

# Minority Victims in Genocide Trials

## Ethnic Vietnamese Civil Parties at the Extraordinary Chambers in the Courts of Cambodia

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**CONFERENCE SESSION**  
**PEACE, JUSTICE & INTERNATIONAL CRIMINAL LAW**

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[www.civilparties.org](http://www.civilparties.org)



# BACKGROUND TO ECCC



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Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

## Established by:

- **Agreement between UN and Cambodian Government** (signed 2003; amended 2004)
- **Law on Establishment of ECCC** for Prosecution of Crimes Committed During Period of Democratic Kampuchea (2001; amended 2004)



## Features:

- International and domestic criminal law and domestic procedure
  - Cambodian Penal Code 1956 (homicide, torture, religious persecution)
  - ECCC Law (providing for genocide, crimes against humanity, graves breaches of Geneva Convention)
- Civil Law System with Common Law influences
- Khmer, English and French

## Jurisdiction:

- “try **Senior Leaders of Democratic Kampuchea** and those who were most responsible for the **crimes** and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were **committed during 17 April 1975 to 6 January 1979**”.

# Cases Before the ECCC

- **Case 001:** Kaing Guek Eav (alias Duch) – Head of S21 – conviction in 2010 for crimes at security center; following prosecution appeal against sentence: life imprisonment
- **Case 002:** JCE involving four accused
  - Nuon Chea, 87, Former Chief Ideologue/Brother Number 2
  - Khieu Samphan, 81, Nominal Head of State
  - Ieng Sary, 87, Deputy Prime Minister, Foreign Affairs Minister – passed away 14 March 2013
  - Ieng Thirith, 80, Minister for Social Affairs – found unfit to stand trial 16 Sept 2012
- **Case 003 / 004:** Five suspects - Politically contested cases; Personal jurisdiction of ECCC in issue



# Victim Participation



- Internal Rule 23: The purpose of **Civil Party action** before the ECCC is to:
  - a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by **supporting the prosecution**; and
  - b) **Seek collective and moral reparations**, as provided in Rule 23*quinquies*.
- Rules amendments in 2009 (only applying to Case 002 and beyond): At the pre-trial stage, Civil Parties participate individually. At the trial stage and beyond, CPs shall comprise a single, consolidated group, represented by the **Civil Party Lead Co-Lawyers** as described in IR 12 *ter*.
  - *Civil Party Lead Co-Lawyers are supported by the Civil Party Lawyers described in IR 12 ter(3) (in Case 002, 11 mixed national/international legal teams).*
- More than **8,200** survivors have sought participation in Case 002
  - Out of those, around **4,000** applied for civil party status

# Representing Civil Parties – Chronology

- **2008:** Preparatory field trip to Phnom Penh, Cambodia with Access to Justice Asia LLP
- **2009:** Admitted to Bar Association in the Kingdom of Cambodia as International Lawyer with standing to represent Civil Parties at ECCC
- Local collaboration with **Legal Aid of Cambodia (LAC)** – National Co-Lawyer
- **2010/2011:** in-country work through **AVI’s** Lawyers Beyond Borders program
- **2013:** in-country work through Prime Minister’s Endeavour Executive Award
- Appearances at trial phase in Case 002, to date, include:
  - **June 2011:** Initial Hearings – preliminary argument on statutory limitations re: grave breaches
  - **April 2012:** Examination of Duch (convicted person in Case 001) on behalf of Civil Parties during his evidence against Senior Leaders accused of atrocity crimes in Case 002
  - **October 2013:** Closing Statements in Case 002/01 – rebuttal Nuon Chea on behalf of Civil Parties
- **2014:** Churchill Fellowship obtained “to develop expertise in international criminal justice” with an ECCC component for the genocide trial in Case 002/02
- **Client Composition:** at various times, up to 127 clients, including Cambodian diaspora in USA & Australia; ethnic Vietnamese in Cambodia; foreign nationals (US/NZ); Khmer connected with Vietnamese genocide

# Collective Narrative of Vietnamese Client Group

- **Long-term residents** of Cambodia, living mainly near or on waters near the Tonle Sap Lake
- Most clients between **50 and 70 years** old
- Collective Narrative of Group involved **2 phases of crimes**:
  - Phase I (April – Sept 1975): Relocation (internal) to a single designated area (forced labour, starvation, ill-treatment, killings of dissidents, mass executions, rape of Vietnamese girls); and
  - Phase II (late 1975): Deportation of entire group in fleets to Vietnam
- **Genocide Phase**: For ethnic Vietnamese remaining in Cambodia (mostly in **mixed marriages**), demographic reports show **100% elimination** rate; no survivors among those who stayed behind
- **Voluntary return of clients** (deported group) to Cambodia at beginning of 1980s

# Importance of Local NGO Support



## (1) Working with local intermediary NGOs - KKKHR

- Partnership with Khmer Kampuchea Krom Human Rights Association (KKKHRA) for outreach to client groups
  - Indispensable to enable communication to clients and notification of court processes and outcomes
  - Advantage: local knowledge; trust and access to local communities; local ownership of processes

## (2) Working with local Legal Aid NGOs – Legal Aid of Cambodia

- Working together with national co-counsel for Civil Parties
- Strategic partnership with Legal Aid of Cambodia (LAC) – ECCC-related project funded by German Development Cooperation

## (3) Working with local human rights NGOs – JRS Cambodia

- Working together on human rights and nationality issues related to client group reparation claims for recognition of, or access to, “Cambodian nationality”

