

Khmer Rouge victims seek cash damages and to honour their dead

Chum Mey and Bou Meng spend a large part of the day, every day, sitting across from each other. The two elderly Cambodian men are among only a handful who survived a stint in the hellish S-21 prison, where over 12,000 people were jailed, tortured and sent to their deaths in a killing field outside Phnom Penh.

Now, from their competing booths at the prison, today a tourist attraction, they recount memories of their incarcerated lives to visitors. Selling their autobiographies to make a living, both are self-styled spokesmen for victims' rights. But they are also, if not rivals, deeply wary of each other and approach their status from very different points of view.

Bou Meng was at the forefront of recent protests from several hundred victims who are angry at the UN-backed Extraordinary Chambers in the Courts of Cambodia (ECCC) and seek cash reparations for their suffering, not just the "collective and moral" reparations envisioned by the tribunal.

Chum Mey sees this as pointless grandstanding. He says he has long since come to terms with the fact that the court cannot pay him. "Reparations doesn't mean monetary stuff, but justice is reparation and reparation is justice," he tells IJT.

Demand for cash damages

For Bou Meng, however, monetary reparations are integral to justice. He and his fellow protesters are demanding the equivalent of 11,400 euros, the same sum the government paid out to victims of a deadly 2010 stampede. "I am not satisfied with reparations if we cannot get individual reparations too," he says. "If there are no [monetary] reparations, that means no justice for victims."

Of any international court, the ECCC affords perhaps the most expansive role for victims. They are given the right to participate in trials as full-fledged civil parties, with their own lawyers given nearly equal standing in court. This role, and the part

it might play in national reconciliation, is major for the court's 'sell' to its donors.

Within the system, civil parties can seek "collective and moral reparations" from the accused, but not monetary compensation. This is because it would be inherently unfair – not to mention unfeasible – to compensate all the court's 4,000 civil parties, who still represent only a small fraction of Cambodians who suffered under the Khmer Rouge's 1975-1979 rule.

Still, the court's two verdicts so far have been met by bitter disappointment among some civil parties. After the ECCC found S-21 commandant Kaing Guek Eav, better known by the revolutionary alias Duch, guilty of crimes against humanity and war crimes in 2010, it told victims that almost none of their requested reparations could be granted. The court rules stipulated that the accused must bear the monetary cost of any reparations. Duch, along with all the court's other defendants, has been declared indigent, rendering this impossible. Victims were granted only two reparations: the listing of their names in the verdict and the distribution of a compiled booklet of Duch's statements of apology.

After the outcry, the ECCC hurriedly amended its rules to allow for court-ordered reparations projects to receive external funding. The result was a rush of more creative and elaborate reparations proposals for the court's largest case, known as 002, against two former Khmer Rouge leaders [IJT-168, IJT-165]. In the case's first phase, victims were awarded a broader set of reparations, including educational programmes, psychotherapy and the construction of Buddhist memorial stupas.

Still, for some victims the reality that they would be getting no cash damages only hit home when the verdict was issued. A group of around 200 people, led in part by Bou Meng, began protesting outside the court, demanding its rules be rewritten to allow for monetary reparations.

Honouring the dead

Marie Guiraud, a lead lawyer representing civil parties in court, says their reaction is not uncommon. "I think victims are always frustrated by [a mass crimes] trial in general," she said. "To participate, to become an actor in a process that you are not at the centre [of], is frustrating by definition."

She cited a study by local NGO ADHOC identifying one of the victims' biggest hopes: that participating in the trials will help them learn how their loved ones died. In most cases, though, this is unlikely, as those being tried are senior regime leaders who did not kill directly.

But as the second phase of the trial begins [IJT-168], Guiraud says civil party lawyers are working even harder to make sure reparations are meaningful.

When asked what they would do if granted the 11,400 euros, most protesting victims said they hoped to hold elaborate Buddhist ceremonies to honour their dead relatives. This important practice in Cambodian culture was prevented by the brutalities of life under the Khmer Rouge, with many bodies dumped in fields and rice paddies.

Guiraud says lawyers are trying to integrate traditional rituals and funerary practices into the reparations projects in the second phase. This might satisfy many, if not all, civil parties.

Im Vannak, who joined the case on behalf of four brothers, an uncle and cousins who died at Kraing Ta Chan prison in southwestern Cambodia, believes collective memorials can still fulfil the Buddhist imperative to memorialize the dead.

"We are not empty-handed," she says. "I mean that victims have been offered justice by the ECCC since the accused have been brought to trial and sentenced to life in prison. And we have been granted collective reparations, too. Our Buddhist principles teach us that rancour cannot be destroyed by rancour, so I follow this."

