

What Reparations Will the Civil Parties Receive in Case 002/001?

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Introduction

Internal Rule 23 *quinquies* (3) of the Extraordinary Chambers in the Court of Cambodia states "if an accused is convicted, the Chambers may award only collective and moral reparations to the Civil Parties." In the context of the former Khmer Rouge leaders' trial, the Chamber is not responsible to award individual, financial compensation to the Civil Parties as found in domestic law.

During Case 002/01 trial, the Civil Party Lead Co-Lawyers submitted documents concerning reparations projects proposed by civil parties to the Trial Chamber seeking recognition as reparations for them. The reparations projects submitted by the Civil Party Lead Co-Lawyers consist of three main categories and are divided into thirteen projects. The three categories are: 1) *Remembrance and Memorialization* 2) *Rehabilitation and* 3) *Documentation and Education*.

The Civil Parties' requested reparations projects are not targeted against the convicted persons but rather to ensure that the reparations are funded by the external sources and acknowledge the sufferings of the Civil Parties; therefore, the projects could be implemented as soon as the announcement of the final judgment is made. Some of the projects are already carried out by NGOs although the Chamber has not announced the final judgment yet. These proposals, however, would not become reparations unless the official recognition of these projects by the Chamber is made or else they could not be recognized as reparations for the Civil Parties.

In order to ensure the approval of the projects, the Chamber requested that the Civil Party Lead Co-Lawyers has to make sure the submitted proposed initiatives have

sufficient funding. Additionally, all reparations proposals must demonstrate the proof of consent and cooperation of any involved third party, and any necessary additional information such as detailed description including sketches and/or pictures and budget plans of proposals. If not, the proposed projects are at risk of being rejected by the Trial Chamber.

The internal rules state clearly that if an Accused is convicted, the Chamber may order the convicted person to pay for the costs of the reparations projects. But, civil party proceedings before the ECCC against a charged person or an accused shall end on the death of that person, this is in contrast to Article 24 of the Criminal Procedure which states “the civil party in a in a civil action can claim compensation for injury from accused’s successor if the accused dies during the proceedings. Even though the criminal action is ended, the criminal court still has the authority to decide a civil action against the successor of the deceased.” Under the ECCC laws, the claim for reparations to be pursued against the successor of the accused does not allow.

To date, there is not an official recognition of the reparations proposals and the Trial Chamber have already notified that a number of initiatives are not detailed enough or do not have the proof of consent and cooperation of any involved third party. In the document which was sent to the Civil Parties Lead Co-Lawyer on 19 December 2013, the Chamber reiterated that the reparations projects which are not technical correct are at risk of being rejected.

Below are the detailed proposal initiatives submitted by the civil party to the Chamber seeking for official recognition as reparations for civil parties in Case 002/01.

The first category: Remembrance and Memorialization

This category is to pay tribute to the deceased and victims, and allows the survivors including the Civil Parties and future generations to reflect on what had happened and practice their belief and religious. This category contains four reparation projects: 1) *National Day of Remembrance*; 2) *Public Memorials Initiative*; 3)

Memorial in Remembrance of Victims and 4) Memorial for the Khmer Rouge Victims in France.

1. National Day of Remembrance

National Day of Remembrance is a reparation project proposed by the Civil Parties seeking the establishment of an official remembrance day which should be different from annual national holidays. The requested dates for the National Day of Remembrance by the Civil Parties are April 17, May 20, or March 30. It would be celebrated throughout the country as an official recognition of crimes committed during the Khmer Rouge regime.

The main purpose of the National Day of Remembrance is to restore the honor of the Khmer Rouge victims both the deceased and survivors, to remember the suffering of their loved ones, to maintain the memory of crime committed during the Khmer Rouge regime, to overcome the psychological wound, and to rebuild the honor of the victims. Besides, this day would also play an important role in educating and preventing the occurrence of genocide again in Cambodia. This project also gives the chance to the Civil Parties and Cambodian people in reuniting and organizing religious practices.

The Royal Government of Cambodia already gave its consent to the project and designated May 20 as the National Day of Remembrance in Cambodian holiday calendar. The Royal Government would soon issue sub-decree concerning the official establishment of Remembrance Day along with the Circular and guidelines for the related authorities and the implementation of the project. The Civil Party Co-Lawyers stated that this project could be implemented at anytime.

2. Public Memorials Initiative

The project concerning the building of public memorial was proposed by all the civil parties in Case 002/01. The building of public memorial is to collect the ash of deceased during the Khmer Rouge and allows the Civil Parties, victims, perpetrators and the public to burn incense and organize religious ceremony in honor to those who lost their life under the Khmer Rouge regime in suitable and collective manner.

