



Victims in International Criminal Justice: Observations from the Extraordinary Chambers in the Courts of Cambodia

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OUTLINE

- **I – Background – Victims Rights in Criminal Justice**
- **II – ECCC / Khmer Rouge Tribunal**
 - History to Conflict in Cambodia
 - ECCC: Establishment, Jurisdiction & structure
 - Cases before the tribunal
- **III – Victim Participation at the ECCC**
 - Victims rights and victim participation
 - Legal representation
 - Victim reparations
- **IV – Personal Observations from a Civil Party Lawyer**

I – BACKGROUND

Victims Rights in Criminal Justice

- **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (adopted by General Assembly resolution 40/34 of 29 November 1985)
 - Plan of Action for the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC resolution 1998/21)
 - Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime (ECOSOC resolution 2005/20)
 - Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations on International Human Rights Law and Serious Violations of International Humanitarian Law (GA resolution 60/147, 2005)
- **Other Useful Sources:**
 - Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNODC, 1999.
 - Guide for Policy Makers on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNODC, 1999.

Fundamental Principles

Declaration of Basic Principles (1985)

Principle 4

- Victims should be treated with **compassion** and respect for their **dignity**.
- Victims entitled to **access to mechanisms of justice and prompt redress** for harm suffered.

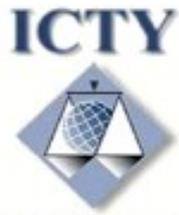
Principle 5

- Judicial and administrative mechanisms should ... enable victims to obtain redress through formal / informal procedures that are expeditious, fair, inexpensive and accessible.
- **Victims should be informed of their rights** in seeking redress through such mechanisms.

Principle 6

- The **responsiveness of judicial and administrative processes to needs of victims** should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) **Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected**, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - (c) Providing proper assistance to victims throughout the legal process [...]

The Ad Hoc International Tribunals



The International Criminal Court (ICC)



II. THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

ECCC / Khmer Rouge Tribunal



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Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens



Conflict in Cambodia: A Brief History

KR rose against backdrop of the Cold War - Vietnam War spilled into Cambodia and ongoing conflict w/Vietnam

- **1953:** Cambodia achieved independence from France
- Led by Prince Sihanouk (policy of neutrality during VN War)
- **1970: Coup** by General Lon Nol as Head of State (of the “**Khmer Republic**”), backed by US (Prince Sihanouk in exile overseas)
 - KR was a peasant guerrilla group
 - Following the coup, Sihanouk called for people to join the KR to fight against the Lon Nol regime
- **April 1975:** Lon Nol regime fell to Pol Pot - Khmer Rouge took power
 - Sihanouk was symbolic Head of State but in April 1976, was forced into political retirement
- **6 January 1979:** Khmer Rouge fell to Vietnamese forces
 - A Vietnamese-backed regime took power
- **1991** Paris Peace Agreement
- **1992/93:** United Nations Transitional Authority in Cambodia (UNTAC)
- **1998:** Death of Pol Pot

Khmer Rouge Regime (Democratic Kampuchea)

- **1975-1979:** KR regime, under the Communist Party of Kampuchea (CPK) took power:
 - Pursued objective of returning Cambodia to “Year Zero” by implementing a radical Maoist/Marxist-Leninist program to transform society into a mass agricultural workforce.
 - Common purpose (JCE) of CPK leaders was:
 - Initially, the **Joint Criminal Purpose** as alleged by OCP: to implement rapid socialist revolution in Cambodia through a “great leap forward” and to defend the Party against internal and external enemies, by whatever means necessary.
 - As later alleged by OCP (end of Case 002/01): to create a “slave state”
 - To achieve the common purpose, CPK leaders designed and implemented policies:
 - (i) Repeated movements of the population from towns and cities to rural areas;
 - (ii) Establishment and operation of cooperatives and worksites
 - (iii) Reeducation of “bad elements” and “enemies”, inside and outside the Party ranks;
 - (iv) Targeting of specific groups, in particular the Cham, Vietnamese, Buddhists, and former officials of the Khmer Republic, and others;
 - (v) Regulation of marriage
 - Result: 1.7 - 2.2 million people died as a result of enslavement, forced labour, starvation, torture, and summary and mass executions in “the killing fields”

Map of the Killing Fields



Documentation Centre of Cambodia, Mapping the Killing Fields Project (2004)

