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Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Practice Direction 02/2007

VICTIM PARTICIPATION

The Rules and Procedure Committee of the Extraordinary Chambers in the Courts of Cambodia (ECCC),

CONSIDERING 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, signed on 6 June 2003 (hereinafter referred to as ‘the Agreement’),

CONSIDERING the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia with inclusion of the amendments as promulgated on 27 October 2004 (hereinafter referred to as ‘ECCC Law’)

CONSIDERING the Internal Rules of the ECCC, adopted by the Plenary Session of Judges on 12 June 2007 and signed into force on 19 June 2007,

ACTING in accordance with Rule 20(3) of the ECCC Internal Rules, which entitles the Rules and Procedure Committee to adopt Practice Directions relating to the functioning of the ECCC, subject to review in the subsequent Plenary Session,

HEREBY ISSUE this Practice Direction on victim participation (hereinafter referred to as ‘the Practice Direction 02/2007’):

Article 1. General Provisions

1.1 In addition to being called as witnesses, victims of the Democratic Kampuchea regime may participate actively in ECCC proceedings either by filing complaints with the Co-Prosecutors, as detailed in Article 2 below, or applying to be joined as civil parties to the Co-Investigating Judges or before the Trial Chamber, as detailed in Article 3 below.

1.2. The ECCC Victims Unit (Victims Unit) shall be the sole contact for victims or their representatives for the filings necessary for participation in the proceedings. The Victims Unit may be contacted directly for all information and assistance related to victim participation at the following address:

ECCC Victims Unit
National Road 4
Chaom Chau, Dangkao, Phnom Penh

Cambodia

Website: www.eccc.gov.kh

Email: victimsunit@eccc.gov.kh

- 1.3. As a transitional measure, until the Victims Unit is operational, complaints and civil party applications shall be filed directly with the greffier of the Office of the Co-Prosecutors or the Office of the Co-Investigating Judges, as the case may be.

Article 2. Procedure and formalities to file complaints

- 2.1. The Co-Prosecutors are responsible for considering all written complaints or information alleging commission of crimes within the jurisdiction of the ECCC.
- 2.2. Complaints or information may be lodged with the Co-Prosecutors by any person, organisation or other source who witnessed or was a victim of such alleged crimes, or who has knowledge of such alleged crimes. Victims Associations and lawyers for victims may also file complaints on behalf of their members or behalf of their clients.
- 2.3. Complainants shall provide the following information:
 - a. The identity of the complainant;
 - b. The subject of the complaint;
 - c. A summary of the alleged crimes coming within the jurisdiction of the ECCC.
 - d. In addition, the complaint shall include:
 - i. any details of potential witnesses;
 - ii. any piece of evidence in the complainant's possession; and
 - iii. an indication as to whether the complainant wishes to be joined as a Civil Party should the case lead to the initiation of an investigation
- 2.4. Complaints shall be made on the Victim Information Form (**Appendix A**). Complaints shall be sent or delivered to the Victims Unit at the address set out in Article 1.2. above.
- 2.5. The Victims Unit is able to assist complainants in filing their complaints. However, only administrative help will be provided, and assistance shall not be understood to include financial or legal aid.
- 2.6. The Victims Unit will forward all complaints to the Office of the Co-Prosecutors. All such complaints will be registered in the complaints register held by the Greffier of the Office of the Co-Prosecutors. The Co-Prosecutors may request the Victims Unit to assist them in providing any notification to the complainants.

- 2.7. In accordance with the Internal Rules, such complaints shall not automatically initiate criminal prosecution, and the Co-Prosecutors shall decide, at their discretion, whether to reject the complaint, include the complaint in an ongoing preliminary investigation, conduct a new preliminary investigation or forward the complaint directly to the Co-Investigating Judges. The Co-Prosecutors shall inform the complainant of the decision as soon as possible and in any case not more than 60 (sixty) days after registration of the complaint.
- 2.8. In accordance with the Internal Rules, the Co-Prosecutors may change their decision at any time in which case the complainant shall be so informed as soon as possible and in any case not more than 30 (thirty) days from the decision.
- 2.9. The Victims Unit and the Co-Prosecutors will ensure the confidentiality of all complaints filed with the ECCC.

