

Creation of a Victims Register by the ECCC

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The Extraordinary Chambers in the Courts of Cambodia (ECCC) is the first tribunal dealing with mass atrocities that has given large numbers of victims an active role in the court's trials. The Rules of Procedure of the International Criminal Court also provide for victims' participation, but Trial 001 of Kaing Guek Euv (alias Duch) has been the first trial to demonstrate the full potential and complexity of victims' participation as civil parties, rather than as complainants, witnesses, or "interested parties." 90 Civil Parties made final submissions to the Trial Court and were represented by four teams of lawyers.

Trial 002 of the ECCC against the top leaders of the Khmer Rouge includes many more Civil Parties. As of 30 November 2009, 2932 persons had applied to become Civil Parties with the ECCC, along with 3475 Complainants. In anticipation of the need to manage so many Civil Parties, the ECCC Rules and Procedures Committee is proposing amendments to the Internal Rules.

Rule 12 of the Internal Rules of the ECCC currently provides for a Victims Unit to:

- a) maintain lists of foreign lawyers who wish to represent victims or victims' associations;
- b) administer applications for admission to the list of Victims' Associations;
- c) assist victims in lodging complaints;
- d) assist victims in submitting Civil Party applications;...
- g) facilitate participation of Victims and the common representation of Civil Parties;
- h) assist the Public Affairs Section in outreach activities related to victims; and
- i) adopt such administrative regulations as required to give effect to this rule.

Proposed amendments to Rule 12 would divide the Victims Unit into two Sections. The Section of Victims Lead Co-Lawyers would coordinate and lead representation of Civil Parties in the Trial Court. The Victims Support Section will have broadened responsibilities that could include creation of a Victims Register. The proposed amendment reads:

"3.) The Victims Support Section shall be entrusted with the development and implementation of programs and other non-legal measures addressing the broader interests of victims. Such programs may, where appropriate, be developed and implemented in collaboration with governmental and non-governmental entities external to the ECCC.

Creation of a Victims Register should be considered in light of the goals of the ECCC.

The ECCC has at least twelve purposes. The four judicial purposes are¹:

1. It is to **decide what crimes were committed** against Cambodians and against humanity by the Khmer Rouge regime.
2. It is to determine what senior leaders and other persons bear greatest **responsibility** for the crimes, and charge them and order their arrest.
3. It will render **judgment of the accused** after evidence has been presented and challenged **in fair trials**.
4. It is to provide **collective and moral reparations** to the victims.

In addition to the judicial purposes of the ECCC, it also has important historical, social, and cultural purposes²:

¹ See relevant Articles of the ECCC Law and the Agreement between the United Nations and the Royal Government of Cambodia.

5. It is to **establish the history** of these crimes to prove that **denial** by the perpetrators is false.
6. It is to **promote public education** about the crimes of the Khmer Rouge, in order to inform Cambodians and people around the world what crimes occurred and who was most responsible for them.
7. It is to contribute to public understanding about **why these crimes were committed**.
8. It is to provide information that will help Cambodians and others design institutions to **prevent** such crimes in the future.
9. It is to **warn future leaders** that they cannot expect **immunity** if they commit crimes against humanity.
10. It is to **extend the rule of law** into a void that has effectively resulted in **impunity** for the worst crimes against humanity. It replaces the law of force with the force of law.
11. It is to provide a sense among the victims that their suffering has been **recognized and remembered**.
12. It is to contribute to the **healing** of the victims and of Cambodian society.

It has been suggested that the Victims Support Section, possibly in conjunction with governmental and non-governmental organizations, could create a Victims Register as one of the non-judicial legacies of the ECCC.

This paper will present several options for creation of such a Victims Register. It will discuss some of the reasons for and against each option, and will discuss other issues related to creation of a Victims Register.

In an appendix, it will compare victims registers created by truth commissions and similar entities in other countries.

I. Should a Victims Register be created?

Pros:

- It could be a form of **collective and moral reparations** within the powers of the ECCC to initiate, yet would not require the ECCC to finish the process, which could be taken over by ongoing Cambodian institutions.
- Over half of the persons who have applied to become Civil Parties, when surveyed by the Victims Unit about what type of Reparations they desire, have expressed a desire for some type of memorial, including assistance with funeral ceremonies for loved ones, stupas, preservation of historical evidence in a record of survivors, museum, or books, and education for future generations.³

² See , Preamble to the Internal Rules, ECCC; the UN Secretary General's Report to the UN General Assembly A/59/432 (2004), His Excellency Sok An's statement in Stockholm, 23-24 April 2002 at <http://www.cambodia.gov.kh/krt/pdfs/Sok%20An%20Speech%20to%20Stockholm%20Forum.pdf> (accessed 19 December 2009) and later statements on the role of international and mixed tribunals such as the Statement of the United Nations High Commissioner for Human Rights Justice Pillay on the commemoration of the 60th anniversary of UN passage of the Genocide Convention: These tribunals "serve to deliver justice to victims who have suffered and they send out a strong message of deterrence," noting that the most important purpose of the Convention is to prevent genocide from taking place.

³ Survey conducted by Victims Unit of responses to question on forms of reparations sought on Application Form for Civil Parties. The pie charts interpreting the surveys do not aggregate closely related forms of reparations, and

- Even if not ordered by the ECCC as a form of Reparations, a Victims Register could be created independently, with cooperation of the Victims Support Section.
- Inclusion of Civil Parties in ECCC trials cannot recognize the suffering of all the victims of the Khmer Rouge regime. Two million Cambodians died and millions of others suffered from the crimes of the Khmer Rouge. **Civil parties represent only a small fraction** of the people injured by the regime.
- A Victims Register would recognize and **create a permanent record** of the names and testimony of victims that would include not only complainants and civil parties but also hundreds of thousands of other persons.
- A Victims Register would provide a way to **recognize and remember the suffering** of many thousands of Cambodians.
- A Victims Register could be used not only at the national level, but also in monasteries, mosques, and by families at the local level. It could become a vehicle for **national and community reconciliation**.
- It could help victims' **cultural bereavement and mental healing**.
- It would assist families to remember their loved ones at **annual ceremonies** such as *Pchhum Ben*, the festival for the dead.
- It would begin a **permanent legacy of the ECCC** that could be carried on long after the ECCC has finished its trials.