ECCT: A Brief History

- **21 June 1997:** Cambodian government submitted official request for assistance to the UN Secretary-General
- **6 June 2003:** Cambodia signed Agreement with United Nations to trial senior leaders of Democratic Kampuchea (DK) and those most responsible for national and international crimes committed in DK between 17 April 1975 – 6 January 1979 (ECCT Agreement)
- **2006:** ECCT is set up and starts operation (fully operational in mid-2007)
- **July 2007:** First arrest
- **February 2009:** Begin of the first trial hearing in Case 001
- **July 2010:** First verdict (in Case 001)
- **August 2014:** Second verdict (in Case 002/01)
- **March 2015:** Suspects in Case 003 and 004 charged

The ECCC, located at a military base near airport (40 minutes by road, from Phnom Penh)



Jurisdiction of ECCC

Laws governing ECCC:

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

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**”.

ECCC can try defendants under:

- **Cambodian Penal Code 1956:** homicide, torture, religious persecution (Art 3)
- **ECCC Law:** International Crimes:
 - Genocide (Art 4, ECCC Law)
 - Crimes against humanity (Art 5)
 - Grave breaches of Geneva Conventions 1949 (war crimes) (Art 6)

ECCC Structure

A **hybrid** international/national tribunal

- Majority Cambodian judges w/ requirement of super majority votes for decisions (4/5 in Pre-trial Chamber in 5/7 for Trial Chamber)
- Procedural law based on civil law system with common law influences
- Official languages: Khmer, English, French

Judicial Sections: Prosecution/Defense/CP/Pre-Trial/Trial/Supreme Court

Admin Sections: Victims Support, Defence Support, Public Affairs

- **Co-Prosecutors:** Preliminary Investigations; Request investigating judges to perform judicial investigation of crimes described
- **Co-Investigating Judges:** Investigate and issue indictment to send to TC
- **Pre-Trial Chamber:** handles pre-trial matters including:
 - Appeals from parties during investigative stages
 - Disagreement between Co-prosecutors and Co-investigating Judges
- **Trial Chamber:** presides over the public trial of cases
- **Supreme Court Chamber:** appeals of decisions of the Trial Chamber

ECCC Proceedings

- Governed by **Internal Rules** (embodying civil law / inquisitorial model)
- Pre-trial stage (investigations) followed by trial phase
- Prosecution, Defense and Civil Parties can question witnesses
- “All evidence is admissible” (except evidence expressly excluded eg legal privileged communications)
- Electronic Case File system – docs in 3 languages
- Procedural & evidentiary rulings on the go (Case 002)
- Judges deliberate and issue written judgment following closing statements
- Currently, four cases before the ECCC

Case 001



Overview of Case 001



CRIMES ALLEGED

- Defendant: Kaing Guek Eav, alias “Duch”, head of S-21 security centre
- Crimes against humanity, Grave breaches of 1949 Geneva Conventions (war crimes), Murder and Torture (domestic crimes)

TRIAL: 17 February 2009 – 17 September 2009, Trial Chamber

- Trial Phase: 72 days of evidence hearings, 24 witnesses, 22 Civil Parties, and 9 experts
- Judgment issued 26 July 2010 – convicted and sentenced to an effective 19 years imprisonment (35, minus 5 for illegal military detention, minus 11 pre-trial detention)
- Prosecution initially sought only 45 years due to mitigating factors

APPEALS: 28 – 31 March 2011, Supreme Court Chambers

- Prosecution appealed sentence
- Defence appeals on conviction and sentence
- Civil Party appeals on admissibility and reparations
- Issue: interim status given to applicants with full participation rights; a number rejected at the end due to lack of proof of relation with direct victim
- Judgment issued 3 February 2012 – life imprisonment



Overview of Case 002



Four defendants, senior leaders of the Democratic Kampuchea

- **Nuon Chea**, 89, former Deputy Secretary of the Communist Party of Kampuchea;
- **Khieu Samphan**, 84, former Head of State;
- **Ieng Thirith**, 83, former Minister of Social Affairs (*found unfit to stand trial in 2012*)
- **Ieng Sary**, former Deputy Prime Minister for Foreign Affairs (*died at 87, 14 March 2013, before any verdict could be given*)

Trial Phase

- Over 350 000 pages of documents
- Closing Order (Statement of Facts/Indictment) of 775 pages, plus few hundred pages in footnotes
- 26 crime sites and crimes against population groups
- September 2011: Trial Chamber severed charges in Closing Order in sub-trials

