

**BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CIVIL PARTY LEAD CO-LAWYERS' INTERIM REPORT ON REPARATIONS IN  
CASE 002/02 AND RELATED REQUEST**

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**Before:**

**Trial Chamber**

Judge NIL Nonn, President  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge YOU Ottara  
Judge Claudia FENZ

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## I. BACKGROUND

1. At the Initial Hearing on 30 July 2014, the Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) provided their initial specification of civil party reparation awards in Case 002/02. The Lead Co-Lawyers stated that they would provide an initial report concerning the progress of the reparation project development process.<sup>1</sup>
2. Internal Rule 23 *quinquies* provides for the right of Civil Parties to seek collective and moral reparation awards if an Accused is convicted. Reparations projects must be linked to the harm caused by crimes within the scope of Case 002/02 and provide benefits to the Civil Parties that address this harm. The Lead Co-Lawyers further note that as the Civil Parties form a consolidated group, collective and moral reparations “may not only address the harm suffered by this limited group, but also collaterally benefit a large number of unrepresented victims who have suffered harm as a result of the commission of crimes for which the Accused are convicted.”<sup>2</sup>
3. As the Accused in this case have been found to be indigent, the Lead Co-Lawyers primarily seek implementation and funding of Civil Party requests for reparation awards from the Royal Government of Cambodia through the Office of Administration<sup>3</sup> and from non-governmental organizations (“NGOs”) via Internal Rule 23 *quinquies* (3)(b). The Lead Co-Lawyers, together with the Victims Support Section (“VSS”), are responsible for consulting with Civil Parties, Civil Party Lawyers and other stakeholders in the development of potential reparations projects to present to the Trial Chamber for its consideration at the end of trial.

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<sup>1</sup> Transcript of Proceedings, Case File No. 002/19-09-2007-ECCC/TC, **E1/240.1**, 30 July 2014, Initial hearing, pp. 10-11. *See also*, Agenda for further Initial Hearing in Case 002/02, **E311/1**, 7 July 2014, para. 5.

<sup>2</sup> Case 002/01 Judgement, **E313**, footnote 3210. The Internal Rules also provide for non-judicial measures; however this mechanism has been rarely utilized. The Victims Support Section is solely entrusted with their development and implementation. *See* Internal Rule 12*bis*(4).

<sup>3</sup> 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, Resolution 60/147, UN General Assembly, 16 December 2005, Articles 15-18. Article 16 provides that “States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”

## II. CONSULTATION PROCESS

4. Consultation with respect to the development of judicial reparations projects by the Lead Co-Lawyers and VSS takes two primary forms. The first is to consult with Civil Parties directly or through their respective Civil Party Lawyers as to the reparations that would be meaningful to them. The second is to consult with stakeholders from all relevant segments of society, including victims, survivor organizations, NGOs, governments, etc., in a transparent and participatory process.
5. At the beginning of the application process in Case 002, the Victim Information Form (“VIF”) asks potential Civil Parties what awards they would request to address the harm they suffered. Eighty-one percent of Civil Parties from Case 002 provided information on the VIFs as to their requests for awards as follows:<sup>4</sup>
  - Access to Medical Services – 22 %
  - Construction of Memorials – 7 %
  - Justice – 18 %
  - Schools – 16 %
  - Individual Reparations – 13 %
  - Documentation of KR Crimes – 11 %
  - Infrastructure – 7 %
  - Religious Buildings – 3 %
6. Prior to the severance of proceedings and the opening of hearings in Case 002/01, VSS, Civil Party Lawyers and NGOs organized consultations with Civil Parties. In October 2010, the Lead Co-Lawyers facilitated consultations on reparations based on questionnaires provided to Civil Party Lawyers to ask their Civil Parties. The results from this consultation were compiled into a detailed report prepared by VSS in May 2011.<sup>5</sup> These results guided the project development process for reparations in Case 002/01 and continue to guide the process in Case 002/02.