Cons:

- If a Victims Register were established before the ECCC renders its verdicts, it could be seen as **prematurely presuming the guilt** of people on trial before they are convicted. It could also assume that certain acts were crimes against humanity before judgments are rendered that they were.
- An improperly conceived Victims Register could **exacerbate divisions** in Cambodia if it distinguishes between people who were former Khmer Rouge cadres and people who were not. Definition of who qualifies as a victim should be avoided.
- If people are classified in the Register using other **divisive distinctions** (designating their ethnic or religious identity, for example), it could also perpetuate divisions.
- A Victims Register could be perceived as in competition with the judicial process of the ECCC.
- Creation of a Victims Register will be a **huge national project**. It will require the work of thousands of **people**, and the expenditure of a lot of **money**. Such funds and such efforts could be used for other remedies.

that task has been carried out by the author. 53.3 percent in Case 001 and 54.6 percent of Civil Party applicants in Case 002 wanted funerals, religious buildings, confessions, memorials, publications and educational programs. Over twenty percent more in both cases asked for health and mental health treatment facilities.

Discussion and recommendations:

Objections to creation of a Victims Register could be overcome if it is properly conceived and implemented.

- A Victims Register could be created without presuming the guilt of any defendant before the ECCC. Collecting names and narratives of persons who see themselves as victims of the Khmer Rouge regime in general need have no relation to specific trials before the ECCC.
- For a particular defendant, the Trial Court might suspend collection for a Victims Register until verdicts have been rendered in his case. After Trial 001, for example, if the Trial Court finds the accused guilty, it could authorize victims (survivors and families of victims) of S-21 and other institutions commanded by Kaing Guek Eav to place their names and testimony in the Victims Register. Complainants and Civil Parties in that case would be presumed to consent to inclusion, unless they opt out because of a request for protection or some other reason. The Trial Court would authorize persons claiming to be victims of defendants in Trial 002 to place their names and narratives in the Victims Register only after its verdicts in Trial 002.
- Compilation of a Victims Register would have no effect on the trials if it is not published until the conclusion of the trials.
- The Victims Register could be supported financially by voluntary donations to a bank account that would not be administered by the ECCC. Such support would permit it to work with Victims Associations and other NGO's whose work on the Victims Register could be supported from the bank account. Cambodian staff could be hired and expenses borne by the bank account, with strict accountability to the donors for all funds disbursed.

Conclusion and recommendation: A Victims Register should be created.

II. Who should be included in the Victims Register?

A. What years should be the period in which people could claim to be “victims?”

1. The first possibility is to include only victims who lived through the rule of the Khmer Rouge regime, April 17, 1975 – January 7, 1979.

Pros:

- These dates (17 April 1975 - 7 January 1979) provide direct correlation with the jurisdiction of the ECCC.
- Such an objective limit provides certainty to the beginning and ending of the time covered by the Victims Register.

Cons:

- The Khmer Rouge controlled many parts of Cambodia before they took Phnom Penh in 1975, and they had already begun their reign of terror in such areas.
- The trauma of survivors continued after the Khmer Rouge were driven out of power, as civil war continued, and the Khmer Rouge continued to control parts of Cambodia.

2. A second possibility is to include all persons who consider themselves victims, through loss of their immediate relatives, or other personal injuries under the Khmer Rouge.

Pros:

- Broadening the category of those eligible to register as Victims would open the Victims Register to include people who lost members of their family in Khmer Rouge controlled areas before 1975 and after 1979, and those who have suffered trauma because of the death of their parents or other immediate family members.

Cons:

- Inclusion of this broader number of victims would blur the focus of the Victims Register from a register for victims of the Khmer Rouge to a more general, vaguely defined group, possibly including anyone who considers themselves a victim of the war era. Such a broad definition of “victims” would dilute the Victims Register.
- If creation of the Victims Register is the result of ECCC action, it should stay within the parameters of the jurisdiction of the ECCC, which is limited to the dates of Khmer Rouge rule over all of Cambodia (17 April 1975 – 7 January 1979), and in Rule 23 (2) specifies the definition of “victims” as those who suffered physical, material, or psychological injury that is the direct actual and personal consequence of offenses committed by the Khmer Rouge.

B. Who should be considered a “victim” of the Khmer Rouge?

Definition of “victims” is fraught with complications for mass atrocities. The Khmer Rouge often used children and teenagers as its spies and executioners. Was a thirteen year old boy forced to kill prisoners at an execution center a perpetrator or a victim? Probably both. Situations where child soldiers have been combatants such as Sierra Leone, Uganda and the Congo have faced similar dilemmas.

The places where definition of “victims” has posed the most problems have been in countries such as Chile, where victims were granted cash reparations. Fraudulent claims to victimhood by perpetrators was a problem there, but a minor one. In the ECCC, which is limited to collective and moral reparations, this problem will not arise.

The legal definition of crimes should not be the criterion for victimhood. The Victims Register should not wait for the ECCC to define what crimes were committed in Democratic Kampuchea and against whom they were committed.

Should a victim who claims she was tortured, forcibly displaced, starved or beaten have any less claim to victimhood than one who lost relatives to murder? If legal definitions of crimes were allowed to objectively limit claims to victimhood, they would truncate the Victims Register, tie it up in endless legal controversies, and reduce its usefulness as an outlet for the voices of the voiceless. A subjective test of victimhood would be better for the victims themselves and would not limit the victims register to those who could somehow legally prove they were victims.

C. Should “victims” in the Victims Register include only people who died during the Khmer Rouge era, or should it also include survivors who lived during Khmer Rouge rule?

- 1. Victims should certainly include those who died during Khmer Rouge rule, whether from murder, starvation, sickness, or other causes of death.**

Khmer Rouge rule was totalitarian. Anyone who the Khmer Rouge considered a threat to their total control was murdered. The rice harvest was systematically taken away from communes, and sold to

China in exchange for weapons. Rations were inadequate for survival of many people, especially targeted groups such as former city dwellers and other “new people.” Scientific medicine was abolished and replaced by “peoples medicine” administered by completely untrained Khmer Rouge cadres. Many died in the so-called “peoples hospitals,” extreme extensions of the “barefoot doctors” ideology of Maoist China.

2. Many crimes against humanity besides murder were committed by the Khmer Rouge, including torture, rape, forced displacement, and arbitrary imprisonment. Victims of these crimes should also be included.

A Victims Register should include those who suffered from crimes against humanity committed by the Khmer Rouge, not only those who died. It should distinguish those who survived from those who died, but both groups were victims.

An important purpose of the Victims Register is to promote social healing. Who has a right to be included in it should not become a subject for extended conflict or resentment.

