

Guarantees of Non-Repetition as Reparations: Exploring a Developing Modality in the Context of the Extraordinary Chambers in the Courts of Cambodia

*Nathaneal Thomas**

Abstract:

This article examines Guarantees of Non-Repetition (GNR) as a form of reparation at the Extraordinary Chambers in the Courts of Cambodia (ECCC), the first international criminal tribunal to issue a reparations order and endorse GNR. The ECCC's GNR measures, while limited, nonetheless marked an important step in expanding reparations in ICL beyond the confines of the duty-right relationship between the accused and victims through cooperation with the State

* Nathan is an LL.M. candidate at The Geneva Academy. Prior to this, Nathan was a Rotary Peace Fellow in Tokyo, Japan, where he served as a teaching assistant in international law and conducted research on transitional justice and international humanitarian law. As part of this fellowship, he worked as a legal intern in the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia.

Nathan's professional background is in the U.S. Army, where he worked for five years as an infantry officer after commissioning from the United States Military Academy at West Point. His experience strengthened his commitment to international humanitarian law and upholding the rights of those affected by armed conflict. .

and other actors. Considering its contribution to victims' right to reparation, the ECCC's GNR measures should be acknowledged as a distinct form of reparation and an emerging modality in international law.

Keywords: Guarantees of Non-Repetition (GNR), Reparations, Extraordinary Chambers in the Courts of Cambodia (ECCC), Khmer Rouge Tribunal, Transitional Justice, Satisfaction, International Criminal Law, Victim-Centered Justice, Institutional Reform, Residual Mechanisms

1. Introduction

The Extraordinary Chambers in the Courts of Cambodia (ECCC) has often been recognized as the first international criminal tribunal to issue a reparations order in 2010, but it also established another important precedent in 2012 as the first international criminal tribunal to link reparations to guarantees of non-repetition (GNR) in a judicial judgment.¹ While this marked an important development in the field, reparations categorized as or relating to GNR at the ECCC and in International Criminal Law (ICL) more broadly remain underexamined. Scholarship on GNR remains largely confined to its application in international human rights law ("IHRL") and the laws of

¹ In Case 001, the Supreme Court Chamber of the ECCC noted that the publication of statements of apology as a reparation was justified by "the widespread recognition of similar measures as reparations," citing Inter-American Court of Human Rights jurisprudence where apologies were considered "a measure of satisfaction for the victims and a guarantee of non-repetition of the grave human rights violations that were committed." ECCC, *Prosecutor v. Kaing Guek Eav alias Duch*, Case File/Dossier No. 001/18-07-2007/ECCC/SC, Appeal Judgement (Supreme Court Chamber), 3 February 2012, fn. 1385 and para.675, citing Inter-American Court of Human Rights, *Ituango Massacres v. Colombia*, Judgment, (Preliminary Objections, Merits, Reparations and Costs), para. 406.

state responsibility, while literature on the ECCC has primarily focused on the implementation of “collective and moral” reparations more broadly.² Yet the inclusion of GNR reveals several tensions that warrant further study. These include its forward-looking orientation, which contrasts with the traditionally retrospective function of reparations, its grounding in broader systemic reform rather than individual responsibility, which sits uneasily within the “duty-right” relationship that has traditionally characterized reparations between the accused and victims, and the actual benefit to survivors in the case of Cambodia.³

This article seeks to address these tensions by addressing the question: Do the ECCC’s GNR-related measures constitute a unique form of reparation for victims in the Cambodian context? In exploring this question, it analyzes four dimensions, namely, (1) the reparative nature of GNR, which, as opposed to restitution and compensation, which are traditionally retrospective in nature, is inherently forward-looking and preventative, so a reparative nature is not readily apparent, (2) its conceptual overlap with satisfaction, raising questions about the distinction between the two modalities, particularly within the context of Cambodia, (3) its normative suitability within the individual responsibility-focused framework of ICL, and (4) the extent to which the GNR reparations of the ECCC have contributed to the prevention of future violations, and if insignificant, whether this has negated their reparative function.

² ECCC, *Internal Rules (Original)*, 12 June 2007, rule 23.

³ Furuya, for example, notes that the “duty-right” relationship between accused and victims at the ECCC “has become almost meaningless” due to the existence of “solidarity-based reparations that are independent of liability-based reparations.” (Translation by the author) Shuichi Furuya, ‘Kambojia Tokubetsu Hotei ni okeru Higaisha Baisho no Igi – Ikoki Seigi o Ninau Shudanteki Baisho no Kozoteki Henka,’ 2022, 97 Waseda Hogaku 179.

To answer this question, this article examines satisfaction and guarantees of non-repetition as forms of reparation under international treaty law, international customary law, and as a developing norm. It then examines how GNR has been implemented in other courts and tribunals to ground the analysis in practice and enable comparison between other legal mechanisms. Finally, it turns to the measures adopted by the ECCC related to GNR itself. This final section evaluates the strengths of measures related to GNR, whether endorsed by the Chambers or implemented through non-judicial measures, by assessing the extent to which they have contributed to non-recurrence, and considering whether, if not, this has negated their reparative function.

1.1. Brief Introduction to the ECCC and Its Reparative Measures

The fall of Phnom Penh in 1975 to the Khmer Rouge just over fifty years ago led to the death of approximately 1.7 million Cambodians and innumerable crimes against both the majority and minority civilian population groups.⁴ The extensive suffering of nearly every Cambodian left behind an enduring legacy of suffering and loss that was witnessed in interviews and workshops with survivors during this research. The scale and duration of this conflict suggest the possible resonance that GNR could have for victims who potentially lived through violence and war under eight different governmental regimes.⁵

⁴ Ewa Tabeau, *Khmer Rouge Victims in Cambodia, April 1975–January 1979: A Critical Assessment of Major Estimates: Expert Report for the ECCC*, ECCC, Phnom Penh, 2009, p. 70.

⁵ In the lifetime of King Sihanouk, for example, Cambodia experienced conflict under French Colonial Rule, Japanese occupation, the first modern independent Kingdom of Cambodia, the Khmer Republic under Lon Nol, the Khmer Rouge Regime, People's Republic of Kampuchea under Vietnam Occupation, the United Nations Transitional

The ECCC was established in 2006 as a hybrid tribunal established by the United Nations and the Cambodian government to “contribute to the principles of justice and national reconciliation, stability, peace and security.”⁶ Although neither Cambodian law nor the UN Agreement explicitly mentioned reparations or Civil Parties, the ECCC law provided that victims could appeal trial decisions, implying they had legal standing.⁷ This inclusion of Civil Parties, who could make reparatory claims, was framed as a means of promoting national reconciliation.⁸ Civil Parties were victims, who, upon successful application, had *inter alia* the right to claim for “moral and collective reparations.”⁹

The court faced substantial challenges in its first case, where the convicted person was found to be indigent, and the court held that any reparation awarded under the then-current internal rules was “unlikely to yield significant tangible results for Civil Parties.”¹⁰ In

Authority in Cambodia, and the current Kingdom of Cambodia. For a historical overview of Cambodia, see: David Chandler, *A History of Cambodia*, 4th ed., Routledge, London 2008.

⁶ *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*, 2329 U.N.T.S. 117, 6 June 2003, (entered into force 29 April 2005), Preamble; *Internal Rules (original)*, above note 2, Preamble.

⁷ ECCC, *Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia*, 27 October 2004, article 26.

⁸ ECCC, *Prosecutor v. Nuon Chea*, Case File/Dossier No. 002/19-09-2007/ ECCC/TC, Decision on Civil Party Participation in Provisional Detention Appeals (Pre-Trial Chamber), 20 March 2008, para. 37; ECCC, *Prosecutor v. Nuon Chea*, Case File/Dossier No. 002/19-09-2007/ ECCC/TC, Decision on appeals against orders of the Co-Investigating Judges on the admissibility of Civil Party applications (Pre-Trial Chamber), 24 June 2011, paras 64-65.

⁹ Internal Rules (Original), above note 2, Rule 23(1). ECCC, *Duch*, Case 001 Appeal Judgment, above note 1, para. 488.

¹⁰ *Prosecutor v. Kaing Guek Eav alias Duch*, Case File/Dossier No. 001/18-07-2007/ECCC/TC, Case 001 Final Defense Written Submissions, 11 November 2009, para. 50.

response, the rules were amended to allow specific reparation measures to be recognized based on external resource mobilization, coordinated between the Victims Support Section and the Civil Party Lead Co-Lawyers by working with governmental and non-governmental organizations.¹¹ A second avenue for reparations was created independent of the chambers with the mandate of the VSS gaining the capability to develop and implement non-judicial programs and measures aimed at addressing the broader interests of victims.¹²

While pragmatic, these additional measures meant that as the remaining convicted individuals were found indigent, all subsequent reparations were not ordered against the accused, but rather recognized as a specific project that appropriately gives effect to the award sought by the Lead Co-Lawyers.¹³ For Killean and Moffet, this new structure of externally funded and coordinated projects that are not ordered against the accused as ‘reparations’ stretches the principle of responsibility beyond dominant conceptualizations of reparations in the context of international trials.”¹⁴ Nonetheless, other scholars have advocated for broader approaches to reparations that move beyond the dominant conceptualizations of reparations. Noting the limitations of reparations offered by regional and national courts, Roht-Arriaza, for example, argues that “individual reparations fail to capture the collective element of the harm in situations of mass conflict or repression.”¹⁵ Relatedly, Mégret has argued that the

¹¹ ECCC, *Internal Rules (Revision 6)*, rules 12 *bis* (2), 23(3), 23 *quinqüies* (1), (2), (3).