The primary objective of this project is restoring the honor and dignity of the civil party and repairing their mental illness. The project aims to maintain the memory of dead people, and to promote the knowledge and collective reflection on the Khmer Rouge history. Furthermore, it also focuses on educating local communities about the facts of the Case 002/01 and gives the Civil Parties a chance to talk about their bitter experiences. The public memorial construction would fight against the divisions resulting from the Khmer Rouge regime in the interest of social reconciliation and the prevention of such acts from happening again. However, this project has not had enough funds to implement it yet.

3. Memorial for Khmer Rouge Victims

Memorial for Khmer Rouge Victims is an artistic project "in tribute to those who are no longer here" initiated by French- Cambodian artist, Sera. He ranks among the top 101 French artists of 2002-2012. The project directs toward the remembrance of forced transfer of Phnom Penh resident on April 17, 1975, marking the commencement of tragedy on Cambodians. The evacuation from Phnom Penh by the Khmer Rouge caused uncertain future and endless sufferings. The memorial sculpture would be place in front of the French Embassy on the roundabout near Chroy Changvar Bridge. The reasons in choosing the front area of French Embassy for placing the sculptures are that it was where mass of people were transferred and also a gathering place for the last thousand refugees before leaving the city. The Civil Parties, the victims of the evacuation, and other civil parties, whose relatives were evacuated when the Khmer Rouge conquered Phnom Penh, would have a place and sculpture for worshipping and celebrating ceremony according to their religious. This project is funded by French Government and many other donors so it could be implemented at anytime.

4. Monument for Khmer Rouge Victims in France

This project proposed by Cambodian people living in France so that they could have a place to pay their respect to those who died during the Khmer Rouge regime, and also for people in general so they can worship and pray anytime that they want.

Besides, the monument would become the gathering place for Cambodian people to celebrate their religious and annual commemoration. It is even more important place when most of Cambodians cannot find the bones of their fallen relatives. Such construction project would be served as the permanent reminder and collective memory of the victims as well as raising the awareness among young people and the public on what had happened during the Khmer Rouge regime. To date, Paris City Hall already gave its consent to the project but it is still in the process of securing funds for implement.

The second category: Rehabilitation

This category is divided into two projects: testimonial therapy and self-help groups for rehabilitation. The primary object of these two projects is treating the trauma psychology of the victims in the wake of the Khmer Rouge.

1. Testimonial Therapy Project

The Civil Parties Lead Co-lawyers stated in the proposed reparation documents submitted to the Trial Chamber that most of the Civil Parties had requested the reparation in the form of mental illness treatment from mental health profession for the mental sufferings caused by the Khmer Rouge. “The Testimonial Therapy Project” requires the Civil Parties, in the presence of mental health profession and other people, talking about the suffers and mental illness that they, their families members or relatives had to endure because of the crime committed during the Khmer Rouge regime. Their stories establish a written document- that is called “Testimony”. These testimonies, then, would be read out loud in the public ceremony across the countries and these ceremonies will be taken place near the civil parties’ residence. These ceremonies may include the Khmer Rouge survivors, family members, community members, religious leaders, politician and NGOs. Once the ceremonies come to an end, all the testimonies would be returned back to the civil parties.

This project is going to promote the treatment and national reconciliation through mental and collective reparation, and the establishment of mental and physical

health care service for the civil parties who suffered or injured because of the notorious Khmer Rouge regime. Furthermore, it would improve the mental health of the civil parties in Case 002 by restoring their dignity, self-esteem, energy and acting ability. The project also allows them to find a balance in their emotions and also how to manage their past and the still-existing psychological problems.

2. Self-help Groups for Rehabilitation

Self-help Group for Rehabilitation shares some similarities with Testimonial Therapy Project. Self-help Group is the gathering of volunteers, who all share a common desire to overcome their sufferings, to understand better, and to manage their emotions by an exchange of words and experiences. Through this project, the civil parties, the forced transfer victims in Case 002, would talk about suffers that they had to endure. These talking sessions beget the healing process of the pain that the civil parties have suffered and served as a means of breaking the loneliness and sense of isolation by building a relationship with other participants.

Both Testimonial Therapy Project and Self-help Group Project have been implemented by Transcultural Psychosocial Organisation (TPO) for 16 months; these projects are partially funded by German Government and many other donors.

The Third Category: Documentation and Education

The Civil Parties Lead Co-lawyers reiterates that the reparations project in the third category concerning documentation and education aims to maintain and deepen the knowledge of the Khmer Rouge history and experiences of each victim. This category consists of seven projects proposed by the Civil Parties Lead Co-lawyers on behalf of the Civil Parties. The projects are:

1. Permanent Exhibition on Forced Transfer and Tuol Po Chrey
2. Mobile Exhibition on Forced Transfer and Tuol Po Chrey
3. New Chapter on Forced Transfer and Tuol Po Chrey in Teacher's Guidebook
4. Community Peace Learning Center
5. Publication of Booklet on Case 002/01 Proceedings
6. Publication and Distribution of Case 002/01 Judgments in Full and Summary

7. Publication of Civil Party Names on ECCC Website

1. Permanent Exhibition on Forced Transfer and Tuol Po Chrey

This measure of reparation was sought by Case 002 civil parties; many of them were the victims of forced transfer on 17 April 1975 as well as the following days. Forced transfer is one of factual allegations in Case 002/01.

