL in a single volume.
- **The Sierra Leone Peace Museum**, which occupies the Special Court's remodelled former security building, is joint work of the Court and the Government of Sierra Leone. As an independent national institution, the Peace Museum will honour the victims of the war, preserve the

4

<http://www.rscsl.org>



Koh Kong Provincial Governor receives a briefing about forced marriage under the Khmer Rouge.



Survivors of the S-21 Security Centre CHUM Mey (2nd left), BOU Meng (centre) and NORNG Chanphal (1st right) with H.E. Dr. SOK An, Former Deputy Prime Minister, Minister in Charge of the Office of the Council of Ministers (2nd right), and H.E. Joachim Baron von MARSCHALL, former German Ambassador to Cambodia (1st left).

history of the war and the story of the peace process, build peace, and promote a culture of human rights.

- **National Witness Protection Programme.** Building on its experience in operating a highly successful witness protection programme, the Special Court worked with Sierra Leone's national authorities to establish a witness protection unit that would support the country's national judiciary. The new unit, situated within the Sierra Leone Police, is envisioned as a way to support the prosecution of serious offences such as organized crime, drug smuggling, human trafficking, corruption, and gender-based violence in the national system. It would also assist the Residual Special Court for Sierra Leone in carrying out its ongoing legal obligation to



Civil Parties attend a mobile exhibition on victims of the Khmer Rouge regime in Siem Reap.

ensure the safety of witnesses who testified in Special Court trials.

- **Archives Development Programme.** While the original archives are stored in The Hague, the Court has established an archive in Sierra Leone that will hold a copy of the Special Court’s public records. These holdings will be combined with the records of the Truth and Reconciliation Commission and National Commission for Disarmament, Demobilisation and Reintegration to create a unified research center on transitional justice following Sierra Leone’s civil war. Sierra Leone currently lacks an institution with the equipment or systems in place to adequately maintain a permanent archive. The Peace Museum provides a temporary solution able to accommodate a small number of users, yet a dedicated archive facility would greatly improve access and the management and preservation of records. SCSL hosted a number of archival training programs for the staff of National Archives and other institutions in archive management. Additional resources are required to create a purpose-built facility that would preserve a public copy of the Special Court’s archives for future generations.
- **Improving Detention Standards and Access to Justice for Women and Juveniles.** On 16 November 2009, the Special Court’s detention facility was transferred to the Sierra Leone Prison Service, which intends to use the site as a prison for women and juvenile detainees. At present, there is little capacity in the prisons system to deal with the unique needs of women and juveniles. This project aims to use the expertise at the Special Court to assist the Prison Service in refitting the prison and training its staff to improve the quality of care provided at the new facility. The training will be offered to prison

officers nationwide and will focus on international standards of detention for women and juveniles. A second component of the project will train lawyers providing pro-bono services to women and juveniles to improve their understanding of the needs of these vulnerable groups and strengthen their advocacy skills. Funding is required for the equipment and modifications needed in the detention facility and to train prison service staff and lawyers in relevant aspects of gender and juvenile justice.



Co-Rapporteurs Judge YOU Ottara and Judge Claudia FENZ present their Advisory Report on Victim Related Activities to the Director and Deputy Director of Administration.

- **Capacity-Building: Professional Development Programme.** The Special Court employs leading experts in various justice sector fields from across the world. Training courses have been organized to transfer these skills to the national judicial system. Training topics include records management, interpretation, administration of juvenile cases, and control and restraint training for prison guards, amongst others. The European Commission has provided USD 55,000 for training courses on records and information management with the staff of national archival institutions and court interpretation. Funding is required for courses including, but not limited to, training for lay magistrates, training for the Sierra Leone Police, and domesticating international criminal law including gender-based crimes.
- **Accountability Now Clubs.** Beginning in 2003, the Special Court, through outreach, engaged with university students at tertiary institutions across Sierra Leone and later in Liberia, supporting them in the formation of Accountability Now Clubs (ANC). The ANCs served to involve university students in justice and accountability issues. In the near term, the ANCs supported the work of the Outreach Section on university campuses and the surrounding communities,



but the ANCs were also meant to be permanent and to outlast the Special Court. The Outreach Section provided training for members in human rights, the Special Court, project writing and implementation, avoiding mismanagement in organisations, communicating with groups, and financial management. As the Special Court neared completion of its mandate, the Outreach Section worked with various ANC chapters to institutionalise them and to assist them in applying their experience to institutions in the national system. In 2010, ANC members who graduated from various universities created a coalition which now operates as an indepen-

Survivors of the S-21 Security Centre, CHUM Mey (centre), BOU Meng (right) and civil party CHIN Met (left) receive the trial judgement in Case 001 against Kaing Guek Eav, alias Duch.



dent organisation working on issues relating to human rights and the rule of law.