- **Conclusion and recommendation: The Victims Register should include all persons who subjectively consider themselves victims as defined by Rule 23 (2) of the Internal Rules: “victims of a crime coming within the jurisdiction of the ECCC, without any distinction based on criteria such as current residence or nationality....The injury must be physical, material or psychological; and the direct consequence of the offence, personal, and have actually come into being.”**
- **The Victims Register should not attempt to distinguish “true” from “false” victims, former Khmer Rouge from other persons, or members of minority groups. Instead anyone who wishes to enroll should be able to do so. A person who was a teenager under the Khmer Rouge and was forced to kill prisoners was both a perpetrator and a victim of the regime, and should be allowed to register as a victim.**

III. What should be included in a Victims Register?

1. Name and birth year of the victim.

- The name and birth year of the victim would be the minimum information necessary for a Victims Register. Some victims will not know their birth year, but could give an approximation instead, based on their age during the Khmer Rouge years.
- By revealing the victim’s name in a document that will be open to public examination, issues of informed consent to disclosure are paramount.
- Civil parties and complainants have already revealed their names and approximate dates of birth in their filings with the ECCC. They have also given their informed consent that their stories could be used in the trials and open to public scrutiny, unless they have asked for protective measures to hide their identity. Victims who have sought protective measures by the ECCC should be included only if they give specific consent to inclusion in a public victims Register.
- Victims who have not registered as civil parties or complainants would need to give similar informed consent to public disclosure of their names and birth years to be included in a Victims Register. This would require that each registrant be given an explanation of how the Register will be used and kept. Persons who do not want their names to be made public could then decline to enter their names in the Register. Those who do consent should do so in writing with a signature or thumbprint.

- The digitized files of names of persons collected by the International Committee of the Red Cross and recently turned over to the Cambodian Red Cross could be used to help families torn apart by the Khmer Rouge to re-connect with other family members.
- Victims names could be used for memorial walls, in books, and other lists.

2. Narrative story.

A Victims Register would be of much greater value to future generations, to family members, and to the victims themselves if it includes more than just names and birth years of the victims.

It could be read by future members of the victim's family.

Persons doing research on the Khmer Rouge era would also gain much more from a Victims Register that includes narratives of the experiences of the victims.

The process of cultural bereavement described by the psychiatric anthropologist of Cambodian culture, Maurice Eisenbruch, MD, MPhil., has been shown to be useful in dealing with what Western psychiatrists would classify as Post Traumatic Stress Disorder. Following the Khmer Rouge era, nearly everyone suffered from extreme stress. Eisenbruch shows through his case studies that narrative re-telling of events combined with Buddhist ceremonies performed by *kruu* (traditional Buddhist healers) and monks can have a dramatic impact in healing disorders that Western psychiatrists cannot understand or heal.⁴ The Transcultural Psychosocial Organization (TPO) has already found Buddhist rituals that assist victims in recovery. Similar rituals exist in Cham Muslim culture and could also be helpful to victims.

The use of narrative in healing is common to most human cultures, from the use of psychoanalysis and pastoral counseling in Europe and America, to traditional healing in Africa, to shamanism among Native Americans and Inuit, and dreamtime healing among Australian aborigines. People can be mentally healed by telling their stories.

Pros:

- For the Victims Register to be most useful to victims, family members, and future generations, inclusion of the narrative stories of victims would greatly increase its usefulness.
- Inclusion of narrative stories of the victims would make the Victims Register far more useful in healing ceremonies and in annual ceremonies for the dead such as *Pchhum Ben*.⁵
- Inclusion of narrative stories would increase the usefulness of the Victims Register to future historians and in genocide prevention education.

⁴ Eisenbruch M., Notes of the author from a conference, Mental Health: Khmer Rouge Survivors and their Descendants, Phnom Penh, 3 December 2009. See also Eisenbruch, M., From Post Traumatic Stress Disorder to Cultural Bereavement: Diagnosis of Southeast Asian Refugees; Eisenbruch M, Cultural bereavement and homesickness. In *On the Move. The Psychology of Change and Transition* (Edited by Fisher S. and Cooper C-). Whey. London, 1990, and Eisenbruch M., Cross-cultural aspects of bereavement: Ethnic and cultural variations in the development of bereavement practices. *Culture, Med. Psychiat.* 8, 315-347, 1984.

⁵ See: Graceffo, A., "Feeding the Ancestors: The Cambodian Pchum Ben Festival" accessed 13 Dec. 2009 at <http://www.mekong.net/cambodia/pchum.htm> .

- The names and narrative stories could include many stories of victims already collected or recorded in Cambodia (including by DC-CAM, Bophana, KID, and TPO) and from the Cambodian diaspora, including the work of the Cambodian Diaspora Victims' Participation Project in the USA, similar groups in France, and elsewhere.

Cons:

- **Labor:** Inclusion of victims' narrative stories would take enormous investments of labor by literate Cambodians who can write the stories down when they are told by Victims. In a country with a formal adult literacy rate of 74 percent in 2008, many people could write their own stories. However the literacy rate is a measure of basic functional literacy and even literate people might need assistance in writing their stories, as they would in many other cultures. 26 percent of the adult population is still illiterate, and those who lived during the Khmer Rouge period may have a disproportionately higher illiteracy rate because the Khmer Rouge closed all schools from 1975 to 1979.
- **Cost:** If registration for the Victims Register is done locally by monks, schoolmasters or non-governmental organizations, they might need to be paid for their services. Such pay would encourage their work and lead to more participation in the Victims Register. Without it, participation may prove to be low. The source of funds for such registration is not currently included in the ECCC budget. There are no provisions in ECCC Law or Internal Rules for a Victims Register bank account. However, a bank account outside the ECCC could be established and funded by voluntary contributions from governments and foundations. The Victims Support Section could also create a Victims Register bank account to support this effort .
- Decisions must be made about information to be included in the Victims Register and how it should be gathered. The narrative could begin with an open ended interview question that would allow each victim to tell his or her story in their own terms. Follow-up questions could elicit further details about places, years, correlative events, the victims' responses to the events described, and the meaning of the events for each victim.

Conclusion and recommendation: A Victims Register should include names, birth years and narrative accounts by victims, in written form, and recorded in video and audio formats that can be digitized for preservation and access.

IV. How could a Victims Register be established?

The ECCC Law and the ECCC's Internal Rules do not provide for establishment of a Victims Register, but they also do not prohibit one. If the Victims Support Section acted under its broader mandate to work with NGO's, it could create such a Victims Register that would continue to be administered beyond the life of the ECCC. There are several ways the Victims Register could be established.

1. The Victims Register might be established by order of the Trial Court as a form of Reparations. Such reparations belong to the legal category called "satisfaction." A Victims Register is similar to apologies and memorials.

Pros:

The Victims Register would gain considerable legitimacy if the ECCC Trial Chamber ordered that it be established as part of the collective and moral reparations to victims provided for in Rule 23.

