

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

**FILING DETAILS**

**Case No.** : 002/19-09-2007-ECCC/TC  
**Date of Document** : 12 March 2012  
**Party Filing** : Civil Party Lead Co-Lawyers  
**Filed to** : The Trial Chamber  
**Original Language** : French/Khmer



**CLASSIFICATION**

**Classification suggested by the filing party:** PUBLIC  
**Classification by the Co-Investigating Judges or the Chamber:** សាធារណៈ/Public  
**Classification Status:**  
**Review of Interim Classification:**  
**Records Officer's name:**  
**Signature:**

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**INITIAL SPECIFICATION OF THE SUBSTANCE OF THE AWARDS THAT THE  
CIVIL PARTY LEAD CO-LAWYERS INTEND TO SEEK – HEARING OF 19  
OCTOBER 2011**

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**Before:**

**The Trial Chamber:**

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 Judge YOU Ottara

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## **I. Introduction / Preliminary Observations**

1. The Civil Party Lead Co-Lawyers and the Civil Parties appreciate the opportunity to provide the Chamber with the additional details it requested after the initial specifications provided at the Initial Hearing on 29 June 2011. We are mindful of the importance of reparations in a judicial process, and the civil parties would not participate in the trial if it were not for the fact that reparations are their ultimate goal. Reparations necessarily go hand-in-hand with the sentence in any criminal trial which entails civil party participation.

2. We are pleased to note that the ECCC allowed civil party participation, a first in international justice. Needless to say, this adds an extra dimension to the trial, along with the obtaining additional constraints, uncertainties and debates. Even while civil party participation may prolong the trial, in itself the fact that this trial concerns the Democratic Kampuchea regime makes it worthwhile. It is difficult to conceive of a trial concerning crimes which touched each family, each and every village in Cambodia, crimes that left visible traces 30 years on without the victim participation. Who, better than they, can legitimately tell the story and demand that the truth be brought to light and that justice be rendered? What constitutes the gravity of the crimes at issue, what could, depending on the Chamber's assessment, constitute crimes against humanity, war crimes or genocide is that they were committed against persons who, directly or indirectly, are asking for justice. Without victims, there can be no crime. While that may sound obvious, there could be a temptation not to allow civil party participation, whereas the civil parties are the ones who symbolise and represent all victims.

3. The Chamber requested further particulars concerning reparations. We welcome this request, because it shows the Chamber is mindful of the interests of the civil parties and of the reparations they will be awarded, should guilt be established. Thanks the time limits accorded to us, we will provide the Chamber with all the necessary details, beginning with the status report on the development of projects, our questions concerning, *inter alia*, the legal framework within and ECCC and elsewhere. We will provide further particulars as requested by the Chamber; present personal thoughts substantiated in various ways and our responses to the Chamber's observations in Memorandum E 125; then, after providing details and initial specifications on what we consider to be the legal framework concerning reparations, we will

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– without repeating what was already said at the Initial Hearing – go over the projects one by one while supplying further particulars and explanations in each instance. Our observations are the product of a collective effort, and we speak with one voice.

## **II. Development process:**

### ***a) The process:***

4. We will begin with a brief background regarding our work on the rights and wishes of the civil parties. Immediately after the issuance of the Co-Investigating Judges' Order declaring numerous Civil Parties admissible in Case 002, the Civil Party Lawyers, the Victims Support Section and the partner organisations undertook careful consultation with the 2,122 Civil Parties both in and outside Cambodia; this required a great deal of time and planning, as well as availability. After the consultations, the Civil Party Lead Co-Lawyers and the Civil Party Lawyers, in collaboration with the Victims Support Section and a number of NGOs, undertook a careful analysis of the data with a view to identifying areas of common interest to the Civil Parties.

5. In compliance with the Internal Rules requirement to provide initial specification of the substance of the awards we intend to seek, we have endeavoured to identify areas of common interest with a view to developing coherent and feasible projects. It is important to highlight one important aspect of this process, namely that in many instances, the wishes of the Civil Parties in Case 002 reflected the reparation claims in Case 001 which were denied by the Trial Chamber in its Judgement of 26 July 2010. The Civil Party Lawyers in Case 001 lodged an appeal with the Supreme Court Chamber on the question of reparations; the appeal is still pending before the Chamber. This means that we proceeded with little legal guidance in light of that circumstance. Despite that, in June 2011, we identified four categories of claims, which also include many sub-categories. By 24 June, five days before the date by which the Civil Party Lead Co-Lawyers were to provide their initial specifications, 1,750 persons whose civil party applications had been rejected, had lodged an appeal and had been declared admissible. We welcomed this new development, but it had an obvious impact on the value of the initial specifications, which counted for only about half of the consolidated civil party group.

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6. On 29 June, the Lead Co-Lawyers provided the Chamber with an oral account of the initial specification of the substance of the awards that they intend to seek, pursuant to Rule 80*bis*. Our aim was to highlight the role of the Civil Parties in the proceedings because that it what legitimises reparations; we also made a number of legal submissions concerning reparations. We then outlined the reparations, which we regarded as the initial specification on their substance.

***b) Collaboration with Civil Society:***

7. Preparations were undertaken with NGOs with a view to having them take over preparation of some of the projects in terms of feasibility and sustainability. The purpose of explanation is to help the Chamber to realise that preparation of reparation claims is no abstraction, but rather a massive task undertaken by the Civil Party Lawyers.

**III. Current procedural context and related constraints:**

***a) Rule 80bis***

8. Rule 80*bis*, Initial Hearing, provides that the Chamber may “direct the Lead Co-Lawyers to provide initial specification of the substance of the awards they seek within the final claim for collective and moral reparations”. We will not use the precious time we have available to us to go over the submissions we made at the first initial hearing regarding how the Civil Party Lead Co-Lawyers and the Civil Party Lawyers interpret Rule 80*bis*; suffice it to say that we have arrived at what we consider to be a reasonable and legally sound understanding of our obligations under this Rule, within its strict meaning, pursuant to which we did not consider it necessary to offer many possible interpretations.

9. In some instances, court proceedings reveal disagreements between one party and the court regarding the meaning of a provision. Allow us to say that there is a disagreement. We still hold the view that at this stage of the proceedings, 80*bis* does not require the Civil Parties to provide a detailed account of the reparation awards under preparation, let alone their mode of implementation. At this stage, as indicated in Documents E86 and E86/1, we are only required to give an initial specification of the substance of the reparations as they stand currently. Nonetheless, we consider today’s hearing as a good opportunity to update the Court on where we stand with regard to reparations. We also hope that this is only the beginning of

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a continuing dialogue with the Chamber on issues relating to the development and the final outcome of these claims.