¹² ECCC, *Internal Rules (Current)*, rule 12 *bis* (4).

¹³ *Ibid.*, rule 23 *quinqüies* (3)(b).

¹⁴ Rachel Killean and Luke Moffett, “What’s in a Name? ‘Reparations’ at the Extraordinary Chambers in the Courts of Cambodia”, *Melbourne Journal of International Law*, Vol. 21, No. 1, 2020, p. 10.

¹⁵ Naomi Roht-Arriaza, “Reparations Decisions and Dilemmas”, *Hastings International and Comparative Law Review*, Vol. 27, No. 2, 2004, p. 169.

divergence from traditional legal frameworks is justified since international crimes often differ ontologically from ordinary crimes, unlike domestic offenses, which focus on individual acts, international crimes often involve or even require a collective nature, and individual-focused approaches to responsibility and reparation are inherently insufficient.¹⁶ The judicial reparations and broader reparative measures of the ECCC provide a case study for examining the implications of these tensions in practice.

Ultimately, 3,959 individuals were accepted as civil parties in Cases 001, 002/01, and 002/02, granting them the right to submit claims for reparations before the ECCC, resulting in the endorsement of 26 collective and moral reparations projects. Of the reparations endorsed, seven were explicitly submitted under the category of GNR, all of which were affirmed.¹⁷ Some of these reparations projects, such as the Legal Documentation Center, in addition to other non-judicial measures that ostensibly contribute to GNR, through education and raising awareness, continue alongside the Residual Functions of the Court, which have been extended to the end of 2027.¹⁸

¹⁶ Frédéric Mégret, “The Case for Collective Reparations before the International Criminal Court”, in Jo-Anne M. Wemmers (ed.), *Reparations for Victims of Crimes against Humanity: The Healing Role of Reparation*, Routledge, New York, 2014.

¹⁷ ECCC, *Prosecutor v. Nuon Chea and Khieu Samphan*, Case File/Dossier No. 002/19-09-2007/ECCC/TC, Case 002/02 Judgment, (Trial Chamber), 16 November 2018, paras 4454, 4457.

¹⁸ *Report of the Secretary-General on the Extraordinary Chambers in the Courts of Cambodia – Residual Functions*, UN Doc A/79/827, 14 March 2025, para. 40; ECCC, *Guide to the Extraordinary Chambers in the Courts of Cambodia: Volume 1, Establishment, Operations and Cases*, ECCC, Phnom Penh, 2023, pp. 247, available at: https://www.eccc.gov.kh/sites/default/files/Guide_to_the_ECCC_Manuscript_EN.pdf; ECCC, *Understanding the ECCC*, Phnom Penh, 2023, p. 11, available at: https://www.eccc.gov.kh/sites/default/files/publications/Understanding%20the%20ECCC_EN.pdf.

2. International Legal Foundations for the Obligation of Reparations and the Modalities of Satisfaction and GNR

2.1. Obligations under Treaty Law

The Hague Convention IV of 1907 marked an early codification of reparations into treaty law.¹⁹ Building on earlier precedents established in state arbitration cases, such as the Alabama Claims of 1872, the convention established that violations entailed an obligation to provide compensation.²⁰ Building on Hague Convention IV, the 1949 Geneva Conventions acknowledge “liability” for violations of IHL, which the Commentaries of 1952 and 2016 state include “war reparations” or “full restitution” respectively.²¹ IHRL instruments were among the first international treaties to explicitly include the right to reparation or remedy. The International Covenant on Civil and

¹⁹ Convention Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, 187 CTS 227, 18 October 1907 (entered into force 26 January 1910), Art. 3.

²⁰ *Ibid.*, Alabama Claims Arbitration (United States v Great Britain) (1872) 29 RIAA 125.

²¹ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31, (entered into force 21 October 1950) Art. 51; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 75 UNTS 85 (entered into force 21 October 1950), Art. 52; Geneva Convention (III) Relative to the Treatment of Prisoners of War of 12 August 1949 75 UNTS 135 (entered into force 21 October 1950), Art. 131; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 75 UNTS 287 (entered into force 21 October 1950), Art. 148. Jean S Pictet (ed), *Commentary on the Geneva Conventions of 12 August 1949: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, International Committee of the Red Cross, Geneva, 1952, p. 373; Knut Dörmann and others (eds), *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2016, para. 3022.

See also Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 26 March 1999, 2253 UNTS 172, entered into force 9 March 2004, Art. 38.

Political Rights recognizes the right to an effective remedy, a right which is shared with other core IHRL treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (which also mentions satisfaction, though not under a form of reparation), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).²² However, except for ICPED, remedies or reparations are described in broad terms with few specific modalities. Only ICPED, which was adopted in 2010 and has 93 signatories as of 2025, describes in detail what forms reparations can take, including satisfaction and guarantees of non-repetition, echoing resolutions by the UN General Assembly and the jurisprudence of national and regional courts.²³ In providing a short but valuable addition, satisfaction is said to include the “restoration of dignity and reputation.”²⁴

Reparations in ICL statutes are more notable for their absence than their presence. Neither the statutes nor subsequent internal rules of the International Military Tribunal, the International Military Tribunal for the Far East, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda would

²² International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976), Art. 2; *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 UNTS 195, (entered into force 4 January 1969), Art. 6; *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990, 2220 UNTS 3, (entered into force 1 July 2003), Art. 83; *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, 2716 UNTS 3, (entered into force 23 December 2010), Art. 24 (Hereinafter “ICPED”).

²³ ICPED, above note 22, Art. 24 (4–5)

²⁴ *Ibid.*, Art. 5(c).

permit the issuance of reparations orders.²⁵ The 1998 Rome Statute of the International Criminal Court (ICC) would be pioneering in this regard in allowing for the ordering of reparations in accordance with principles established by the court, including restitution, compensation, and rehabilitation.”²⁶ While not mentioning either satisfaction or GNR, the non-exhaustive list permits reparations under other principles, a prerogative which the court implemented for the first time concerning GNR in 2017, following and perhaps influenced by the jurisprudence of the ECCC in Cases 001 and 002/01.²⁷

2.2. Obligations under Customary International Law

Twenty-one years after the Hague Convention IV of 1907, the PCIJ would hold that “it is a principle of international law, and even a general conception of the law, that any breach of an engagement involves an obligation to make reparation.”²⁸ While nonbinding, in 1948, international community affirmed that a similar principle applied to individuals through the Universal Declaration of Human Rights, where it is written that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”²⁹ The

²⁵ Charter of the International Military Tribunal 82 UNTS 279, 8 August 1945; Charter of the International Military Tribunal for the Far East, 19 January 1946; Statute of the International Criminal Tribunal for the Former Yugoslavia UNSC Res 827, 25 May 1993; Statute of the International Criminal Tribunal for Rwanda, 8 November 1994, UNSC Res 955.

²⁶ Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998, (entered into force 1 July 2002), Art. 75.

²⁷ International Criminal Court, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, No. ICC-01/12-01/15 Reparations Order (Trial Chamber VIII), (17 August 2017), para. 67.

²⁸ Permanent Court of International Justice, *Factory at Chorzów (Germany v. Poland)* (Merits) PCIJ Rep Series A No 17, 1928, p. 29.

²⁹ Universal Declaration of Human Rights, 1948 UNGA Res 217 A(III), 10 December, Art. 8. See also the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res. 40/34, 29 November 1985.

codification of the state responsibility with regard to reparations is documented in the draft Articles on Responsibility of States for Internationally Wrongful Acts (Draft Articles), which, while not a treaty, has been in part recognized by the International Court of Justice as reflecting customary international law (CIL).³⁰ In the 2007 *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, the ICJ affirmed that certain Draft Article provisions, such as Articles 4, 8, and 16, reflect the “state of customary international law.”³¹ Furthermore, it has been recognized by many scholars as “the authoritative statement of the law on state responsibility.”³² While generally applying only to bilateral actions of states, the ICJ has noted that the outlawing of certain acts, namely “acts of aggression, and of genocide” and the upholding of “the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination” are *erga omnes* obligations.³³ On this basis, the commentary on the Draft Articles asserts that “international responsibility” is not limited to bilateral relations due to a legal interest in the protection of “certain basic rights and the fulfilment of certain obligations.”³⁴

³⁰ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* in ‘Report of the International Law Commission on the Work of Its Fifty-Third Session’ (23 April–10 August 2001), UN Doc A/56/10, 2001.

³¹ International Court of Justice, *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgement, *ICJ Reports 2007*, paras 398, 401, 420.

³² Sotirios-Ioannis Lekkas, “Uses of the Work of International Law Commission on State Responsibility in International Investment Arbitration” in Panos Merkouris, Andreas Kulick, José Manuel Álvarez-Zarate and Maciej Żenkiewicz (eds), *Custom and its Interpretation in International Investment Law*, Cambridge University Press, Online 2024, p. 93.

³³ International Court of Justice, *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* Judgement, *ICJ Reports 1970*, para. 33.

³⁴ Above note 30.