Case 002/01 Overview

- **Crimes:** focused on crimes at beginning of KR's reign:
 - alleged crimes against humanity related to the forced movement of the population from Phnom Penh in April 1975 (FT1)
 - forced movements after April 1975 from other regions (FT2), and
 - alleged execution of Khmer Republic soldiers at Toul Po Chrey execution site in Pursat immediately after the Khmer Rouge takeover in 1975
- 21 November 2011 to 21 July 2013: Evidence hearings
- 31 October 2013: Closing Statements
- 7 August 2014: Judgment issued
 - Nuon Chea and Khieu Samphan were found guilty of crimes against humanity and sentenced to life imprisonment

The two convicted individuals



Nuon Chea



Khieu Samphan

Overview of Cases 003 and 004

- **7 September 2009:** International Co-Prosecutor filed two Introductory Submissions, requesting Co-Investigating Judges initiate investigation of five additional suspected persons
- The two submissions referred to as “Case 003” and “Case 004”
- Cases 003 and 004 have been riddled with controversy, concerning:
 - Allegations of **political interference** (public statements against proceeding with the two cases by Prime Minister Hun Sen; **several split-decisions** of the Pre-Trial Chamber along international and national lines.
 - Procedural Rights of suspected persons (not yet charged) re: Legal Representation and Access to Case file (decisions on admissibility of Civil Parties made before persons charged)
- Disagreement between national and int. Co-Prosecutors filed re: Intro Sub
- Disagreement btw national and int CIJs filed re: Closing Order
- CP applications in 003 and 004 in excess of 2,300 (Feb 2015 Court Report)
- CIJ has not made any admissibility decisions (procedurally charged accused first), but CP applications likely to be decided on at time as issue of Closing Order
- List of ECCC decisions and updates at:
 - <http://www.eccc.gov.kh/en/case/topic/286> (Case 003)
 - <http://www.eccc.gov.kh/en/case/topic/98> (Case 004)

Case 003 Update

Involves 2 former mid-ranking KR commanders:

- Meas Mut, former Navy Commander
- Sou Met, former Air Force Commander
- Prosecutor’s Case 003 Introductory Submission address: murder, extermination, torture, unlawful imprisonment, enslavement, persecution and other inhumane acts (CAH, war crimes and domestic crimes)

Procedural History

- **29 April 2011:** judicial investigation was closed by International CIJ Siegfried Blunk and National CIJ, You Bunleng
- **2 December 2011:** investigations reopened unilaterally by International Reserve CIJ Laurent Kasper-Ansermet International CIJ, Mark Harmon continued to investigate crimes, inviting victims to apply as Civil Parties.
- **14 December 2012:** Defence lawyers Ang Udom and Michael Karnavas assigned to one of the Case 003 suspects
- **14 June 2013:** Sou Meth passed away – civil parties admitted upon claims relating to his alleged role and responsibilities would no longer have a recourse to moral and collective reparations under the Internal Rules
- **3 March 2015:** International CIJ **charged Meas Muth** in absentia with:
 - Homicide (Cambodian Penal Code 1956)
 - CAH of murder, extermination, enslavement, imprisonment, persecution on political and ethnic grounds, and other inhumane acts allegedly committed at Wat Enta Nhien security centre, Kampong Som, Kratie, S-21 security centre, and against Vietnamese, Thai and other foreigners at sea and on the islands over which DK claimed sovereignty; and
 - Grave Breaches: unlawful confinement of civilians, wilful deprivation of a prisoner of war or civilian’s rights to fair and regular trials, wilful killing, unlawful deportation or transfer, wilful causing of great suffering or serious injury to body or health, and torture, allegedly committed in Kampong Som, Kratie, S-21 security centre, and against Vietnamese, Thai and other foreigners at sea and on the islands over which Democratic Kampuchea claimed sovereignty.
- Once charged, ECCC Internal Rules permit Meas Muth, through his lawyers, access to the case file and to participate in the investigation

Case 004 Update

Involves 3 Mid-Ranking former Khmer Rouge Commanders

- Im Chaem: allegedly ran a forced labor camp involving a massive irrigation project in Preah Net Preah.
- Ta Ann and Ta Tith were two deputies who allegedly oversaw massacres in the camp.

