

**Guidebook on
Judicial Reparations
in Case 002/02
before the ECCC**

**Civil Party Lead
Co-Lawyers' Section,
ECCC**

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Introduction

This Guidebook has been prepared by the Civil Party Lead Co-Lawyers' Section (CPLCLS) to provide concise information on the legal framework and development process for judicial reparations at the Extraordinary Chambers in the Courts of Cambodia (ECCC). It is hoped that the information contained in this Guidebook will help to facilitate the engagement of potential partners and donors and will lead to the development and implementation of meaningful and effective judicial reparations.

Legal Framework

The ECCC is the first internationalized criminal court to provide civil party-victims the possibility to make a legal claim for reparation. In criminal proceedings, the purpose of reparation is to repair the harm or injury caused to a victim as a consequence of the crimes being tried. Reparations that are granted by the judges of the ECCC are referred to as **judicial reparations**.

Through the Civil Party Lead Co-Lawyers (CPLCLs), civil parties to proceedings at the ECCC may make a **single request** for collective and moral reparation at the end of the trial. The Trial Chamber requires that reparation requests must be sufficiently specified and documented.

At the ECCC, the right to request reparation does not extend to individual or monetary reparation, but only **collective and moral** reparation. On this point, the Court has indicated that:

- The “**collective**” element is intended to respond to the mass nature of violations which occurred in Cambodia, but encompasses the concept of both numerous individual violations and a group violation. Accordingly, reparations may benefit a smaller sub-set of the consolidated group, though there is a preference for “measures that benefit as many victims as possible.”
- The “**moral**” element refers to reparations that seek to repair moral, rather than material harm, and may “entail individual benefit for the members of the collective.” Some examples of moral harm include: physical suffering; loss of dignity; psychological trauma; psychic harm; harm to private and family life; harm to reputation; harm to traditions and culture; loss of freedom or liberty; loss of future life prospects; and “loss of enjoyment of life.”

At the ECCC, reparations should bear a **connection to the harm** caused by the **crimes** adjudicated and must provide **benefit to civil parties** which addresses this harm.

The **benefit** provided by a reparation project may be symbolic and “indirect.” For example, the benefit to civil parties of a project might be that it educates youth or the general public because the civil parties wish to prevent the recurrence of mass atrocity in Cambodia. Additionally, the Court has noted that “[b]ecause [civil parties] form a consolidated group at the trial stage, the moral and collective reparations sought on their behalf 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 the crimes for which the Accused are convicted.”

Judicial reparations may only be granted by the Court, *if* the accused are **convicted** of the crimes alleged.

In their claim for reparations, the Civil Parties must choose between one of the two **modes of implementation** envisaged in the Court’s Internal Rules:

- a reparation **award**, the expense of which would be *borne by the convicted person*; or
- a reparation **project**, which is externally financed and would be “*recognized*” as reparation by the Trial Chamber.

Further considerations for reparation projects

Under the second mode of implementation, externally financed reparation projects must have **secured funding**. Judicial reparations may be funded by donors through a direct funding agreement with the project partner(s) or through an agreement with the Victims Support Section (VSS) through the ECCC Office of Administration.

Judicial reparations may be independently **implemented** by project partners working in cooperation with the CPLCLS and VSS.

Key directives from the Trial Chamber on the legal framework for reparations

Following the Initial Specification on Reparation held in Case 002/01, the Trial Chamber directed the CPLCLS to ensure that requested reparation projects:

- **Comply with** the ECCC legal framework;
- **Link to the scope** of the case; and
- Prioritize a **limited number** of meaningful projects.

Civil Party Requests for Reparation

Beginning in June 2014, the CPLCLS and VSS initiated a series of **consultations** with civil parties and other stakeholders from the civil society, government and donor sectors on reparations for Case 002/02. Of the requests that fall within the Court’s mandate for judicial reparation, the civil parties emphasize projects that primarily fall into the **categories** of:

- **Memorialization** (especially public memorials and ceremonies);
- **Rehabilitation** (especially projects that address mental/physical health and groups with special needs); and
- **Documentation and Education** (especially projects in which civil parties participate in efforts to educate the youth and public).

The consultation process on reparations will continue in tandem with the other steps in the identification and development process described below.

Project Identification & Development Process

The CPLCLS and VSS have established a **process** through which reparation projects for Case 002/02 will be identified, developed and funded. This began with the **consultation** of civil parties and other stakeholders—a process which is ongoing and will be utilized to get valuable feedback as potential reparation projects are identified and their development moves forward.

In the next step in the process, the CPLCLS and VSS will take **proposals from potential partners** through the end of 2014 on projects to be developed as judicial reparation in Case 002/02. Once these project proposals are received, they will be assessed for viability and appropriateness as judicial reparation. From this assessment process, a limited number of projects will be **prioritized** to be further developed as judicial reparation by the end of January 2015.