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<sup>4</sup> Preferences of the Civil Parties as to the form of collective and moral reparation they would like to obtain, Presentation by VSS during the Workshop “Reparations and other non-judicial measures for the benefit of victims”, p. 5.

<sup>5</sup> Compilation and Analysis of Civil Party Lawyers Requests for Collective and Moral Reparation at the Extraordinary Chambers in the Courts of Cambodia, produced by the Victims Support Section, May 2011.

7. On 11 June 2014, the Lead Co-Lawyers and VSS hosted the *Stakeholders Consultation on Case 002/02 Reparations: Lessons Learned, Best Practices & Next Steps* in order to facilitate the further contributions and participation of Civil Parties and victims, Civil Party Lawyers, civil society organizations, victims associations, state authorities and donors in the reparations process for Case 002/02.
8. On 21 July 2014, VSS and the Lead Co-Lawyers facilitated a consultation with Civil Parties in Phnom Penh in order to update the Civil Parties on the implementation of the reparation projects from Case 002/01, to provide an overview of potential reparations projects for Case 002/02 that resulted from the Stakeholder Consultation and to solicit ideas for other potential reparations projects from the Civil Parties themselves in small group discussions with their lawyers.
9. On 4 September 2014, the Lead Co-Lawyers and VSS hosted a second stakeholder consultation on the objects and output of stakeholder consultations. The reparations process in Case 002 was explained and a further discussion of potential reparations projects in Case 002/02 took place.
10. On 6 October 2014, VSS facilitated a Civil Party forum in Phnom Penh. Part of the forum involved small group discussions between Civil Parties and their respective Civil Party Lawyers, in which a questionnaire prepared by the Lead Co-Lawyers relating to reparations requests in Case 002/02 was discussed.
11. On 13 November 2014, the Lead Co-Lawyers distributed a guidebook on judicial reparations and form for project proposals to various stakeholders.<sup>6</sup> To date, the Lead Co-Lawyers have received 18 project proposals from NGOs and seek to develop several other projects with the assistance of the Royal Government of Cambodia, through the Office of Administration,<sup>7</sup> in response to requests made by the Civil Parties. Project descriptions are attached as annexes to this report.<sup>8</sup>

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<sup>6</sup> See Annex 2 (“Guidebook on Judicial Reparations”).

<sup>7</sup> The LCLs, VSS and the Office of Administration have agreed to hold regular meetings in order to identify and develop reparation projects that could be implemented with the support of the Royal Government of Cambodia.

<sup>8</sup> See Annex 1 (“NGO Proposed Reparation Projects”).

12. The Lead Co-Lawyers conducted an initial evaluation of the 18 projects proposed by NGOs with VSS and the Civil Party Lawyers in February 2015. On 27 February 2015, the project proposals were presented to the Civil Parties at the Civil Party forum hosted by VSS in Phnom Penh.
13. A preliminary list of follow-up questions was developed with respect to each proposed project and the Lead Co-Lawyers together with VSS met with each NGO in February and March 2015 in order to further clarify each project and to provide guidance to each NGO as to satisfying the legal requirements for judicial reparations. As a result, some NGOs have refined their project proposals and have received letters of support from the Lead Co-Lawyers. Further project development meetings between the Lead Co-Lawyers, VSS and NGOs are scheduled for June and July 2015.
14. On 25 March 2015, a presentation was made on behalf of the Lead-Co Lawyers of the information on proposed NGO projects to state representatives at the ECCC Friends Meeting in an effort to begin the fundraising projects.
15. The refined project proposals will be presented to the Civil Parties at the VSS sponsored Civil Party Forum in July. The Lead Co-Lawyers, together with VSS, are also currently fundraising for additional civil party consultations on reparations this summer in order to maximise civil party engagement in the reparations process and to prioritize reparations projects accordingly.