To preserve the memory of the Khmer Rouge regime, the project retains all kind of evidences in specific location intended for this purpose. The long-term preserved evidence will contribute to the knowledge of the regime. This project is a tribute to the victims and also served as a way for the Civil Parties to share their stories with future generation, national and international.

Educating is another purpose of the project. Teaching the younger generation about the past experience can achieve the national reconciliation. In addition, the initiative allows the Civil Parties and other victims to share their experiences and expend knowledge on the Khmer Rouge regime. It will also develop a history educational program and makes the Civil Parties' stories available to the public.

The Permanent Exhibitions is implemented by Documentation Center of Cambodia (DC-Cam) in close collaboration with the Ministry of Culture and Fine Art under the framework of preservation and development of museums in 24 provinces and cities throughout the country. The Royal Government of Cambodia already gave approval to DC-Cam. Therefore, DC-Cam will prepare the documents and design exhibitions about the Khmer Rouge regime throughout Cambodia.

Primarily, Permanent Exhibitions will be held in five provincial museums- firstly at Battambang and Bantey Mean Chey, followed by Kampong Thom, Takeo, and Svay Rieng. The two main reasons in choosing these five provinces for the exhibition are the good progress and intact building structure of the museum. Besides, these locations are related to Case 002/01 because many victims were forcefully transferred to there. Although the concept of the exhibition is about the Khmer Rouge history, the first main topic are about the first and second phase of forced transfer and what had happened at Tuol Po Chrey.

The project is planned to implement for sixteen months-starting from September 2013 to December 2014. The first phase of the project is from September 2013 to April 2014 and is mainly about the preparations. The exhibitions are opening from May to December 2014. A number of the Civil Parties will participate in this project by narrating and sharing their experiences under the Khmer Rouge regime as well as their participation in the trial proceedings. The Permanent Exhibitions would be the reparation for the Civil Parties in Case 002 and the implement of the project is funded by German Government.

2. Mobile Exhibition on Forced Transfer and Tuol Po Chrey

This project is set up to: 1) encourage the public to recognize the Civil Parties' suffers caused by forced transfer, 2) inform the public about Khmer Rouge history and more importantly on forced transfer, and 3) revitalize Cambodians' reflection on the Khmer Rouge regime and its root causes in order to prevent such atrocities from happening again. It also aims to promote peace culture and national reconciliation through moral and collective reparations. The Civil Parties will be supported with equipment, and take part in the exhibition design as well as many other educational programs.

Youth for Peace in concert with Kdei Karuna are going to implement this reparation project in six different areas. The implement is divided into two phase: the first phase includes the exhibition design, the production of documentary, exhibition on panels, the production of media materials, education, and the organizing project activities such as public forums, seminars, theatrical or musical performances, religious ceremonies, screening and making a film about the exhibitions. In the second phase of the project, the two organizations would create a team individually to implement the above plans. The German Government is the donor for this project.

3. New Chapter on Forced Transfer and Tuol Po Chrey in Teacher's Guidebook

This project is proposed by the Civil Parties to include an additional chapter on forced transfer and the Tuol Po Chrey execution site in the *Teacher's Guidebook: The Teaching of a History of Democratic Kampuchea (1975-1979)*. The main purpose of

the project is to gain formal and permanent recognition of the Democratic Kampuchea history and victims' stories. This kind of reparation project also promotes the learning of historical events and also teaches the younger generation to be responsible and moral in order to prevent crimes committed by the Khmer Rouge from happening again.

The chapter will be written and distributed by DC-Cam. DC-Cam has already published, circulated and used the teacher guidebook. Therefore, the chapter on forced transfer and Tuol Po Chrey execution site will be added into the book following the pronouncement of the tribunal's decision. The title of the chapter is "Participation of the Civil Parties and the Judgments in Case002/01" divided into four lessons within 16 pages. The first lesson deals with objectives and the policy of the forced transfer and the different stages of these transfers. The second lesson describes the living conditions of the Civil Parties during the evacuation. The third lesson discusses the negative effects of forced transfer on the victims. The fourth lesson is about Tuol Po Chrey execution sites with a particular focus on conditions and massacres over there, as well as the civil parties' experiences and testimonies.

Different from other projects, it could be implemented only after the pronouncement of Case 002/01 judgment. The Extraordinary Chambers in the Court of Cambodia stated clearly that the Chamber has not yet officially recognized this project because this reparation initiative relates to the factual allegations that are currently under judicial consideration and need to be finally adjudicated. If the charge persons are found guilty and a verdict is made, there will be enough requirements for the Chamber to approve.