- **Sierra Leone Legal Information Institute (OTP Legacy Project).** Better known as Sierra Lii, the Sierra Leone Legal Information Institute was begun in February 2009 to provide free online access to Sierra Leone's primary legal materials and related information. The Office of the Prosecutor brought together primary stakeholders including the Parliament, Judiciary, Attorney-General's office, the Sierra Leone Bar Association, Fourah Bay College, the Law Reform Commission and civil society to create an entity to host Sierra Lii for the long term, and to develop a long-term management sustainability plan.
- **Training of Police Prosecutors (OTP Legacy Project).** In 2009 and 2013 the Office of the Prosecutor trained police prosecutors in all three of Sierra Leone's provinces and in the Western Area, which includes the capital Freetown. Criminal prosecutions in Sierra Leone's Magistrates Courts are normally conducted by police officers, not lawyers, and so the trainings were designed to introduce participants to the basics of prosecutorial skills, summary trials, preliminary investigations, the conducting of proper investigations, strategy and ethics, witness and victims management, case management, police liaison with the Prosecutions Department, analysis of the rules as to information and indictment and basic advocacy skills. The trainings typically targeted police officers who were new to police prosecutions, since longer-serving police prosecutors and often learnt procedures through experience.
- **International Prosecutors' Best Practice Project (OTP Legacy Project).** In collaboration with the Offices of the Prosecutor of the

International Tribunal for the former Yugoslavia, the International Tribunal for Rwanda, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon, the Office of the Prosecutor has worked to document the recommended practices from each prosecutorial office. The project consulted widely with current and past members of the various OTPs, including current and former prosecutors, and resulted in a best practices manual to assist investigators and prosecutors at the international level, as well as relevant national prosecuting authorities.

Civil Parties attend a mobile exhibition on victims of the Khmer Rouge regime in Siem Reap.





# CONCEPT ANALYSIS

**“The ECCC stands out among the internationalised criminal tribunals when it comes to participation of victims.”**

International proceedings frequently deal with mass crimes involving large numbers of victims, often exceeding 100,000. For various reasons the majority of victims of large and often long-lasting conflicts never comes to participate in proceedings at all. However, they and their descendants remain in the shattered, post-conflict society – often in close proximity to lower-level perpetrators who have never been brought to trial. They are frequently forced to deal with the personal and societal consequences of conflict with little to no support.

In many (if not most) national and internationalised criminal tribunals, those victims who participate in criminal proceedings do so as witnesses. As such, their role is limited to providing evidence relevant to the crimes charged. This provides little room for them to discuss issues outside the narrow confines of what is directly relevant to charges brought against those accused of causing them – and others – great suffering. A discussion of the consequences of crimes on them personally, their relatives or descendants after the crime is frequently not possible.

The procedural role of victims is more extensive when they participate as parties (e.g. Civil Parties), and can additionally testify about the suffering and damage which the perpetrators have caused.

The desire of large numbers of victims to participate in proceedings and tell their stories in a more holistic manner and in greater detail is understandable. It is however undeniable that the formal setting of courtrooms with its strict set of procedural rules cannot provide the safe space victims might need to talk about harrowing experiences.

Such formal exercises are time-consuming. Thus, the needs of large numbers of victims frequently compete with the rights of the accused to be tried within a reasonable time (see Art 6(1) ECHR). This is the reason why some internationalised criminal tribunals have shied

**“It is therefore only fitting for the ECCC to lead the way again when it comes to developing a scheme for dealing with victims in the residual phase of an internationalised criminal tribunal.”**

away from providing victims a role beyond that of a witness, thus often leaving them frustrated, unsupported and with the feeling that justice has not been done.

The ECCC stands out among the internationalised criminal tribunals when it comes to participation of victims. While the Agreement between the Royal Government of Cambodia and the United Nations did not mention the participation of victims, Article 36 New of the Law on the Establishment of the ECCC opened this opportunity by providing a right to appeal for victims. The Internal Rules accordingly designed a legal framework modelled on Civil Party participation as foreseen in the Cambodia Criminal Procedural Code and adapted to the procedural realities of trying mass crimes. One of the incentives of this modified system was the need to manage the participation, representation and reparation process of close to 4,000 victims in case 002. Permitting each victim and his or her respective legal representatives to speak in court at length or in detail would fundamentally have extended judicial proceedings, unduly. Deciding on 4,000 civil claims (and individual reparations requests) would have been an incredibly time-consuming feat, and impossible within a “reasonable” time.