10. In Memorandum E125, the Chamber emphasises that the purpose of these initial specifications is “to encourage sufficient specificity and advance planning” and that it is “therefore entirely to the benefit of the consolidated group of Civil Parties that as much specificity as possible is provided to the Chamber at an early stage”.<sup>1</sup> We seize the opportunity offered to us to reassure the Chamber that the Civil Party Lead Co-Lawyers and the Civil Party Lawyers will ensure that the reparation claims are submitted proper form and that they are legally sound.

11. This is squarely within our mandate, which is “to seek collective and moral reparations” on behalf of the Civil Parties, as set out in Rule 23 of the Internal Rules.<sup>2</sup> We reaffirm that it is the responsibility of the Civil Party Lead Co-Lawyers and the Civil Party Lawyers to devise and prepare reparation claims, with the assistance of partner organisations, including, first and foremost, the Victims Support Section, non-governmental organisations and, where necessary, the assistance of the Cambodian Government.

12. Moreover, we wish to respond to the Chamber’s assertion in Memorandum E125 that the initial measures sought lack sufficient specificity “to enable the Chamber to give meaningful comment at this stage”. With all due respect to the Chamber, while the Civil Party Co-Lawyers and the Civil Party Lawyers recognise that they are required under 80*bis* of the Internal Rules to provide initial specifications on the substance of the reparations they intend to seek in their final claim, there seems to be nothing in this Rule permitting the Chamber to intervene in the planning or to issue an initial decision, or for that matter, to make “meaningful comment” that is binding in character.

13. We wish to re-emphasise that the Civil Parties are a distinct and independent party to the proceedings before the ECCC. While we see the need for advance planning in the interest of ensuring that the claims are ready before the judgement in the instant case, we also see the

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<sup>1</sup> Memorandum E125, 23 September 2011, page 3.

<sup>2</sup> Internal Rules (Rev. 8).

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need to attend to any legal and practical issues relating to the development of the reparation claims and the wishes of the Civil Parties. At this stage of the proceedings, given that the trial has not yet commenced and that no verdict of guilty or innocence has been pronounced, we believe that it is premature to provide further details on the planning of the reparation projects.

***b) Current appeal in Case 001:***

14. It bears noting that some reparation claims are currently under appeal before the Supreme Court Chamber. Even though the Internal Rules have been amended, thereby significantly changing the rules which applied in Case 001, a number of legal issues have not been addressed in the amendments, but they could be addressed by the Supreme Chamber in its upcoming decision. It is legally permissible for the parties to contest and question a decision; this is a fundamental right that Civil Parties have invoked in this instance. Today, we wish to respectfully draw attention to our objections.

15. The first issue concerning reparations in the Judgement in Case 001 is that the Chamber did not specify the reasons or legal grounds for its findings. As a result, the Civil Parties can only speculate as to the reasoning Chamber adopted concerning reparation claims. This omission seriously impairs the Civil Party Lead Co-Lawyers and the Civil Party Lawyers in their duty of defending the interests of the Civil Parties. Moreover, it runs counter to numerous provisions of the Internal Rules and international law concerning the rights of victims to reparations and to fair and equal participation in the proceedings, which are aimed at give effect to reparation.

16. It also bears noting that the Chamber seems to have adopted a rather narrow interpretation of the notion of “collective and moral” reparations. Further, in our view, it makes an erroneous assessment of reparation awards involving benefits or services for consolidated civil party groups by characterising them as individual or monetary. Here again, we have employed the word “seems”, because, in our view, the Chamber did not sufficiently reason or substantiate its decision to allow for any amount of certainty on this point.

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17. More specifically, the matters relating to the establishment of a trust fund and reparation measures requiring government approval are currently under appeal before the Supreme Court Chamber. On the first point, the Civil Party Co-Lawyers submit that the Chamber did not address the question of establishing a trust fund for the Civil Parties in Case 001. It did not specifically address the question of establishing a trust fund or the simple request to order the Accused to write a public letter to the Government of Cambodia requesting that some of the entry fees to S-21 and Choeung Ek be allocated to the trust fund. The Civil Party Co-Lawyers are waiting for the Supreme Court Chamber ruling on these questions.

18. As to the second point, i.e. measures requiring the prior approval of the Cambodian Government, they were denied by the Trial Chamber in the *Duch* case, on the ground that they are not within the framework of the ECCC. Here again, the Civil Party Lawyers lodged an appeal, in which they submitted that even though the Court lacks jurisdiction to order the Kingdom of Cambodia to pay reparations, it could order the Accused to pay reparations whose implementation does not require government approval. Further, the Civil Party Co-Lawyers recall that the rights of victims of human rights violations are enshrined in international law<sup>3</sup> and the Kingdom of Cambodia must award reparations to the victims of the atrocities committed under the Khmer Rouge regime, pursuant to its international obligations.

19. The Supreme Court Chamber is also seised of the question of the level of specificity that the Chamber can reasonably require. That is a question of great importance to both the Civil Party Lead Co-Lawyers and the Civil Party Co-Lawyers as they devise and prepare the reparation claims to be submitted in Case 002.

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<sup>3</sup> See for example 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 60/14, UN General Assembly; 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; Rome Statute, art 75; see also regional instruments: European Convention on Human Rights, art. 5(5); American Convention on Human Rights, Art. 25, 63(1) and 68; African Charter on Human and Peoples' Rights, Art. 21(2); and see also international jurisprudence: Human Rights Commission, *General Comments No. 31*, paras. 15 to 17; UN Committee against Torture, *General Comments No. 2*, para 15; Inter-American Court of Human Rights, *Case of Velásquez-Rodríguez v. Honduras*, para. 174; European Court of Human Rights, *Case of Papamichalopoulos v. Greece*, para. 36  
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20. In their appeal, the Civil Party Co-Lawyers argue that the Chamber omitted to provide the Civil Parties with advance informatio about the admissibility criteria of reparation claims. Moreover, the level of specificity required by the Chamber had no legal basis in the ECCC Internal Rules. The Internal Rules have since been amended, but the question of the level of specificity still remains unanswered; the Supreme Court could have some useful insight in that regard. By applying such a high standard in Case 001, the Chamber overlooks the Civil Parties' right to reparation. Lastly, the Court ought to seek guidance in the practice of other international and regional tribunals on this question, for example, the practice of the Inter-American Court of Human Rights or the International Criminal Court, which is more adaptable.