In affirming that these certain obligations included the provision of reparations, in the 2024 Advisory Opinion on the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, the ICJ noted that the failure to protect rights guaranteed under IHL and IHRL constituted an internationally wrongful act which entailed an obligation to provide full reparation “to all natural or legal persons concerned.”³⁵ The court further noted that reparation includes “restitution, compensation and/or satisfaction.”³⁶ Yet, in outlining the precise obligations to natural persons for the violation under international law, the court only focused on the obligation for material damages. Restitution is the first obligation, and in “the event that such restitution should prove to be materially impossible,” an “obligation to compensate, in accordance with the applicable rules of international law, all-natural or legal persons, and populations” exists.³⁷

Despite its absence as a remedy in this Advisory Opinion, GNR does have a foundation within state responsibility. While the forms of reparations described in the Draft Articles are restitution, compensation, and satisfaction, the Draft Articles emphasize GNR as a general principle of international responsibility.³⁸ Affirming GNR as a remedy, in the ICJ Judgement of the 2001 *LaGrand Case (Germany v. USA)*, the court considered that an apology alone offered by the United States was insufficient, but that the actions undertaken by the

³⁵ International Court of Justice, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, para.149. See also: International Court of Justice, *Legal Consequences of the Construction of a Wall*, Advisory Opinion, 9 July 2004. See for comparison International Court of Justice, *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)*, Judgement, *ICJ Report 2012*, para.140.

³⁶ *Policies and Practices of Israel*, above note 35, para. 149.

³⁷ *Ibid.*, para. 271.

³⁸ Draft Articles, above note 30, Arts 30, 35.

United States “must be regarded as meeting Germany's request for a general assurance of non-repetition.”³⁹ For Sullivan, this represented an inclusion of GNR and general assurances of non-repetition, which was an unwarranted expansion of remedial authority by the ICJ. He argued that this represents “a dramatic shift to a forward-looking remedial structure,” which “lacks legal justification.”⁴⁰

Thus, while CIL includes the obligation to make reparation, the legal foundation of GNR remains considerably less established than the principles of restitution, compensation, and satisfaction despite their inclusion in the Draft Articles and implicit acknowledgment in *LaGrand*. Nonetheless, the idea of GNR as a meaningful remedy has gained traction as an emerging norm despite continued debate over its inclusion as a reparation.

2.3. Satisfaction and GNR as Emerging Norms in Lex Ferenda

Reparations can be seen as taking a narrow and broad approach according to De Greiff.⁴¹ Van Boven advocated for a broad interpretation of reparations, which included measures of satisfaction and GNR such as truth seeking, structural measures, and judicial sanctions during his tenure as the UN Special Rapporteur tasked to investigate victims' right to restitution, compensation, and

³⁹ International Court of Justice, *LaGrand Case (Germany v. United States of America)*, Judgement, *ICJ Reports 2001*, para. 124.

⁴⁰ Scott M. Sullivan, “Changing the Premise of International Legal Remedies: The Unfounded Adoption of Assurances and Guarantees of Non-Repetition”, *UCLA Journal of International Law and Foreign Affairs*, Vol. 7, No. 2, 2002, p. 298.

⁴¹ Pablo De Greiff, “Justice and Reparations”, in Pablo De Greiff (ed.), *The Handbook of Reparations*, Oxford University Press, Oxford, 2006, p. 452.

rehabilitation.⁴² While acknowledging Van Boven's broader understanding of reparation, De Greiff has argued for a narrower definition that takes into account only the direct material and symbolic benefits for the victims of specific crimes to ensure that reparations are both achievable and targeted. His narrower interpretation excludes as reparations measures of GNR, such as criminal justice or institutional reform.⁴³

In the case of international crimes, where the chapeau elements almost necessitate the existence of collective harm, this broader approach has become increasingly accepted by the international community as demonstrated by the United Nations General Assembly adoption of the 2005 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles). These principles, based on Van Boven's work, affirm the following five forms of reparations: rehabilitation, restitution, compensation, satisfaction, and GNR as modalities to address redressing serious violations of international law.⁴⁴ This marked the first time that GNR was affirmed by the General Assembly as a form of reparation.

This section will primarily draw on the Basic Principles and their preparatory reports, together with the Draft Articles and their commentary, to develop a deeper understanding of the principles of satisfaction and GNR and to assess their reparative value. It finally

⁴² Theo Van Boven, "Victims' Rights to a Remedy and Reparation: The United Nations Principles and Guidelines", in Carla Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, 2nd ed., Brill | Nijhoff, Leiden, 2020, p. 36.

⁴³ P. De Greiff, above note 41, 453.

⁴⁴ UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147 (Basic Principles), Principle 18.

turns towards the issue of State Responsibility, and the extent to which these broad reparatory measures, which are often disconnected from individual responsibility, fit within the context of ICL.

2.3.1. Satisfaction

Satisfaction is identified as the tertiary and final obligation under the Draft Articles, following restitution and compensation.⁴⁵ It is presented as an obligation only “insofar as [full reparation] cannot be made good by restitution or compensation.”⁴⁶ This phrasing, as clarified by the commentary on the Draft Articles, underscores the exceptional character of satisfaction and its status as a non-standard form of reparation used only when the other forms of reparation are inadequate or inapplicable.⁴⁷ While no such implied hierarchy exists in the Basic Principles, satisfaction is listed fourth, after restitution, compensation, and rehabilitation (a modality not described in the Draft Articles), but before GNR.⁴⁸

Neither the Draft Articles nor the Basic Principles provides a precise definition of satisfaction, with both texts instead providing a non-exhaustive list of examples of measures that may constitute satisfaction. The Commentary on the Draft Articles states that satisfaction is meant to address injuries that are not “financially assessable, which amount to an affront,” further emphasizing that such redress is required “irrespective of its material consequences.”⁴⁹ This non-material element is a reflection that the obligation to provide

⁴⁵ Draft Articles, above note 30, Art. 30, 35–37.

⁴⁶ *Ibid.*, Art. 37(1).

⁴⁷ *Ibid.*, p. 105.

⁴⁸ Basic Principles, above note 44, Principle 18.

⁴⁹ Draft Articles, above note 30, p. 106.

reparations extends to “any damage, whether material or *moral*, caused by the intentionally wrongful act.”⁵⁰ In cases of moral damage, where harm may not be fully quantified or addressed through restitution or compensation, satisfaction is the only possible form of address provided by the Draft Articles. The non-exhaustive list of measures constituting satisfaction provided by the Draft Articles includes acknowledgement of the breach, an expression of regret, and a formal apology.⁵¹ Additionally, the Commentary explicitly includes assurances or guarantees of non-repetition as potential forms of satisfaction. This suggests the overlap between satisfaction and GNR, which will be addressed further in this article as to whether GNR should be regarded as a form of satisfaction, a general obligation, a unique modality of reparation, or some combination of these classifications.

The five principles are not allocated to address specific differences between moral and material harms in the way described in the Commentary on the Draft Articles. Notably, the Basic Principles recognize that compensation can be provided for moral damage, suggesting both a degree of overlap and a more flexible approach to providing reparations to the victims of International Crimes. The Basic Principles, rather than defining Satisfaction, provide a non-exhaustive list of eight measures which should be included “where applicable”, including public apologies, judicial sanctions against persons found liable, and commemorations.⁵² While the measures could be understood as primarily symbolic in nature, such as public apologies, official declarations, and commemorations, they nonetheless can restore the dignity of victims.⁵³ The list also includes more concrete

⁵⁰ Italics added for emphasis, Draft Articles, above note 30, Art. 31.

⁵¹ *Ibid.*, Art.37(2).

⁵² Basic Principles, above note 44, Principle 22.

⁵³ *Ibid.*, Principle 22 (d), (e), (g).

measures such as judicial sanctions against violators, disclosures of truth, education in IHRL and IHL, and the search for disappeared persons.⁵⁴ While the cessation of continuing violations is included as a form of satisfaction, GNR is not because it is its own form of reparation according to the General Principle.⁵⁵ The forms of satisfaction listed in the Basic Principles clearly have substantial overlap with GNR in contributing to prevention.

In turning back to recent treaty law, arguably the most recent and comprehensive definition reflecting the international community's understanding of satisfaction is noted in ICPED as those measures aimed at the “restoration of dignity and reputation.”⁵⁶

2.3.2. Guarantees of Non-repetition

The Basic Principles identify GNR as those measures that “contribute to the prevention,” highlighting eight specific actions, namely ensuring (1) civilian control of security forces and (2) abidance to due process, fairness, and impartiality, (3) strengthening judicial independence, (4) protecting *inter alia* human rights defenders, (5) providing IHRL and IHL training to all sectors of society, (6) promoting codes of conduct and ethical norms to public servants and (7) mechanisms for preventing conflicts and their resolution, and finally (8) reviewing and reforming laws contributing or allowing gross IHRL or IHL violations.⁵⁷ As noted earlier, the Draft Articles establish GNR not as a modality of reparations but as a general principle of international responsibility; however, the commentary on the Draft

⁵⁴ *Ibid.*, Principle 22 (b), (c), (f).

⁵⁵ *Ibid.*, Principle 22 (a), 23. Cessation is considered a General Obligation under the Draft Articles.

⁵⁶ ICPED, above note 22, Art. 5.

⁵⁷ Basic Principles, above note 44, Art. 23.

Articles notes that satisfaction can include GNR as a form of reparation.⁵⁸ However, an analysis of the work of the International Law Commission (ILC) reflects this not so much a divergence from the Basic Principles, but as a matter of emphasis.