Lack of reparations policy forces war victims to court

Speculation continues to mount over the next step of the office of the prosecutor of the International Criminal Court (ICC) after, in the final hours of 2014, Palestine officially ratified the Rome Statute to become the 123rd member of the court.

The move, made possible after Palestine received a status upgrade at the UN to 'non-member observer state' in 2012, opens the possibility for Israeli and Palestinian citizens to be prosecuted by the Hague-based court for war crimes and crimes against humanity committed on Palestinian territory.

Israel and the United States immediately condemned the development, calling it an "escalatory step" and stressing that negotiations were the only "realistic path" towards peace.

While, according to the Rome Statute, the ICC does not acquire jurisdiction until 60 days after a state accedes to the court – in this case, 1 April 2015 – Palestine has filed a request to give the court jurisdiction over prior events. It picked the date of 13 June 2014, thereby including the latest Gaza conflict.

In an earlier case, the prosecutor's office noted that it would "as a matter of policy" open a preliminary examination of the situation when it received a referral or a declaration made by a state – that which Palestine submitted. A prosecution spokesman told The New York Times last week that such a preliminary examination, which is meant to determine if a situation meets the legal criteria to warrant an investigation, could be opened immediately.

But even if the prosecutor opens such a probe, it will likely take months, if not years, before there is a result. Last time Palestine called on the ICC to investigate crimes on its territory in 2009, it took the office of the prosecutor three years to eventually decline jurisdiction. - SB

Gloria Laker struggles to support her three children and four siblings in Paicho, in northern Uganda's Gulu district. Her husband and parents were killed in the two-decade-long war between the Lord's Resistance Army (LRA) rebels and government troops. Despite a promise made by President Yoweri Museveni in 2010 to provide compensation to over 10,000 war-affected victims in the Acholi sub-region, Laker, like thousands of others, has never received anything.

At least 6,000 people have since registered with Ugandan authorities for compensation in the districts of Gulu, Nwoya, Amuru, Pader, Agago, Kitgum and Lamwo. But, eight years since the cessation of hostility, victims still await government support.

"I am very frustrated with the government's failure to provide us [victims] with reparations and compensation for the lost lives, property and harm suffered," Laker told IJT.

The frustrations prompted her, with other victims, to hire well-known human rights lawyer Nicholas Opiyo to sue for the promised damages for lost family members, property and harm suffered. IJT was told that negotiations are on-going between Opiyo's law firm and the government to settle out of court, but the lawyers refused to provide details on the "very sensitive" talks.

"I support the victims' move," Martin Ojara, the Gulu district local government council chairman, told IJT. He criticized the government's development plans for war-affected northern regions, which, since September 2007, have focused on infrastructure, "leaving [aside] the needs of the victims".

Peace agreement expectations

Apart from the president's verbal promise, the 2006 provisional peace agreement signed by the Ugandan government and an LRA delegation in Juba, South Sudan, also foresaw various provisions reparations and compensation for those affected by the conflict. The government was to establish a special fund for victims and to remunerate landowners who hosted about 1.8 million internally displaced persons.

"These provisions indicate the government of Uganda's responsibilities," said Jane Anywar Adong, a legal officer with the NGO Women's Initiatives for Gender Justice. "It is arguable in law that the said provision creates a legitimate expectation on the part of the victims to expect compensation from the government."

But the high numbers of killings, abductions and

sexual violence, torture and forced displacement that happened during the war make it difficult to estimate "how soon and how effectively the courts can hear and resolve these cases," says Ruben Carranza, director of the International Center for Transitional Justice's reparative justice programme. He tells IJT that courts hearing compensation claims "will generally not be able to ensure the delivery of the forms of reparation that might be more appropriate for certain kinds of human rights violations," including "uncovering the truth surrounding a killing or massacre", determining the socioeconomic consequences of forced displacement, identifying abductees' whereabouts, establishing accountability for sexual violence and caring for children born from such cases.

Any compensation exercise will also be complicated by the lawsuits of war claimants in Acholi and Lango sub-regions and eastern Teso region. They seek over 1 billion dollars in compensation for their lost cattle.

"The government has made some efforts," acknowledges Adong. But the diversity of claims and lack of coordination led to "haphazard efforts that lack clear thinking on the dynamics involved and victim's participation," she says. "Money has been spent. Few individuals have benefited. Many, especially the most vulnerable and those at grassroots, have been left out or completely ignored."

Overdue policy

According to government officials, the reparations puzzle hinges on the lack of a policy.

The National Transitional Justice Policy – which has been in draft form since 2009 – sets to provide a roadmap for the country's post-conflict transition. But it has yet to even be tabled in parliament.

"We hope Cabinet will table the draft transitional justice policy in Parliament. The policy looks at all aspects of the war victims," Richard Todwong, minister without portfolio, tells IJT. "When this law [to implement the policy] is passed, it will make it easier for the government to compensate all the people affected by the rebellion."