### III. PROJECTS IN DEVELOPMENT

16. The Lead Co-Lawyers have revised the framework relating to the substance of reparations projects currently in development to reflect the categories embodied by international human rights instruments such as the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the *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*.<sup>9</sup> These instruments provide for restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition as reparation for harm suffered.<sup>10</sup>

17. On 17 October 2014, Civil Parties affected by Case 002/01 proceedings attempted to petition the Trial Chamber in order to address the incapacity of the ECCC framework to provide individual monetary compensation and express their dissatisfaction with the reparations scheme (“Petition on Individual Monetary Compensation”).<sup>11</sup> The Civil Parties, in addition to individual monetary compensation, requested that a library, a museum and a place to commemorate the victims of the DK be built in each province.<sup>12</sup> Since the beginning of Case 002/02, the petitioners, along with other Civil Parties, have continued to convey their request – either directly or through their respective Civil Party Lawyers – for individual monetary compensation while participating in the consultation process relating to the development of projects under Internal Rule 23 *quinquies* (3)(b). The Civil Parties and Civil Party Lawyers wish that the Petition on Individual Monetary Compensation be formally filed by the Lead Co-Lawyers. Therefore, in order to simultaneously manage Civil Party expectations by providing a sense of closure and to reflect the views of the Civil Party Lawyers, the Lead Co-Lawyers consider it to be in the interest of the consolidated group to request that the Trial Chamber acknowledge receipt of the petition.
18. As the ECCC framework excludes individual monetary compensation, only projects relating to rehabilitation, satisfaction and guarantees of non-repetition are addressed in the current report.

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<sup>9</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution 40/34, UN General Assembly, Annex; 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, Resolution 60/147, UN General Assembly, 16 December 2015. *See also* Universal Declaration of Human Rights; International Covenant on Civil and Political Rights, Art. 2(3), 9(5) and 14(6); International Convention on the Elimination of All Forms of Racial Discrimination, Art. 6; Convention of the Rights of the Child, Art. 39; Convention Against Torture, Art. 14; International Convention for the Protection of All Persons from Enforced Disappearance, Art. 24.

<sup>10</sup> 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, Resolution 60/147, UN General Assembly, 16 December 2015, Articles 19-23.

<sup>11</sup> *See* Annex 3 (“Trial Chamber Memorandum and Civil Party Letter and Petition on Reparations”).

<sup>12</sup> *Ibid.*

19. Victims of crime have a right to rehabilitation as reparation, including medical and psychological care.<sup>13</sup> Civil Parties have repeatedly indicated that access to psychological and physical health services was one of their main concerns. Currently, two projects have been proposed to correspond to this request.<sup>14</sup>
20. Victims of crime also have a right to satisfaction as reparation, including, *inter alia*, the verification of facts and full and public disclosure of the truth, commemorations and tributes to victims, and the inclusion of an accurate account of violations that occurred in educational materials at all levels.<sup>15</sup> Civil Parties have consistently requested that memorials be built and ceremonies be organised. Seven proposed projects address these concerns.<sup>16</sup>
21. Reparation awards may take the form of guarantees of non-repetition, such as educational projects. This form of reparation promotes mechanisms for preventing and monitoring social conflicts and promoting their peaceful resolution.<sup>17</sup> Civil Parties have consistently identified inter-generational dialogue, including through media and artistic projects, as a way to prevent the recurrence of mass atrocity in

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<sup>13</sup> 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, Resolution 60/147, UN General Assembly, 16 December 2015, Article 22.

<sup>14</sup> See Annex 1 (*Improving the health and mental wellbeing and reducing the risk of poverty and social exclusion of some civil parties and other vulnerable older people in Cambodia*, proposed by HelpAge Cambodia; *Promoting healing and reconciliation in Cambodia through psychosocial interventions*, proposed by TPO).

<sup>15</sup> 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, Resolution 60/174, UN General Assembly, 16 December 2015, Article 22.

