



Civil Parties Identify Reparations Projects for Case 002/01
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The Civil Party Lead Co-Lawyers (LCLs) of the Extraordinary Chambers in the Courts of Cambodia (ECCC) have identified a prioritized list of reparations projects, including the status of their financing, that they intend to propose in Case 002/01 “which appear to have the greatest likelihood of being realized.”¹ Seven projects are being pursued: Royal Government of Cambodia recognition of a new remembrance day for Khmer Rouge victims; the creation of three to six public memorials that acknowledge the harms of Case 002 Civil Parties, in particular those related to the policy of forced movement at issue in Case 002/01; the funding of mental health services, such as testimonial therapy and self-help groups for Case 002 Civil Parties; a mobile exhibition with short films and live testimonials by Civil Parties documenting harms, including those related to forced transfer; a permanent exhibition space with documents, multi-media testimonials, and artistic displays to preserve accounts of forced transfer among other harms; and a booklet explaining the ECCC judicial process, Civil Party participation, and the crimes that are encompassed in Case 002.² According to the LCLs:

These seven prioritized projects are in the final stages of design in collaboration with the CPLs [Civil Party Lawyers], VSS [Victim Support Section], and partner organizations and entities. All of the confirmed partner organizations and entities have expressed their willingness to be responsible for the implementation of these projects and to enter into direct funding agreements with project donors and/or Victims Support Section.³

Pursuant to the Internal Rules, the ECCC has no authority to grant individual reparations, only those that are “collective and moral.”⁴ The Trial Chamber has said:

[T]he ECCC lacks the competence to award individual monetary compensation to Civil Parties. ... Such departures from national law were considered necessary in view of the large number of Civil Parties expected before the ECCC and the inevitable difficulties of quantifying the full extent of the losses suffered by an indeterminate class of victims. Reparations before the ECCC were therefore intended to be essentially symbolic ... rather than compensatory.⁵

¹ Trial Chamber Memorandum: Indication of Priority Projects for Implementation As Reparation (Internal Rule 80*bis*(4)) (Dec. 3, 2012).

² Lead Co-Lawyers’ Indication to the Trial Chamber of the Priority Projects for Implementation As Reparations (Internal Rule 80*bis*(4) with Confidential Annexes (Feb. 12, 2013) [hereinafter Indication to the Trial Chamber].

³ *Id.* ¶ 4.

⁴ ECCC Internal Rules, r. 23*quinqüies*(1). The Rules define “collective and moral” as measures that (a) acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted and (b) provide benefits to the Civil Parties that address this harm. *Id.*

⁵ *Duch* Trial Chamber Judgment, ¶ 661 n. 1144 (July 26, 2010). This was upheld by the Supreme Court Chamber. *Duch* Appeals Judgment, ¶ 644 (Feb. 3, 2012).

In the Court's first Case (001), Civil Party teams requested as reparations, "at a minimum," the compilation and dissemination of convicted S-21 security center chief Kaing Guek Eav (Duch)'s statements of apology with Civil Party comments, access to free medical care for their clients, the funding of educational programs about the Khmer Rouge and S-21 in particular, the erection of memorials and pagodas, and the inclusion of Civil Party names in the final judgment.⁶

Under the Internal Rules in force at that time reparations awards were to be "directed against and borne exclusively [by] the Accused[.]"⁷ and Duch was determined to be indigent. The Trial Chamber found that it had no jurisdiction over Cambodian or other authorities, could not issue orders that were incapable of enforcement due to a lack of specificity, and at most could only "encourage" outside actors to provide victims financial support.⁸ Although recognizing international principles obligating states to redress victims of gross human rights violations, the Chamber said it was "constrained in its task by the requests before it and the type of reparation permitted under its Internal Rules. Limitations of this nature cannot be circumvented through jurisprudence but instead require Rule amendments." It therefore awarded only the Civil Parties' request for inclusion of the names of Civil Parties and the immediate victims in the final judgment and the compilation and publication of all statements of apology made by Duch during the trial.⁹

In anticipation of Case 002, the judges amended the Court's rules to expand their authority to provide reparations. New Internal Rule 23 *quinquies*(3) gives the judges the power either to order that the cost of a reparations award be borne by a convicted person or to "recognise that a specific project appropriately gives effect to the award sought by the Lead Co-Lawyers and may be implemented. Such project shall have been designed or identified in cooperation with the Victims Support Section and have secured sufficient external funding." This rule amendment creates potential for expanded reparations; however, to date, the Trial Chamber has not provided a concrete framework to guide its implementation, and many practicalities remain unclear.

