

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

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**LEAD CO-LAWYERS' INDICATION TO THE TRIAL CHAMBER OF THE PRIORITY  
PROJECTS FOR IMPLEMENTATION AS REPARATIONS (INTERNAL RULE  
80BIS(4)) WITH CONFIDENTIAL ANNEXES**

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**Before:**

**Trial Chamber**

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*Lead Co-Lawyers' Indication to the Trial Chamber of the Priority Projects for Implementation as  
Reparation (Internal Rule 80bis(4))*

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*Lead Co-Lawyers' Indication to the Trial Chamber of the Priority Projects for Implementation as Reparations (Internal Rule 80bis(4))*

## I. PROCEDURAL HISTORY AND INTRODUCTION

1. On 3 December 2012, the President of the Trial Chamber issued a memorandum on *Indication of priority projects for implementation as reparation (Internal Rule 80bis (4))*<sup>1</sup> requesting the Lead Co-Lawyers to identify the Civil Parties' prioritized list of reparation projects currently under development for submission to the Chamber. Furthermore, the President requested that the Lead Co-Lawyers (LCLs) provide, in consultation with the Victims' Support Section (VSS), information regarding the current status of the financing of their prioritized projects. Under the present circumstances, the Lead Co-Lawyers and Civil Parties Lawyers have chosen to develop the following reparations awards as projects that would be implemented as envisaged under Rule 23*quinqüies* 3(b).
2. By May 2011, the Lead Co-Lawyers and Civil Parties Lawyers, in cooperation with VSS, had refined Civil Party requests for reparations into sixteen concrete reparation projects<sup>2</sup> or categories. We arrived at these projects after careful analysis and consideration of the wishes expressed by Civil Parties in their applications as well as through several consultations conducted with Civil Parties by Civil Party Lawyers (CPLs) and with the CPLs themselves. Further consultation held in March 2012 led to the prioritized ordering of these types of projects and a request from the LCLs and CPLs to VSS seeking their further collaboration and assistance, especially in the area of fundraising. Throughout this period, the key components of these projects were further elaborated through an extensive series of collaborative meetings, workshops and conferences held on the subject of reparations—all with a view to ensuring effective and meaningful reparation projects for the Civil Parties to Case 002 in line with the legal criteria set out by the Court.
3. During the Trial Management Meeting held on 27 August 2012, the Lead Co-Lawyers indicated to the Chamber that six projects had been prioritized;<sup>3</sup> however, one of these projects, on the exhibition, has since been split into two different projects. For this reason,

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<sup>1</sup> E218/7 Trial Chamber Memorandum entitled "Indication of priority projects for implementation as reparation (Internal Rule 80bis (4))."

<sup>2</sup> See *Annex G: 16 Award Projects for Submission by Civil Party Lead Co-Lawyers during the Whole of Case 002*.

<sup>3</sup> E1/114.2 Trial Management Meeting hearing transcripts dated 27 August 2012, pp 7-8.

we actually have seven prioritized reparation projects which are divided in three main categories as follows:

- **Remembrance and Memorialization comprising two projects:** *Remembrance Day* and *Public Memorials Initiative*;
- **Rehabilitation comprising two projects:** *Testimonial Therapy* and *Self-Help Groups*; and
- **Documentation and Education comprising three projects:** *Book on Victim Participation and Forced Transfer*; *Permanent Exhibition*; and *Mobile Exhibition and Education Project*.

4. These seven prioritized projects are in the final stages of design in collaboration with the CPLs, VSS, 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. Most recently and on the initiative of the Lead Co-Lawyers, these projects were further discussed and a clear path for finalizing the project design was set. In collaboration with an expert consultation hired by VSS, the LCLs and CPLs have continued to participate in this process to ensure that the final design fits with requests from Civil Parties and the reparations regime established by the Court.
5. As the development of the reparations projects has advanced, a number of projects have been merged or reformulated to better fit the needs and desires of the Civil Parties as well as the capacities and resources of the project partners. In addition to the seven prioritized projects identified here, there are an additional six projects which the Lead Co-Lawyers and Civil Party Lawyers presented to the Chamber during the Initial Specifications hearings.<sup>4</sup> These projects remain under consideration, but occupy a secondary position to

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<sup>4</sup> See **E1/6.1** Transcript of Initial Hearing, 29 June 2011 and **E1/11.1**, Transcript of hearing on specification of civil party reparations awards, 19 October 2011.

the prioritized group of projects. Should time and resources allow for the adequate development and funding of these projects, we would consider including one or more of these projects in the final claim for reparations.