<sup>16</sup> See Annex 1 (*Forest of Remembrance in Phnom Penh*, proposed by the Youth Resource Development Program; *Youth Contest for the creation of Cambodia's Remembrance Song*, proposed by the Youth Resource Development Program; *Kraing Ta Chan Memorial Project*, proposed by Youth for Peace and the Peace Institute of Cambodia; *Remembering Sites of Atrocity, Documentation of Crimes Sites*, proposed by Youth for Peace and the Peace Institute of Cambodia; *Teacher Guide Book on "Study Tour at Kampuchea Democratic Historical Mass Killing Site" and "Documenting the 8 Crime Sites of Investigation of Case 002/02"*, proposed by Youth for Peace and the Peace Institute of Cambodia; *Community Peace Learning Center in Phnom Sampov, Battambang*, proposed by Youth for Peace and the Peace Institute of Cambodia; *The Untold Stories of Civil Parties participating in Case 002/02 at the ECCC*, proposed by CHRAC).

<sup>17</sup> 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, Resolution 60/147, UN General Assembly, 16 December 2015, Article 23.



- Cambodia. Two proposed projects aim at addressing civil parties in general<sup>18</sup> and seven projects address the harm suffered by specific groups within the scope of Case 002/02.<sup>19</sup>
22. The Lead Co-Lawyers, in the development of these projects, are also taking into account lessons learned from Case 002/01 reparations projects. VSS conducted a study of 246 randomly selected civil parties who were admitted for sexual and gender based crimes with respect to their satisfaction with Case 002/01 judicial reparations projects. While the official results of the study are forthcoming, a preliminary analysis indicates that at least 90 per cent of the consulted civil parties are satisfied with the reparations awards and indicated that the projects can help to reduce their suffering.<sup>20</sup> Between 10 and 20 per cent expressed dissatisfaction with the lack of availability individual monetary compensation.<sup>21</sup>
23. After the next round of consultations with Civil Parties and Implementing Partners, the Lead Co-Lawyers will be well positioned to prioritize projects to be submitted in their Final Claim.

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<sup>18</sup> See Annex 1 (*Learning from the Khmer Rouge: an educational application project*, proposed by Bophana; *Civil Courage in Cambodia: a Crossmedia Project*, proposed by the Cambodian-German Cultural Association, in cooperation with Youth for Peace and Khmer Action Arts).

<sup>19</sup> See Annex 1 (*History for Prevention: Cross-generational redress for survivors of gender-based violence*, proposed by Kdei Karuna; *Community Media Project: The Cham People and the Khmer Rouge*, proposed by the Cambodian-German Cultural Association; *Community Media Project: Indigenous Peoples and the Khmer Rouge*, proposed by the Cambodian-German Cultural Association; *Voices from Ethnic Minorities: Promoting public awareness about the treatment of ethnic minorities during the Khmer Rouge regime*, proposed by Kdei Karuna; *Research Book and Video Film on Treatment of Buddhists*, proposed by Peace Institute of Cambodia and Youth for Peace; *Contemporary Cambodian dance theater as a means to stimulate public dialogue and healing among victims of GBV during the Khmer Rouge Regime*, proposed by the Khmer Arts Academy, in collaboration with Kdei Karuna, TPO and Bophana Center; *Initiative to reconstitute the civic identity of civil parties and facilitate (re)integration into Cambodian Society (Ethnic Vietnamese)*, proposed by Civil Party Lawyers, Kdei Karuna and Minority Rights).

<sup>20</sup> As the official results are forthcoming, preliminary figures have been provided. Please note, however, that these results may be refined.

<sup>21</sup> *Ibid.*

**IV. REQUEST**

**WHEREFORE**, the Civil Party Lead Co-Lawyers respectfully request that the Trial Chamber:

- (1) **ACKNOWLEDGE** receipt of the Petition on Individual Monetary Compensation.

Respectfully submitted,

Date	Name	Place	Signature
17 June 2015	Marie GUIRAUD International Lead Co-Lawyer	Phnom Penh	