The model was refined several times during the course of proceedings until the current, unique scheme of victim participation, representation and reparations was solidified. Both the genesis (which was less than ideal) and the unique outcome of this process are unprecedented in international criminal procedural law.

It is therefore only fitting for the ECCC to lead the way again when it comes to developing a scheme for dealing with victims in the residual phase of an internationalised criminal tribunal. The objective should be to remedy some of the shortcomings, as seen from a victim’s perspective, which derive from the limitations of criminal proceedings as described above. During international criminal proceedings, the role of victims, whether they participated as witnesses or parties, ends with the final-



Nuns line up at the ECCC to attend hearings in Case 002/01.

**“It would appear therefore that the residual phase of a court commends itself both to contributing to the victims’ healing process and the wider aspiration of national reconciliation.”**

ization of judicial proceedings. For the victims on the other hand, their participation in criminal proceedings is neither the first engagement with the consequences of the crimes committed against them nor does it end there. It is one phase in their long journey from crime to healing. Considering that the process opens old wounds it is quite often a very challenging one.

From a wider perspective, reconciliation – on its largest scale, national reconciliation – has often been mentioned as a desirable consequence of international criminal proceedings. It is however a fact that criminal proceedings are not designed – at least not primarily – with (national) reconciliation in mind. Their objective is to establish accountability by clarifying criminal responsibility for crimes within a reasonable time period.

It would appear therefore that the residual phase of a court commends itself both to contributing to the victims’ healing process and the wider aspiration of national reconciliation. Both objectives necessitate the inclusion of wider parts of society, including those victims who did not participate in proceedings, their descendants,

low-level perpetrators, and the general public. Since the legal and procedural constraints of criminal proceedings no longer apply in this phase, such larger-scale engagement is viable.

Further still, it is necessary because support for victims – and even more so national reconciliation – call for a more holistic approach to the conflict than a criminal trial can provide. Every member of society was quite literally impacted at the time of the conflict which is under the jurisdiction of the court, and whose consequences were felt long thereafter and still reverberate today. Half of the current population of Cambodia was not born at the time of the Khmer Rouge regime but are impacted by living with the trauma their parents,

Civil Parties attend a mobile exhibition on victims of the Khmer Rouge regime in Siem Reap.





**“Those who cannot remember the past are condemned to repeat it.”**

**George Santayana**

relatives and countrymen endured and the larger societal consequences which followed. Understanding this unfortunate part of their country’s history is imperative.

As has been famously said: “Those who cannot remember the past are condemned to repeat it.” (George Santayana).

Another feature of note in this context is that the ECCC is a hybrid court. This extends to the composition of the chambers, staff and party representatives, and the legal framework. Knowledge transfer and capacity building through cooperation has been an explicit aspiration of all hybrid courts. Extending it into the residual phase and beyond the narrow confines of legal expertise is a worthwhile endeavour.

This process of knowledge transfer in non-legal areas has begun at the reparations phase, which consisted of projects dealing with issues like mental health – an area of the national healthcare system with room for improvement; mediation – a skill widely applicable across various fields; and reconciliation – a process still underway in modern day Cambodia. We note that many projects delivered for the residual phase build on those reparation projects, thus potentially allowing a deepening of impact and creation of sustainable initiatives. Some of these initiatives should ideally survive the residual phase and continue to benefit not only direct victims but wider segments of the population.

Notable in this context is that the only other internationalised criminal tribunal with victim related initiatives in the residual phase (SCSL) is also a hybrid court, which is located in the region of conflict. Close proximity between court and the victims’ location appears to be conducive to further engagement between the two.

This is a fact to be taken into consideration whenever the establishment of further internationalised criminal tribunals is contemplated.

# DISCUSSION OF PROPOSALS

In the interests of transparency and with the consent of the contributors we have annexed all relevant proposals.

This allows readers to familiarise themselves with details of the ideas which we have broadly summarised below. It identifies the sources of our recommendations, the contributors and – read together – provides a general overview of the nature and scope of ideas.

Furthermore, it might serve as an incentive for the submission of new proposals, allowing early identification of overlooked areas and the provision of options for further synergies.