Procedural History

- 27 March 2015: International CIJ Mark Harmon charged Ao An (“**Ta An**”), deputy secretary in the Central Zone of De-mocratic Kampuchea, with:
 - Premeditated Homicide (Cambodian Penal Code 1956), allegedly committed at Kok Pring execution site, Tuol Beng security centre and Wat Au Trakuon security centre, and
 - Crimes against Humanity of murder, extermination, persecution on political and religious grounds, imprisonment, and other inhumane acts (namely inhumane conditions of detention) at Kok Pring execution site, Tuol Beng security centre and Wat Au Trakuon security centre.
- National and Int’ CIJs lodged disagreement under IRs, including on the issue of charging.
- Cambodian Co-Investigating Judge You Bunleng has not assisted his international counterpart in the investigations on the basis of doubts as to whether the case with within jurisdiction.
- Once charged, Ao An, through lawyers, permitted access to case file and to participate in investigation.
- **Next step: Issuance of a Closing Order setting out crimes charged and facts alleged and civil party admissibility decisions**
- Ta Tith not yet charged.

III. VICTIM PARTICIPATION IN THE ECCC JUSTICE PROCESS



(1) VICTIMS RIGHTS & VICTIMS PARTICIPATION

- Victims are entitled to participate as complainants, witnesses or civil parties, under **Internal Rule 23**
- A measure of restorative justice
- Victim participation on this scale is unprecedented internationally
- Scope of civil party victim participation:
 - Crime within ECCC's jurisdiction (no distinction based on current residence or nationality)
 - Suffered personal physical, material or psychological injury (that has actually come into being)
 - As a direct consequence of the offence

Civil Party Testimonies



Victim Impact Hearings, May 2013. Source: ECCC.

Rule 23. General Principles of Victims Participation as Civil Parties

Amended on 5 Sept 2008, 6 March 2009, 11 Sept 2009, 9 Feb 2010, 17 Sept 2010 and 3 August 2011

- (1) 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 23quinquies.
- (2) Right to take civil action may be taken regardless of current residence / nationality.
- (3) At the pre-trial stage, Civil Parties participate individually. At the trial stage and beyond, CPs shall comprise a single, consolidated group, whose interests are represented by the Civil Party Lead Co-Lawyers as described in IR 12 *ter*.
 - *The Civil Party Lead Co-Lawyers are supported by the Civil Party Lawyers.*
 - *Lead Co-Lawyers shall file a single claim for collective and moral reparations.*
- (4) Civil Parties have rights similar to the other parties (e.g. Charged Person / Accused)
 - cannot be questioned as a simple witness in the same case (have right to give evidence without taking oath: right against self-incrimination)
 - may only be interviewed under same conditions as a Charged Person or Accused

Involving Victims in the Justice Process

- Victim Information Form
 - Part A: Personal information
 - Part B: Information about the alleged crimes
 - Part C: Application to be joined as Civil Party

Notification / information

Victim impact statements

Support the prosecution

Civil claim / reparations

- Civil party system at the ECCC allows for extensive participation rights in the justice process
- Difference to ICC Victim Participation practice (no civil party mechanism)

Civil Parties in Case 001



Victim & Civil Party Participation in Case 002

- More than **8,200** survivors seek participation in the proceedings of Case 002
- Out of those, around **4,000** applied for civil party status
- In their Closing Order of Sep 2010, the Co-Investigating Judges admitted **2,123** civil parties (most of the non-admitted civil parties have appealed the decision) – 98% success rate on appeal
- Grouping Victims:
 - Diaspora victims (USA/France etc)
 - Persecution groups (VN, Buddhists, Cham Muslims, KK, Christians)
 - Crime sites (S21/mass graves/prison sites)
 - Current residence (for reparations)
 - Grouping in accordance with legal representation?
 - Rules Amendments effectively resulted in collective participation at trial

(2) LEGAL REPRESENTATION FOR CPs

- Initially, no legal representation provided by the ECCC
 - all legal representation in Case 001 provided by Cambodian NGOs and international pro bono lawyers
- Sep 2009: ECCC Plenary decided to “streamline” civil party participation by introducing one national and one international **Lead Co-Lawyer** to “ensure the effective organization of Civil Party representation during the trial stage and beyond” (IR 12ter)
 - Now 2 Lead CP Co-Lawyers and approx 11 mixed legal teams (including 3 national court-funded lawyers)
- Lead CP Co-Lawyers to carry out their mandate at trial phase
- At Pre-Trial phase – Cases 003 and 004 – CP LCLs do not have a role