Once the prioritized projects have been selected, the **development phase** will begin. At this phase, the partners will prepare the appropriate documentation and description of the projects, with the support and oversight of the CPLCLS and VSS. This phase of the process will conclude after approximately six months.

The **Fundraising phase** for prioritized projects may begin concurrently with the development phase and continue at least until the Final Claim for Reparation is submitted to the Court.

Based on the outcomes of the development process, a prioritized project may be **finalized for presentation** to the Trial Chamber in the Civil Parties' Final Claim for Reparations. Factors which will determine whether the project is ultimately submitted as a reparation request will include, among others, whether the project is able to secure the necessary authorizations and funding and whether the project has the support of civil parties.

When the Case 002/02 hearings draw to a close, the Trial Chamber will call upon the CPLCLS to submit the **Final Claim for Reparations**. Later, the Chamber will issue a **decision** on the Civil Parties' reparation requests.

Documentation Required for Judicial Reparation Projects

Over the course of proceedings, the Trial Chamber of the ECCC has given clear indication of the minimum level of **documentation** required in order to substantiate a request for judicial reparation. In most cases, the CPLCLS has developed a document template to ensure information is prepared in a systematic and complete manner. Project partners should use the document template provided, unless otherwise indicated. An explanation of the documentation required follows here, as well as an indication of the timeline for its completion.

1. **Reparation Project Overview (RPO)**

This document provides a brief overview of the project concept. It is intended to provide the CPLCLS and VSS with enough information to assess the viability and appropriateness of a project which is proposed to be developed as a judicial reparation request before the ECCC.

The Reparations Project Overview should be no longer than three (3) pages in length and contain the following information:

A. Project Title

B. Contact Person(s)

- Include full name, position and organization.

C. Project Description & Objectives

D. Key Outputs & Activities

E. Project Innovation

- How does this project offer a benefit/service that civil parties might not otherwise be able to access?
- How has this project been tailored to civil parties and to Case 002/02?
- Was this type of project already planned or has it been previously implemented?

F. Key Beneficiaries

- Who do you expect might benefit from this project?

G. Legal Basis

- How are the project and its components linked to the alleged crimes in Case 002/02? (*see Annex 1 for Case 002/01 crimes/topics*)
- What harm(s) to civil parties will the project address/repair?
- What benefit(s) will this project provide to civil parties?
- How do these benefits address the harm experienced by civil parties?

H. Implementing partner(s)

- List all organizations that will participate in the implementation of this project and give a brief indication of their respective roles.
- If more than one organization is listed, please indicate if the partners have jointly implemented a project in the past and name that project.

I. Duration of Project

J. Estimated Total Budget

K. Potential Donors

Template: Please see Annex 2 and the attached document template.

Timeline: The Reparation Project Overview should be submitted to the CPLCLS and the VSS no later than **31 December 2014**.

2. **Project Partner Description (PPD)**

This document will provide the Trial Chamber with a brief introduction to the partner organization. It is intended to supply enough basic information to the Chamber so that it has confidence that the partner is adequately qualified and experienced to successfully implement the

proposed reparation project. This document should be prepared on the organization's letterhead and should include:

- A. basic **background description** of the organization (the type of organization it is, its name, when it started, its legal status);
- B. organization's **mission**, the **fields** it works in and/or the **services** it provides;
- C. organization's **experience and expertise** relevant to the proposed project;
- D. **date**; and
- E. **signature** of authorizing official.

It might also be useful to give a few examples of projects which the organization has successfully carried out and the donors which have funded them.

Template: There is no template for this document, as each will be unique to the organization.

Timeline: The Project Partner Description should be submitted to the CPLCLS and VSS *with* the Reparations Project Overview and no later than **31 December 2014**.

3. Letter of Engagement (LOE)

This document is a non-binding statement of intent between the CPLCLS, VSS and project partners which sets out the basic framework for their cooperation in the development of a judicial reparation project. The LOE is supplied to the Trial Chamber to demonstrate the intent of the parties to see the project through to its completion.

Template: Please see Annex 3 and the attached document template.

Timeline: This document should be signed as soon as possible after the proposed project is accepted for development as a reparation request. It must be on file with the CPLCLS and VSS before the end of the development phase, currently estimated to be in **July 2015**, and *before* court-assisted fundraising begins.

4. Letter of Authorization (LOA)

This document must be prepared if the reparation project requires the authorization or cooperation of third parties, such as governmental authorities or land owners. The purpose of the LOA is to verify for the Trial Chamber that all necessary authorizations from competent authorities whose involvement is required to implement the proposed reparation project have been secured and the proposed reparation project's implementation will not be impeded.

Authorizations should be sought early in the reparations development process, as acquiring them can be an involved and time-consuming process. All LOA's should be dated, written on the competent authority's letterhead, where appropriate, and signed and/or thumb printed by an individual who has the authority to grant the authorization.