21. We are eagerly awaiting the Supreme Court Chamber decision on these matters, and hope that such guidance contained will substantially contribute to the task of devising and refining the reparation claims that the Civil Party Lead Co-Lawyers and the Civil Party Lawyers are currently preparing. In addition to the arguments raised earlier, this is another reason to believe that it would be entirely unreasonable at this stage of the proceedings to expect the Civil Parties to provide virtually final specification of the substance, clear outline and mode of implementation of each of the reparations they intend to seek. We expect the Supreme Court Chamber decision to give us a better idea of the applicable parameters.

*c)– Severance*

22. On 22 September, the Trial Chamber rendered a Severance Order Pursuant to Rule 89<sup>ter</sup> of the Internal Rules, in which it decided to “separate the proceedings in Case 002 into a number of discrete cases that incorporate particular factual allegations and legal issues”.<sup>4</sup>

23. In its decision, the Trial Chamber indicated that the first trial in Case 002 was to concern factual allegations relating to population movement (phases 1 and 2) and Crimes against humanity, with the exception of persecution on religious grounds. It thus also excluded cooperatives, worksite, security centres, execution sites and the factual allegations relating to population movement. Finally, it excluded the charges of genocide and grave

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<sup>4</sup> Trial Chamber Memorandum, Severance Order Pursuant to Rule 89 *ter*, E124.  
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breaches of the Geneva Conventions of 1949. It nonetheless indicated that it “may at any time decide to include in the first trial additional portions of the Closing Order in Case 002”, subject to the right of the Defence.

24. On 14 October, the Co-Prosecutors filed a request for reconsideration<sup>5</sup> of the Severance Order (E124/2), which request “will be rejected”, according to the Chamber’s Senior Legal Officer’s email of 17 October. The Civil Parties also filed a request for reconsideration on 18 October partly supporting the request filed by the Co-Prosecutors. The Chamber dismissed the request in the decision it rendered yesterday, 18 October, without having had the opportunity to examine our request.

25. The Civil Parties are concerned about the Trial Chamber’s view that “*[l]imiting the scope of facts to be tried during the first trial accordingly has no impact on the nature of Civil Party participation at trial, and their formulation of reparations claims made on their behalf by the Lead Co-Lawyers*”.

26. By denying the request to stay the proceedings in the instant case, the Chamber recognised that the Severance Order could have an impact on reparations. I should point out that that an impact is not just a possibility, but a certainty.

27. Under Rule 23<sup>quinquies</sup> 2) b), civil party claims must provide “reasoned argument as to how they address the harm suffered and specify, where applicable, the Civil Party group within the consolidated group to which they pertain”. Even though this rule was not yet in force in Case 001, the Chamber held that “Civil Parties must satisfy the Chamber of the existence of wrongdoing attributable to the Accused which has a direct causal connection to a demonstrable injury personally suffered by the Civil Party”<sup>6</sup> and “the clear specification of the nature of the relief sought, its link to the harm caused by the Accused that it seeks to remedy, and the quantum of the indemnity or amount of reparation sought from the Accused to give

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<sup>5</sup> See Co-Prosecutors’ Request for Reconsideration of ‘Severance Order Pursuant to Internal Rule 89ter, E124/8, and Lead Co-Lawyers and Civil Party Lawyers Request for Reconsideration of the Terms of Severance Order, E124/2, 18 October 2011.

<sup>6</sup> Judgement, Case 001, para. 639.

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effect to it”.<sup>7</sup> The Chamber clearly indicated that it could not “substitute its own decision in these areas”.<sup>8</sup>

28. It follows that when making civil party claims, the Civil Party Lead Co-Lawyers and the Civil Party Lawyers – before even embarking on questions execution and logistics – must establish a direct causal connection between the wrongdoing attributable to the Accused and the injury relating thereto, as well as its link to the harm it seeks to remedy. Clearly, this is an impossible task given that the crimes and the civil parties have only been partially defined.

29. From a theoretical standpoint, the Civil Parties do not object to the severance of Case 002 provided that the aim is not simply expeditiousness at all costs to the detriment of basic criteria, namely the nature, the gravity and the representativeness of the crimes, the number of victim civil parties per crime and the Civil Parties’ right to be heard within a reasonable time

30. Such being the case, we are faced with a problem in finalising the first and critical phase of the development process. The Chamber issued its Severance Order at a time we thought that we had consulted the Civil Parties and established the requisite causal connection between, on the one hand, the crime and the injury suffered, and, on the other hand, the injury and the remedy sought. Since the Chamber intends to separate the proceedings in Case 002 into a number of discrete cases, the first link of the chain – namely the crime to which the harm must be linked – has now been significantly altered. As a result, it is unclear which of the 3,850 Civil Parties who were admitted in Case 002 will participate in the first trial.

31. As we indicated in our submission, the Civil Parties hold the view that the Severance Order adversely affects the consolidated civil party group in that, in the absence further details about the substance and timing of the subsequent trials envisaged, more than 3000 Civil Parties could end up being denied their right to effective remedy. We have asked the Chamber to, as a matter of urgency, clarify what it means by subsequent trials and their subject matter. The Civil Party wish to recall that that the natural consequences of the severance include impairment of the parties’ *locus standi*. The change in the scope of the trial means that only

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<sup>7</sup> *Ibid.*, para. 665. (emphasis added)

<sup>8</sup> *Ibid.*

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750 Civil Parties out of nearly 4,000 will be able to participate in the first trial. Also, only those 750 will have *locus standi* to lodge reparation claims, whereas reparations are supposed to be collective and moral before the ECCC.

32. It is therefore important for the details about the initial specifications to include not only the consolidated group but also the civil parties who will have standing and will thus be allowed to participate in the proceedings and to seek reparation once the Chamber has specified the scope of the trial.

***d)- Consultation process***

33. As pointed out earlier, the Civil Party Lead Co-Lawyers and the Civil Party Lawyers are still in the process of consulting some 1,700 Civil Parties who were admitted at the end of June. In view of the problems that were are facing in regard to communications, transport, time and materiel resources, this task cannot be accomplished fast or easily.

34. Despite those problems, we have made an all-out effort to undertake a thorough consultation with all the Civil Parties. We consider the consultation process to be a key element of the procedural reparations to which the Civil Parties are entitled, and which bring a deep sense of satisfaction and justice.

35. Having regard to the importance they attach to the consultation process, the Civil Party Lead Co-Lawyers and the Civil Party Lawyers are bolstered by international and by experts on the matter. Paragraph 11 of 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 sets out the victim's right to "equal and effective access to justice" and to "access to relevant information concerning violations and reparation mechanisms". As the International Center for Transitional Justice rightly put it, reparations initiatives that follow from meaningful consultation with victims have the best chance of being fair and effective.