We note that the deadline for the report and consequently the time to deliver proposals was short and that stakeholders were taken by surprise by our Call for Contributions.

This undoubtedly accounts for the fact that current proposals are at very different stages of development. The bandwidth reaches from one-liners to fairly developed project proposals. Some proposals might benefit from assistance of experts in project development. In this context we note that GIZ-CPS program has played an important role in supporting the ECCC, especially in the field of victims related work, for example, in providing expertise in project development. Given this outstanding commitment over the lifetime of the court, we suggest drawing on their experience and extensive network also in this phase.

The proposals we received broadly fall into the following categories:

- Guiding principles for victims related initiatives in the residual phase;
- Education (schools, universities) about transitional justice and the ECCC;
- Information of/to the general public about the ECCC (i.e., exhibitions, lectures, study tours, radio talk show, blogs);
- Data organization, evaluation, and preservation;
- Community reconciliation, testimony, mediation/alternative dispute resolution;
- Mental health initiatives;
- Academic research in various fields;
- Monuments, stupas, ceremonies.



Monks give blessings to survivors of the Khmer Rouge regime and Civil Parties at the 20 May Remembrance Day commemoration held at the Tuol Sleng Genocide Museum.

Not covered by any proposal yet but worth considering in our view is the development of victims support services within the national criminal law system. These include services especially, though not exclusively, for victims of sexual crimes and minorities including legal, financial and psychological support.

Projects concerning knowledge transfer in the legal field, among others, training of judges, prosecutors, and lawyers should also be considered.

Compiling the large number of scholarly articles about the ECCC might provide a valuable tool for further research activities.

A separate compilation of press articles on the ECCC during its lifetime might shed an interesting light on the public(ised) perception of the court over the years. Given the described limitations regarding the stage of this initiative and the level of development of ideas, an in-depth analysis or evaluation is not feasible at this point.



However, among the general recommendations we received we especially endorse the following:

- Any initiative has to prioritize the principle “do no harm”. Re-traumatisation of victims has to be avoided, and their privacy must be respected. For foreign organizations becoming involved in domestic projects, information about the Cambodian context should be contemplated. With Civil Parties, the involvement of their representatives will be beneficial.
- Projects that build upon past or existing initiatives should be prioritised.
- Cooperation between academic research and community-based projects should be encouraged.
- Consolidation, preservation and publication of available information about all victims related activities (projects, initiatives, etc.) that have been undertaken so far should be undertaken as soon as possible with a view to ensuring that currently fragmented knowledge and information is not lost. This would also avoid duplication of efforts.

We note that some proposals touch on the issues of archives. This is however outside the mandate of this report.

# RECOMMENDATION ON THE WAY FORWARD

**‘By deciding how to proceed, a balance will have to be struck between keeping the momentum created by the Call for Contributions and allowing stakeholders enough time to submit new ideas, develop existing ones and when applicable seek synergies by cooperating with other stakeholders.’**

The feedback we received during the process revealed that the initiative came as a surprise to most at a time when many stakeholders were in the process of redirecting their planning including funding away from the ECCC. The overall impression we received was that engagement of the court with victims would cease with the end of judicial proceedings. The idea that a court might engage with victims in the residual phase is novel, and with the exception of SCSL, a virtually unprecedented concept in the history of internationalised criminal tribunals. Its validity has been recognised by most stakeholders in personal feedback and by engaging with the initiative. This surprise factor in connection with the short deadline for proposals accounts for the early stage of developments many submitted ideas are still in. It also accounts for requests of several interested organisations or individuals to submit ideas after the deadline. We confirmed this option when asked and took late submissions into consideration.

## Summing up:

This advisory report and the activities leading up to it has to be viewed as the starting point of a long process that has just begun. By deciding how to proceed, a balance will have to be struck between keeping the momentum created by the Call for Contributions and allowing stakeholders enough time to submit new ideas, develop existing ones and when applicable seek synergies by cooperating with other stakeholders.

As a first step we suggest an early publication of this report and an in-person meeting between current stakeholders including the contributors to this initiative and the ECCC represented by the Office of Administration ideally at the end of January 2022. Given the easing of COVID-19 related restrictions this should be possible organization-wise. This meeting

**“This advisory report and the activities leading up to it has to be viewed as the starting point of a long process that has just begun.”**

would demonstrate the seriousness of the initiative – something some stakeholders still appear to doubt. It would demonstrate the commitment of the Office of Administration, which is in charge of the organisation and overview of the residual phase, including its victim-related segment. It would allow stakeholders to clarify in an easy, direct manner questions pertaining to the relationship between the ECCC and the stakeholders, timelines, funding, etc.