In 1993, Van Boven proposed GNR as an independent modality of reparation in a report that would serve as the foundation for the 2005 Basic Principles.⁵⁹ In noting the ILC's work, Van Boven's approach mirrored the format of this early form of the Draft Articles with regard to satisfaction and GNR.⁶⁰ In 1989, Arangio-Ruiz, the then Special Commissioner on State Responsibility, had written that while most authors considered GNR to be a form of satisfaction, specific attributes distinguished GNR from other forms of satisfaction. These distinctions included GNR's applicability to wrongful acts with a high likelihood of recurrence and its function as "something additional to and different from mere reparation," particularly where re-establishing the pre-existing situation was deemed insufficient.⁶¹ Consequently, early drafts of the *Draft Articles* included GNR and satisfaction as forms of reparations.⁶² In these early drafts of both the UN Basic Principles and Draft Articles, GNR is listed following satisfaction in the same point rather than on its own, as the other principles, highlighting the GNR's continued relationship to satisfaction. This convergence was not by

⁵⁸ Draft Articles, above note 30, Art. 30.

⁵⁹ Theo van Boven, "The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", *United Nations Audiovisual Library of International Law*, 2012, p.1, available at: https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf.

⁶⁰ Theo van Boven, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, U.N. Doc. E/CN.4/ Sub.2/1993/8, 2 July 1993, para. 137 (11).

⁶¹ Gaetano Arangio-Ruiz, *Second Report on State Responsibility*, A/CN.4/425 and Add.1 & Corr.1, 1989, para. 149

⁶² *Ibid.*, para. 191.

chance, with Van Boven noting in his 1993 report that the Draft Articles, which included GNR, were of particular relevance to his study.⁶³

In 2000, under the new Special Rapporteur Crawford, the ILC considered that despite GNR being concerned with the “restoration of confidence”, it was more appropriately classified as a general obligation under the framework of state responsibility rather than as a form of reparation.⁶⁴ Crawford later explained that while there had been debate over whether GNR was more akin to cessation or reparation, the ILC ultimately concluded that GNR’s significance warranted its recognition as a general obligation of state responsibility, with equal status to reparation.⁶⁵ Accordingly, the ILC’s exclusion of measures of GNR from reparations can be viewed not so much as a divergence from the Basic Principles which are concerned only with obligations towards victims, but as emphasizing its role as not only a potential measure related to reparation, but also its role in addressing broader obligations under international law. In fact, it can be seen that the origin of the inclusion of GNR in the Basic Principles is related to the early work of the ILC from which Van Boven took inspiration.

Both the Basic Principles and the commentary on Draft Articles highlight GNR as a reparatory measure in international law. While its exact classification remains unclear as a general obligation, a form of satisfaction, or a unique form of reparation, it is clearly recognized as a potential obligation in the case of the violation of international law. Furthermore, this article argues that while the reparatory benefit of

⁶³ Van Boven, above note 59, para. 47.

⁶⁴ James Crawford, *Third Report on State Responsibility*, A/CN.4/507 and Add.1–4, 2000, paras 57, 121.

⁶⁵ James Crawford, “Articles on Responsibility of States for Internationally Wrongful Acts”, *United Nations Audiovisual Library of International Law*, 2012, p. 5, available at: https://legal.un.org/avl/pdf/ha/rsiwa/rsiwa_e.pdf.

GNR focuses on a restoration of confidence in the rule of law, as opposed to satisfaction as defined as restoration of dignity and reputation, may have significant overlap in actual practice, where implementation will often contribute to both, they do represent distinct modalities of reparations for victims in international law. This demonstrates that, opposed to Sullivan's positioning of GNR as a forward-looking measure, there is also a restorative benefit.

2.3.3. Individual Responsibility and Collective Redress

Despite the growing acceptance of Van Boven's broader reparatory measures as remedies for IHL and IHRL violations, they nonetheless sit uneasily within the ICL paradigm, which is focused on individual criminal responsibility. As increasingly recognized in CIL and adopted by the General Assembly in the Basic Principles, a "state shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law."⁶⁶

Despite this obligation, the question of state responsibility was avoided in the negotiations of the statutes for the first two international criminal tribunals with a reparative mandate, the ICC and ECCC. Scholars have noted that during the negotiations of both statutes, states deliberately focused on individual responsibility while sidestepping the politically sensitive issue of whether states themselves should bear direct reparations obligations.

In the negotiations for the Rome Statute, while the French delegation supported a form of subsidiary responsibility for states, the

⁶⁶ Basic Principles, above note 44, Principle 15.

issue was ultimately dropped.⁶⁷ Muttukumar, a senior member of the United Kingdom's delegation in Rome, argued that "a significant number of delegations would have opposed Article 75 in its entirety, had it included provisions on state responsibility."⁶⁸ Muttukumar nonetheless stressed that the justification for this refusal was primarily grounded in the fact that the court was intended to deal with individual responsibility rather than to "diminish any responsibilities assumed by states."⁶⁹

A similar logic shaped the creation of the ECCC. Although the 1998 UN Group of Experts recommended that any tribunal provide for the possibility of reparations, including through a trust fund, this recommendation was largely ignored in the final design.⁷⁰ Scheffer, who led the negotiations for the United Nations, would note that:

[t]he ECCC was never conceived by those who negotiated its creation as an instrument of direct relief for the victims [. . .] The victims' numbers are simply too colossal and the mandate and resources of the ECCC far too limited to address the individual needs, including the award of reparations, for so many victims.⁷¹

Nonetheless, both the Chambers of the ICC and ECCC would ultimately endorse collective reparations as a way of addressing the

⁶⁷ Christopher Muttukumar, "Reparations to Victims", in Roy S. K. Lee (ed.), *The International Criminal Court: The Making of the Rome Statute, Issues, Negotiations, Results*, Kluwer Law International, 1999, p. 265.

⁶⁸ *Ibid.*, 268.

⁶⁹ *Ibid.*, 267.

⁷⁰ Group of Experts, *Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135*, 18 February 1999, para. 212.

⁷¹ David Scheffer, "Abridged Book Chapter Entitled The Extraordinary Chambers in the Courts of Cambodia", in M. Cherif Bassiouni (ed.), *International Criminal Law*, 3rd ed., M. Nijhoff Publishers, 2008, pp. 17–18.

harm to survivors. These collective reparations, according to Rosenfeld, are justified to “undo the collective harm that has been caused as a consequence of a violation of international law.”⁷² In allowing tribunals to address the collective nature of the crimes, the reparations break from the strict duty-right relationship between the accused and victims and may include broader responsibilities. In advocating for this broader conception of reparations, Moffett, for example, has argued that reparations “are intended to be victim-centred in responding to their harm, rather than being dependent on the identification, prosecution or conviction of an accused.”⁷³ In highlighting the need for broader measures that address community harm, Sarkin explicitly calls for measures of GNR to be utilized in the ICL.⁷⁴ Collective reparations have allowed international criminal tribunals to address this by providing broader forms of reparations.

This tension is particularly visible in the ECCC. With the internal rules modified to permit either the order of reparations against the accused or the endorsement of reparations disconnected from the accused, the court moved beyond the duty-right concept. In navigating this delicate balance, the Supreme Court Chamber (SCC) noted that the reparations of the ECCC “ought to be considered as a contribution to the process of national reconciliation, possibly a starting point for the reparation scheme, and not the ultimate remedy for nation-wide consequences of the tragedies during the DK.”⁷⁵ In

⁷² Friedrich Rosenfeld, “Collective Reparation for Victims of Armed Conflict”, *International Review of the Red Cross*, Vol. 92, No. 879, 2010, p. 733.

⁷³ Luke Moffett, “Reparations for Victims at the International Criminal Court: A New Way Forward?”, *The International Journal of Human Rights*, Vol. 21, No. 9, 2017, p. 1207.

⁷⁴ Jeremy Julian Sarkin, “Why the International Criminal Court Should Apply Restorative Justice and Transitional Justice Principles to Improve the Impact of Its Criminal Trials on Societies around the World”, *International Journal of Transitional Justice*, 2025, p. 16.

⁷⁵ DK stands for Democratic Kampuchea, the official name of the Khmer Rouge Regime. ECCC, *Duch*, Case 001 Appeal Judgment, above note 1, para. 655.

this context, the court's endorsement of collective and moral reparations, including GNR, can be understood as a partial recognition of the actions of the government of Democratic Kampuchea.

While punitive measures in ICL are confined to individual responsibility, a constraint shaped by political compromises during the drafting of tribunal statutes, this should not limit the scope of reparative measures. Where states have permitted broader interpretive spaces, tribunals have justifiably expanded their engagement with collective forms of reparation, which often extend beyond the narrow remit of the duty-right obligations that are beyond the capabilities of the perpetrator to fulfill. The greater inconsistency lies not in the limited acceptance of collective reparations like the broad measures outlined by satisfaction and GNR, but in the persistent refusal of states to acknowledge broader responsibility in the fulfillment of survivors' right to reparation for crimes.

2.4. Jurisprudence of Other Judicial Mechanisms

This section provides a brief analysis of the jurisprudence of GNR in other mechanisms to explore actual jurisprudence beyond the aspirational norms endorsed in documents such as the Basic Principles and positions its measures within the broader jurisprudence. While the ECCC was the first international criminal court to issue a reparations order, other regional and transitional justice mechanisms had already utilized GNR as a modality of reparations. This section will look at the IACtHR, transitional justice bodies in Sierra Leone, and the ICC, which, in the wake of the ECCC decisions, have increasingly looked to broader principles such as GNR as a form of reparation.