The LCLs share overlapping responsibilities with the VSS to create reparations projects, making lines of authority and ultimate accountability ambiguous: "The Victims Support Section shall, in co-operation with the Lead Co-Lawyers ... endeavour to identify, design and later implement projects[.]"¹⁰ The LCLs seek and convey the views of Civil Parties regarding which projects would be meaningful and prepare the final proposal for the Trial Chamber;¹¹ however, their primary role is the in-court representation of Civil Parties, not project administration. The LCLs emphasize that they can only support and facilitate VSS fundraising, as they "have neither the expertise nor the mandate to be directly responsible[.]"¹² VSS is responsible for project

⁶ See Civil Parties' Co-Lawyers' Joint Submission on Reparations, Case No. 001/18-07-2007-ECCC/TC, ¶¶ 12-30 (Sept. 14, 2009).

⁷ ECCC Internal Rules (original), r. 23(11).

⁸ See *Duch* Trial Chamber Judgment, ¶¶ 663-65. This was upheld by the Supreme Court Chamber. *Duch* Supreme Court Judgment, ¶ 654.

⁹ *Duch* Trial Chamber Judgment, ¶¶ 662, 664-75. Civil Parties' request to include comments with the statements of apology was not accepted.

¹⁰ Internal Rules, r. 12*bis*(2).

¹¹ See *id.*, r. 80*bis*(4).

¹² Indication to the Trial Chamber, *supra* note 2, ¶ 30. Both offices are both hampered by a lack of expertise. As noted in the past by the LCLs, the task of formulating reparations projects is normally performed by "specialised

development and is expected to “design the award(s) identified by the Co-Lead Lawyers, and ensure their funding and readiness for implementation at the verdict stage.”¹³

According to the LCLs, currently “[t]he identification and design of the projects are at an advanced stage, however, financial guarantees are yet to be found, or if found, it is still not clear.”¹⁴ Although the Trial Chamber has said that the new reparations rule “presupposes the development of awards (technically through program management) in parallel with the ongoing trial[,]”¹⁵ it is unknown if projects must be *fully* designed and funded prior to their recognition—making ECCC approval purely symbolic—or if it is sufficient that a concrete plan and funding pledges (perhaps contingent on ECCC recognition) exist.

The Trial Chamber has previously offered observations about the compatibility of the types of projects the LCLs are prioritizing with the new ECCC framework for reparations. Notably, it indicated that measures requiring Cambodian Government approval may be beyond the scope of ECCC authority. Moreover, it said that requests for the establishment of *stupas*, memorial sites, educational programs, and psychological support require sufficient specificity. For example, referencing the *Duch* judgment, the Trial Chamber indicated that practical information about the location, cost, and consent of owners of proposed memorial site locations and the need for administrative authorizations such as building permits must be provided “to ensure that even a limited cross-section of these measures can be meaningfully achieved within the applicable time frame.” It did not otherwise explain what level of specificity would be sufficient but instead tellingly identified measures similar to those awarded in Case 001—the dissemination of the judgment and a list of Civil Parties—as “appropriate and achievable measures within the specific ECCC context.”¹⁶ But of course, these reparations were available before the adoption of the new rule and have been described as “ineffective” by the LCLs.¹⁷

Finally, the implications of the severance of Case 002 into one or more smaller trials on the entitlement of individual Case 002 Civil Parties to reparations remain unaddressed. This topic will be discussed in an upcoming commentary.

entities which are afforded a large staff, funding, time and experience” unavailable to either the LCLs or the VSS. Initial Specification of the Substance of the Awards that the Civil Party Lead Co-Lawyers Intend to Seek—Hearing of 19 October 2011, ¶ 40 (Mar. 2, 2012) [hereinafter LCL Initial Specifications].

¹³ TC Memorandum: Initial Specification of the Substance of Reparations Awards Sought by the Civil Party Lead Co-Lawyers Pursuant to Internal Rule 23*quinquies*(3) (Sept. 23, 2011) [hereinafter TC Initial Specifications].

¹⁴ Indication to the Trial Chamber, *supra* note 2, ¶ 36.

¹⁵ TC Initial Specifications, *supra* note 13, at 2..

¹⁶ *Id.* at 3.

¹⁷ LCL Initial Specifications, *supra* note 12, ¶ 52.