"The national transitional justice policy is overdue. We demand the government to expedite the tabling of the long-awaited transitional justice policy and bill in parliament so that we could push for reparations, psychosocial and livelihood support," says Gilbert Olanya, independent legislator for Amuru.

A banner year for victims' reparations at the International Criminal Court?

Despite lingering uncertainties, the final convictions of two Congolese warlords raises hopes that this year victims will see reparations handed to them by the International Criminal Court.

The Hague-based court is the first in the history of international criminal justice that can order a convicted perpetrator to pay reparations to victims. Two cases currently meet the criteria. In December, the appeals chamber confirmed the conviction [IJT-171] of Thomas Lubanga Dyilo. In 2012, he was found guilty of war crimes for enlisting, conscripting and using child soldiers – mostly from his ethnic group, the Hema – during the wars in the Ituri district of the Democratic Republic of Congo. The second case is that of Germain Katanga [IJT-159, IJT-160, IJT-163], whose rebel group had been fighting Lubanga's militias. Katanga was convicted last March of crimes against humanity and war crimes for a 2003 attack on the predominantly Hema village of Bogoro.

"With these two final convictions the road is cleared for the court to decide on reparations in both cases," says Pieter de Baan, director of the Trust Fund for Victims (TFV), which was established alongside the ICC by its states parties. One of the TFV's mandates is to implement court-ordered reparations awards, for which it reserves 3.6 million euros (from a total budget of 10 million euros).

Victims have been waiting for "an extremely long time", but it is still unclear when they will receive reparation, says Gaëlle Carayon, a legal officer with Redress, which facilitates championing victims' rights at the ICC. "Some victims have seen the two convictions as an indication that finally some progress is being made. But others are clearly frustrated at the lack of clarity on reparation and have even withdrawn from that process," she tells IJT.

Who are the victims?

According to ICC rules, victims are those persons specifically linked to the charges and the crimes of the defendant. In Lubanga's case, the 129 persons granted the status of victim are mostly former child soldiers, plus some parents and individuals who tried to prevent the enlistment of children.

"To evaluate their harm will not be easy. Child soldiers have suffered in different ways. They were taken away from families and schools. Girls were sexually abused. You can't give them back their stolen youth," Carayon says.

Another problem is that child soldiers are not automatically seen as victims in some communities. "Some people will hail them as heroes, but others will say they are perpetrators," says De Baan. Carayon emphasizes: "The ICC has to make sure it won't increase the stigmatization these young people already suffer."

In a painful twist, civilians targeted by Lubanga's troops cannot be officially recognized as victims because the warlord was only convicted of enlisting and using child soldiers. De Baan argues that this is why those communities should be included in a consultative process on reparations: to prevent reparations awards to victims from leading to "more harm and jealousy". The Katanga case registered 366 victims who survived the massacre in Bogoro. Some have since died.

After the judges ordered an update on the overall situation in August, the registry organized a mission and interviewed 305 victims. That report is still under wraps and uncertainty prevails for Katanga's victims as well.

Another sensitive issue is that in both cases, due to the specific charges on which Lubanga and Katanga were convicted, almost all victims are Hema. Other ethnic groups who suffered under Lubanga's troops are not formally recognized

as victims. "It is another reason why we prefer to have an approach of designing reparations in which not only victims, but also communities are consulted. To avoid problems that might even reignite the conflict," explains De Baan.

What do victims want?

While some victims may want money, this is not the case for all, points out Carayon. "Girls who have been raped might want medical treatment or help to raise the children born out of these rapes. The views about individual or collective reparations are varied as well. Some might be positive about setting up a school or a monument, while others may not want to be reminded of the suffering," she says.

Central role for judges

The ICC judges are key to this process. "They can decide on who will get reparation, what form it will take, when and who will implement it," explains Carayon. After Lubanga was convicted, his judges issued, on 7 August 2012, the court's first-ever decision on reparations.

"It laid down the principles of reparations and the procedures," De Baan tells IJT. In the ruling, the judges seemed to favour collective over individual reparations, but the decision was appealed. The matter now rests in the hands of the appeals chamber and it is unclear when the ruling will be. "It is only after that decision that we can formulate a concrete plan for reparations, which also has to be submitted to court," says De Baan.

These proceedings, however, only apply to Lubanga's victims. Chambers dealing with other cases may take other approaches and reach different conclusions. According to Carayon, the ICC missed an opportunity to formulate a more unified position. "We would have wanted the ICC to come up with court-wide principles to guide reparations, to ensure certainty and consistency," she says, "but the plenary of judges declined to do so, which is unfortunate."