6. On 8 February 2013, the Supreme Court Chamber issued a decision on the Co-Prosecutors' appeal on the scope of proceedings in Case 002/01 in which the Trial Chamber's severance in this case was invalidated.<sup>5</sup> In light of this decision, the resulting circumstance that the scope of proceedings must be reevaluated by the Trial Chamber, and the brief amount of time between the rendering of this decision and the due date for this submission, the Lead Co-Lawyers and Civil Party Lawyers reserve the right to subsequently reformulate their reparation requests in accordance with the final determination on the scope of Case 002/01, once that determination has been made.

## II – PRIORITIZED REPARATIONS PROJECTS

### **First Category: REMEMBRANCE AND MEMORIALISATION**

#### ***First Project: Remembrance Day***

7. The Civil Parties seek the establishment of an official, governmentally recognized Remembrance Day which honors victims of the Khmer Rouge, both living and deceased, and acknowledges the crimes of this regime. A number of Civil Parties emphasize that the day should be different from annual national holidays determined by sub decree of the Royal Government of Cambodia (RGC). Therefore, this reparation project focuses on the determination of a new holiday by the Royal Government of Cambodia (RGC). Several dates have been proposed by Civil Parties and will be presented to the RGC for discussion, their consideration and decision.

8. The establishment of such a Remembrance Day is sought in order to obtain official and permanent recognition and promote collective remembrance of the crimes committed during

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<sup>5</sup> See Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01, Case File No. 002/19-09-2007-ECCC-TC/SC(18), Doc. No. E163/5/1/13, 8 February 2013.

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the Khmer Rouge regime. It will aid in restoring the dignity and healing the psychological harm experienced by victims of the Khmer Rouge as a consequence of the crimes adjudicated in Case 002, especially Civil Party victims. As a symbolic form of reparation, the positive reach and benefits of this reparation cannot be contained to only Civil Parties. It will necessarily offer benefit to victims and Cambodian society more generally. Another example of this dual role is the way in which the Remembrance Day will serve an important role in educating the public about the crimes of the Khmer Rouge and in preventing their recurrence in Cambodia.

9. Consultation with Civil Parties has clearly established that they specifically seek an annual, nationwide, official government holiday. As a remembrance day of this nature clearly requires the involvement of the Royal Government of Cambodia (RGC), the LCL Section, in collaboration with the VSS and partner organizations and entities, is in the process of liaising with the RGC to obtain its recognition of this Remembrance Day.

10. After several consultations on the issue, the majority of Civil Parties Lawyers propose on behalf of their clients two potential dates, 17<sup>th</sup> of April or 20<sup>th</sup> of May, for the Remembrance Day, which will be put to the RGC.

***Second Project: Public Memorials Initiative***

11. The Public Memorials Initiative seeks to develop and/or establish from three to six public memorial sites distributed geographically throughout Cambodia and selected on the basis of a set of criteria which are intended to ensure that the sites are accessible, sustainable and build upon existing resources and capacities. The key components of this reparation project are the design and construction of public memorials, including educational elements to inform the public of the significance and historical context related to the memorial; outreach and educational activities that will enhance public knowledge and understanding and generate dialogue on experiences under the Khmer Rouge; and a public information campaign to publicize the existence and purpose of these sites.

12. A significant proportion of Case 002 Civil Parties mentioned Public Memorials as a desired form of reparation. The development of accessible, meaningful and well-maintained public memorials will play an important role in the recovery of Cambodian society. Such sites will publicly acknowledge the private sufferings of the Civil Parties and, in so doing, serve a reparative function in facilitating the healing of both the victims of Khmer Rouge instigated atrocities and the country of Cambodia as a whole. The monuments provide an essential space for honoring deceased and living victims, especially Civil Parties; serve as a permanent reminder of Khmer Rouge atrocities, especially, the forced movement of the population, thus helping to ensure their non-recurrence; generate and preserve the history of this period; and promote intergenerational dialogue, thus improving social cohesion and de-stigmatizing the harms suffered by the Civil Parties.

