



Trial Chamber Endorses Proposed Case 002 Victim Reparation Projects “In Principle”

Anne Heindel, Legal Advisor – Documentation Center of Cambodia

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The Trial Chamber has announced that the Civil Party Lead Co-Lawyer’s (LCLs) proposed reparations projects in Case 002 at the Extraordinary Chambers in the Courts of Cambodia (ECCC) are appropriate for addressing victims’ harm and “in principle” will be endorsed. However, implementation is not assured, as the Court’s approval remains contingent on the uncertain ability of the LCLs and the Victims Support Section to obtain Government support for some projects, specify additional details for others, and—most problematically—identify sufficient funding for all projects by the end of September.¹

At the time the Case 001 verdict was issued, the ECCC Internal Rules only authorized reparations “awarded against, and ... borne by convicted persons.”² The Trial Chamber found that it had no jurisdiction to order Cambodian authorities to provide reparations to Civil Parties, and that at most it could “encourage” the Government and other entities to offer financial and other forms of support. The Chamber also said that no legal mechanism existed “allowing the ECCC to substitute or supplement awards made against [accused] with funds provided by national authorities or other third parties.”³ The accused was found indigent, and the Trial Chamber awarded Civil Parties only the inclusion of their names and those of the immediate victims in the final judgment, and the compilation and publication of statements of apology made by the accused during the trial. The Chamber rejected all other reparations requests, including for the construction of pagodas and memorials; free medical care; the funding of educational programs about the Khmer Rouge; and any measures that would require implementation by the Government, such as a national commemoration day.⁴

In anticipation of the Court’s second trial, the ECCC judges amended the Court’s rules to expand the scope of their authority to provide reparations. New Internal Rule 23 *quinquies*(3) gives the judges the power to “recognise that a specific project appropriately gives effect to the award sought by the [Civil Party] 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.”

At the behest of the Trial Chamber,⁵ late last year the LCLs identified a prioritized list of reparations projects and the current status of their outside financing, proposing seven priority

¹ TC Memorandum, *Trial Chamber’s Response to the Lead Co-Lawyers’ Initial Specifications of Civil Party*

² ECCC Internal Rules (original), r. 23(11).

³ See *Duch* Trial Chamber Judgment, ¶¶ 663-75. See also Civil Parties’ Co-Lawyers’ Joint Submission on Reparations, Case No. 001/18-07-2007-ECCC/TC, ¶¶ 12-30 (Sept. 14, 2009).

⁴ *Id.*

⁵ TC Memorandum, *Indication of Priority Projects for Implementation As Reparation (Internal Rule 80bis(4))* (Dec. 3, 2012); TC Memorandum *Initial Specification of the Substance of Reparations Awards Sought by the Civil Party Lead Co-Lawyers Pursuant to Internal Rule 23quinquies(3)* (Sept. 23, 2011) [hereinafter TC September 2011 Memo].

awards: (1) Government recognition of a new remembrance day for Khmer Rouge victims; (2) the creation of three to six public memorials acknowledging the harms of Case 002 Civil Parties; the funding of mental health services for Case 002 Civil Parties including (3) testimonial therapy and (4) self-help groups; (5) a mobile exhibition with short films and live testimonials by Civil Parties; (6) a permanent exhibition space with documents, multi-media testimonials, and artistic displays to preserve Civil Party accounts of the harms they suffered; and (7) a booklet explaining the ECCC judicial process, Civil Party participation, and the crimes encompassed in Case 002.⁶

The Trial Chamber has previously said that Rule 23 *quinquies*(3) initiatives requiring Cambodian Government action “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.”⁷ Early this year, the LCLs asked the Prime Minister to “provide directions or decisions to the concerned governmental authorities” for implementation of a new remembrance day, the preservation of crime sites named in the Case 002 indictment, the construction of *stupas* and memorials, the establishment of archives and exhibitions, and the incorporation of Khmer Rouge history into the national school curriculum for Grades 7-12.⁸ In response, the Council of Ministers agreed “in principle” to re-designate May 20, celebrated since 1984 as “Day of Anger,” as “National Day of Remembrance,” and to extend Khmer Rouge studies, currently mandatory for grades 9-12, to grades 7 and 8. None of the other projects for which the LCLs requested support were specifically mentioned. The Council of Ministers said it would issue directions to the relevant ministries and local authorities on this topic but noted that the ECCC administration was responsible for seeking “technical and financial support” for the implementation of all requested projects.⁹

The Trial Chamber’s new memorandum on reparations indicates that no further consultations have taken place between the LCLs and the Government regarding the establishment of a remembrance day. Moreover, cooperation by the Government on the public memorials initiative “to date has not been assured.” The Trial Chamber therefore emphasizes that “[p]roof of the willingness” of the Government will be required before these projects are approved.¹⁰

Regarding requests for the establishment of *stupas*, memorial sites, educational programs, and psychological support, the Trial Chamber has emphasized in the past that they must be proposed with sufficient specificity, including practical information about the location, cost, and, where relevant, the consent of land owners; as well as the need for administrative authorizations such as building permits.¹¹ Likewise, in its new memorandum, the Trial Chamber says that detailed descriptions of proposed public memorials and inscriptions will be a precondition for their approval. It also seeks additional details about other proposed projects, such as who will be responsible for the establishment and provision of testimonial therapies and self-help groups, the duration of these projects, and whether the participation of non-governmental organizations

⁶ 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).

⁷ TC September 2011 Memo at 3, *supra* note 5.

⁸ Letter from the LCLs to the Prime Minister of the Kingdom of Cambodia, Ref. LCL-2013-0014 (March 7, 2013).

⁹ Letter from the Office of the Council of Ministers to the LCLs, No. 1134 S.CH.N (June 11, 2013).

¹⁰ TC August 2013 Memo ¶¶ 3(i), 4, *supra* note 1.

¹¹ TC September 2011 Memo at 3, *supra* note 5.

listed as partners is dependent on available funding.¹²

Thus, despite the Trial Chamber's tentative endorsement of Civil Party proposals, it remains uncertain if the LCLs can rally the Victims Support Section to obtain clear Government support, nail down specific proposal details, and secure necessary funding within the short time left before closing arguments. The Trial Chamber has asked the LCLs to provide additional information by August 23, 2013, and to file their final reparations submission by September 26.¹³

¹² TC August 2013 Memo ¶ 5, *supra* note 1.

¹³ *Id.*, ¶¶ 6-8.