Currently there is much uncertainty about these questions which will directly impact on the willingness and ability of these stakeholders to participate further. While flexibility during the process will be important, stakeholders need early clarification on some of these questions. The Office of Administration would benefit from this meeting by learning at an early stage about possible obstacles that – if not attended to timely – might hinder successful implementation.

Since stakeholders could be expected to be present at this meeting, duplication of questions could be avoided. The meeting could also be a platform for stakeholders to engage with each other to explore synergies between projects.

We suggest similar meetings every 3 months with a view to have fairly well-developed proposals in after about 6 months.

We further suggest exploring the feasibility of a pre-residual phase period in which some of the projects can be started. This would, for example, allow the seamless continuation of projects as follow up to initiatives already on the way.

We also recommend the Office of Administration does not only develop a communication strategy with



Students in Anlong Veng School receive a briefing from the Public Affairs Section on developments at the ECCC.

stakeholders and donors but also one with the media, which can play an important role in presenting the initiative and the underlying concept to the public. Wider knowledge of the initiative might also assist with fundraising. Even though contacted, we have not yet engaged with the media to not prejudice further developments at what is the inception phase of this initiative.

**“Ideally, some of the projects could result in long-term endeavours which survive the lifetime of the court, including its residual phase.”**

Ideally, some of the projects could result in long-term endeavours which survive the lifetime of the court, including its residual phase. To ensure sustainability it will be necessary to prepare the timely transfer of the management of those initiatives to a permanent institution which is funded out of the budget of the state to reduce future dependency on donors. The Legal Documentation Centre could be an appropriate option in this context.

Finally, we wish to:

- commend the Office of Administration for starting this process which has the potential to establish a successful precedent for future international courts;
- thank all stakeholders for their valuable contributions; and
- encourage other stakeholders to contribute to the process. The door to this exciting new phase in the ECCC's history has only just been opened.

**May this initiative be the success it deserves to be.**

# ANNEX 1 ADDENDUM TO THE UN-RGC AGREEMENT ON THE ECCC



**Addendum to the Agreement**  
**between the Royal Government of Cambodia and the United Nations**  
**concerning the prosecution under Cambodian law of crimes committed**  
**during the period of Democratic Kampuchea**  
**on the Transitional Arrangements and the Completion of Work**  
**of the Extraordinary Chambers**

**RECALLING** the Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea, done on 6 June 2003 at Phnom Penh (hereinafter the “Agreement”);

**WHEREAS** the parties to the Agreement agree that upon the completion of all judicial proceedings under Article 1 of the Agreement, the Extraordinary Chambers will need to carry out a number of essential residual functions identified in this Addendum;

**WHEREAS** the parties to the Agreement are convinced that in view of the substantially reduced nature of the residual functions, the Extraordinary Chambers should be comprised of such number of staff that is commensurate with its reduced functions;

**WHEREAS** the parties to the Agreement have engaged in consultations on transitional arrangements for the completion of the work of the Extraordinary Chambers and on the performance of residual functions;

**NOW THEREFORE** the United Nations and the Royal Government of Cambodia have agreed as follows:

**Article 1**  
**Transitional Arrangements**

Upon the completion of proceedings before any chamber of the Extraordinary Chambers, all judges of that Chamber shall be de-installed from the Extraordinary Chambers. Following their de-installation, the judges shall be remunerated on a pro-rata basis for any work performed, and they shall work remotely except when required to be present at the Extraordinary Chambers at the request of the President of the Chamber.

**Article 2**  
**Residual Functions**

1. Upon the completion of the proceedings under Article 1 of the Agreement, including any appeals related thereto before the Supreme Court Chamber, the Extraordinary Chambers shall continue to carry out the following functions for an initial period of three years: review applications and conduct proceedings for revision of final judgments; provide for the protection of victims and witnesses; sanction or refer to the appropriate authorities any wilful interference with the administration of justice or provision of false testimony; supervise the enforcement of sentences as well as monitor the treatment of convicted prisoners; maintain, preserve and manage its archives, including the declassification of documents and materials; respond to requests for access to documents; disseminate information to the public regarding the Extraordinary Chambers; and monitor the enforcement of reparations awarded to Civil Parties, as required.
2. The United Nations and the Royal Government of Cambodia shall review the progress of these functions after the initial three-year period, following which the Extraordinary Chambers will continue to perform these functions, or some part thereof, for a further period to be determined between the parties.
3. An application for revision of final judgment may only be filed during the lifetime of the convicted person by the convicted person or the co-prosecutors.