36. The Civil Party Lead Co-Lawyers and the Civil Party Lawyers are continuing their dialogue with the Civil Parties as part of a consultation which takes account of their role as

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parties to the proceedings, and offers the best chances of obtaining remedy for the harm they suffered through the mere fact of participating in the development of the reparation claims. Our approach does not compromise our ability to present the Chamber with the fair and justified claims; rather, it increases the chances that the measures sought will be both legally sound and meaningful to the Civil Parties.

**IV Response to the Chamber’s “Observations ” concerning the initial specifications of the substance of the reparation awards that by the Civil Party Lead Co-Lawyers and the Civil Party Lawyers intend to seek in their final claim**

37. In Memorandum E125, the Chamber laid down its requirements in regard to reparation claims. In particular, it made “further observations” regarding certain categories of reparation initially specified by the Civil Party Lead Co-Lawyers at the Initial Hearing. We will seize this opportunity to respond to the substance of the Chamber’s observations, and we will then provide further details, which we hope will reassure the Chamber as to the fact that we have taken due account of its concerns and are fully mindful of the issues relating to its those reparations.

***a).Collaboration with partners***

38. The Civil Party Lead Co-Lawyers and the Civil Party Lawyers are fully aware that the task of developing and implementing the projects is not theirs alone. The Victims Support Section also has the task of developing non-judicial measures that can be implemented immediately (Rule 12*bis*), and with identifying, designing and later implementing projects envisaged by Rule 23*quinquies* 3) b)”.

39. For this reason, for the past several months, and while at same time dealing with coordination, legal matters and preparation for the trial, the Civil Party Lead Co-Lawyers and the Civil Party Lawyers have been in contact with a number of project heads within the Victims Support Section and held meetings with them with a view to developing reparation projects. With the Victims Support Section coordinating, they have embarked on task of identifying the reparation projects and assessing their feasibility. These reparations can be realised through projects or programmes in collaboration with civil society, the government

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and donors. The Victims Support Section shares our deep commitment to making the reparations a reality, and our collaboration with them is ongoing will be reinforced in the future.

40. However, it must be recognised at this juncture that the tasks assigned to the Civil Party Lead Co-Lawyers and the Civil Party Lawyers, as well as the Victims Support Section, are not only daunting but also unprecedented in the context of an international tribunal. Such tasks are normally performed by specialised entities which are afforded a large staff, funding, time and experience. In order to ensure on-time development of projects other than the purely symbolic ones, which are clearly unsatisfactory for the Civil Parties, may we propose that the Victims Support Section be provided with staff with diversified skills.

***b). Establishment of a trust fund***

41. In the 23 September Memorandum, the Chamber stated that “a trust fund and individual financial compensation to victims falls outside the scope of the ECCC legal framework”. In this instance, the Chamber is quoting from the *Duch* Judgement and Rule 23quinquies 1). Nonetheless, it seems that neither of the two authorities may be relied upon to deny a request to establish a trust fund, which is precisely aimed at financing legally sound reparation projects. We wish to point here that what we are proposing is the establishment of an independent non-governmental, quasi-administrative body, outside the ECCC framework. Its purpose would be to implement reparation awards ordered by the Court and to allocate funds to that effect. We will provide further details about this project in our conclusion.

***c) Measures requiring government approval***

42. The Civil Party Lead Co-Lawyers and the Civil Party Lawyers now turn to the Chamber’s Memorandum of 23 October 2011 in which the Chamber observes that certain measures initially specified by the Civil Parties may also be beyond the scope of the ECCC to provide, being the prerogative of governmental authorities to grant. In the same paragraph, the Chamber cites “instituting a day of remembrance” as one of the initiatives which “may only be endorsed by the Trial Chamber as reparations where it is clear that such measures have been approved or implemented by the Royal Government of Cambodia”.

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43. The Civil Party Lead Co-Lawyers and the Civil Party Lawyers are pleased to note that the Chamber has recognised that while the reparations initially specified require official government approval, they require no government action. The former are entirely permissible under the Internal Rules, and in fact, they seem to be contemplated in Rule 23*quinqüies* 3) b) (Rev. 1) of which the current version provides: “the Chamber may (...) recognise that a specific project appropriately gives effect to the award sought by the Legal Co-Lawyers and may be implemented. Such project shall have been designed or identified in cooperation with the Victims Support Section”.

44. With regard to projects such as instituting a day of remembrance, we are not asking the Chamber to order the government to implement such a measure. Rather, we are working in collaboration with the government, with the assistance of the Victims Support Section, before finalising our claim; only then shall we ask the Chamber to endorse the outcome. Pursuant to the Internal Rules, it falls squarely in line the Civil Party Lead Co-Lawyers’ duty to lodge such claims and for the Chamber to entertain them.

***d) Specificity required for other measures***

45. In Memorandum E125, the Chamber observed that a number of other measures sought lack sufficient specificity to enable the Chamber to give meaningful comment at this stage. Two elements of this observation call for a response, namely, the meaning of “sufficient specificity” and the fact that the Chamber should require us to present substantial observations already at this stage.

46. The Civil Party Lead Co-Lawyers and the Civil Party Lawyers do not have the Appeal Judgement in Case 001. All they have is the Judgement in Case 001 and the Internal Rules to rely upon in regard to specificity. In the *Duch* Judgement, the Chamber held that “a prerequisite to the grant of an award [...] is *a clear indication* of the nature of the relief sought”.<sup>9</sup> In its decision on the civil action, the Chamber denied a large number of civil party claims “on grounds of *lack of specificity*”<sup>10</sup> even though it omitted to specify what is meant by sufficient specificity in regard to the claims. It is noteworthy that neither the applicable

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<sup>9</sup> Judgement, Case 001, para. 665 (emphasis added).

<sup>10</sup> *Ibid.*, paras. 668, 669 and 672 to 674.

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provisions of the Internal Rules (Revision 3) nor the Directions on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions make reference to a “*clear indication*” requirement. In fact, the Chamber did not cite any rules, jurisprudence or legal authority in support of the reasoning it adopted in imposing this requirement.

47. Yet, even though the Internal Rules use the terms “specify”<sup>11</sup> and “specific”,<sup>12</sup> they offer no definition or any explanation as to what is considered as a sufficiently specific claim. Moreover, the Chamber did not specify its interpretation of the applicable criteria. In the Memorandum of 23 September 2011, the Chamber observes that the Civil Parties specifications must be sufficiently specific, without defining the term or offering any clarification.<sup>13</sup> In the absence of clear indications in the Internal Rules or from the Chamber, the Civil Parties lack the guidance they need to tailor their reparation claims to the Chamber’s requirements.