2.4.1. *Guarantees of Non-Repetition Inter-American Court of Human Rights*

The IACtHR has the most extensive jurisprudence on GNR as a form of reparation of any regional or international court. 63 percent of cases at the IACtHR from 1998 until 2015 contained measures related to GNR to prevent the repetition of violations of human rights as a form of reparations.⁷⁶ The 1998 *Loayza-Tamayo v. Peru* judgment marked the first ordering of a GNR-related measure where the state of Peru was ordered to “adopt all necessary domestic legal measures” to comply with the American Convention of Human Rights and prevent human rights abuses.⁷⁷ The IACtHR jurisprudence regarding GNR has increasingly grown to develop around four generic mandates: 1. repeal, 2. create, or 3. modify laws, practices, policies, or institutions of the state, or 4. educate public officials or the public to prevent recurrence. For example, in the 2023 *La Oroya Community v. Peru Judgement*, the IACtHR applied these mandates by recommending that Peru adopt mechanisms and apply existing mechanisms in domestic law to incorporate the affected community in decision-making (modification of laws) and provide training for judicial and administrative authorities on environmental matters.⁷⁸ The IACtHR jurisprudence reflects that the court views the effects of the GNR as

⁷⁶ Maria Carmelina Londoño Lázaro and Monica Hurtado, “Guarantees of Non-Repetition in Inter-American Judicial Practice and Their Potential Impact on the Creation of National Law”, *Mexican Bulletin of Comparative Law*, Vol. 50, No. 149, 2017, p. 726, available at: <https://www.scielo.org.mx/pdf/bmdc/v50n149/2448-4873-bmdc-50-149-725.pdf>.

⁷⁷ Inter-American Court of Human Rights, *Case of Loayza-Tamayo v. Peru*, Judgement, (Reparations and Costs), 27 November 1998, para. 168, operative para. 6.

⁷⁸ Inter-American Court of Human Rights, *Case of the Inhabitants of La Oroya v. Peru* Judgement, (Preliminary Objections, Merits, Reparations and Costs), 27 November 2023, para. 342.

reparations that go beyond simply repairing past harm and providing satisfaction to victims, but also creating systematic changes to ensure long-term protection of human rights. The focus of these reparatory measures is primarily aimed at the state, rather than individual perpetrators, a difference that was noted by the SCC of the ECCC even as they utilized it as a basis for reparations related to satisfaction and GNR.⁷⁹

2.4.2. Guarantees of Non-Repetition in Transitional Justice Mechanisms in Sierra Leone

Sierra Leone provides a uniquely rich case study for examining the breadth of measures that theoretically can be taken related to GNR in the aftermath of international crimes, as it employed two complementary transitional justice mechanisms, the Truth and Reconciliation Commission (TRC) and the Special Court for Sierra Leone (SCSL), each with distinct mandates and capacities. The TRC's mandate was explicitly focused on GNR, aiming "to address impunity, break the cycle of violence," and to "make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve the object of [. . .] preventing the repetition of the violations or abuses suffered."⁸⁰ Empowered to examine and propose recommendations to the government of Sierra Leone, the TRC played a substantial role in institutional reform. In response to recommendations from both the TRC and the country, it established human rights bodies and mechanisms, including the independent Human Rights Commission

⁷⁹ ECCC, *Prosecutor v. Kaing Guek Eav alias Duch*, Case File/Dossier No. 001/18-07-2007/ECCC/SC, Case 001 Appeal Judgment, 3 February 2012, fn. 1385 and para.675, citing Inter-American Court of Human Rights, *Ituango Massacres v. Colombia*, Judgment, (Preliminary Objections, Merits, Reparations and Costs), para. 406.

⁸⁰ Truth and Reconciliation Commission Act 2000 (Sierra Leone) paras 6, 15(2).

of Sierra Leone.⁸¹ The TRC also promoted mechanisms to improve governance in Sierra Leone, including revisions to the Civil Service code to prevent breaches in ethics and increase transparency.⁸² The TRC coordinated with the West African Peacebuilding Institute in Accra to implement a conflict prevention and early warning system.⁸³

Meanwhile, the SCSL did not issue measures of GNR as reparations directly, as it lacked a reparative mandate like the ECCC or ICC; nonetheless, as with all ICL mechanisms, it can be said to have addressed GNR by prosecuting potential offenders. While the Residual SCSL mission of protecting witnesses and victims and preserving the court's legacy through its archives can be seen as an important tool in education and the prevention of crimes, the connection is not explicit.⁸⁴ Subsidiary institutions such as the Peace Museum of the SCSL's mission statement are more closely aligned with GNR to "educate the present and future generations about the fight against impunity, the pursuit of accountability and the importance of sustainable peace."⁸⁵ Nonetheless, the contrast between the TLC and SCSL demonstrates the traditional restraint that tribunals have in providing or ordering substantive GNR measures.

2.4.3. Guarantees of Non-Repetition at the International Criminal Court

⁸¹ UN Human Rights Council, *Compilation on Sierra Leone*, UN Doc A/HRC/WG.6/38/SLE/2 26 February 2021, para. 5.

⁸² Sierra Leone Truth and Reconciliation Commission, *Matrix on the Status of Implementation of the Truth and Reconciliation Commission Recommendations*, Freetown, 2010, section 3.

⁸³ *Ibid.*, section 10.

⁸⁴ The Residual Special Court for Sierra Leone Agreement, February 2011, Art. 1.

⁸⁵ Residual Special Court for Sierra Leone, *Sierra Leone Peace Museum*, available at: <https://rscsl.org/peace-museum/>.

While the Rome Statute does not explicitly mention GNR, the non-exhaustive nature of “establishing principles related to reparations” allows the judges to include principles outside of the three explicitly mentioned decisions.⁸⁶ While not explicitly mentioning GNR, in the ICC’s first decision related to the principles to be applied to reparations, the Trial Chamber noted that “reparations in the present case must [. . .] deter future violations.”⁸⁷ In the 2017 *Prosecutor v. Ahmad Al Faqi Al Mahdi* Reparations Order, the judges used their discretion to explicitly issue an order under the principle of GNR, with the order reading “measures aimed at rehabilitating the Protected Sites with effective measures to guarantee non-repetition of the attacks directed against them.”⁸⁸ While the implementation of this order has not been completed, the most recent report by the Trust Fund for Victims (TFV) noted the installation of lighting around ten protected buildings as a deterrence measures, the planting of trees to protect the sites from environmental degradation, and the hiring of guards/laborers to provide maintenance and security for the sites.⁸⁹ While the TFV’s activities are being conducted in coordination with assistance from the state of Mali, the actual implementation of these measures is being conducted by UNESCO and the TFV.⁹⁰

⁸⁶ Rome Statute (n 25) Art. 75(1).

⁸⁷ International Criminal Court, *Prosecutor v Thomas Lubanga Dyilo*, No. ICC-01/04-01/06, Decision establishing the principles and procedures to be applied to reparations (Trial Chamber I), 7 September 2012, para. 179.

⁸⁸ *Prosecutor v Ahmad Al Faqi Al Mahdi*, No. ICC-01/12-01/15, Reparations Order (Trial Chamber VIII), 17 August 2017, para. 67.

⁸⁹ *Prosecutor v. Ahmad Al Faqi Al Mahdi*, No. ICC-01/12-01/15, Thirty-Fourth Update Report on the Updated Implementation Plan (Trial Chamber II), 29 January 2025, paras 51, 55, 58.

⁹⁰ Governor of the Timbuktu Region, *Establishing a Regional Coordination and Monitoring Commission for the Collective Reparations Measures Related to the Maintenance and Rehabilitation of Protected Buildings in Timbuktu, Commemorative Ceremonies, and Local Economic Revitalization, under the Fund for the Benefit of Victims*, Decision No. 2022-0147/GRT-CAB, 5 July 2022.

The 2024 *Prosecutor v. Dominic Ongwen* Reparations Order likewise mentioned the principle of non-repetition and discussed education as a means of accomplishing non-repetition. The order emphasized the “importance of rehabilitating all child victims and reintegrating them into society in order to end the successive cycles of violence that have formed an important part of past conflicts.”⁹¹ Specific projects included “a museum regarding the war that can be used as an educational and training center for peacebuilding.”⁹² While not a principle listed in the Rome Statute, it is clear that the ICC, through its orders and TFV in its actions, is increasingly focusing on GNR as a method of providing redress against harm. However, as opposed to the broad institutional reform orchestrated by the TRC of Sierra Leone, the measures of the ICC and Residual SCSL have been more modest, focusing on education and modest measures of prevention.

2.5. Summary

Across treaty law, CIL, and jurisprudence over the past three decades, GNR has increasingly emerged as a form of reparation despite its legal basis remaining significantly less settled than restitution, compensation, satisfaction, or even rehabilitation. While it arguably does have a restorative element, namely the restoration of confidence or trust in the rule of law, it also includes a forward-looking aspect. GNR typically manifests itself in two main ways: education and institutional reform.

3. Guarantees of Non-Repetition at the ECCC

⁹¹ *Prosecutor v. Dominic Ongwen*, No. ICC-02/04-01/15, Reparations Order (Trial Chamber IX), 28 February 2024, para. 85.

⁹² *Ibid.*, 607.

