



The Center for Justice & Accountability (<https://cja.org/>)

# VICTIMS' RIGHT TO REMEDY

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The ECCC's reparations scheme has the potential to be the Court's most remarkable contribution to Cambodian victims and the development of international law. Although monetary reparations are not available to Civil Parties, the Court has the ability to award 'collective and moral' reparations for the harms they suffered as a result of crimes attributable to the defendants in law.

Moral and collective reparations are 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 which address this harm. These benefits shall not take the form of monetary payments to Civil Parties.

In Case 002, the Court's rules were amended to permit third parties to cover the cost of the reparations. The current system allows the cost of reparations to either be borne by the convicted person, or by external funding which has already been secured to implement a project designed by the legal representatives of the Civil Parties in cooperation with the Victims Support Section. In order to ensure that an order of reparations is issued first and foremost against the convicted party, CJA submitted a proposed amendment to the internal rules in a plenary session before the ECCC. The plenary paper is available here (</cja/downloads/Plenary%20Paper%20Rule%2023.pdf>).

The true potential of reparations can only be realized if the Court takes immediate steps to address and remedy outstanding issues of law and policy that caused the majority of reparations requests in its first case ("Case 001") to be rejected or cast aside.

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CJA and Access to Justice Asia (AJA), in cooperation with the International Human Rights Law Clinic at University of California Berkeley School of Law, published "Victims' Right to Remedy: Awarding Meaningful Reparations at the ECCC," a comprehensive report identifying areas where the Court's approach to reparations remains unclear or is inconsistent with international practice. [\(https://cja.org/\)](https://cja.org/)

### Reparations Granted in Case 001:

In the case against Kaing Guk Eav, alias "Duch", the Trial Chamber accepted the applications of 64 victims as civil parties and awarded two of the 28 reparations initially requested. The reparations granted included the publication of the names of the Civil Parties in the final judgment, including descriptions of their connection to S-21, as well a compilation of Duch's apologies and acknowledgements of responsibility, which are available online here (<http://www.eccc.gov.kh/en/video/apology>). On appeal to the Supreme Court Chamber, 10 additional civil parties were accepted as victims of the crimes in Case 001 and the reparations were affirmed. That decision can be found here (<http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/Case%20001AppealJudgementEn.pdf>).

### Reparations Granted in Case 002/1:

During the judgment issued on August 7, 2014, the Trial Chamber found Nuon Chea and Khieu Samphan guilty of crimes against humanity for the forced movement of the population (phase one and two) and the execution of Lon Nol soldiers at Tuol Po Chrey. The Court recognized that the 3,866 Civil Parties that participated in the case suffered immeasurable harm. As a result, the Trial Chamber endorsed eleven reparations projects to benefit the victims. These include: the institution of a National Remembrance Day project; the construction of a memorial in Phnom Penh to honor victims of forced evacuations; a testimonial therapy project; self-help groups; a permanent exhibition; a mobile exhibition and education project; the inclusion of a chapter on forced population movement and executions at Tuol Po Chrey within the Cambodian school curriculum; the construction of a peace learning center; a booklet on adjudicated facts and civil party participation at the ECCC; two editions of the verdict in Case 002/01; and inclusion of Civil Party names on the ECCC website. The remaining reparations requested were not granted as a result of insufficient proof of secure funding for each project.

### Reparations Requested in Case 002/2:

During the initial hearing for Case 002/2, Lawyers for Civil Parties submitted a final request for reparations in the case. The request includes:

### Existing Memorial and Memorialization Projects

- Construction of Memorial Stupa in keeping with the religions of civil parties;
- Statute depicting activities of the victims: forced marriage and living conditions;
- Maintenance of the remains of victims.
- Existing Rehabilitation Projects
- Treatment and support from psychologists for victims and community;
- Physical health support for civil parties who are elderly and indigent, including the construction of health and meditation centers.
- Existing Documentation and Education Projects
- Publication of full and summary judgments;

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- Production of a book detailing the participation of civil parties;
- Compilation of a summary of crime sites and charges in the current phase;
- Production of a chapter on Khmer Rouge history for school curriculums;
- Creation of a website recognizing civil parties;
- Development of fixed and mobile exhibitions about the genocide;
- A scholarship for children of forced marriages.

### New Memorial and Memorialization Projects

- Regional bridges and roads bearing the names of memorialized victims.

### New Rehabilitation Projects

- Support and empowerment of civil parties by specific groups including victims of gender and sexual violence and members of minority groups;
- Certification and identification of civil parties to recognize participation and provide access to available services (ID Cards);
- Reparations and apologies.

### New Documentation and Education Projects

- Works authored by civil parties detailing facts related to charges in the current case;
- Summary of facts of crimes and the charges from Case 002/02 to assist the public in understanding the nature of the charges;
- VCD and digital recordings documenting the efforts of the civil parties in the trial;
- Community screenings and distribution of these videos;
- Oral history tellings in gatherings of civil parties that include youth participation;
- Highlighting some positive stories of Cambodian history and culture through art, music, sport and storytelling.

Lawyers for Civil parties will work with VSS to secure partners, budgets, and donors to aid in implementing the projects.

## Related Links

- Victims Right to Remedy Full Report (<http://cja.org/wp-content/uploads/2011/12/Victims-Right-to-Remedy.CJA-Berkeley-Report-1.pdf>)
- Click here for a summary. (/report-summary)
- Press Release Victims Right to Remedy ([http://cja.org/wp-content/uploads/2011/12/Press-Release\\_Victims-Right-to-Remedy-18-Nov-11.pdf](http://cja.org/wp-content/uploads/2011/12/Press-Release_Victims-Right-to-Remedy-18-Nov-11.pdf))
- Read a Phnom Penh Post article on reparations. (/cja/downloads/kr-victims-face-rocky-road-to-reparations.pdf)

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