48. The Rules of Procedure and Evidence of the International Criminal Court (ICC) show how reparations are conceived in an international tribunal. According to the ICC Rules of Procedure and Evidence, a claim for reparations must contain a description of the injury or harm,<sup>14</sup> as well as claims for rehabilitation or other forms of remedy.<sup>15</sup> Nowhere in these Rules is there mention of the words “sufficient specificity” and “specificity”.<sup>16</sup> These Rules clearly reveal that where the victims’ claims are consistent with the injury suffered,<sup>17</sup> the Chamber ought to find those claims admissible.<sup>18</sup> These rules have not been applied in

<sup>11</sup> See Rule 23 *quinquies* 2) b) of the ECCC Internal Rules (Rev. 8) (“The submission shall provide (...) b) reasons as to how they address the harm suffered and *specify*, where applicable, the Civil Party group within the consolidated group to which they pertain”) (emphasis added).

<sup>12</sup> See Rule 23 *quinquies* 3) b) (...) the Chamber may, in respect of each award, (...) recognize that a *specific* project appropriately gives effect to the award (...). (emphasis added).

<sup>13</sup> Memorandum E125, 23 September 2011.

<sup>14</sup> Rule 94 1) b) of the ICC Rules of Procedure and Evidence.

<sup>15</sup> *Ibid.*, Rule 94 1) f).

<sup>16</sup> See also UN resolution 60/147, Doc No. UN A/RES/60/14, 21 March 2006, para. 15 (where it is stated that the Human Rights Commission does not require a high level of specificity. The Commission’s main concern with regard to reparations seems to be that they must be “proportional to the gravity of the violations and the harm suffered.”).

<sup>17</sup> Rome Statute of the International Criminal Court, 17 July 1998, UN Treaty Series, Vol. 2187, Article 75(2) (“The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.”).

<sup>18</sup> See also UN resolution 60/14, UN A/RES/60/147, 21 March 2006, para. 15 (where it is stated that the Human Rights Commission does not require a high level of specificity. The Commission’s main concern with regard to reparations seems to be that they must be “proportional to the gravity of the violations and the harm suffered.”).

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practice and therefore no authority exists as to how the ICC interprets the criteria relating to reparation claims; however, it is also true that as according to the clear language of the Rules, reparations claims are not subject to a high level of specificity.

49. Unlike that of the ICC, the jurisprudence developed by the Inter-American Court of Human Rights runs counter to the apparently high threshold of specificity set by the Chamber. According to the jurisprudence of the Inter-American Court of Human Rights, victims' reparation claims are not required to meet a high level of specificity. In the case of *Mapiripán Massacre v. Colombia*, the Judges found as follows: "given the gravity of the facts in the instant case (murder, forced disappearance and displacement of the people of Mapiripán), the situation of partial impunity, the intensify of the suffering caused to the victims, changes in the conditions of their existence and other pecuniary and non-pecuniary consequences, the Court deems it necessary to order non-pecuniary compensation, in fairness".<sup>19</sup> In this Judgement, the Court ordered the State to build "an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre [which] must be placed in an appropriate public place in Mapiripán".<sup>20</sup> The Court did not require the victims to provide particulars "regarding the exact number of memorials sought and their nature, their envisaged location, or estimated cost"<sup>21</sup> as did the Chamber in Case 001 in respect of similar Civil Party requests for monuments and stupas.

50. Given that the Chamber is yet to define what it means by "requisite specificity" and "sufficient specificity" and that these terms are not specifically employed in international law, the Civil Parties are obliged to resort to guesswork in order to meet the Chamber's criteria. They should not have to bear this extra burden. At the very least, since this goes to the heart of the reparations to which they are entitled by law, they should be afforded sufficient information about what is expected of them, and such expectations must be in conformity with international law.

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<sup>19</sup> *Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 134 (15 Sept. 2005). Series C No. 134 at ¶ 285; see *Case of Acosta Calderón*, *supra* note 7 at ¶ 159 to 160; *Case of Caesar*, *supra* note 274 at ¶ 126, and *Case of Huilca Tecse*, *supra* note 274 at ¶ 97.

<sup>20</sup> *Ibid.* at ¶ 315.

<sup>21</sup> Judgement. Case 001, para. 672.

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*e) Measures within the legal framework of the ECCC*

51. Finally, the last category of reparation claims regarding which the Chamber has made observations consists only of those measures that, in the Chamber's view, are in conformity with the legal framework of the ECCC. They include "dissemination of the Case 002 Judgment and compilation of a list of Civil Parties".<sup>22</sup>

52. The Civil Party Lead Co-Lawyers and the Civil Party Lawyers agree that that is a good starting point in regard to reparations and that such measures are clearly in conformity with the legal framework of the ECCC. Nonetheless, the Civil Party Lead Co-Lawyers and the Civil Party Lawyers consider that not only were such measures ineffective in Case 001, but also that Civil Party Lead Co-Lawyers and the Civil Party Lawyers do not feel compelled to limit themselves to this category of reparations in regard to Case 002.

53. To request solely these extremely limited reparations would not only amount to flouting a fundamental legal principle requiring compensation for injury suffered by the civil parties, but it would also be disproportionate with the categories clearly envisaged under both Internal Rules and international law.

54. As recalled in 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, "[r]eparation should be proportional to the gravity of the violation and the harm suffered".<sup>23</sup> Despite the major challenges facing the Court in regard to the award of reparations, it can and ought to award much more proportional awards than mere publication of court documents to which most Cambodians will most likely never have access, let alone understand them.

**VI. Update and Further Details of the Initial Specification on Reparations**

55. In collaboration with the VSS, we have analyzed the individual requests from the 11 legal teams representing civil party clients in Case 002, four main areas in which reparations request were made were identified, (1) remembrance/Memorialization, (2) rehabilitation; (3)

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<sup>22</sup> Memorandum E125, 23 September 2011, p. 4.

<sup>23</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, Article 15.  
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documentation/education; (4) other requests. In each of these categories different proposals are grouped into one project. As the discussions are still ongoing this is a first description of the contents of each project.

*a) Category I: Remembrance/Memorialization*

56. The Remembrance and Memorialization category encompasses a range of reparation measures aimed at commemorating the lives and deaths of victims and providing literal and metaphoric spaces for grieving and reflection. By synthesizing the twenty-eight individual requests submitted by various legal teams, the lawyers identified distinct subcategories that capture all remembrance-related requests: (1) Facilitation of a Memorial Day; (2) Stupas and Monuments; (3) Ceremonies and (3) Preservation of Crimes Sites.