Nineteen of the official judicially endorsed projects of the ECCC arguably contribute either primarily or secondarily to GNR, second only to projects related to satisfaction. Most of these efforts were initiatives focused on education in schools or the public more broadly, and seven were listed explicitly as being intended to contribute towards GNR during their submission to the court.⁹³ Several, including the establishment of the ECCC itself, can be considered examples of structural reform that could contribute to the prevention of future crimes. In addition, the reform of the rules following Case 001 allowed the Victim Support Section to independently pursue reparation projects. Today, the residual functions of the court include extensive focus on the dissemination of information, education, and providing a voice to survivors, which serve as further GNR efforts.⁹⁴ While this analysis reveals achievements, this section also critically analyzes both the effects for survivors and, regarding structural reform, the significant limitations of these reparatory initiatives.

Most of the efforts of the ECCC's judicial and non-judicial reparations projects contributing to GNR reflect education and institutional mechanisms for preventing and resolving conflicts. Therefore this article will first analyze the judicial and non-judicial reparations projects education which align closely with Principle 7(d) of the Basic Principles or the provision of IHRL and IHL training before analyzing the limited mechanisms that the ECCC itself and reparations that have contributed to conflict resolution and Principles 7(c), (g), and (h) of the Basic Principles which could be considered to

⁹³ ECCC, *Nuon, Khieu*, Case 002/02 Judgment, above note 17, paras 4456, 4460

⁹⁴ UNGA, Res. 75/257 B, 7 July 2021, Article 2(1). See also ECCC, *The Court Report 2023*, ECCC, 2024, available at: https://eccc.gov.kh/sites/default/files/publications/THE%20COURT%20REPORT%202023_EN.pdf

contribute towards the restoration of victims confidence in the rule of law as well as possibly a restoration of dignity and reputation.

3.1. Legal Framework and Chamber Interpretation related to Guarantees of Non-Repetition

While not directly noted in the Internal Rules, the SCC nonetheless highlighted that measures related to GNR were an adequate form of collective and moral reparation under the ECCC framework in Case 001.⁹⁵ Subsequently, in Case 002/01, the Trial Chamber welcomed any measure which “awakens public awareness to avoid repetition of acts such as those that occurred.”⁹⁶ In completing this evolution in the final submissions by the Co-Civil Party Lawyers in Case 002/02, seven requests were categorized under GNR.⁹⁷ The Trial Chamber, in turn, returned its judgment with all seven of the endorsed reparations categorized expressly under GNR.⁹⁸ This highlights that the court found this modality to be an appropriate form of collective and moral reparation.⁹⁹ Nonetheless, with the SCC holding that it had no power to issue an order to the Royal Government of Cambodia or any other institution or individual that was not a party to the proceedings and unwilling to endorse any measure which could not be enforced measures related to GNR were limited to what limited powers the court itself had and cooperation with the government and other actors.¹⁰⁰

⁹⁵ ECCC, *Duch*, Case 001 Appeal Judgment, above note 1, para. 675.

⁹⁶ ECCC, *Prosecutor v. Nuon Chea and Khieu Samphan*, Case File/Dossier No. 002/19-09-2007/ECCC/TC, Judgment (Trial Chamber), 7 August 2014, para.1164.

⁹⁷ *Prosecutor v Nuon Chea and Khieu Samphan*, Case No 002/19-09-2007-ECCC/TC, Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 (Trial Chamber), 30 May 2017, para. 26.

⁹⁸ ECCC, *Nuon, Khieu*, Case 002/02 Judgment, above note 17, paras 454, 457.

⁹⁹ *Internal Rules (Revision 6)*, above not 11, Rule 23 quinquies (1)(a).

¹⁰⁰ ECCC, *Duch*, Case 001 Appeal Judgment, above note 1, paras 653, 666.

Table One: GNR in the 26 Judicially Endorsed Reparations Projects of the ECCC¹⁰¹



3.2. Education

3.2.1. Judicially Endorsed Reparations

¹⁰¹ Figure 1 created by the author. For a consolidated list of all reparations, implementing partners, and a brief description, see: *Guide to the ECCC*, above note 18, pp. 247–254.

Arguably, all nineteen of these GNR-related reparations projects, including the seven which were officially endorsed, were aimed at public education, employing both traditional and innovative methods. Teacher education programs and the creation of additional educational materials have been instrumental in incorporating the history of the Khmer Rouge into the school curricula.¹⁰² This ensures that younger generations are exposed to lessons on justice and accountability. Furthermore, museums and memorials serve as physical reminders of the regime's crimes, encouraging public dialogue, awareness, and a narrative of reconciliation.¹⁰³ Notably, the ECCC has embraced technology and the arts through initiatives such as the development of a multilingual mobile application and interactive plays performed across Cambodia.¹⁰⁴ Film, dance, music, theatre, and storytelling were all judicially endorsed mediums providing a forum for GNR initiatives. These efforts extend the reach of education, ensuring accessibility to diverse audiences and promoting messages of non-repetition.

One judicially endorsed reparation that the author had the opportunity to witness firsthand was “The Courageous Turtle.”¹⁰⁵ The court endorsed this reparation, stating that the Turtle Project, along with two other awards:

Concern forms of education aimed at guaranteeing non-repetition, comply with the requirements of Internal Rule 23quinquies, and are of a collective and moral nature. As this Chamber held previously [in case 002/01], public education regarding the suffering of

¹⁰² See Table 1 Reparations one, seven, and nine.

¹⁰³ See Table 1 Reparations two, five, and eighteen.

¹⁰⁴ See Table 1 Reparations seven, ten, and fifteen.

¹⁰⁵ ECCC, *Nuon, Khieu*, Case 002/02 Judgment, above note 17, para. 4423.

victims and the nature of the DK regime is likely to advance the goals of acknowledgment, remembrance, awareness of the crimes committed and the suffering resulting therefrom.¹⁰⁶

Notably, the Court did not require a direct connection between the reparation project and the individual accused, nor even a necessary link to the specific crimes for which they were convicted. Instead, the emphasis was placed on broader educational efforts regarding the Democratic Kampuchea regime as a whole. Arguably, these measures of GNR seemed to be more connected with the responsibility of the Democratic Kampuchea regime than the individual liability of the convicted individual.

Over the endorsed period from 2016 to 2017, the actors performing this reparations project travelled to all 25 Cambodian provinces, delivering 129 performances at 37 schools and universities. During this period, the initiative reached 9,619 students and engaged 189 Civil Parties who shared their lived experiences in intergenerational dialogues following the performances.¹⁰⁷ The play was submitted to the ECCC as a reparation falling under GNR, which was “promoting historical awareness and civil courage in Cambodia.”¹⁰⁸ Participating in one such intergenerational dialogue, Civil Party Ek Vireak reflected, “I am very happy to share my story and my life under the Pol Pot regime with the young generation as I want them to know the

¹⁰⁶ *Ibid.*, para. 4454.

¹⁰⁷ Cambodian German Cultural Association (KDKG e.V.), *The Turtle Report: Community Theatre and Peace Dialogues Cambodia 2016–2018*, KDKG eV, 2018, p. iv.

¹⁰⁸ ECCC, *Nuon, Khieu*, Final Claim for Reparation in Case 002/02 above note 97, para.15–35.

sufferings during this regime and I want to tell them what happened and why, so it doesn't happen again in Cambodia.”¹⁰⁹

3.2.2. *Non-Judicial Projects*

The modification of the Internal Rules after Case 001 allowed the Victim Support Section to independently pursue additional reparations projects for victims regardless of a conviction or participants' status as Civil Parties. In all, the Victim Support Section implemented four additional projects under the revised rules, two of which were related to GNR, namely the construction of a Community Peace Learning Center and raising awareness for victims of gender-based violence (GBV) under the Khmer Rouge Regime.¹¹⁰ Despite some critiques that this measure was underutilized, this alternative pathway achieved some notable success.¹¹¹ The GBV project ultimately reached 3,235 survivors of gender based violence under the Khmer Rouge, including 795 non-civil parties, and 31,395 secondary beneficiaries, including uniformed personnel, legal officers, and health professionals.¹¹²

In conducting its residual functions, education is one of the primary functions of the ECCC through its dissemination mandate. The ECCC Mobile Resource Center stands as one such example, which the court has described as a tool to promote “education, healing and

¹⁰⁹ *The Turtle Report*, above note 106, p. 31.

¹¹⁰ *Guide to the ECCC*, above note 18, p. 108.

¹¹¹ Christoph Sperfeldt, *Practices of Reparations in International Criminal Justice*, Cambridge University Press, Cambridge, 2022, p. 267.