Cons:

- The current Internal Rules of the ECCC and proposed amendments to them would make this method of establishment legally and financially difficult unless a source of financing can be found for it outside the ECCC budget, and the Plenary Session does not force the Trial Court to award only a single form of Reparations.

Rule 23 of the Internal Rules prescribing procedures for Civil Party Action by Victims currently requires that reparations be funded by the convicted persons.

“1.) Subject to Article 39 of the ECCC Law, the Chambers may award only collective and moral reparations to Civil Parties. These shall be awarded against and be borne by the convicted persons.”

This provision poses a financial barrier to creation of a Victims Register as a form of Reparations ordered by the Trial Chamber. Since all accused persons to date have claimed to be indigent, there will be no funds to create a Victims Register or anything else that costs money as reparations to victims.⁶

The Rules Committee and Plenary Session of the ECCC could adopt an amendment to Rule 23 that would permit establishment of a Victims Register bank account that would pay the cost of establishing a Victims Register. But such an amendment might not be necessary if the Victims Register bank account is an independent entity, unlike the Trust Fund of the International Criminal Court, because the ECCC has a limited lifespan. A Trust Fund for Reparations was provided for in the early drafts of the Internal Rules, but was deleted.

Rule 23 (2) states:

“Such awards may take the following forms:

- a) An order to publish the judgment in any appropriate news or other media at the convicted person’s expense;
- b) An order to fund any non-profit activity or service that is intended for the benefit of Victims; or
- c) Other appropriate and comparable forms of reparation.”

In spite of these potential restrictions in the Internal Rules, however, a Victims Register could still be established. It could be established as an independent project, even if it is initiated by the ECCC Victims Support Section, and could be funded by a Victims Register bank account, to which donors could give voluntary contributions.

⁶ One amendment to the Internal Rules proposed to the Rules and Procedure Committee in December 2009 would require a single award of reparations. It would make establishment of a Victims Register as a form of reparations unlikely unless it is the single form of reparations ordered by the Trial Court. The proposed amendment, Rule 23 *quater* on Civil Party Claims states: **“This shall be requested in a single, consolidated submission. [The single claim shall consist of a request for a single award. Where a single request can be shown, through reasoned argument, to not encapsulate the collective suffering of the consolidated group, a limited number of additional awards may be requested.]”**

It would seem that the Rules and Procedure Committee should not recommend an amendment to the Rules that will tie the hands of the Trial Court by requiring that there be a single claim for a single award to civil parties for reparations.

2. The Victims Register could be established by the Victims Support Section acting under its broadened authority to work with NGO's and governments to provide non-legal support to victims.

To repeat the proposed amendment to Rule 12 (3):

"The Victims Support Section shall be entrusted with the development and implementation of programs and other non-legal measures addressing the broader interests of victims. Such programs may, where appropriate, be developed and implemented in collaboration with governmental and non-governmental entities external to the ECCC."

Creation of a Victims Register could be construed as a form of non-legal support to victims.

Pros:

- The ECCC Law and Internal Rules do not explicitly provide for the establishment or funding of a Victims Register. However, they do not prohibit ECCC initiation of and cooperation with a new, independent organization established to create and control such a Register.
- The Victims Support Section is the designated contact point of the ECCC for all matters related to Victims with NGO's and governments. The existing Victims Unit is already working well with them and receives financial and personnel support from them.
- Establishment by the Victims Support Section will give the Victims Register the legitimacy conferred by its connection with the ECCC.
- The Victims Register would become a vital part of the ECCC's Legacy Project, and would outlive the ECCC.
- A Victims Register bank account could be established to fund creation of the Victims Register that will not be administered by the ECCC. It would be incorporated and subject to strict accounting requirements by firms of international stature.
- Governments and NGO's external to the ECCC could provide the funding necessary to pay for creation of a Victims Register.

Cons:

- The Victims Register will be a legacy of the ECCC, but will outlive the ECCC, and will have to be administered and maintained after the ECCC is terminated. The Victims Register cannot be completed until after the final verdict of the ECCC. Thus, involvement by the Victims Support Section would require legal authorization for its continuation beyond the life of the ECCC or its transformation into another form.
- Funding by governments and NGO's to the Victims Register might be better spent on other activities more closely related to the trials that are the central purpose of the ECCC.

3. The Victims Register could be established and maintained by Cambodian NGO's or other institutions and funded by government and other donations.

Pros:

- Numerous NGO's, such as KID, Adhoc, and TPO have helped the ECCC establish lists of Civil Parties and supported the ECCC's work with Civil Parties in the trials.

- The Virtual Tribunal Project of the University of California at Berkeley's War Crimes Study Center and Stanford University, led by Professor David Cohen, has proposed a sophisticated, computerized archive of the ECCC's records that could be extended to include a Victims Register. It would include development of a Khmer language search engine.⁷
- NGO's such as the Documentation Center of Cambodia (DC-CAM) have collected names of victims, and their stories. DC-CAM claims to have collected one million names of victims (most from the Renakse records discovered by DC-CAM, but publicly owned), and claims to have carried out 20,000 interviews, which it has stored in its archives. Should the ECCC compete with a program that is already underway and well funded, or find a way to cooperate with DC-CAM and other NGO's in creating a Victims Register?
- DC-CAM has already secured the funding and the Cambodian government has granted it land to build a museum about the Khmer Rouge era in Phnom Penh,
- DC-CAM has demonstrated its ability to put its records on-line and to keep duplicate copies at universities such as Rutgers and Yale.
- A new, independent organization that includes DC-CAM and other organizations would represent more people in Cambodia in governing creation of and access to the Victims Register.
- Quasi-public memorial institutions like the United States Holocaust Memorial Museum or Yad Vashem in Israel are funded partly by their governments and partly from private funds, giving them long-term stability while also permitting creativity and independence.
- Such mixed control over memorials and archives best protects their accessibility and use by the public for anti-genocide education.
- Mixed memorial institutions have the best record for raising funds to continue their activities.
- A partnership of the ECCC Victims Support Section with DC-CAM, Victims Associations, the Virtual Tribunal Project, KID, ADHOC, Bophana, and other NGO's would attract even greater support and funding for a Victims Register from governments than DC-CAM's project alone.

Cons:

- The legacy of the ECCC should not be left in the hands of a single NGO, which may appear strong now, but could disappear if its leader changes or funding dries up.
- DC-CAM may not be willing to share its records or work with the Victims Support Section to create a Victims Register.

Conclusion and recommendation: The Victims Register should be initiated by the ECCC Victims Support Section in conjunction with a broad group of NGO's and established as an independent entity that will outlive the ECCC. This quasi-public/private organization combines the benefits of Options 2 and 3.