57. **The first project** is called: **“Advocacy Project to create a national and international Memorial Day”**. This project intent to achieve the establishment of a memorial day in order to obtain some symbolic permanent recognition and collective remembrance of the crimes committed during the Khmer Rouge Regime. This award would benefit all Civil Parties and would create one day a year where the Civil Parties and the Cambodian population can meet and organize religious and non-religious ceremonies for the victims and their relatives, according to their own beliefs and cultural identity. This award is of benefit to the Civil Parties as it would help the Civil Parties to recover their integrity and to get from the State and the international community the recognition of an official date to pray and organize religious and/or non-religious ceremonies dedicated to their loved ones.

58. So far, no consensus has yet being reached on the appropriate day to establish the Memorial Day. The different legal teams have suggested dates ranging from an additional day added to Pchum Ben to a National Ecumenical Day to 17 April. Further discussions on this topic will be held. Furthermore, some groups have pleaded to have memorial days that specifically would remember particular crimes such as forced marriage. Further consultations are needed in order to enhance the symbolic value of this project, finalizing the request will require identifying a particular day and manner of observance with symbolic meaning for the Victims. This facilitation project will involve liaising with either government actors or members of the international community to establish a national or international day of commemoration.

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59. **The second project** is called **“Project to build stupas and/or Monuments/ecumenical monument”**. This project was requested by nearly every legal team. The erection of monuments would pay tribute to the memory of the victims in that they give an opportunity for the victims and the younger generation to remember the victims of the Khmer Rouge regime in a permanent and collective way.

60. The aim of this award is to benefit to all Civil Parties, as well as to all victims and Cambodian persons. However some specific groups will have to be taken into account as they have proposed specific awards that would benefit principally their Civil Parties. For example the Maât team proposes the Creation of a Center for the Promotion of Cambodian Spirituality which would be a place for tolerance. The centers for spirituality shall gather all kinds of documents (religious and sacred books, historical documents) and objects of worship in relation to the various forms of spirituality in Cambodia. 10. There remains a fair amount of debate concerning what form the request for monuments should take, from whether there should be a central structure in each province or smaller structures spread throughout Cambodia, to whether it is appropriate to propose stupas as a “moral and collect reparation measure” when a significant number of victims identify with non-Buddhist faiths.

61. The Civil Parties have not yet determined how the award will be designed and implemented (it might be asked to the government to agree on the place where to build the centers). We are still elaborating the project in collaboration with VSS who has already met with governors of some provinces who are willing to contribute their land for the construction of such monuments.

62. **The third project** of this category is **“Projects to organize several ceremonies at the day after issuing the judgment and on other occasions”**. This project envisages the organization of a ceremony after the judgment. It would gather all the Civil Parties in order for them to express their grief collectively for the lost ones and their feelings after the verdict. Furthermore it is also proposed to organize ceremonies at the Memorial Day for some years; the exact number of ceremonies, the place and the time is yet to be determined.

63. This award is to benefit all Civil Parties as they would be acknowledged as Victims  
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publicly and will give an opportunity for the victims and the young generations to remember the victims of the Khmer Rouge regime in a collective way. It has not been yet determined how this award will be exactly designed and implemented. A proposal is that VSS would be in charge of organizing the first ceremony after the verdict.

64. **The fourth and last project** within this category is named **“Projects to participate in the preservation of the Crime Sites”**. This project aims to participate in the organization of the preservation of the Crimes Sites included in the Closing Order. This award will benefit all Civil Parties and particularly the victims of those specific crime sites. The preservation of the crime sites is of utmost importance in order to have a palpable/demonstrative evidence of the place where the atrocities were committed. The CPs could in this way commemorate the soul of the deceased relatives or remember and tell to their relatives their sufferings during the regime. Additionally, the conservation of this concrete example of the history of DK would be the best way to show how the regime functioned to the persons that aren't aware of the history of the crimes.

65. As the government issued in 2002 a circular to preserve such places, we are identifying now in collaboration with VSS, who is being doing what in site research, if all the sites that are part of the Case are preserved, and we are analyzing how well preserved they are in order to know what needs to be done regarding the further development of this award. VSS is already collaborating with the relevant public authorities in order to achieve the project. Furthermore it is being discussed to include this preservation component of former crimes sites in the requests for remembrance structures at the same sites in order to link these reparations awards.

***b). Category II: Rehabilitation***

66. The second category is related to Rehabilitation measures and encompasses a range of awards intended to restore the individual's mental and physical health, or at least mitigate the harm resulting from the trauma suffered.

67. The first project is named **“Project to establish Psychological and Physical health services”**. This project aims to establish Psychological and Physical health services to the Civil Parties that suffered from trauma and/or illnesses due to the crimes suffered during the

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KR regime. This project includes a wide range of proposals that include among others the creation of a health centers for elderly Civil Parties; the establishment of mental health centers for victims; or enrolling the Civil Parties in an existing government program that provides identity cards and access to health services for low-income Cambodians.

68. The beneficiaries of this project will be the Civil Parties who suffered from trauma and health problems as a consequence of the crimes committed to them during the regime. This would benefit them as they would obtaining mental and heath care and would help them to overcome their suffering. These projects can be established within the actual structures such as TPO, SCC, and health centers. Nevertheless an exact description of the project cannot be given at this moment.

69. **The second project** of this category is called **“Project to Support the Self-Help group”**. This project is intended to assist Civil Parties to talk about their suffering and to promote reconciliation. This project also includes establishing a network specifically for victims of gender-based violence, in particular forced marriage. This award would benefit all the Civil Parties that wish to participate of the sessions during which they can share their feelings, tell their stories and is a way to try to achieve closure and move forward. This project would help them to overcome their suffering. The Self-Help Groups are already a pilot project conducted by TPO, therefore the projects aims to cooperate with this NGO in order to continue with the work and enable more Civil Parties to participate.

***c). Category III: Documentation/Education***

70. This third category, *Documentation/Education*, encompasses initiatives aimed at preserving and understanding the history of the Khmer Rouge and the experiences of individual victims.

71. The first project is called **“Project to establish school curriculum”**. This project encompasses requests ranging from the incorporation of Khmer Rouge history and/or the trials of senior leaders into the national curriculum to building education centers. This project would allow the Civil Parties to convey the crimes suffered to the younger generation and this will confronted them with the past in order for the crimes to be remembered and not repeated.

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This award will benefit all Civil Parties and future generations. A possible collaboration would be to enhance DC-CAM book on the regime that was distributed to the schools with a part that would describe the trials at the ECCC.