13. Through a participatory process with key stakeholders, the Lead Co-Lawyers and Civil Party Lawyers have worked with VSS and civil society partners to develop this project. **Kdei Karuna** and **Youth for Peace**, both of which have extensive experience in the development of sustainable memorial sites through consultative community-based processes, will serve as the implementing partners for this project. The **Cambodian Human Rights and Development Association** (ADHOC) will partner on this project in an advisory capacity, assisting with Civil Party participation. The LCLs and VSS are in the process of liaising with the RGC to facilitate cooperation on this project, particularly with the Ministry of Culture and Fine Arts, the Ministry of Tourism and local government actors. Once and only if such authorized cooperation is established, Civil Parties will finalize this project and request that the Court recognize this project as a reparation award which enjoys the full cooperation and agreement of the RGC.

### **Second Category: REHABILITATION**

14. A significant number of Civil Parties have requested mental health services as a form of reparation. Recent studies demonstrate the high number of victims who suffer from Post-Traumatic Stress Disorder in Cambodia, which, of course, includes Civil Parties. Projects fulfilling this wish for psychosocial support have been developed in a way that they can be

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awarded by the Trial Chamber as collective and moral reparations in Case 002. Two projects are being developed for the category of Rehabilitation: *Initiative for Testimonial Therapy for Civil Parties to Case 002* and *Self-help groups for Civil Parties of Case 002*. For these two projects the Lead Co-Lawyers are partnering with the **Transcultural Psychosocial Organization Cambodia** (TPO) who will be responsible for the implementation the project. TPO has been working for the last years with the Civil Parties and is the only non-governmental organization providing psychosocial support to Civil Parties before the ECCC.

***Third Project: Testimonial Therapy***

15. The Testimonial Therapy project aims to provide the Civil Parties to Case 002 with effective trauma treatment as it directly addresses the psychological suffering of victims resulting from the crimes perpetrated against them.

16. Testimonial Therapy is an effective short-term trauma treatment approach that was specifically designed for victims of state-sponsored violence. During the first phase of the Testimonial Therapy, as applied by TPO, the Civil Parties to Case 002 will be invited to talk about their traumatic experiences and in cooperation with a mental health professional they will restore their painful memories and convert them into a written document: *a testimony*. The reconstruction of traumatic memories in a safe space and with the assistance of well-trained mental health workers will allow Civil Parties to process their traumatic experiences.

17. During a second phase, the testimonies will be read aloud and handed over to the Civil Parties in a public ceremony in accordance with religious/spiritual beliefs and cultural practices of the respective parties. The public ceremonies will be organized throughout Cambodia in or near the communities where Civil Parties reside and include the participation of civil parties, survivors, relatives, community members, religious/spiritual leaders as well as representatives from governmental and non-governmental agencies.

18. The beneficial effect of Testimonial Therapy for Civil Parties as stated by TPO is multi-layered. This practice allows victims to express and process traumatic experiences, to restore their dignity, to document human rights violations, and to advocate for their own needs and interests in the context of Cambodia's transitional justice and reconciliation process.

***Fourth Project: Self-Help Groups***

19. Self-help groups are an alternative therapy treatment that has being develop by TPO and is intended to allow Civil Parties to Case 002 victims of forced transfer to talk about their suffering and in so doing start a process of healing the trauma suffered and to promote reconciliation.

20. The project has being designed to include eight sessions with groups of Civil Parties, once a month, in which the participating Civil Parties would be accompanied by a professional that would guide them through this alternative therapy. This collective therapy would also envisage opening afterwards dialogue between Civil Parties perpetrators and Civil Parties victims in their communities. This reconciliation component is also crucial.

**Third Category: DOCUMENTATION AND EDUCATION**

***Fifth Project: Mobile Exhibition and Education Project: Exploring History and Transitional Justice***

21. The Civil Parties seek the establishment of exhibitions and educational initiatives in order to educate survivors and post-war generations of Cambodians about the crimes committed during the Khmer Rouge period and more specifically during the forced movement of population. The civil society partners to this project are **Kdei Karuna** and **Youth for Peace** which will implement the project and **ADHOC** and **Cambodian Defenders Project** which will serve in an advisory capacity.

22. Much of the information currently available on the Khmer Rouge period can be inaccessible, complex and difficult for many Cambodians to grasp. In order to provide effective educational initiatives in these areas, this project aims to address the need to understand the past, specifically the topic of forced transfers, through a mobile exhibition and interactive, participatory events. Through short films and live testimonies by Civil Parties, the mobile exhibition will document Civil Party experiences of forced transfer and other harms suffered under the Khmer Rouge regime and make these accounts available to a wider public.