Article 3 Civil party applications

- 3.1. Any victim of a crime coming within the jurisdiction of the ECCC may join the proceedings as a civil party in a case concerning that crime.
- 3.2. The following criteria shall be met in order to be considered as victims for the purposes of the ECCC:
 - a. To be a natural person or legal entity that has suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC.
 - b. To have suffered injury which shall be:
 - i. Physical, material or psychological; and
 - ii. The direct consequence of the offence, personal and have actually come into being.
 - c. Psychological loss may include the death of kin who were the victim of such crimes.
 - d. All victims satisfying these criteria have the right to apply to be civil parties without any distinction based on criteria such as current residence or nationality.
- 3.3. Victims may only apply to be joined as civil parties to a case if the case is under investigation by the Co-Investigating Judges or which has been sent before the Trial Chamber.
- 3.4. Applications shall be filed with the greffier of the Office of the Co-Investigating Judges or the Chambers, as appropriate, through the Case File Officer.
- 3.5. The Victims Unit shall assist applicants in processing applications and shall forward applications to the greffier of the Office of the Co-Investigating Judges or the Chambers, as appropriate, through the Case File Officer.
- 3.6. All Civil Party applications shall contain the following information:

- a. Details allowing verification of the applicant's status as a Victim;
 - b. The alleged crimes;
 - c. The domicile of the Victim, the registered office of the Victims' Association of which he or she is a member, or the address of the lawyer, as appropriate, with a view to service and notifications. Where this address is outside of Cambodia, an address in Cambodia shall be provided. This will generally be the address of the Civil Party's representative.
 - d. Any protective measures requested by the Victim, such as protection of their identity.
 - e. The applicant should also attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator or accomplices.
- 3.7.** Civil Party applications shall be made on the Victim Information Form (**Appendix A**). Once completed, they should be forwarded to the Victims Unit.
- 3.8.** Completed applications are then transferred by the Victims Unit to the greffier of the Office of the Co-Investigating Judges or the Chambers, as appropriate, through the Case File Officer, together with all necessary information concerning common representation.
- 3.9.** If applicable, the judges will decide on the admissibility of the Civil Party application and such decision shall be open to appeal before the Pre-Trial Chamber or the Supreme Court Chamber depending on the stage of the proceedings.
- 3.10.** Once a Victim has been joined as a Civil Party, the Victims Unit plays no role in the legal proceedings. However, it may still provide assistance, under judicial supervision, to resolve problems concerning memberships of Victims' Associations, legal representation and protective measures.

Article 4. Representation of Civil Parties by Lawyers

- 4.1.** Any victim participating in proceedings before the ECCC as a civil party has the right to be represented by a national lawyer, or a foreign lawyer in collaboration with a national lawyer.
- 4.2.** The Victims Unit maintains a list of foreign and national lawyers registered with the BAKC who are available to represent the victims.
- 4.3.** If victims choose a foreign lawyer, he or she shall work in conjunction with a national lawyer before the ECCC.
- 4.4.** A group of civil parties may choose to be represented by a common lawyer drawn from the list held by the Victims Unit. The Victims Unit may help organise such common representation. If necessary, the judges may require a group of civil

parties to choose common representation or may themselves appoint such representation.

Article 5. Victims Associations

- 5.1.** Victims' Associations may assist civil parties. Victims' Associations are not themselves civil parties to the proceedings. They simply represent their members who are civil parties. Accordingly, the members of Victims' Associations shall still provide personal information about their application. They may, however, request the Co-Investigating Judges that such information be protected.
- 5.2.** In order for a Victims' Association to be authorised to act on behalf of its members it must be admitted to the list of Victims' Association approved to act on behalf of civil parties before the ECCC, drawn up by the Victims Unit under the supervision of the Co-Investigating Judges and the Trial Chamber.
- 5.3.** Application forms for admission to the list of Victims' Associations are available from the Victims Unit and may be downloaded from the ECCC website.
- 5.4.** The Victims Unit will provide Victims with the list of approved Victims' Associations.
- 5.5.** In order to be included in the list, a Victims' Association shall provide the Victims Unit with documentation showing that it is validly registered or established in the country in which it is carrying on its activities.
- 5.6.** A Victims' Association which is carrying on its activities in Cambodia shall register pursuant to the applicable procedure. For further information, please contact:

Ministry of Interior
#275, Blvd. Norodom, Phnom Penh, Cambodia
Tel: 855-23-750-802/121-707/726-148
Fax: 855-23-212-708/726-052
Email: moi@interior.gov.kh, website: www.interior.gov.kh
- 5.7.** The sole fact that a foreign registered Victims' Association represents victims resident abroad before the ECCC shall not be construed as carrying on activities in Cambodia for this purpose;
- 5.8.** The Victims' Association shall provide proof that it is authorised to represent its members before the ECCC.
- 5.9.** All Victims' Associations may be represented by lawyers, through the procedure detailed in Article 4 above.

- 5.10.** A Victims' Association has the right to appeal the decision concerning its application for admission to the list before the Pre-Trial Chamber.
- 5.11.** In case of dismissal or absence of decision of the Victims Unit, Victims' Associations may appeal to the Pre-Trial Chamber within fifteen days of receiving notification of the decision of the Head of the Victims Unit or the end of the 30 day period, as appropriate.
- 5.12.** The fact that certain victims choose to take action through a Victims' Association shall not affect the right of other victims to be joined as civil parties in the same case.

Article 6. Filing, service and notification of documents

- 6.1** Once an application to be joined as a civil party has been accepted, all filing, service and notification of documents relating to the case shall be done with the greffier of the Office of the Co-Investigating Judges or the Chambers, as appropriate, through the Case File Officer, in accordance with the Practice Direction on filing of documents.
- 6.2.** Victims, their lawyers and Victims' Associations shall provide an address in Cambodia for this purpose.

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Appendix A

- Office of the Co-Prosecutors
- Office of the Co-Investigating Judges

Case File No:

Victim Information Form

PART A

PERSONAL INFORMATION ABOUT THE VICTIM

1. Name(s) and first name:	2. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
3. Place of Birth:	4. Nationality:
5. Age/Date of Birth (if known dd/mm/yyyy):	6. Occupation:
7. Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widow/Widower <input type="checkbox"/> Other	
8. Father's or Tutor's Name:	Mother's Name:
9. How many dependants do you have? <i>Please write number.</i>	
10. Have you ever had any disability or disabilities? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please specify:	
11. Which of the following proof of identity do you have? <i>Please indicate the number.</i>	
Type of proof of identity	Number or other reference
<input type="checkbox"/> Passport	
<input type="checkbox"/> Driver's licence	
<input type="checkbox"/> Identity card (such as students, employees)	
<input type="checkbox"/> Letter from Local Authority	
<input type="checkbox"/> Camp registration card	
<input type="checkbox"/> Card from humanitarian agency (such as UNHCR, WFP)	
<input type="checkbox"/> Tax document	
<input type="checkbox"/> Voting card	
<input type="checkbox"/> Other	
<input type="checkbox"/> None	

FOR VICTIMS UNIT USE ONLY

Application:

- Witness Complaint Civil Party Application

Action:

- Co-Prosecutors Co-investigating Judges

12. Please complete all that apply to you.	
<input type="checkbox"/> Current address <input type="checkbox"/> If you do not have a specific address, please provide your last residence	
Number/Plot:	Street:
Group/Village:	Commune:
District:	Province/City:
Country:	
13. Contact address. <i>Please tick as appropriate.</i>	
<input type="checkbox"/> I would like to be contacted at the address mentioned in question 12.	
<input type="checkbox"/> I would like to be contacted through a person acting on my behalf:	
<input type="checkbox"/> Lawyer:	<input type="checkbox"/> Victims Association:
<input type="checkbox"/> I would like to be contacted at the following address C/O:	
Number/Plot:	Street:
Group/Village:	Commune:
District:	Province/City:
Country:	
<input type="checkbox"/> I would like to be contacted at the following telephone number:	
Have you already submitted a complaint or an application for civil party participation to the ECCC or other places?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please indicate what form of application, where and when:	
Form of application	
Place:	Day Month Year

PART B

INFORMATION ABOUT THE ALLEGED CRIME(S)

Please attach answers to this section on a separate sheet of paper if necessary.