4. Community Peace Learning Center

The project is part of an effort to develop critical thinking and methods in maintaining the process of peace and good governance; allow the victims and youth to hold discussion and later on young people can reflect based on these discussions; and prevents the crime against humanity and atrocities in the future. It will be implemented in Battambang province. The Civil Parties are going to talk about their experiences regarding the evacuation and tortures particularly in Battambang and

Pursat under the Democratic Kampuchea to establish documents explaining the events and the process of ECCC. The center will be transformed into a place for compiling, broadcasting, training, discussing and educating.

The center will be constructed on the execution sites under the Khmer Rouge regime but currently it belongs to the community. Other activities of the projects are skill development and good governance, public forum with 100 participants, handicrafts, the creation and improvement of library management system, youth camping, and documentation on the execution sites.

Youth of Peace will implement this project for two years starting from September 2013 to August 2015 and Swiss Agency for Development and Cooperation (SDC) is the donor.

5. Publication of Booklet on Case 002/01 Proceeding

This project is to publish a booklet using simplified words, images and drawing to make the readers to easily understand the development of ECCC. This booklet will help the readers to know more about the Khmer Rouge regime and understand the history so the readers can use the knowledge for reflection. This book is also a tribute to the Civil Parties who have participated in the trial proceedings on behalf of other victims. The project will be carried out by Cambodian Human Rights Action and Committee (CHRAC) made up of twenty-one associations and GIZ funds this project.

6. Publication and Distribution of Book on Case 002/01 Judgments in Full and Summary

Publication and Distribution of Book on Case 002/01 Judgments in Full and Summary is proposed by the Civil Parties to the Chamber to recognize it as a reparation initiative. The Civil Parties suggest the ECCC's office of administration to be in charge of this project. The office of administration will publish and distribute the books to the Civil Parties, public and law professions.

The project would also help the public to understand more about the trial proceedings and national reconciliation. However, there are not enough funds for the publication. Once the Chamber recognizes this project, it would be implemented about four months.

7. Publication of Civil Party Names on ECCC Website

This project is sought by the Civil Parties in an effort to show and value the participations of them in the trial proceedings. The publication will include the names of the Civil Parties in Khmer and Latin, the code number issued by The Victims Support Section (VSS), and other elements to make the name searching easy. The project will be carried out for three months once the Trial Chamber pronounced the judgment. VSS and the ECCC's Public Affairs Section are responsible for this project.

Notification of Trial Chamber on the Requested Reparations Projects

The Chamber stated clearly that all the proposed projects are not yet officially approved to be reparations for the Civil Parties. The detailed reparation projects which have already submitted by the Civil Parties Co-Lawyers and VSS is done for the purposes of informing and maintaining the scope and effective of the proposed initiatives, and allowing the Chamber to have a chance to review and comment whether such projects satisfy the criteria set out by the Trial Chamber. Provided the Trial Chamber rules that the projects are not suitable for implementation, the Chamber will not recognize the proposed projects as reparations for the Civil Parties in Case 002/01.

To date, the Trial Chamber has already made an announcement that a number of projects are at risk of not being recognized due to the lack of cooperation and consent proof, insecure funding, and incomplete of necessary information. Those projects are the Public Memorials Initiative and Memorial in Remembrance of Victims; there is no specific information about funding, detailed descriptions including sketch and/or picture, and more importantly the lack of official approval for the construction from Phnom Penh City Hall since the chosen locations are in regard as public property.

The Chamber already informed the Civil Parties Lead Co-Lawyers that it will not recognize any requested projects not meeting the established requirements or having only partial funds. However, the Trial Chamber has extended the deadline until 31 March 2014 for the Civil Parties Lead Co-Lawyer to provide further detail on the projects that are at risk of being rejected. The Chamber will not take into consideration any information submitted after the date.

To ensure that all the requested projects recognized by the Chamber, both the Civil Parties Lead Co-Lawyer and VSS need to make more efforts in searching for cooperation with the third party for technical support and fund.

Conclusion

Although a number of requested projects do not have secured fund for the implement, the Chamber should not make any rejections before the pronouncement of final judgment. Under Rule 23 *quinines* of the ECCC internal rules, if an Accused is convicted, the Chamber may order the convicted person to be financially responsible for the project that is not fully funded.

If the convicted person cannot pay for reparations, ECCC shall transfer the responsibility to the third parties who have enough funds and are willing to implement. The Chamber would assign the Victims Support Section to secure more funding for the initiatives that are not fully funded. Therefore, the Chamber should officially recognize all the reparation projects proposed by the Civil Parties Lead Co-Lawyer as rewards for the Civil Parties in Case 002/01.