72. The second project is an “**Advocacy projects encompassing a Documentation centre/ museum/archives/Libraries**”. The project envisages the establishment of Spaces for Public Access to Historical Documents and Artefacts, pertains to building libraries, archives and/or museums that serve the dual purposes of preserving artefacts from the Khmer Rouge era and providing a space for CPs and the public to educate themselves about the regime and the ECCC trials. This project would give the opportunity to compile information about the regime and make it at ease to the Civil Parties to have access to this information and archive it. These will be instruments for the civil parties to explain and show to the public the atrocities in the DK regime.

73. The Documentation Center would have the role to collect, maintain, make analyzes and distribute documents concerning the Khmer rouge regime for a museum, libraries or similar centre with the purpose taking care of the documents for the profit of the civil Parties and future generation.

74. This award will benefit all Civil Parties and the Cambodia population especially the younger generation. Regarding the implementation, it is yet to be decided if the project encompasses one documentation centre, or different small ones in every province. Collaboration with DC-CAM is also under consideration as they are planning in creating a museum. The award will be designed and implemented in collaboration with the Civil Parties and communities in Cambodia.

75. The third project is a “**The Victims Register or *Kraing Meas* (“Golden Book”)**”. This project envisages the creation of an historical document that commemorates victims and can be accessed by current and future generations. The register open the possibility to record as many victims of the regime as possible and therefore would permit to have a comprehensive register of the crimes committed and the number of victims as this would be open to anyone that wants to tell their story. It would also acknowledge the crimes that they

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suffered.

76. This award will benefit all Civil Parties and all Victims of the Regime that wish to participate. Regarding the implementation, though the form of the proposed register varies, with some teams requesting a comprehensive book containing victims' narratives and others a simple list of victims' names, all sharing the same goal. Furthermore, it is envisaged that the Victim Register should be maintained in both physical and online format, via the existing Virtual Tribunal, to maximize distribution.

77. The last project of this category is the **“Publication of the names of the Civil Parties in the Judgment”**. It is intended to request the Chamber to include the full names of the Civil Parties and, where requested by the Civil Party Lead Co-Lawyers, their place of residence, date of birth, place of birth and occupation; that were admitted to the proceedings. Furthermore a wide distribution in all the country should be made in order for the Cambodian Public to know the findings of the Court.

*d) Category IV: Other projects*

78. Our consultations with the Civil Parties have produced self-evident projects, which have met with everyone's approval and are already part of the mainstream international definitions of reparations, memory and remembrance, rehabilitation, documentation and education, as we stated earlier. There are also other projects which we will not characterise as more original, but their specificity is such that we had not been able to discuss them sufficiently in order to present them as projects whose nature and contours have been defined among us. Nonetheless, here again, we would like to provide the Chamber with further details, as requested.

79. Those projects include the establishment of a **trust fund**, whose name and title may and should be changed. At paragraph 670 of the *Duch* Judgement, the Chamber held as follows: “[a]ll requests which, whether directly or indirectly, seek individual monetary awards for Civil Parties, or the establishment of a trust fund for victims, are beyond the scope of the available reparations before the ECCC”. It is upon this ground that the Chamber dismissed some claims which, in its view, either directly or indirectly sought individual monetary

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reparations. This includes the claims seeking professional training, micro-enterprise loans or technical or commercial training or the establishment of a trust fund.

80. The Chamber quite rightly points out that claims for monetary awards, whether collective or individual, cannot be entertained. We are fully aware of this, and in fact, we believe that it is justified, if only in view of the sheer number of Civil Parties. Moreover, the collective nature of the reparations is meaningful in this trial, in which, once again, the victims are not the 3,900 Civil Parties alone, but rather the entire population. The establishment is justified by the quantum of the collective harm and the symbolism of the reparations to be awarded.

81. This project could be called **“Project to establish a trust fund and for collective and moral reparations”**.

The Internal Rules contemplate the monetary aspect of the reparations, even where such reparations are symbolic and moral. Accordingly, under Rule 23*quinquies* 3) b), it must be demonstrated to the Chamber that funding for the projects has been secured. It is therefore justified to envisage the establishment of a trust fund or a funding organ. This would enable donors who are prepared to fund a reparation project to willingly entrust funds to an independent organisation for use in implementing a variety of projects.

82. There are many types of trust funds. The first example is the fund established by the International Criminal Court. The Chamber could argue that the fund was established through the Rome Statute at the same time as the ICC as an organ thereof. Such is not the case here. However, there is no impediment to establishing such a fund here in another form, provided that it guarantees use of the funds collected. Another example could be the fund established by the German Foundation (EVZ), which serves a much broader purpose than simply collecting and distributing funds. There are many other examples emanating from cases before the Inter-American Court of Human Rights and from domestic reparation schemes. Those examples show that a quasi-administrative entity, an implementation agency, a reparations advisory committee, or an organ called by some other name, can contribute to putting in place complex non-monetary reparations, but whose implementation involves a cost.

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83. We propose the creation of such a mechanism with a view to establishing genuine and sustainable reparations. The mechanism is currently being developed. We must determine whether there could be any legal impediments that could prevent the Chamber from awarding this type of reparations. In any event, this project would offer a response to the first question, namely how to guarantee the actual realisation of the reparation projects, given the material constraints involved.

84. This project offers a real solution to recognising the rights of the Civil Parties to reparation; moreover, it would facilitate the development of many other projects. Finally, it would be for all those Civil Parties who may benefit from it in one way or another. In addition to Civil Parties, it could also benefit victims in a broader sense, as awarding collective and moral reparations to civil parties implies that they can benefit many victims.

85. - The second project in this category is similar to the trust fund in terms of its implementation. It entails the **creation of an entity to monitor the implementation of the reparations** after the verdict, and to keep the Civil Parties, the victims and the international community abreast of the implementation. We are mindful of the fact that such an entity must be self-funded; this could be a difficult, but not impossible task.

86. Needless to say, one of the main concerns of the Civil Party Lawyers is to ensure that after the verdict, all the reparations awarded are actually implemented. While we are aware that it will be virtually impossible to ensure implementation of the reparations through legal channels once the Chamber is no longer seised of the case, we believe that another independent body will step in to ensure the implementation and, where necessary, to facilitate its continuation.

87. Further, as part of its task to inform both nationally and internationally, this entity will ensure that the Civil Parties, the victims and the international community are kept abreast of the status of each reparation award. One part of the reparation award is its award, another part is its actual implementation, and yet another is the fact that it is brought to the attention of persons other than those to whom it was awarded in the first place.

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88. -The third project in this category could be called: **“Project to facilitate acquisition of Cambodian citizenship”**. This is the project which we mistakenly and too hastily named “Project for granting Cambodian citizenship”, at the initial hearing. The misnomer drew a number of observations from the Chamber in its Memorandum E125. The Chamber recalls that it cannot compel the Cambodian Government to accord Cambodian citizenship, as only the Cambodian Government is entitled to do so. Needless to say, the Civil Party Lawyers are aware of this.