# The Floating Villages, Kg Chhnang

Client villages



Visiting  
clients  
on the  
floating  
villages



Meal with  
clients in  
Kg  
Chhnang



Gift from  
Village Chief  
for  
representing  
clients'  
claims



# (1) The Challenge of Prosecutorial Selectivity

- General feature of the prosecution of mass crimes: **selectivity & limitations on scope of judicial investigations**; suspects, charges, crime sites => impact on representativeness of victim participants
- Prosecution pursued genocide charges, but only on a very **limited geographical area**:
  - Svay Rieng and Prey Veng Provinces; and during incursions into Vietnam
  - Almost no Vietnamese survivors from Prey Veng/Svay Rieng – key Prosecution witnesses were Khmer nationals who lost their Vietnamese spouse
- Apart from client group, no other Vietnamese survivors applied to become Civil Parties (Indicative of Khmer Rouge's success at eliminating members of that group)
- December 2009: Submitted Request to CIJs for Further Investigations into Genocide of the Ethnic Vietnamese

# (1) Challenge of Prosecutorial Selectivity

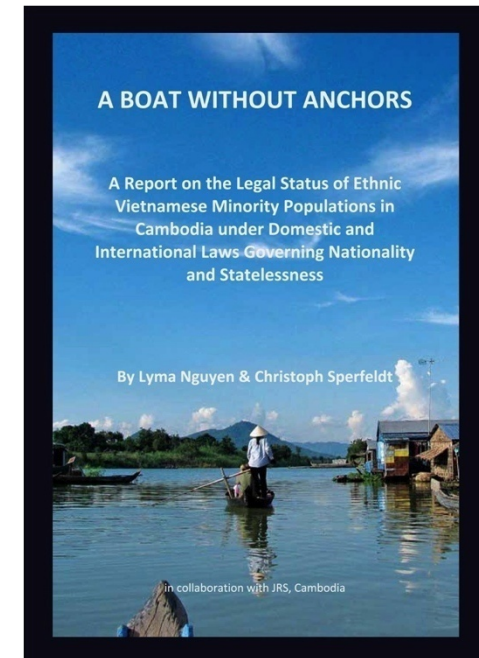
- CIJ Decision: No expansion of scope of investigations, resulting in initial rejection of all Vietnamese clients on basis that “harm not linked to crimes within scope of judicial investigations”
- Sept – Oct 2010: Mass admissibility appeals against decisions rejecting victims and clients
- June 2011: Pre-Trial Chamber admitted almost all civil party applicants, including all ethnic Vietnamese clients
- Considerable uncertainties for survivors during their participation process
- Prosecutorial decision have direct impact on victims’ rights and remedies – require conviction for judicial reparations
- Question whether logic of prosecutorial selectivity can be reconciled with aspiration of achieving representativeness among participating survivors, including vulnerable groups such as minorities

## (2) Genocide charges at the ECCC

- **OCIJ Closing Order** (15 Sep 2010): Genocide charges in respect of the Cham Muslims and Ethnic Vietnamese
- Arguments supporting Genocide Charges in case 002: Ben Kiernan argues Cham Muslims and ethnic Vietnamese were targeted specifically because of their religious and ethnic background
- Escalating deportations, persecution, incitement of hatred leading to systematic killing of Vietnamese indicating planning and coordination by CPK leaders in the framework of a common purpose
- **Demographic Expert Report:** almost all Vietnamese remaining in Cambodia were killed during CPK regime (100% elimination rate by deportations or killings)
- **Political discourse** in Cambodia around genocide charges in respect of the Vietnamese minority => Vietnamese minority a vulnerable group in Cambodia: past history of discrimination and persecution

# (3) Collective Reparations: Clients' Request for Access to Cambodian Nationality

- Significance of participating in criminal trial for the ethnic Vietnamese minority = a means to highlight ongoing and contemporary human rights issues arising from past crime
- Client consultation identified clients' request for **recognition of, and access to, Cambodia nationality** as their main priority
- Request resulted from loss of important documentation during the forced transfer by the Khmer Rouge to Vietnam
- Outreach to Kg Chhnang and liaison with UNHCR over statelessness issues from 2010 to date
- Report "A Boat Without Anchors" resulting from a project, jointly implemented with Jesuit Refugee Service (JRS) Cambodia, presenting preliminary findings concerning statelessness of the group



Report available at  
<http://www.civilparties.org/?p=494>

# The Genocide Trial – Case 002/02

- In 2011, Case 002 (comprising of Closing Order of approx 1000 pages) was severed into sub-trials
- First sub-trial (Case 002/01) litigated 2011-2013, focused only forced transfers – Judgment to be delivered 7 Aug 2014
- Trial Chamber has declared that genocide of the ethnic Vietnamese and Muslim Cham will form part of the next sub-trial, Case 002/02
  - Initial Hearing (preliminary argument & trial directions) held 30 July 2014
- Age and health condition of defendants may have real impact on continuation of, or delays associated with, Case 002/02
- Australia has provided \$26.2 million to ECCC since 2003 (recent addition of \$3.2 million to see case 002/02 through)
- Need to recognise limitations of a mass crimes legal proceedings for victims of crimes
- Therefore, increased importance of complementary activities, such as documenting victim stories, for historical purposes, beyond the trials.

# Further Information

- Civil Parties & ECCC Updates

- [www.civilparties.org](http://www.civilparties.org)

- Other

- About the ECCC

- <http://www.eccc.gov.kh/english>

- To follow the trials

- <http://krtmonitor.org/tag/aiji/>

- [www.CambodiaTribunal.org](http://www.CambodiaTribunal.org)

- DC-Cam Database of Materials

- <http://www.dccam.org/>