⁷ See description at <http://www.ocf.berkeley.edu/~changmin/virtualtribunaldevelopment.htm> (accessed 19 December 2009).

V. How would a Victims Register be administered and funded?

1. A Khmer Rouge Victims Register could be organized and incorporated independently from the ECCC. A Board of Directors for the KR Victims Register could be chosen from prominent Cambodian citizens, who would select the Director of the Victims Register and oversee its personnel, policies, and funding.

- The members of the Board of Directors could include representatives of relevant government authorities such as the National Archives, the Khmer Rouge Task Force of the Office of the Council of Ministers, the ECCC Victims Support Section, Victims Associations, and NGO's such as DC-CAM, TPO, ADHOC, KID, Bophana Center and other NGO's, government, legal, business and civic leaders.
- The Khmer Rouge Victims Register would need Articles of Incorporation and Bylaws that require strict financial accountability and annual audits of its expenditures of funds, with annual reports to its donors and to the government and the public.

VI. Who would appoint the Board of Directors?

The Khmer Rouge Victims Register's Directors could be appointed independently by agreement among the Victims Support Section and leading Cambodian NGO's.

Some of the proposed members of the Board of Directors could come from within the government of Cambodia, particularly from its judicial branch, including some of the judges and other personnel who have served with the ECCC, and the Cambodian Ministries of Health and of Women's Affairs.

Other members of the Board of Directors could be nominated by other organizations in Cambodia, such as the Buddhist monks, Muslim imams, Christian pastors, Victims Associations, the Cambodian Bar Association, The Transcultural Psychosocial Organization, CHRAC, KID, ADHOC, Bophana Center, the Center for Justice and Reconciliation, legal aid and other social welfare and civil society organizations.

Pros:

- A Cambodian organization created to oversee the creation and preservation of the Victims Register would outlive the ECCC.
- If the organization's Board of Directors includes persons like the Directors of DC-CAM, the Transcultural Psychosocial Organization, and Victims Associations, ADHOC, KID, the Bophana Center, and key persons from the government and the ECCC, it could unite efforts to create, preserve, and utilize the Victims Register.
- The Khmer Rouge Victims Register could be financed by, and possibly even be responsible for, control over a Khmer Rouge Victims Register bank account.
- Any organization that collects, preserves, and controls a massive collection of data must be well managed and well led. Choice of the Director and staff must be based on competence. It should not be a political appointment, but one made by the organization's Board of Directors, who will have ultimate power over hiring and firing.

Cons:

- Creation of such an organization may require a statute or sub-decree from the Council of Ministers.

- Rivalries between competing NGO's, government authorities, and other people must be overcome for such an organization to function smoothly.
- Financial management of the organization should be strictly monitored and audited at least annually by an independent private auditing company of international standing. Without such financial accountability, governments will be unwilling to donate funding to the organization. If there is political rejection of such monitoring and auditing, the funding will dry up and the organization will fail.
- It might be better to create separate organizations to create and administer the Khmer Rouge Victims Register and the Khmer Rouge Victims bank account. Both organizations would have to be subject to strict financial controls and annual audits.

VII. Where would a Victims Register be kept?

1. It could be kept in the National Archives or in new Archives for ECCC records to be built with a donation by the government of Japan. The Cambodian Bar Association will also be housed in the new building.

Pros:

- The government of Japan has already generously donated \$2 million to build and establish archives for all ECCC records. These archives would be the most logical place for the central Victims Register to be kept.
- These archives will include the Case Files of the ECCC, including all Complaint and Civil Party Applications files by the Office of the Co-Prosecutors and Office of the Co-Investigating Judges and other records of the Victims Unit. It could also include the Victims Register.
- Such a facility could provide state of the art online access from every law school in Cambodia, and connect by internet to every university and research facility in the world. It would also house computers where Cambodians can have free access to the records in the new Archive. The Victims Register and Archives of the ECCC will not be locked up in a dusty basement or held by a single NGO.
- Housing the archives of the ECCC in the archive of records of the ECCC to be built by the Japanese government does not preclude duplication of the names and stories of complainants and civil parties for inclusion in a broader Victims Register to be housed in a museum to be built by DC-CAM.
- The Virtual Tribunal Project could provide the technical expertise to digitize these records and make them available world-wide on the internet. The Bophana Center has also been a leader in using modern use of audio-visual records.

Cons:

- Storage of the Victims Register in the National Archives or in the new Archives building that will also house the Cambodian Bar Association may place it under the control of the Cambodian government, which at some future date might restrict access to it, as the Turkish government has restricted access to the archives containing the records of the Armenian genocide.
- The Victims Register should remain with the people who actually own the Victims Register – the people who have entered their names and told their stories.
- Political control would dry up non-governmental, voluntary funding to maintain the Victims Register.

2. It could be kept in a central, national museum in Phnom Penh. The Victims Support Section and other NGO's could assist DC-CAM in this project, which is already underway.

Pros:

- Land has already been donated by the Cambodian government and funding obtained from donors by DC-CAM to build a national museum that could house such a national Victims Register.
- DC-CAM has a proven record of maintaining and protecting archives and facilitating public access to them.
- Such cooperation with NGO's is exactly the sort envisioned by the broadened mandate of the Victims Support Section. The organization that administers a Victims Register should not reinvent the wheel.

Cons:

- A single NGO, no matter how well run and creative, should not have sole custody of a national archive, which by rights belongs to the Cambodian people who have given their names and told their stories to construct it.
- DC-CAM may not agree to cooperate with the Victims Support Section or other NGO's on its Victims Register or Museum.
- If the ECCC Victims Support Section is to cooperate with DC-CAM in creating the Khmer Rouge Victims Register, a mixed public/private character of the museum should be maintained.

3. Records for each commune could be kept in sacred books in monasteries.

Buddhist sacred books are hand-written on parchment or heavy paper pages folded accordion-style and bound between wooden covers and kept in monastery libraries. A mythical book, the *Kraing Meas*, translated as "Golden Book," contains the names of the *bodisatva*, saints.

Buddhists believe strongly in *samsara*, which can be translated as the cycle of rebirth, and in the continuing presence of ancestors in people's lives. Each person has a duty not only to "make merit" for him or herself, but also for their ancestors.

The names and stories of survivors could be collected and kept not only in a national museum, but also copied into sacred books that will be kept in commune monasteries in cabinets that will protect them, yet allow them to be removed for ceremonies on occasions, such as the two week ceremonies of *Pchhum Ben*, the annual festival for the dead, when people come to monasteries and pagodas to feed and comfort their ancestors, with rituals and readings in Pali, the sacred language, by monks. It is also a ceremony in which evil spirits are confronted and vanquished.