4. If a convicted person is eligible for commutation of sentence, early release, or parole, the Royal Government of Cambodia shall notify the Extraordinary Chambers accordingly. There shall only be a commutation of sentence, early release, or parole if the Supreme Court Chamber so decides on the basis of the interests of justice and general principles of law.
5. Judges, co-prosecutors, defence counsels and Civil Party Lead Co-Lawyers shall be remunerated on a pro-rata basis when required to perform the functions identified in paragraph 1 of this article, and they shall work remotely except when their functions require their attendance in person at the Extraordinary Chambers. In the case of the judges, this would be at the request of the President of their respective chambers. Any judicial plenary sessions shall be conducted remotely and amendments of the Internal Rules shall be decided remotely by written procedure.
6. Upon the commencement of the functions identified in paragraph 1 of this article, the Secretary-General shall undertake to provide a list of nominees for international judges further to paragraph 5 of Article 3 of the Agreement to ensure that there are a sufficient number of international judges available to carry out the functions under paragraph 1 of this article should any appointed international judge be unavailable to serve when required. The Royal Government of Cambodia shall similarly ensure the availability of Cambodian judges should any appointed Cambodian judge be unavailable to serve when required.

### **Article 3**

#### **Archives**

1. The United Nations and the Royal Government of Cambodia agree that it is vital to ensure that the archives of the Extraordinary Chambers are preserved in accordance with international standards and that they are as broadly accessible as possible.

2. For the purpose of preserving and promoting the legacy of the Extraordinary Chambers, as part of its residual functions, the Extraordinary Chambers shall provide electronic access to, and printed copies of, the public archives to the public.
3. The United Nations and the Royal Government of Cambodia shall each have a complete set of the archives of the Extraordinary Chambers, including all documents and materials. Upon the completion of the proceedings under Article 1 of the Agreement, the United Nations and the Royal Government of Cambodia shall each receive a complete set of the public archives. Upon the completion of the residual functions under Article 2 of this Addendum, the United Nations and the Royal Government of Cambodia shall each receive any additional public documents and materials, as well as a complete set of classified documents and materials.

#### **Article 4**

##### **Approval**

To be binding on the parties, the present Addendum must be approved by the General Assembly of the United Nations and ratified by the Kingdom of Cambodia. The Royal Government of Cambodia will make its best endeavors to obtain this ratification by the earliest possible date.

#### **Article 5**

##### **Application within Cambodia**

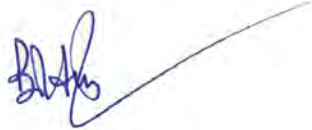
The present Addendum shall apply as law within the Kingdom of Cambodia following its ratification in accordance with the relevant provisions of the internal law of the Kingdom of Cambodia regarding competence to conclude treaties.

**Article 6**  
**Entry into force**

The present Addendum shall enter into force on the day after both parties have notified each other in writing that the legal requirements for the entry into force have been complied with.

Done at New York and Phnom Penh on 11 August 2021 and 26 August 2021, respectively, in two originals in both the Khmer and English languages. In a case of divergence, the English text shall prevail.

**For the Royal Government of Cambodia**



**Bin Chhin**

Standing Deputy Prime Minister  
Minister in charge of the Office of the  
Council of Ministers

**For the United Nations**

  
**Miguel de Serpa Soares**

Under-Secretary-General for Legal Affairs  
and United Nations Legal Counsel

# ANNEX 2

## LIST OF CONTRIBUTORS

David Scheffer  
Documentation Center of Cambodia  
GIZ  
Helen Jarvis  
Kdei Karuna Organization  
La Trobe University  
Lead Co-Lawyers (Civil Parties)  
Legal Documentation Center  
Marie Wilmet  
Nathan J. Chan  
REDRESS  
Royal University of Phnom Penh  
SIM Sorya  
Transcultural Psychosocial Organization  
Tuol Sleng Genocide Museum  
Victims Support Section (ECCC)  
Witness and Expert Support Unit (ECCC)  
Women Peace Makers  
Youth for Peace  
Youth Resource Development Program Organization



Please scan to view the Co-Rapporteurs'  
Call for Contribution of Ideas and  
submissions which were received.