Srebrenica survivor awaiting compensation wants the Dutch “to determine the truth”

Over a year after the highest court in the Netherlands held the Dutch state responsible for the fate of his father and brother, who were killed after the fall of the Bosnian town of Srebrenica in 1995, Hasan Nuhanovic still awaits satisfactory compensation. His case is often cited as crucial for damages claims to come, for Srebrenica and beyond.

Court proceedings lasted more than a decade – and it shows. Nuhanovic is clearly tired of taking on the Dutch state. “I’m losing the energy, to be honest,” he recently told IJT. “It was Nuhanovic versus the Netherlands, with all their resources. I’m just waiting for this to be over.”

The case the Bosnian genocide survivor brought forward, together with relatives of killed electrician Rizo Mustafic, is historic in many ways. The plaintiffs held the Dutch state accountable for their relatives’ death during a Dutch battalion-led UN mission to protect civilians during the 1991-1995 Bosnian War. In turn, the Dutch judiciary was forced to evaluate the division of responsibilities between the UN, which has immunity in domestic courts, and the Netherlands as the country providing the troops. A lengthy legal battle ensued.

It took Nuhanovic years to merely prove that on 13 July 1995, his father, mother and brother were forced off the Potocari compound guarded by Dutchbat soldiers. The town of Srebrenica had fallen to the Bosnian Serb army two days before, and

Nuhanovic pleaded for his family to be allowed to stay at the compound, where he was employed by the UN as an interpreter for Dutch soldiers. But they were removed from the premises and fell into the hands of Bosnian Serb soldiers. All three were killed in a genocide that left more than 8,000 people dead.

A figure on suffering

The Supreme Court of the Netherlands upheld the verdict that the Dutch troops knew the risks faced outside the compound. Though Dutchbat could not have foreseen the murder of Nuhanovic’s mother – women were generally escorted out of Bosnian Serb territory alive – the judges confirmed that both men were sent to their deaths, stating “the State is responsible on the grounds of wrongful conduct for the damage which Nuhanovic has suffered and will continue to suffer as a consequence of the death of [brother] Muhamed and [father] Ibro Nuhanovic”.

That ruling was not subject to appeal. Dutch Prime Minister Mark Rutte said the government “would act upon the verdict”.

But monetizing Nuhanovic’ suffering has proven hard. Unilaterally, the state decided on a 20,000-euro compensation. Nuhanovic rejected it. “It’s not about the money,” he said. “I wanted to force the Dutch system to deal with it and determine the truth.”

But he does feel this amount and the way it was forced on him shows very little respect for what he has been through or the time and effort that went into the court case. “This covers only my direct material costs during the process,” he said, “which I paid for out of my own pocket.”

Nuhanovic’s lawyer, Liesbeth Zegveld, has filed a counterproposal of immaterial damages of 30,000 euros for each victim. She also filed an unspecified amount for material damages encompassing Nuhanovic’s travel expenses, hours devoted to the case and opportunity costs of his broken career.

The Dutch defence ministry is currently reviewing the proposal. Zegveld says she hopes the parties can reach agreement

over the next few months.

More claims to come

Meanwhile, various stakeholders are monitoring the case. In July 2014, a Dutch district court ruled in favour of relatives of some 300 other Bosnian genocide victims who had been sent off the compound [IJT-164]. Through procedures at The Hague Court of Appeal, 6,000 victims’ relatives are seeking to extend the responsibility of the Dutch state to all 8,000 victims of the Srebrenica genocide.

Marco Gerritsen, a lawyer representing these 6,000 claimants, told IJT that if they win their case, his clients would “absolutely” seek the same amount of immaterial damages Nuhanovic gets.

The Dutch defence ministry says the possibility of setting a precedent for other claims was not taken into account when determining his compensation offer. Nuhanovic, however, is adamant that his settlement is being complicated by the litigation of others. “It should not be my problem, but the Dutch government is still very cautious of everything having to do with Srebrenica because they expect hundreds or thousands of claims against the State of the Netherlands,” he said.

The implications could be much wider still. Talking to IJT in October [IJT-167], Lenneke Sprik, a specialist in the laws governing peacekeeping and humanitarian intervention, pointed to “problematic” peacekeeping missions such as those in Darfur and the Democratic Republic of Congo. “The ruling is a confirmation that things are changing and that states are held responsible directly for what happens in peacekeeping missions,” she said, speaking of the July 2014 verdict. “It all depends on the willingness of the families of the victims to come with these kinds or claims.”

But the barriers in these kinds of tort cases remain very high. That is something Nuhanovic can attest to. “The sad thing is that it’s down to individuals to make a difference. The heavy burden is on individuals,” he said. “The Dutch state has the capacity and the resources to absorb this problem. I’m just one person. Why does it depend on me?”



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