If the annual ceremony of *Pchhum Ben* were led by His Majesty the King, it would transcend politics and have even more significance for the survivors.

4. The names and stories deposited by each person could be written out and presented to each person and his or her family to be kept in the family shrine.

Mental illness has been a major problem among survivors of the Khmer Rouge era. Transcultural psychological researchers such as Nadine Stammel, Sopheap Taing, Nigel Field, Mychelle Balthazar, Vannavuth Sochanvimean, and Phuang Pham have found that at least 11 percent of Cambodian adults who lived through the Khmer Rouge era still suffer from symptoms that would be classified as Post Traumatic Stress Disorder, 30 percent from depression, and 37 percent from anxiety. As many as a third of the Civil Parties in the ECCC may have PTSD.⁸

The Australian Psychiatric Anthropologist Maurice Eisenbruch argues that Western psychological diagnoses of PTSD may misinterpret the mental health problems of Cambodians. In his culturally informed studies he does not deny the prevalence of mental illness, but says that Cambodians classify it according to their own beliefs.⁹

The disembodied souls of people who have been killed violently are said to linger as ghosts in the place they were killed until they gain enough merit to be released into their next life. There are also evil ghosts, disembodied skulls that trail entrails and fly through the air in a green glow, searching for blood to eat. The word for evil ghosts is now also commonly used for the Khmer Rouge. Demon spirits (*kamraal*) can enter a person's brain and cause mental illness, called boiling or burnt or spinning brain.

Cultural bereavement rituals performed by Buddhist healers or monks (described by Maurice Eisenbruch) have a demonstrated healing power for trauma experienced by survivors of the Khmer Rouge.¹⁰

The Transcultural Psychosocial Organization (TPO), a Cambodian NGO that is led by Cambodia's most eminent psychiatrists and psychologists, such as Dr. Chhim Sotheara, and others, has designed rituals that address mental illness and are in harmony with Cambodian Buddhist beliefs.

A person's story is written onto a piece of paper or parchment and placed in a book. The person and his or her family go to their pagoda or monastery and the story is read aloud in the person's presence. This often elicits tears from the person whose story is being read, a universal human emotional response. The monk blesses the story, and comforts the dead persons named in it, then gives the book with the story to the person whose story was read. People who have participated in these ceremonies have experienced a high degree of relief. In Western terms, they experience catharsis.¹¹

Pros:

⁸ Author's notes from presentations of papers by these scholars at conference on Mental Health: Khmer Rouge Survivors and their Descendents, Phnom Penh, 3 December 2009.

⁹ Ibid.

¹⁰ See footnote 4.

¹¹ Presentation by Transcultural Psychosocial Organization at Conference on Reparations and other non-judicial measures for the benefit of victims, organized by the Cambodian Human Rights Action Committee and REDRESS, Phnom Penh, 18 November 2009.

- Rituals using peoples' stories at the monasteries and pagodas of Cambodia could provide healing for victims of the Khmer Rouge.
- These rituals have been tried and tested by the TPO, and are endorsed by some of the most eminent transcultural psychiatrists in Cambodia and the world, notably Dr. Chhim Sothea, His Excellency Professor Ka Sunbaunat, Dr. Maurice Eisenbruch, and other experts on Cambodian culture.
- Dr. Eisenbruch has stated that such rituals not only heal individuals. Because they are performed publicly, they also help to heal communities.
- Maintenance of these records by monasteries and families decentralizes the effect of the Victims Register, personalizes it, and makes it directly accessible to victims.
- Maintenance of Victims Register records at the local and commune level would make records locally accessible for education about the Khmer Rouge genocide.

Cons:

- Records kept close to the local level could divide the community if the names of Khmer Rouge perpetrators are mentioned in the stories and they still live in the community.
- Public reading of peoples' stories would require consent from the victims, but also might require consent from others who are mentioned during the public reading of the stories.
- Monks would need to be trained in the rituals and in handling peoples' responses to them. Some monks will be good at performing such rituals, and others will not be.
- Preservation of the records at the monastery and family level would require care. Some monasteries may eventually permit the records to be destroyed by insects, rains, fire and other natural causes. Some people may not want their names mentioned in the stories and will take steps to destroy the records.

Conclusion and Recommendation:

Creation and use of a Victims Register will help the Victims Support Section accomplish several important goals of the ECCC. It will provide Satisfaction to many Victims, a form of Reparations.

1. It will provide a sense among the victims that their suffering has been **recognized and remembered**.
2. It will provide **collective and moral reparations** to the victims.

3. It will contribute to the **healing** of the victims and of Cambodian society.

Working with Cambodian NGO's and the Cambodian government, the Victims Support Section should begin to organize an independent institution to create, maintain, and utilize a Victims Register. The institution should include on its Board of Directors the Head of the Victims Support Section, directors of leading Cambodian NGO's, including DC-CAM, TPO, KID, ADHOC, Bophana Center, the Center for Justice and Reconciliation, the Cambodian Ministry of Women's Affairs, a leading Buddhist monk, a Muslim Cham leader, and other persons to be recommended in consultation with a broad range of NGO's and government leaders.

Organization of a Victims Register will be a large project that will need strong leadership and careful planning.

Implementation:

1. A Consultant for the ECCC Legacy Project should be appointed for a three to six month period beginning in June 2010. He or she should make recommendations about appointment of the specialist and technical staff needed to create a Victims Register. The Consultant should be attached to the Victims Support Section.
2. Following approval of a plan for creation of a Victims Register by key stakeholders, including ECCC personnel, government authorities, key NGO's etc., fund-raising for and staffing of the Victims Register project would begin by September 2010. An independent Victims Register bank account could be organized.
3. The Victims Register Project would begin in November 2010 and continue for several years.

Appendix: Comparison with other victims registers

No international or mixed national/international tribunal established to try mass atrocities has ever created a Victims Register on the scale outlined in this report. But victims have also never before played such an important role in the tribunal's cases.

Cambodia is by far the largest case of mass atrocities ever tried by an international or mixed tribunal. Twice as many people died during the three year regime of the Khmer Rouge as the number of victims in the former Yugoslavia, Rwanda, Sierra Leone, and East Timor combined.

Cambodia is also the first Buddhist country to have suffered such mass murder. In Buddhism, people live with their ancestors, feed and comfort them in annual rituals, and believe strongly that mental illness caused by trauma is caused by evil spirits that must be confronted and vanquished on at least an annual basis.