Template: There is no template for this document, as each will be unique to the project and the authorities granting the authorization.

Timeline: The Letter of Authorization should be submitted to the CPLCLS and the VSS as soon after the proposed project is accepted for development and the authorizations have been

granted, preferably by the end of the project development phase which is currently estimated to be in **July 2015**.

5. Verification of Secured Funding (VSF)

This document provides assurance to the Trial Chamber that sufficient external funding has been secured for the project. It can be a simple letter from the donor entity stating its commitment to provide a specified amount of funding to a particular reparation project. This verification may also take the form of a signed and dated funding agreement between the donor and the implementing partner(s), provided that the agreement indicates the name of the project, the amount of funds, the donor entity and the partner organization receiving the funds. Alternatively, a template has been provided which allows for the collection of such verifications on a single document. In the case that funding is being provided by multiple donors, verification of funding should be provided from each donor source.

Template: Project partners may use their own template, or see Annex 4 and the attached document template.

Timeline: Verification of secured funding should be submitted to the CPLCLS and VSS as soon as possible after the proposed project is accepted for development as a reparation request and a funding commitment has been secured.

6. Reparation Project Description (RPD)

This document is a full project proposal which details all components of the project's design and the complete plan for its implementation as agreed by the CPLCLS, VSS and all projects partners. The RPD should include information such as:

A. Title Page

- Official Project Title
- Name and Address of Partner Organizations
- Name of Contact Persons
- Date

B. Project Summary

C. Project Description

- Context
- Opportunity/Problem
- Objectives
- Components
- Activities
- Scope
- Location, etc.

D. Duration of the Project

E. Implementation Timeline

F. Authorizations/Engagements Required

- Who is involved and in what capacity?
- Implementing entity
- Monitoring & Evaluation
- Donor
- Third parties

G. Design Details

- Architectural/Structural Plans
- Sketches, Photographs, Models
- Inscriptions, dedications, etc.

In addition to the information above, the project description must provide sufficient detail and information to meet the requirements of the project donor. In its final form, the RPD must match the line items detailed in the final Project Budget.

Template: There is not currently a template for this document, but one will be supplied at a later date, if the proposed project is accepted for development as a reparation request.

Timeline: A draft RPD should be submitted to the CPLCLS and VSS as soon as possible after the proposed project is accepted for development as a reparation request. A final version must be submitted no later than the end of the project development phase currently estimated to be in **July 2015**.

7. Project Budget (PB)

This document is a line item budget which includes all costs associated with the design, implementation, monitoring and evaluation of the project. If the total funding secured for the project falls short of the original budget, a scaled-down version of the RPD and budget which match the actual funds secured must be prepared in order to present a fully funded project to the Trial Chamber at the time the Final Claim for Reparations is filed to the Court.

Template: There is not currently a template for this document, but one will be supplied at a later date, if the proposed project is accepted for development as a reparation request.

Timeline: The Project Budget should be submitted to the CPLCLS and the VSS at the same time as the Reparation Project Description. The final version must be submitted no later than **30 days before** the filing of the Final Claim for Reparations.

A note on document preparation and formatting

Please prepare documents using the templates provided, unless another option is explicitly provided. Any document prepared without the use of a template should be formatted to the A4 paper size with 1" (1.27 cm) margins (excluding letterhead). Please use the Times New Roman font in 12 point size. Document titles, such as "PROJECT PARTNER DESCRIPTION", should appear in all capital letters ("all caps") and be located prominently on the first page of the document.

Conclusion

The CPLCLS and VSS are committed to working with civil parties, partners, stakeholders and donors throughout the reparation development process. We encourage anyone interested in supporting or engaging with judicial reparations being developed for Case 002/02 to please contact us with your questions, concerns and input.

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Annex 1

KEY TOPICS & CRIMES IN THE SCOPE OF CASE 002/02

Topics	Crimes
<ul style="list-style-type: none"> ▪ Tram Kok Cooperatives (Takeo Province) ▪ Trapeang Thma Dam Worksite (Banteay Meanchey Province) ▪ 1st January Dam Worksite (Kampong Thom Province) ▪ Kampong Chhnang Airport Construction Site (Pursat Province) ▪ S-21 Security Centre (Phnom Penh) ▪ Kraing Ta Chan Security Centre (Takeo Province) ▪ Au Kanseng Security Centre (Ratanakiri Province) ▪ Phnom Kraol Security Centre (Mondulkiri Province) ▪ Treatment of Buddhists ▪ Treatment of the Cham ▪ Treatment of Vietnamese ▪ Regulation of Marriage 	<ul style="list-style-type: none"> ▪ Genocide (Cham and Vietnamese) ▪ Murder ▪ Extermination ▪ Enslavement ▪ Deportation ▪ Imprisonment/Unlawful Confinement ▪ Torture ▪ Political Persecution ▪ Religious Persecution (Cham and Buddhists) ▪ Racial Persecution (Vietnamese) ▪ Forced Marriage ▪ Enforced Disappearances ▪ Attacks against Human Dignity ▪ Inhumane Treatment ▪ Rape (esp. in context of forced marriages)