Legal Representation for Civil Parties

under Amended Rules

Rule 12 *ter* - Civil Party Lead Co-Lawyers (CP LCLs)

- CP LCLs (funded by ECCC) comprise 1 international and 1 national lawyer
- CP LCLs derive their powers from the Internal Rules
- CP LCLs shall represent the interests of the “**consolidated group**” of Civil Parties from trial phase and beyond, having responsibility for overall advocacy in court
- CP LCLs to consult with CP Lawyers

Rule 23 *ter*. Representation of Civil Parties

- From Closing Order onward, CPs shall at all times be represented by a CPL
- CPs may form groups and choose common legal representation
- Co-Investigating Judges and VSS have a role in selection of common lawyers, to represent distinct interests of CPs

“Supporting the Prosecution”

- Through their lawyers, civil party victims can:
 - Request judicial investigations
 - Produce evidence
 - Call witnesses
 - Cross-examine defendants
 - Appeal decisions affecting their interests
 - Request collective reparations
- Defense Lawyers have argued that CP participation is contrary to “parity of arms” principle – that it affects accused rights to fair trial as they are effectively against “two prosecutors”
- But note that role of prosecutor and victims counsel do differ (CPs have a mandate re: reparations)

Civil Party Lawyers



Rebuttals during Closing Statements Case 002/1, Oct 2013

(3) VICTIM REPARATIONS

ECCC Internal Rules

Rule 23 *quinquies*. Civil Party Claim

1. *If an Accused is convicted, the Chambers may award only collective and moral reparations to Civil Parties. Collective and moral reparations for the purpose of these Rules 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.*

3. In deciding the modes of implementation of the awards, the Chamber may, in respect of each award, either:

- a) *order that the costs of the award shall be borne by the convicted person; or*
- b) *recognise that a specific project appropriately gives effect to the award sought by the 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.*

Example of Reparation Requests in Case 002/01

Attachment: Overview of Civil Party Reparation Requests in Case 002/01

Name	Main Project Partners	Description	Donors
1. National Day of Remembrance	Royal Government of Cambodia (RGC)	Project to create an official national day of remembrance honoring victims and survivors of the Khmer Rouge in Cambodia. Royal Government of Cambodia (RGC) has already expressed its principled agreement to create such a day.	Not Applicable
2. Public Memorials Initiative	Kdei Karuna (KdK) & Youth for Peace (YfP)	Project to develop a small number (~6) of public memorial sites with related truth-telling and educational activities through a consultative process with civil parties, local communities and other stakeholders at sites distributed throughout Cambodia.	<i>[pending donor]</i>
3. Memorial for Khmer Rouge Victims: "For Those Who Are No Longer Here"	Séra ING (artist) ANVAYA Association Embassy of France OUBA SAS ACYC SARL Architects	Project to produce and stage a group of sculptural monuments on a raised triangular platform adjacent to the Embassy of France in Phnom Penh. The monuments will evoke events which affected the population of Phnom Penh in April 1975 when the city's inhabitants were forced by the Khmer Rouge to abandon their homes.	<ul style="list-style-type: none"> ▪ Republic of France ▪ Ms. Catherine Quéré (French MP) ▪ Mr. Avi Assouly (French MP) ▪ ANVAYA Association ▪ OUBA SAS ▪ ACYC SARL Architects
4. Monument for Khmer Rouge Victims in France	International Federation for Human Rights (FIDH) Victims of the Khmer Rouge Genocide (VGKR) Memorial for Victims of the Genocide Committed by the Khmer Rouge (MVGKR)	The construction of a monument for victims of the Khmer Rouge living in France at the Great Pagoda of Vincennes in Paris in order to provide a space where survivors and relatives of the victims can hold ceremonies and honor the memory of those lost.	<ul style="list-style-type: none"> ▪ Paris Bar Association ▪ VGKR ▪ MVGKR
5. Testimonial Therapy	Transcultural Psychosocial Organization (TPO)	Project provides approximately 200 civil parties the opportunity to participate in testimonial therapy, during which they are invited to talk about their traumatic experiences with the support and assistance of a mental health professional who helps them to prepare their testimony in the form of a written document. The civil party or their support person later reads portions of their story in a public ceremony held in accordance with the civil party's religious/spiritual beliefs and cultural practices.	<ul style="list-style-type: none"> ▪ German Federal Ministry for Economic Cooperation and Development (BMZ) ▪ Stiftung Kriegstrauma-Therapie ▪ Commonwealth of Australia