¹¹² Julian Poluda, Sineth Siv, and Sothary Yim, *Final Evaluation Report: Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-Based Violence under the Khmer Rouge Regime: Final Evaluation of the ECCC Non-Judicial Gender Project (Phase 2)*, United Nations Trust Fund to End Violence against Women, Victims Support Section of the Extraordinary Chambers in the Courts of Cambodia, Transcultural Psychosocial Organization Cambodia, Cambodia, September 2019, pp. 85–86.

reconciliation” and “raise awareness among Cambodians about their recent history.”¹¹³ The Mobile Resource Center is a bus intended to bring the message of the court beyond the capital of Phnom Penh. Through intergenerational dialogue with survivors and the dissemination of the court's work by ECCC outreach officers, participants are exposed to the history of the court and the Khmer Rouge and presented a message of reconciliation. The Resource Center’s work is enhanced by cooperation with local organizations such as Youth for Peace, an organization dedicated to “social justice, reconciliation, and peace.”¹¹⁴ Furthermore, the Public Affairs team has leveraged a range of social media platforms, including Telegram, YouTube, and TikTok, as well as a state-of-the-art legacy website, to enhance public awareness and engagement.¹¹⁵ As of January 2025, the ECCC’s TikTok page had approximately 297,000 followers, surpassing the International Court of Justice’s following on X (approximately 246,000), but falling short of the International Criminal Court’s following on the same platform (approximately 831,000).¹¹⁶ Messages

¹¹³ Extraordinary Chambers in the Courts of Cambodia, *The Court Report 2024*, ECCC, 2025, p. 32, available at https://backend.eccc.gov.kh/uploads/WEB_THE_COURT_REPORT_2024_EN_d64e54525e.pdf. See also: Nathan Thomas and Patrick Thorne, “The Extraordinary Bus: Shifting Gears in International Criminal Law”, *ECCC*, 11 November 2024, available at: <https://eccc.gov.kh/en/resources/news-and-outreach/driving-change-the-eccc-mobile-resource-centres-journey-to-connect-cambodias-past-and-present>.

¹¹⁴ Youth For Peace Organization, *Samroung Knong Security Center 1975–1979: The Khmer Rouge Prison*, Education Justice and Memory Network, Phnom Penh, 2023, p. 91.

¹¹⁵ See also Andre Kwok, “Vlogging International Criminal Justice? Digital Optics at the Khmer Rouge Tribunal”, *Just Security*, 10 September 2024, available at: <https://www.justsecurity.org/99047/khmer-rouge-tribunal-tiktok/>.

¹¹⁶ Extraordinary Chambers in the Courts of Cambodia, TikTok, available at: <https://www.tiktok.com/@eccckh> accessed 24 January 2025; International Court of Justice, X (formerly Twitter), available at: https://x.com/cij_icj?lang=en, accessed 24 January 2025; International Criminal Court, X (formerly Twitter), available at: https://x.com/IntlCrimCourt?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor, accessed 24 January 2025.

on Telegram, for example, frequently feature GNR-related tags such as #NeverAgain, #RememberThePastBuildingTheFuture, and #Awareness.¹¹⁷ While it is impossible to quantify the direct impact of such engagement on GNR objectives, the ECCC's active presence on these platforms represents an innovative approach to expanding the reach of transitional justice initiatives and amplifying the voices of victims in a digital age.

Judicially endorsed projects like “The Courageous Turtle,” official non-judicial reparations projects, and residual functions such as the Mobile Outreach Center are models of innovative reparative projects that contribute to GNR. Yet an inherent tension remains where “civic courage” against the Khmer Rouge is encouraged, while, simultaneously, political dissidents are reportedly silenced.¹¹⁸ Some historical narratives are privileged over others simply due to the jurisdiction of the court. While the author never witnessed any curbing of speech during these projects, the mandate of the court to “senior leaders of Democratic Kampuchea and those who were most responsible for the crimes [...] committed during the period from 17 April 1975 to 6 January 1979” implicitly limits GNR initiatives of the court to non-repetition of the crimes of the Khmer Rouge rather than ending a culture of impunity more broadly.¹¹⁹ Discussions of crimes committed after this period by forces other than the Khmer Rouge are discussed only in hushed tones.

¹¹⁷ Extraordinary Chambers in the Courts of Cambodia Telegram, available at: <https://t.me/ECCCKH>, 07, 09, and 30 January.

¹¹⁸ For example, see: Reuters, “Cambodia Opposition Politician Jailed For 2 Years for Incitement”, *VOA News*, 26 December 2024, available at: <https://www.voanews.com/a/cambodia-opposition-politician-jailed-for-2-years-for-incitement/7914466.html>; Jonathan Head, “A Politician Was Shot Dead in Bangkok. Did Another Country Do It?” *BBC News*, 9 January 2025, available at: <https://www.bbc.com/news/articles/cdr0rx307p3o>.

¹¹⁹ ECCC, *Law on the Establishment of the ECCC*, above note 7, Art.1.

3.3. Institutional Reform

First and foremost, it must be recognized that the establishment of the court itself is an example of institutional reform that has contributed to GNR. Yet, as noted by Perez-Leon, this and its related reparations programs are arguably the only transitional justice mechanisms backed by the Cambodian government.¹²⁰ Holding that it had no competence to order reparations or even make recommendations to the government, efforts at institutional GNR were limited. Institutional GNR inherently requires substantial coordination and support from the government.¹²¹ Nonetheless, the court did endorse two reparations, which can be seen as contributing to GNR. First, the Legal Documentation Center (LDC) and the creation of a National Day of Remembrance demonstrate some institutional change. However, the primary focus of both projects is primarily retrospective rather than forward-looking, like the reforms focused on by the IACtHR. Unlike the IACtHR, which often mandates legal and institutional reforms, or the Sierra Leone TRC, which recommended the establishment of human rights commissions, the ECCC has not been able to contribute to systemic change. Strengthening judicial independence, promoting accountability, and safeguarding civil liberties remain critical gaps in the ECCC's approach.

With a mission to bring about “national reconciliation, stability, peace and security,” one of the main goals of the ECCC's establishment can be seen as contributing to GNR.¹²² As one of the main purposes of

¹²⁰ Juan-Pablo Perez-Leon-Acevedo, “Reparation Modalities at the Extraordinary Chambers in the Courts of Cambodia (ECCC)”, *Law & Practice of International Courts and Tribunals*, Vol. 19, No. 3, 2020, p. 457.

¹²¹ ECCC, *Duch*, Case 001 Appeal Judgment, above note 1, paras 653, 666.

¹²² UN-Cambodia Agreement, above note 7, Preamble.

ICL more broadly, the court serves the expressivist purpose of demonstrating that the crimes committed by the Khmer Rouge will not be tolerated. By prosecuting the Khmer Rouge, a message is given that states that crimes like these will not be tolerated in the state of Cambodia, potentially discouraging the future commission of these crimes. The prosecution of senior leaders, including the former head of state, Khieu Samphan, demonstrates that no one is immune from the law. Some historians and Cambodians suggest that the government's opposition to the cases against Meas Muth and Sou Met (who died before indictment) stemmed more from Hun Sen's discretion and their roles as government advisors than from a genuine commitment to justice.¹²³ The narrative of no one being above the law is undermined by the perception that immunity from crimes is, in fact, possible if one is aligned with the current government. However, the broad dissemination of all the crimes investigated, regardless of whether they resulted in a conviction, through the ECCC Legacy Website and Outreach Projects, which focus not only on the convictions but also on the existence of clear and consistent evidence of crimes in Cases 003 and 004, may have a mitigating effect on this issue.¹²⁴

The endorsement of a National Remembrance Day, along with the Public Memorials Initiative, marked the first direct cooperation with the Royal Government of Cambodia in the implementation of reparations projects. The provision of a national holiday was seen by the court as a measure which would appropriately give effect through the acknowledgement to victims and “promote a culture of peace and

¹²³ Reuters, “Khmer Rouge Genocide: Justice Delayed May Be Justice Denied”, *VOA News*, 10 January 2012, available at <https://khmer.voanews.com/a/khmer-rouge-genocide-justice-delayed-denied-trial-reuters/1619178.html>.

¹²⁴ *The Court Report 2024*, above note 113, pp. 19, 35.

to contribute to national reconciliation.”¹²⁵ In considering that the implementing partner, the Cambodian Government, had expressed its willingness to declare an annual day of remembrance, the Court found that no additional funding was required and therefore endorsed the measure as a reparation.¹²⁶ Despite the positive cooperation between the ECCC and the state, the fact that the day was removed as a public holiday in 2019 demonstrates the fragility of the non-binding reparations of the ECCC.¹²⁷

Proposed by the Council of Ministers of Cambodia and funded through the Cambodian national government, the LDC is a judicially endorsed reparation project that has some of the hallmarks of institutional reform that continues today.¹²⁸ While its primary functions of outreach projects, funding genocide research, and academic exchanges fall more under educational GNR initiatives, it is a department within the Council of Ministers.¹²⁹ As a department within the government, it, along with the ECCC, has firsthand access to the Counsel for Ministers and the Prime Minister to serve as a voice for the victims of the Khmer Rouge. However, with the narrow focus of the LDC and the court, broader and more substantial GNR efforts face significant challenges. As opposed to many of the other reparations projects, the work of the LDC continues today through coordination with the Residual Functions of the ECCC.¹³⁰

¹²⁵ *Prosecutor v Nuon Chea and Khieu Samphan*, Case File/Dossier No. 002/19-09-2007/ECCC/TC Judgement (Trial Chamber), 7 August 2014, para. 1152.

¹²⁶ *Ibid.*, para. 1153.

¹²⁷ Nhim Sokhorn, “Observers See Politics in Removal of Holidays”, *VOD English*, 7 August 2019, available at <https://vodenglish.news/observers-see-politics-in-removal-of-holidays/>.

¹²⁸ ECCC, *Nuon, Khieu*, Case 002/01 Judgement, above note 125, para. 4429.

¹²⁹ Interview with Seang Sopheak, Deputy Director of the Legal Documentation Center, Phnom Penh, 8 November 2024 (on file with author).

¹³⁰ *Residual Functions*, above note 18, para. 26.