1. Please provide details of crime(s).
Location (<i>village, district, area, zone</i>):
Date (dd/mm/yyyy):
Description of Crime(s) (<i>what crimes occurred and how they occurred</i>):
2. Who do you believe is responsible for these crime(s) and why you believe this? <i>Please answer to the extent possible.</i>
3. Were you a victim of these crime(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No
4. Were you a witness to these crime(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No
5. Do you know any other victims or witnesses to these crime(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If yes (and if you can), please give their names and addresses, unless you know that they wish to remain anonymous, or it would put the applicant or anyone else at risk):</i>

6. Do you have any relationship with these witnesses (are they family members, neighbours, friends, etc.)? Yes No
(If yes, please indicate):

In order for Civil Party action to be admissible, the injury must be: a) physical, material or psychological; b) the direct consequence of the offence, personal and have actually come into being.

PART C

APPLICATION TO BE JOINED AS A CIVIL PARTY

You should only complete this Part if you wish to be joined as a Civil Party to a judicial investigation

1. Please indicate the proceedings to which you wish to be joined:
Case File No:

2. Please state the injury, loss or harm you have suffered, and give a brief description (such as physical injury, mental pain and anguish, loss of or damage to property):

3. Were you examined by a doctor after the event or events occurred? Yes No

4. Did you receive any medical or psychological treatment? Yes No

5. If yes, do you have any records regarding any medical or psychological treatment? Yes No
If yes, please tick as appropriate and provide a photocopy, if available.
 Medical report from doctor, hospital or health centre X-rays Prescriptions/Invoices for medicines
 Other. *Please specify:* None

6. Does your condition persist today? Yes No
If yes, please give details:

7. Do you have any preference as to the form of collective or moral reparation that you would like to obtain? Yes No
If yes, please give details:

PART D

SIGNATURES

1. SIGNATURE OF THE VICTIM
Please sign or add your fingerprint and date this Form, whether or not someone is acting on your behalf or assisting you in filling in this Form.
I hereby declare that:
- To the best of my knowledge and belief, the information I have given in the present Form is correct, otherwise I will be liable under the applicable law.
- I wish to participate in proceedings before the ECCC as: a witness a complainant a civil party
If you answered "civil party", please ensure that you have filled in Part C above

Location: _____ Day: _____ Month: _____ Year: _____
Signature or fingerprint of the victim and name

Witnessed by/Signature : _____ Signature:

2. SIGNATURE OF THE PERSON ACTING ON BEHALF OF THE VICTIM AND CONSENT OF THE VICTIM

Consent of the victim:

I,

Print name of the victim

consent to

Print name of the person acting on behalf of the victim, in the capacity of

to act on my behalf in making this application.

Location:

Day:

Month:

Year:

Signature or fingerprint of a person acting on behalf of the victim and name

Witnessed by/Signature:

Signature:

Before submitting this Application Form, please review it and tick the following as appropriate:

I have attached the following documents in support of this Form:

- 1.
- 2.
- 3.

I have signed or added my fingerprint on every page of this Form as well as any other documents accompanying it.

Please indicate total number of pages of this Form including additional pages and photocopies of documentation:

Victim:	Person acting on behalf of the victim:
<input type="checkbox"/> I have provided a photocopy of proof of identity in response to Question 11 of Part A. <input type="checkbox"/> I have provided contact information in response to Question 13 of Part A. <input type="checkbox"/> I have signed or added my fingerprint on the first box in Part D.	<input type="checkbox"/> I have signed or added my fingerprint on the second box in Part D.

NOTE

Once the ECCC receives your Form, you will receive an acknowledgement. This acknowledgement will provide you with a registration number that you should use when communicating with the Court. If you send additional information to the Court, please use this registration number to ensure your application is properly updated. Please note that criminal proceedings take time and it may be a while before the ECCC judges make a decision on your application.

This Form and the process of applying are free of charge.

Victims Unit may be contacted at the address below or by email at victimsunit@eccc.gov.kh