A Victims Register for Cambodia, therefore, could be one of the most powerful forms of Reparations that the ECCC could order.

In this appendix, I will discuss how lists of victims are collected and utilized by the International Criminal Court, and how they have been utilized by several Truth and Reconciliation Commissions. I am grateful to Scott Campbell, Intern for the Victims Unit, for his excellent memo on this subject and will quote extensively from it.

The International Criminal Court (ICC):

The Victims Register of the ICC exists to register "interested parties" who may participate in a limited way in ICC proceedings. They do not constitute "civil parties" with a full right to participate in the trial, as in the ECCC. Maintenance of a Victims Register is solely for purposes of each trial, and does not extend beyond the particular trial for which it is employed.

The purpose of the Victims Register at the ICC is quite different from the purpose proposed for a Victims Register for the ECCC. It is a tool of the prosecutor and the Trial Court for participation in trials and award of reparations. It has no purpose beyond the trial, and does not attempt to create a register of other victims of the person on trial, or the regime he led.

Scott Campbell, intern with the Victims Unit, summarized the ICC Victims Register and Registers of several Truth Commissions in a memo in April 2009. His report is quoted in the sections below in smaller type.

In accordance with the Rome Statute establishing the International Criminal Court (hereinafter "ICC" or "Court"), victims are granted substantial rights to participation in ICC proceedings. These rights are described in Article 68, on the protection of the victims and witnesses and their participation in the proceedings, which include the following, in pertinent part (Rome Statute, Article 68, paragraphs 1-6):

- The protection of their physical and psychological well-being.
- The right to have proceedings conducted in camera or through electronic means or other restricted means in the event of sensitive material concerning a victim of sexual violence or a child victim.
- The right of the victim to express his or her views at any point during the proceeding where the personal interests of the victim are affected.
- The power of the Victims and Witnesses Unit to advise the Court on matters of protection and assistance for victims or witnesses.
- The power to withhold evidence, the presentation of which may jeopardize a victim's security.
- The right of a State to protect its own agents or confidential information.

Article 43, paragraph 6 places the responsibility of protecting and advising victims with the Registry, which is obligated to create and maintain the Victims and Witnesses Unit (Rome Statute, Article 43, paragraph 6).

The ICC Rules of Procedure and Evidence outline how the above victim rights enumerated in the Rome Statute shall be applied (ICC Rules of Procedure and Evidence, Chapter 4, Section III). Rule 85 defines victims as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court” and “may include organizations or institutions that have sustained direct harm.” (Chapter 4, Section III, Rule 85(a), (b)). Rule 89 allows these individuals or institutions to submit to the Registrar an application to participate in the proceedings as a victim (Rule 89). Rule 92 makes it the responsibility of the Registrar to provide notification to all victim applicants and their respective legal representatives if their application has been refused or granted. If an application is granted, the Registrar must notify the victim of the dates of hearings, postponements or decisions, and information regarding requests, submissions or motions (Rule 92). The Registry is required to keep a record of all notifications. (Rule 92, sub-rule 7). In regard to reparations, a victim must submit a request for reparations that includes all of the following information (Rule 94):

- Claimant's identity and address.
- A description of the injury, loss or harm.
- The location and date of the incident.
- If possible the identity of the individual the claimant believes to be responsible for the injury.
- A description of any assets, property or tangible items the claimant is seeking restitution for; claims for compensation.
- Claims for rehabilitation or other forms of remedy.
- Supporting documentation, including names and addresses of witnesses.

During the course of the proceedings, the Registrar must provide notice to claimants and other concerned parties, i.e., legal representation, witnesses, or the accused. At the point during the proceedings where reparations are determined, the Court may appoint experts to determine the most appropriate mode and scope of reparations, and shall invite victims and/or their legal representatives, as well as other interested parties, including the accused, to submit observations on this expert report on reparations. (Rule 97).

The ICC's Regulations of the Court expand upon how the requirements presented by the above Rules of Procedure and Evidence are to be executed. Chapter 5 of the Regulations describes in particular the regulations regarding victim participation and reparations. These regulations reiterate that the application to participate in ICC proceedings as a victim will be made readily accessible as widely as possible to victims and groups of victims (Regulation 86, sub-regulation 1). The application should include as much of the following information as possible (Regulation 86, sub-regulation 2):

- The identity and address of the victim.
- Evidence of the consent of the victim or evidence on the situation of the victim submitted in writing in the event the application is submitted by a person acting with the consent of or on behalf of the victim – in the case of a victim who is a child or is disabled.
- A description of the harm suffered as a result of the crime committed in the jurisdiction of the Court.
- A description of the incident where the harm in question was suffered, including date and location, and those the victim believes are responsible for the harm.
- Relevant supporting documentation, including names and addresses of witnesses.
- Information as to why the personal interests of the victim are affected.
- Information indicating the stage of the proceedings at which the victim wishes to participate, and the relief sought.

- Information on the legal representation sought by the victim, including names and addresses of potential legal representatives and the victim's financial means of securing legal representation.

Applications for participation in the proceedings must be received by the Registrar before the stage of the proceedings at which the victim wishes to participate (Rule 86, sub-regulation 3). The Registrar may request further information from victims submitting an application in order to ensure that all of the above information has been included (Regulation 86, sub-regulation 4). The applications including all of the above information will be submitted, along with a report, to the Chamber. The Registrar will then present a singular report on a group of victims based on the interests of those victims (Regulation 86, sub-regulation 5). After the Chamber has determined whether an application is accepted, the ized unit under the authority of the Registrar regarding victims shall bear responsibility for matters concerning victim participation and reparations (Regulation 86, sub-regulation 9).

Additionally, the Regulations of the Registry of the ICC describe in detail the duties and operations of the Registry, including the responsibilities of the Registrar relating to victims and witnesses at Chapter 3. In pertinent part, sub-regulation 88 on information managements states that, “[t]he Registry shall keep information relating to witnesses, victims who appear before the Court and persons at risk, accompanying persons and family members in a secure environment,” and “[a] secure electronic database shall be maintained for any information relating to persons referred to in sub-regulation 1. This database can only be accessed by designated staff members of the Registry and, where appropriate, by the Chamber and by participants.” (Regulation 88, sub-regulations 1, 2). This policy is reiterated in regulation 98 and expanded to include information arising from victim applications, additional information or documentation provided by victims or their legal representatives, and any other communication or information received relating to victims. (Regulation 98, sub-regulation 1). Upon receipt of this sensitive information, the Registrar reviews it in order to determine whether disclosure to other Court organs or other participating parties will jeopardize the safety of the victim (Regulation 99, sub-regulation 1). Victims may also request that certain information not be disclosed, and these requests are assessed and decided upon by the Chamber (Regulation 99, sub-regulation 3). Victims are also free to withdraw their applications, and withdrawals are submitted to the Chamber by the Registry (Regulation 101). When victim applications are received by the Registry, they are converted into an electronic image, to ensure that they are in no way altered (Regulation 107, sub-regulation 1).