While some forms of GNR, namely related to education, punishment of the perpetrator, and symbolic acknowledgment, are implementable within the scope of international criminal law, it is clear that even limited structural reform requires cooperation from the state. Nonetheless, the limited cooperation by the Cambodian state demonstrates an important precedent in ICL.

3.4. Victims' Priorities

A 2013 preliminary study of Civil Party victims in Case 002 revealed that only 6 percent of respondents were motivated to participate in the ECCC process to prevent the return of the Khmer Rouge, indicating that GNR was not the primary concern for most victims.¹³¹ A 2018 study similarly found that only 7 percent of Civil Parties were motivated by prevention.¹³² In the 2022 Victims Workshop in preparation for the Residual Functions of the court, none of the proposals by victims related directly to prevention, but rather victims submitted proposals more closely related to the modalities of satisfaction and rehabilitation such as the construction of stupas, provision of health care, the creation of survivor associations, and commemoration.¹³³ However, the top three motivations of survivors in the 2018 study were a desire to have their suffering acknowledged (42.8 percent), to obtain justice for relatives (36.9 percent), and to tell

¹³¹ Nadine Kirchenbauer et al., *Victims Participation Before the Extraordinary Chambers in the Courts of Cambodia: Baseline Study of the Cambodian Human Rights and Development Association's Civil Party Scheme for Case 002*, ADHOC and Harvard Humanitarian Initiative, Phnom Penh, January 2013, p. 34.

¹³² Timothy Williams et al., *Justice and Reconciliation for the Victims of the Khmer Rouge? Victim Participation in Cambodia's Transitional Justice Process*, Swiss Peace Foundation, November 2018, p. 71.

¹³³ David Cohen, Daniel Mattes, and Sangeetha Yogendran, *Workshop Report on Victim-Related Activities During the Implementation of the ECCC's Residual Mandate*, ECCC, 15 July 2022, p. 127.

their stories (33.8 percent).¹³⁴ This emphasis on storytelling underscores the need for dignity restoration and recognition. Mechanisms tied to GNR, such as intergenerational dialogues and educational programs, fulfill this need by creating platforms for victims to narrate their experiences, ensuring that their suffering is acknowledged and memorialized. These measures provide victims with a chance to be heard, acknowledged, and to provide value, contributing to their moral and psychological restoration. Even if GNR's preventive goals may not align directly with the victims' expressed priorities, its implementation often facilitates a broader reparative effect that still may achieve the victims' desires.

With 92.5 percent of Civil Parties believing that the ECCC was rebuilding trust prior to Case 002, and 90 percent trusting the court, a Cambodian institution, it seems that the Court was contributing to a restoration of confidence.¹³⁵ Furthermore, in the survey following the trials, 60 percent of Civil Parties expressed that they completely trusted the ECCC, and another 30 percent expressed some trust, demonstrating that whether a primary reason that people chose to participate as Civil Parties, it may have been a positive secondary effect.¹³⁶ Yet the extent to which the GNR-related reparations have directly contributed to this is undermined to an extent by the same study finding that 81.4 percent of Civil Party respondents, including 60 percent of Civil Parties who had participated in a reparation project, could not name a single reparations.¹³⁷

4. Conclusion

¹³⁴ T. Williams, above note 132, p. 71.

¹³⁵ Nadine, above note 131, pp. 32.

¹³⁶ T. Williams, above note 132, 64.

¹³⁷ *Ibid.*, 116.

4.1. A Restoration of Dignity and Trust and Value to Victims

In considering whether the ECCC's GNR measures constitute a distinct form of reparation for the victims in the Cambodian context, the answer is a qualified yes. While GNR has a forward-looking element in the prevention of future crimes, its restorative benefit can be viewed as a restoration of confidence in the rule of law. As noted in the survey of Civil Parties, the broader practices of the court appear to have had a positive effect in restoring confidence in the rule of law, yet the extent to which GNR-related judicial reparations are the primary cause seems limited, given the large proportion of Civil Parties' lack of awareness.

Regarding the extent to which the GNR has contributed to the actual prevention of the recurrence of crimes, the answer is much less clear. Although seven projects were officially endorsed as GNR, their preventative impact was minimal, as they concentrated almost exclusively on the Khmer Rouge, a group that no longer presented a genuine threat, while leaving broader political challenges unaddressed. The reparations projects were constrained by the willingness of the Cambodian government to work with the ECCC. Therefore, the measures primarily focused on education about the Khmer Rouge rather than the institutional reform that could have led to the prevention of violations of human rights more generally. In some cases, the court and its initiatives may have served more as state legitimization than genuine prevention. The frequent invocations of the Khmer Rouge by Hun Sen, the former prime minister, to discredit political opposition underscore the potential for GNR rhetoric to be co-opted, thereby rendering it, in some cases, counterproductive to

the aim of GNR.¹³⁸ Still, this does not mean the ECCC's GNR measures are meaningless as they still maintain a restorative value in providing a restoration of dignity and a limited restoration of confidence in the government.

4.2. GNR's Uneasy Position within ICL

The connection between GNR-related reparations and individual criminal responsibility may often be indirect, yet collective reparations nonetheless retain important normative value. The purpose of the ECCC was not only to punish those most responsible but to promote reconciliation in Cambodia, and collective and moral reparations were the approach adopted by the Chambers to accomplish this.

Regardless of whether Khieu Samphan, the former head of state of Democratic Kampuchea, can provide redress to a victim, that does not diminish the right of victims under international law to reparations not only against the convicted, but against other perpetrators and, arguably, the state, a tension that international criminal tribunals have been structurally constrained from addressing.¹³⁹ The distinction

¹³⁸ Kevin Doyle, "Marking the End of Pol Pot's Rule in Cambodia", *Al Jazeera*, 7 January 2015, available at: <https://www.aljazeera.com/features/2015/1/7/marking-the-end-of-pol-pots-rule-in-cambodia>; Lauren Crothers, 'Cambodia PM Warns Muslims of Danger of Return to Past', *Anadolu Agency*, Phnom Penh, 16 October 2015, available at: <https://www.aa.com.tr/en/world/cambodia-pm-warns-muslims-of-danger-of-return-to-past/445610>; Kuch Naren, 'Hun Sen Warns Of Civil War If ECCC Goes Beyond "Limit"', *The Cambodia Daily*, 27 February 2015, <<https://english.cambodiadaily.com/news/hun-sen-warns-of-civil-war-if-eccc-goes-beyond-limit-78757/>> accessed 28 April 2025.

¹³⁹ While not defining what this right was, the SCC suggested that the reparations of the ECCC regime were unable to fulfil the victims right in saying "that the limited reparations available from the ECCC do not affect the right of the victims to seek and

between GNR in the laws of state responsibility and in international criminal reparations should not be overstated. In ICL, IHRL, and state responsibility alike, the right of the individual victim to reparation remains central. What differs is the mechanism of enforcement. Under IHRL and state responsibility, the state, as a duty bearer, is legally bound to implement measures such as education or institutional reform to prevent further violations. In ICL, by contrast, collective reparations, including GNR, depend on cooperation from states and implementing partners because the convicted perpetrators often lack the means to provide these forms of reparations. In the limited legal and political space afforded by hybrid tribunals such as the ECCC and ICC, the use of GNR and other broad forms of reparation to address collective harm should not only be permitted but actively encouraged, even when this diverges from the traditional duty–right constructs of criminal law.

Though constrained compared to the IACtHR or the TRC of Sierra Leone, even modest state cooperation, such as the establishment of the LDC at the ECCC and the declaration of a national holiday, has normative and practical value. The LDC, for example, is one of the few reparations projects still in operation even following the conclusion of Japanese support for the project.

obtain reparations capable of fully addressing their harm in any such proceedings that could be made available for this purpose in the future,” the ECCC was able to defer responsibility from itself while nominally recognizing survivor’s right to more substantial reparations.” Furthermore, with regard to state responsibility, the SCC held that “As a criminal tribunal, albeit of an internationalised character, the ECCC is not vested with the authority to assess Cambodia’s compliance with these international obligations.” ECCC, *Duch*, Case 001 Appeal Judgment, above note 1, paras 654, 668.

The endorsement of GNR as a distinct reparative category by the ECCC and the Chambers' cooperation with the state of Cambodia to achieve limited measures establishes an important precedent that should be followed in ICL. International criminal tribunals can utilize GNR as a method of recognizing the rights of victims under international law, even, or perhaps especially, when the harm is collective in nature and the prospect of direct compensation is unfeasible. Where measures of GNR may fail to truly provide a genuine preventative function, they may contribute to a measure of the closely related modality of satisfaction.

The ECCC's endorsement of GNR as a collective and moral reparation, while certainly facing limitations, represents an advancement in victim-centric justice that is continuing under the residual functions of the ECCC. It has contributed to both the restoration of dignity and trust, as reflected in victims' testimonies and surveys, while simultaneously contributing to broader goals of international law, namely the cessation and non-repetition of crimes. Through its jurisprudence, the ECCC has advanced GNR as an additional tool both to meet victims' needs and to foster accountability and deterrence of future crimes. As such, the ECCC's approach to GNR should serve as a model for other courts and tribunals, offering a means to restore victims' confidence in the rule of law and, as noted in the 2024 *Onghwen* reparations order, to "end the successive cycles of violence that have formed an important part of past conflicts."¹⁴⁰

¹⁴⁰ ICC, *Onghwen* (Reparations Order), above note 91, para.85.