The majority of activities will be conducted in rural areas of Cambodia targeting beneficiaries

who often do not have access to similar initiatives at the national level, such as the planned permanent exhibition and other memory initiatives in the capital.

23. Experience has shown that many Cambodians are better able to integrate information which is presented in an interactive, participatory and pedagogically adequate way. The implementing partners build on their extensive experience in community engagement, participatory outreach, and interactive education to promote an intergenerational discussion of the topic while relating it to local experiences. The proposed project will thereby contribute to healing and closure for Civil Parties and survivors. In addition to a travelling multimedia exhibition, supplementary information on the work of the ECCC and forced transfers will be distributed and produced in conjunction with educational events.

***Sixth Project: Permanent Exhibition***

24. The Civil Parties envisage the establishment of a permanent public exhibition space which includes materials such as photographs, relics, documents, multi-media testimony of Civil Parties and other survivors, artistic displays, historical dioramas and other interactive educational and dialogue components that serve the dual purposes of preserving accounts from the Khmer Rouge era as well as providing a space for Civil Parties and the public to educate themselves about the regime and specifically about the forced transfer of persons.

25. The Lead Co-Lawyers and the VSS have identified potential partners for this project and will continue to work as quickly as possible to negotiate and formalize firm partnership arrangements.

***Seventh Project: Booklet on Adjudicated facts on Case 002 and Civil Party***

***Participation***

26. This project aims at creating a booklet regarding the judicial process at the ECCC, especially with a view to documenting and explaining Civil Party participation and a detailed treatment of forced transfer and the other crimes which are the subject of Case 002.

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27. The booklet would specifically describe the Civil Parties participation during the judicial process in Case 002 and, more specifically, it would include Civil Party statements given during the hearings. Among other topics we could discussed of the consequences of these crimes on the Civil Parties. Another section of the booklet would particularly aim at describing the crime of forced transfer and other facts/crimes as well as its consequences in an understandable form for the younger generations.

28. This project is part of the broader project that Civil Parties have requested in order to gather documentation related to the Khmer Rouge regime and the ECCC, archive it and make it open to the public in order to educate people.

29. The Lead Co-Lawyers and VSS have identified potential partners for this project and will continue to work as quickly as possible to negotiate and formalize firm partnership arrangements.

### **III- STATUS OF FUNDRAISING FOR PRIORITY REPARATIONS PROJECTS**

#### ***Responsibility for Fundraising***

30. The Lead Co-Lawyers understand and fully appreciate that reparations sought under Rule 23*quinquies* (b) must have secured funding and be adequately designed to guarantee their implementation. We are also acutely aware of the time required to raise such funds and the absolute necessity of having a well-planned, sustained, diverse fundraising strategy. Insofar as we reasonably can, the Lead Co-Lawyers have endeavored to assist VSS and project partner organizations and entities with fundraising efforts. In our outreach activities, the Lead-Co-Lawyers have consistently sought to inform the public and especially potential donors about our work on reparations and opportunities to fund the prioritized reparation projects. As well, we have offered our assistance to VSS and partner organizations and entities in the form of formal letters of support and participation in meetings to explain the ECCC reparations regime, the meaning of reparations to Civil Parties and to allay reported donor concerns about the legitimacy and legal viability of reparations. We have also sought to facilitate negotiations between the VSS and partner organizations and entities on the issue of fundraising and financing, so that fundraising efforts can move forward. Finally, we have also sought to

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design meaningful projects the scope and cost of which are reasonable and reflective of Civil Party requests. However, the Lead Co-Lawyers must also emphasize that our efforts can only be of support, facilitation and assistance in the area of fundraising. We have neither the expertise nor the mandate to be directly responsible for fundraising.

31. VSS, on the other hand, is much better placed to carry out this vital task. For at least the last year, VSS has had two staff members tasked solely to work on reparations and non-judicial measures. We have understood that these individuals bear the primary responsibility to raise funds for reparations sought under Rule 23*quinquies* (b).