The South African Truth and Reconciliation Commission

For the South African Truth and Reconciliation Commission (TRC), providing victims and perpetrators of human rights violations a process in which to reveal the facts about crimes committed under the *apartheid* regime was the *raison d'être* of the TRC. Maintaining a record of statements by witnesses was an essential part of the TRC mandate. Nevertheless, the TRC did not attempt to construct a complete register of the victims of the regime. It could only record the testimony of witnesses who came before it, and other documentation presented to it.

Scott Campbell summarized the TRC's mandate:

The Promotion of National Unity and Reconciliation Act of 1995 establishing the TRC provided for the constitution of the Committee on Human Rights Violations (hereinafter “CHRV”) and its powers, duties and functions (Promotion of National Unity and Reconciliation Act, 95-34, 26 July 1995, Ch. 3). Those powers and duties were to institute inquiries into gross violations of human rights, compile relevant information relating to those violations, record allegations and complaints of violations, and “at the conclusion of its functions submit to the Commission a comprehensive report of all its activities and findings in connection with the performance of its functions and the carrying out of its duties in terms of this Act.” (Id.).

The South African Truth and Reconciliation Commission (hereinafter “TRC” or “Commission”) endeavored to provide justice by allowing victims to describe publicly and officially the human rights violations they experienced. The was responsible for identifying potential victims of human rights violations, facilitating victim testimonies, and ultimately producing a list of the victims to the Committee on Reparation and Rehabilitation. The mandate of the CHRV was “to enquire into systematic patterns of abuse; to attempt to identify motives and perspectives; to establish the identity of individual and institutional perpetrators; to find whether violations were the result of deliberate planning on the part of the state or liberation movements, and to designate accountability, political or otherwise, for gross human rights violations.” (Truth and Reconciliation Commission of South Africa Report, Vol. 6, Sec. 4, Ch. 3, p. 570). During the course of the TRC, the CHRV received 21,519 victim statements, which contained more than 30,384 human rights violations, and more than 15,000 statements contained at least one gross human rights violation.

This final report of the TRC eventually included “victim findings,” but, due to the vast number of victim complaints, remained unfinished by the conclusion of the Commission (Report of the Human Rights Violations Committee, Administrative Report, p. 572).

The National Commission on the Disappearance of Persons, Argentina

The report on victims of the Argentine junta also did not attempt to construct a full victims register.

The National Commission on the Disappearance of Persons (or, the Comisión Nacional sobre la Desaparición de Personas, hereinafter “CONADEP”) examined forced disappearances and human rights abuses during the National Reorganization Process in Argentina during mid-1970s to the early 1980s. CONADEP submitted a report entitled *Nunca Mas* (“Never Again”) which recorded the cases of the disappearances of approximately 9,000 people, and led to the trial of members of that military junta.

The Rettig Report and the Valech Report, Chile

The National Commission for Truth and Reconciliation Report, also known as the Rettig Report, so named for the Commission’s chairman, Raul Rettig, documented the human rights abuses, deaths and disappearances that occurred in Chile during the 1973 to 1990 military rule of Augusto Pinochet. The Rettig Report listed 2,279 people as having been killed for political reasons. An additional 641 cases could be determined to have been politically motivated, and 449 cases produced no information beyond a name of the disappeared. This report was released in February of 1991.

Also in Chile, the Valech Report, produced by the National Commission on Political Imprisonment and Torture, was a more recent report on the Pinochet junta released in two parts on November 29, 2004 and June 1, 2005. The Valech Report produced a total of 28,459 cases of abuse, most of which took place in 1973. The report has been criticized for lacking proper verification of instances of abuse, due to both misleading testimonies and broader definitions of abuse than those typically accepted by the United Nations.

One of the problems with the victims list in the Valech Report was that those listed were to receive cash reparations awards as a result of their listing. There is evidence that some people who had no valid claim

to victimhood, and even some perpetrators of violations, got their names listed, in order to receive cash payments.

A lesson to be learned from the Chilean experience is that without a reliable verification process, a victims register should not be tied to awards of cash reparations. Such payments corrupt the validity of the Victims Register. No such individual reparations are permitted by the ECCC Law or Internal Rules, so this will not be a problem.

The Truth Commission for El Salvador

The Truth Commission for El Salvador (or Comisión de la Verdad para El Salvador) was established by the UN to investigate human rights abuses that occurred in El Salvador during its civil war lasting from 1980 to 1992. The Truth Commission was created as part of the 1992 Chapultepec Peace Accords. The result of its yearlong investigation was a report entitled *From Madness to Hope: The 12-Year War in El Salvador*, published on March 15, 1993. The report listed 13,569 cases of abuse, and highlighted in detail 32 major cases, including those involving the death squads responsible for the El Mozote Massacre, the murder of six Jesuit priests by the Armed Forces of El Salvador, and the executions of government officials by guerilla militias.

The Commission did not attempt to compile a complete list of all the victims of the civil war in El Salvador.

Cases before the Inter-American Court of Human Rights

The Inter-American Court of Human Rights has never ordered the creation of a Victims Register. However it has been among the most creative courts in the world in ordering reparations.

In two legal cases from Honduras, the *Velásquez Rodríguez* and *Godínez Cruz* cases¹², the Inter-American Court of Human Rights ordered the government of Honduras to pay reparations with interest to victims, but the Honduran government refused to pay the interest valued before the Honduran currency had been devalued. In the second case, the Court again ordered the government to pay the interest at full value. Honduras threatened to withdraw from the contentious jurisdiction of the Inter-American Court, and the Organization of American States took no action to enforce the judgment. Eventually Honduras paid in full, but the weakness of the Inter-American Court to enforce its judgments was proven. In most cases states comply voluntarily with its judgments, but it has no powers to enforce them.

The Inter-American Court's cases are instructive because they are a warning that courts on their own do not have the power to enforce their judgments. That is certainly the case with the ECCC. Even if the Trial Court ordered the creation of a Victims Register as a form of Reparations, it would depend on organizations that will outlive the ECCC to implement these measures.

¹² Inter-Am. Comm. H.R., Annual Report of the IACHR 1997, at Ch. VII, para. 12 and 13, OEA/Ser.L/V/II.98 doc.6 rev. (1998) Cited in Shelton 2003.

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