Civil Party Lead Co-Lawyers' Section

Last Updated: 4 April 2014

ផ្លូវជាតិលេខ 4 ភ្នំពេញ កម្ពុជា ទូរស័ព្ទ: (855) 023 219 814 ទូរសារ: (855) 023 219 841 គេហទំព័រ: www.eccc.gov.kh
National Road 4, Chasam Chan, Porsenchey, PO Box 71, Phnom Penh, Cambodia Tel: (855) 023 219 814 Fax: (855) 023 219 841 Web: www.eccc.gov.kh

Source: ECCC VSS

IV. PERSONAL OBSERVATIONS FROM A CIVIL PARTY LAWYER

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
- Examples of appearances at trial phase in Case 002, to date, include:
 - **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

Representing Victims & Civil Parties

- **Multiple roles as victims lawyer:**
 - Legal representative (submissions, appeals, examination in chief, etc)
 - Media spokesperson (media liaison)
 - Witness/victims liaison (protective measures)
 - Victim support (referral to counselling; for regional victim, includes community development referrals)
 - Outreach arm of work
- **Representing the Ethnic Vietnamese Victims**
 - Investigating their civil claims & taking supplementary statements
 - Requesting further investigations into Genocide of the Group
 - Civil Party Admissibility Appeals
 - Requesting Protective Measures
 - Ensuring their best interests are represented (to media etc)
 - Nationality-claims is a sensitive topic in Cambodia

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

Genocide: Definition

“The specific intent, to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such, by any of the following acts:

- **Killing** of members of the group,
- **Causing serious bodily harm, or mental harm**, to members of the group;
- Deliberately **inflicting on the group conditions of life** calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to **prevent births** within the group or forcibly transferring children from one group to another group

Case Example of Client Group: **Ethnic Vietnamese Minority Victims**

Khmer Rouge policies on the Vietnamese:

- Systematic discriminatory KR policy targeted at Vietnamese (genocide persecution group)
- Initially, a policy of ‘purging’ the Vietnamese, or those associated
- 1977: As CPK’s relations with Vietnam worsened, policy became one of eliminating all those with any connection to the VN (eg. killing all Vietnamese encountered during incursions into Vietnam)
- S21 - confession evidence - “Purging” also directed at members of KR who were perceived to be spies or associated with the Vietnamese
- Difficulties with genocide case: ongoing war with VN (war crimes?)
- “Intent to destroy”: Mixed marriage policy against civilians

Offence Elements of Genocide

To convict on genocide, it must be proven that the perpetrator:

1. Committed one of the **acts** constituting genocide
2. Against members of a racial, ethnic, national or religious **group**
3. With **specific intent** to destroy that group, in whole or in part.

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

(a) 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

(a) 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

(b) Genocide charges at the ECCC

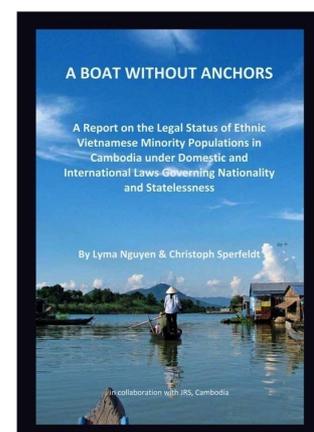
- **OCIJ Closing Order** (15 Sep 2010): Genocide charges in respect of the Cham Muslims and Ethnic Vietnamese
- Arguments supporting Genocide Charges in case 002: Ben Kiernan argues Cham Muslims and ethnic Vietnamese were targeted specifically because of their religious and ethnic background
- Escalating 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

August 2008: **Outreach Session** with KKKHRA at floating (ethnic minority) villages, Kampong Chhnang (November 2008)



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

- Victim participation as means to highlight ongoing and contemporary human rights issues
- 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
- Case 002/01 focussed on forced transfer of city-dwellers from PP
- Genocide of the ethnic Vietnamese and Muslim Cham will form part of the next sub-trial, Case 002/02
- 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 => increased importance of complementary activities, such as documenting victim stories, for historical purposes, beyond the trials.

Concluding Remarks

- Victim participation in an international context
- Lessons Learnt from Civil Party participation at ECCC
- Where to next for victims of crime in international justice?

Further Information

- Civil Parties & ECCC Updates

- 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

- DC-Cam Database of Materials

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