89. Put in plain terms, the form of remedy sought by the ethnic Vietnamese survivors, a minority group in Cambodia, was not intended to circumvent the discretion or authority of the Cambodian government to grant nationality or citizenship. First, we wish to emphasise that those claims are legitimate in that the harm suffered by those victims is linked to crimes set out in the Indictment, namely genocide, persecution and enforceable expulsion of Vietnamese from Cambodia. The consequences of the enforceable expulsion from Cambodia – which led to the loss of documents, loss of citizenship, – can be remedied in part by the Project for facilitating acquisition of Cambodian citizenship, a measure that is entirely in keeping with the “collective and moral” reparations envisaged at the ECCC.

90. This reparation measure consists in a project aimed at facilitating applications for naturalisation by ethnic Vietnamese victims who have lived in Cambodia for generations, and who, as a direct impact of the crimes committed by the Khmer Rouge – namely, enforceable expulsion from Cambodia – had lost their documents or the means to substantiate or prove their identity or connection to Cambodia when they returned to Cambodia in the nineteen eighties. These victims were born and raised in Cambodia, like their parents and grandparents. Some had Cambodian nationality pursuant to earlier citizenship laws. The fact that owing to their enforceable expulsion from Cambodia by the Khmer Rouge, these victims are no longer able to prove how many years they lived in Cambodia, their birth status or that their parents and grandparents lived in Cambodia amounts to further harm, i.e. not being in a position to meet the naturalization requirements under Cambodian law. These victims are a high risk of being stateless and living on the margins of society due to no fault of their own.

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91. For example, nationality applications could be facilitated through an outreach project on Cambodia's citizenship law and on the legal requirements that the applicants must satisfy when applying for citizenship in accordance with Cambodian procedures. A pertinent project might be to create a legal assistance service in the civil parties' home area, assist in collecting the application materials, filling in the applications and submitting them to the competent Cambodian authorities. It could also serve as a liaison between the local government authorities by making sure that they are properly informed about the situation of the ethnic Vietnamese and that they comply with the citizenship law when exercising their discretionary powers in processing applications for citizenship.

92. In any event, applications for nationality under this reparation award must be processed by the competent Cambodian authority. The project is only aimed at facilitating the application process, and it is for the government to decide the status of these individuals through the normal process.

93. The imperative is to avoid any misunderstanding in the future by the Trial Chamber, members of the general public or the people of Cambodia about the reparation claims of ethnic Vietnamese civil parties, so as to avoid further discrimination, which would have a negative impact on their community. Their claims are legitimate in that the crimes are directly linked to the harm they suffered, and also the award would be a meaningful form of remedy for them.

94. The fourth and last project in this category could be called "**Project to identify requirements and preferences for professional training**". This project is designed for Civil Parties, victims of forced marriages and their children, including children who were born after the demise of the Khmer Rouge regime. It would be for the children concerned to identify their requirements and preferences. A task force would thus be formed by region and in each major training area. The government could be part of the task force if it accepts to support the core idea. If not, it will be necessary to secure external funding.

95. As regards implementation, the government would be invited to the task force and would be informed of the results. The professional training should last at least one year, and

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the funding should cover the teachers' salaries and provide the trainees with financial aid enabling them to attend the courses. At the end of the training, the task force would assist the individuals concerned to find employment or to start their own business. The project could provide the trainees with micro-finance loans.

96. In conclusion with regard to these projects, we wish to once again call the attention of the Chamber to the fact that they have not yet been specifically discussed, owing to their somewhat unique character. They have been presented to all the lawyers, but they require further discussion in the future as part of the consultations, and to the extent possible, the consensus-building. That does not diminish their merits or feasibility. This is a key component of the lawyers' discussions. In informing the Chamber of these projects at this early stage, we hope that it will begin the task of assessing their merits and feasibility, as well as their necessity and symbolism. That said, we are mindful of the fact that there could be impediments to implementing them. We will endeavour to overcome any such obstacles.

**CONCLUSION:**

97. As we conclude our oral arguments, we hope that we have enlightened the Chamber and provided it with the details it requires. We also hope that we have clearly spelled out the problems we face, the questions we have, including the ones relating to the Severance Order and to the lack of clear guidance concerning notions and definitions attached to reparations.

98. Our initial specifications concern all the crimes and all Civil Parties. The Severance Order significantly changes their scope and leaves us in an uncertain situation. As part of this overall conclusion, we wish to raise a number of open questions, to which the Chamber will perhaps offer some answers: How are the Chamber's views on the connection between the initial specifications on the substance of the reparation claims and the consequences of a severance? What are the Chamber's views on the reparation claims in each trial? Has the Chamber already determined the level of specificity of the projects? These are only a few of the many questions which affect our work going forward.

99. Finally, we wish to conclude with some thoughts: Reparations are not casually prepared, easy-to-implement technical measures. They must be satisfactory and give each

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Civil Party the sense that he/she is receiving the form of that alleviates his/her suffering. That is particularly true at this time, given that the trial could be separated into several discrete trials, which may not include all the Civil Parties. For the sake of reparations, we should do more than simply choose seemingly easy options that have no meaning for the Civil Parties. Reparations are meaningful only if each Civil Party is able to recognise their value and impact, be it indirectly. Pre-Trial Chamber I of the ICC has declared: “(...) the success of the Court is, to some extent, linked to the success of its reparation system”.<sup>24</sup> We share that view.

100. We realise that our projects are ambitious and difficult to implement. We must perform our duty with a sense of purpose. Otherwise, we would not be true defenders of the Civil Parties. We are aware that some projects need amendment, that others will be abandoned and that others still will be changed into non-judicial reparation schemes. Those choices will be made in the course of the development and it up to us to make them.

101. It is our duty and responsibility to prepare reparation projects that can be implemented, and it is our responsibility to present projects after having making sure that they are feasible; for its part, the Chamber has the responsibility to order, not measures that seem easily implementable, and if I may say, ordinary, but rather measures that are not only in compliance with the law, but are also more out of the ordinary and bring genuine remedy.

102. The reparations awarded in this case will be the fruit our efforts and common desire to ensure that reparations are not just token gestures with no deeper meaning, as that would arouse resentment and discontent. It is our duty to ensure that the judgements to be rendered are high in symbolism. We are fully confident that the Chamber will be mindful of this.

Date	Name	Place	Signature
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<sup>24</sup> ICC, *Prosecutor v. Thomas Lubanga Dyilo*, 10 February 2006, para. 136, No. ICC-01/04-01/06. Original FRENCH: 00788149-00788181

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