### *Efforts Undertaken and the Financial Status of Projects*

32. Over the course of 2012, VSS prepared a series of documents related to fundraising which included the ECCC Reparations Program Executive Summary,<sup>6</sup> One-Page Project Descriptions,<sup>7</sup> and an Advocacy and Fundraising Strategy.<sup>8</sup> In the case of the first two of these documents, the LCLs requested the opportunity to provide feedback on these documents and successfully negotiate many, but not all requested changes to their content. The content related to the design and components of these projects is drawn from the written specifications prepared by the Lead Co-Lawyers Section, but the budgetary figures were set by VSS. These budgetary figures are currently the being reevaluated in the final design process and remain subject to modification.<sup>9</sup>

33. On 10 January 2013, the Lead Co-Lawyers requested the VSS to provide them with details on their fundraising activities.<sup>10</sup> In response, the LCLs received a detailed Reparation

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<sup>6</sup> Annex A, *VSS Reparations Program 2013-2017*. This is the abridged version of a larger document which lays out the VSS' vision for reparations (understood in the broad sense to include judicial reparations and non-judicial measures as described at this Court) now and beyond the lifespan of the ECCC.

<sup>7</sup> Annex B, *VSS Detail on six prioritize projects*. This document was revised by VSS in January 2013 and is now titled "Prioritize Projects" and includes only the descriptions of the prioritized reparation projects.

<sup>8</sup> Annex C, *VSS Advocacy Fundraising*.

<sup>9</sup> On this point, we would suggest that budgets for the Remembrance Day, Permanent Exhibition and Book Chapter projects can be significantly reduced while retaining the core components sought by Civil Parties.

<sup>10</sup> See Annex D, *Letter from the Lead-Co-Lawyers to the VSS* requesting an update of their fundraising activities, dated 10 January 2013. A subsequent Inter-Office Memorandum (see Annex E) dated 22 January, 2013 was sent requesting that VSS provide additional details on their fundraising efforts which had been originally requested,

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Programs of the ECCC, the “Project Status Report,”<sup>11</sup> which states that no funds have been secured for reparations thus far, and a list of potential donors<sup>12</sup> compiled by VSS. The documents VSS prepared in 2012 are those that VSS uses in their fundraising efforts.

34. The Lead Co-Lawyers and Civil Party Lawyers understand that funds must be secured for the prioritized reparation projects on an urgent and priority basis. VSS’ current fundraising strategy includes the creation of the Victims Foundation of Cambodia (VFC) as a potential mechanism for channeling and administering funds for reparations projects. The Lead Co-Lawyers and Civil Party Lawyers are currently in discussions on the role that the VFC (a non-judicial measure) might play in financing reparations projects; however, they acknowledge that it is possible, if agreed by donors, that reparation projects may be funded and implemented directly with partner organizations and entities.

35. In addition to seeking to arrive at a lower final budgetary figure for an number of the prioritized projects, wherever possible, due consideration is being given to the scalability of these project such that if funding can be secured for only the basic or key components, the projects will go forward accordingly and, if additional funds are secured, additional components could be included either at the time the final claim is made for reparations or in a later phase of the project. These approaches allow for a more flexible approach in fundraising for these projects. Of course, the efforts of the Lead Co-Lawyers, Civil Party Lawyers, VSS and partner organizations and entities in this regard are guided by the imperative that the reparation projects are meaningful and have an impact in redressing the harms suffered by the Civil Parties.

## CONCLUSION

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but not included in the Project Status Report. These additional details had not yet been provided to the LCLs by the time this submission was sent for translation.

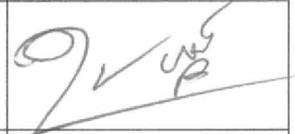
<sup>11</sup> Annex F, *VSS Project Status Report to LCLs*, dated 20 January 2013.

<sup>12</sup> VSS provided a list of ninety-six (96) potential donors divided into the categories of governments and agencies, foundations companies and individual donors. Should the Trial Chamber require additional details on this list, the Lead Co-Lawyers can submit this list as a strictly confidential annex to this submission.

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36. In the present submission, the Lead Co-Lawyers have listed the seven prioritized reparation projects and provide an update on the fundraising efforts by VSS. In addition, we have provided further detail on the nature, purpose and status of these projects. The 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. The Lead Co-Lawyers, Civil Party Lawyers, VSS and partner organizations and entities will cooperate to finalize the design of the prioritized projects and offer our support in fundraising efforts. We also reiterate that the prioritization of the projects indicated here does not bar the possibility of submitting to the Trial Chamber other projects in their final claim pursuant to internal rule 80bis(4), if the prioritized projects have been adequately developed and adequately funded.

Respectfully Submitted,

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