Annex 2

REPARATION PROJECT OVERVIEW

Project Title:	
Contact Person(s):	
Project Summary & Objectives:	
Key Outputs & Activities:	
Project Innovation:	
Key Beneficiaries:	
Legal Basis:	
Implementing Partners:	
Duration of the Project:	
Estimated Total Budget:	
Potential Donors:	

Annex 3

LETTER OF ENGAGEMENT

This letter of engagement has been prepared to set out the basic framework for the cooperation undertaken by the Civil Party Lead Co-Lawyers, the Victims Support Section and the partner organization(s) in the development, fundraising and implementation of Civil Party reparation projects in Case 002/02.

Project

This letter of engagement concerns the [INSERT PROJECT NAME HERE] (hereinafter “the Project”).

Partners

The partners to this project are:

1. The Civil Party Lead Co-Lawyers of the Extraordinary Chambers in the Courts of Cambodia (CPLCLs)
2. The Victims Support Section (VSS) of the Extraordinary Chambers in the Courts of Cambodia
3. [INSERT ALL OTHER PROJECT PARTNER NAMES HERE]

Terms of Engagement

Civil Party Lead Co-Lawyers

The CPLCLs, in consultation with Civil Party Lawyers, are solely responsible for filing the Final Claim for Reparations before the Extraordinary Chamber in the Courts of Cambodia. Accordingly, the CPLCLs shall make the final review of the Project as well as the final determination as to whether said project shall be sought as reparation on behalf of Civil Parties. As a cooperating partner and the representative of civil party interests, the CPLCLs shall participate and provide input and support in all phases of project development, including the identification, design and fundraising for the Project.

Victim Support Section

The VSS shares responsibility with the Lead Co-Lawyers to cooperate in the identification, design and later implementation of Civil Party reparation projects. As well, the VSS is primarily responsible for fundraising for reparations projects and will do so in accordance with the prioritized list of projects identified by the CPLCLs in consultation with Civil Party Lawyers and the civil parties themselves.

Project Partner(s)

The project partners will cooperate with the CPLCLs and VSS in the design, development and implementation of this reparation project. If the project partner(s) so desire and the funding entity agrees, the project partner(s) may directly receive project funds and implement the project independent of the CPLCLs and VSS. Project partners may also engage in

fundraising efforts directly with potential donors and will inform the CPLCLs and VSS should they secure funding for the Project.

All Signatories

All signatories to this letter of engagement will endeavor to cooperate, maintain effective communication and share information in the interest of achieving the shared goal of realizing effective and meaningful judicial reparation for civil parties.

Nature of Engagement

This letter is not a legally binding document. The signatories affirm that they shall endeavor to act in accordance with the terms set out above in order to bring the Project to fruition.

Discontinuation

The signatories to this letter of engagement may, at any time, elect to discontinue their participation in this project through written notification to all other signatories.

Duly signed on [INSERT DATE] 2015 at Phnom Penh, Cambodia

National Civil Party Lead Co-Lawyer

International Civil Party Lead Co-Lawyer

Chief, Victims Support Section

[Add partner organization]

[Add partner organization]

Annex 4

VERIFICATION OF SECURED FUNDING FOR REPARATION PROJECT

Background

Internal Rule 23*quinqüies*(3) of the Internal Rules of the Extraordinary Chambers of the Courts of Cambodia (ECCC) provides for two distinct modes of implementation for any judicial reparation project sought by civil parties to the proceedings. In the second of these modes, specified in Internal Rule 23*quinqüies*(3)(b), the Civil Parties may request that the Trial Chamber “recognize that a specific project appropriately gives effect to the award sought,” where such project has “secured sufficient external funding.”

Purpose

The reparation project specified below is sought by Civil Parties as judicial reparation in Case 002/02 before the ECCC under the second mode of implementation envisaged in Internal Rule 23*quinqüies*(3)(b). This document has been prepared in order to provide the Trial Chamber of the ECCC with verification that sufficient external funding has been secured for the reparation project as required pursuant to this rule.

Project Details

- *Title:* [INSERT PROJECT TITLE]
- *Project Partners:* [INCLUDE ALL PARTNERS]

Verifications

The undersigned representative(s) hereby verify that their donor entity has committed the funds specified to the aforementioned project through donor agreements with one or more of the project partners and, accordingly, that these funds are secured for the implementation of this project.

Donor Entity	Funds Secured (and currency)	Representative (name and title)	Representative Signature	Date
Total:				