

CASE NOTE

NATIONALITY AS REPARATION? THE *CASE 002/02* TRIAL JUDGMENT AT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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I INTRODUCTION

On 22 September 2022, the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia (‘ECCC’) affirmed the former Head of State Khieu Samphan’s conviction for the crime of genocide perpetrated against Cambodia’s ethnic Vietnamese population, among other crimes.¹ The appeal judgment brought to an end the ECCC’s last trial in *Case 002/02*, after which the Court ended its judicial operations.² It followed an earlier judgment by the ECCC Trial Chamber, rendered on 16 November 2018,³ in which the Court found the then two defendants — Nuon Chea, the former Deputy Secretary of the Communist Party of Kampuchea and Khieu Samphan — guilty of genocide, war crimes and crimes against humanity. Included in these charges were acts of murder, extermination, enslavement, torture, persecution on political, religious and racial grounds, and other acts characterised as enforced disappearances, forced transfer, forced marriage and rape within those marriages.⁴ On charges of genocide, the Trial Chamber found Nuon Chea guilty of genocide against two minorities (the Cham and Vietnamese groups) and found Khieu Samphan guilty of genocide against the Vietnamese but not the Cham. The Trial Chamber

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¹ *Case 002/02 (Summary of the Appeal Judgment)* (Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, Case No 002/19-09-2007-ECCC/SC, 22 September 2022) 30.

² The residual phase commenced after the conclusion of judicial operations following the *Case 002/02* appeal judgment: Extraordinary Chambers in the Courts of Cambodia, ‘Addendum to the UN-RGC Agreement Enters into Force’ (online, 20 July 2021) <<https://eccc.gov.kh/en/articles/addendum-un-rgc-agreement-enters-force>>, archived at <<https://perma.cc/ED4J-Z88Y>>.

³ *Case 002/02 (Judgment)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No 002/19-09-2007/ECCC/TC, 16 November 2018) (‘*Case 002/02 (Judgment)*’).

⁴ *ibid* [4331].

sentenced both defendants to life imprisonment, which was merged with their already confirmed life sentences from *Case 002/01*.⁵ Nuon Chea passed away in 2019.

While the ECCC's genocide convictions sparked global attention,⁶ less discussed was a collective and moral reparation measure put forward by one of the genocide victim groups, namely the Vietnamese Cambodian civil parties, who had initially asked for the recognition of, or access to, Cambodian nationality and later framed their request as a legal and civic education project on citizenship. The nature of this request was unprecedented for an international(-ised) criminal justice setting, which primarily deals with the individual criminal accountability of perpetrators of international crimes. The deprivation of citizenship is often part of genocidal dynamics that target religious or ethnic minorities, such as witnessed with Jewish populations under Nazi Germany or the Rohingya of Myanmar.⁷ Through such practices, states mark affected populations and reproduce them as outsiders or foreigners; in effect manufacturing statelessness from among their own citizenry.⁸ Yet, historical precedents of remedies for the restoration of victims' citizenship after genocide and persecution have frequently been dealt with through administrative means.⁹ The United Nations' ('UN') *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* recognise the restoration of citizenship as a form of reparation.¹⁰

This case note provides some background to this unique reparation request, including the context in which it emerged, as well as the harm suffered by the survivors and its link to the crimes before the ECCC. It then examines how victims' lawyers framed the request for the purposes of the ECCC's distinct reparation mandate, the challenges the request faced at trial and how judges eventually dealt with the request.

⁵ *ibid* [4401]–[4402].

⁶ See, eg, Rachel Killean, 'The Case 002/02 Appeal Judgment's Implications for Genocide Recognition in Cambodia', Symposium on the ECCC, *Opinio Juris*, (Blog Post, 31 October 2022) <<https://opiniojuris.org/2022/10/31/symposium-on-the-eccc-the-case-002-02-appeal-judgments-implications-for-genocide-recognition-in-cambodia>>, archived at <<https://perma.cc/C828-BMSQ>>.

⁷ See Katherine Southwick, 'How Statelessness Matters to Atrocity Prevention: Lessons from the Rohingya Case' (2021) 115 *Proceedings of the ASIL Annual Meeting*, 203–6; Coman Kenny, 'Legislated Out of Existence: Mass Arbitrary Deprivation of Nationality Resulting in Statelessness as an International Crime' (2020) 20(6) *International Criminal Law Review* 1026–67.

⁸ Neha Jain 'Manufacturing Statelessness' (2022) 116(2) *American Journal of International Law* 237–88.

⁹ For the case of Germany, refer to *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law for the Federal Republic of Germany] art 116(2).

¹⁰ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc A/RES/60/147 (adopted 16 December 2005) [19].

II BACKGROUND TO THE CASE: SOCIAL EXCLUSION OF GENOCIDE VICTIMS

The Vietnamese are Cambodia's largest minority.¹¹ Whilst some ethnic Vietnamese have integrated into wider society, many other long-term residents continue to live at the margins of society and face difficulties substantiating their legal status. The precarious status of Cambodia's Vietnamese minority has been highlighted in the literature.¹² Despite their long generational ties to the country — for many, spanning back to French colonial times — many are stateless or at risk of statelessness.¹³ This phenomenon has deep roots in Cambodia's colonial and post-colonial history when many ethnic Vietnamese were excluded from Cambodian citizenship. The United Nations High Commissioner for Refugees ('UNHCR') reported a figure of 75,000 individuals falling under the organisation's statelessness mandate — most are Vietnamese Cambodians, who do not hold proof of Cambodian citizenship or any other nationality.¹⁴ During the 1970s, social exclusion and the politicisation of ethnicity in domestic politics led to persecution.¹⁵ After the Khmer Rouge took power in 1975, they implemented policy measures aimed at eradicating the Vietnamese from Cambodian territory. First, they expelled an estimated 150,000 to 170,000 Vietnamese across the border to Vietnam.¹⁶ This was followed by targeted mass killings of those who stayed behind.¹⁷ A demographic expert report concluded that 100% of the remaining 20,000 Vietnamese were systematically killed.¹⁸ By late 1978, the Vietnamese minority had disappeared from Cambodia. This provided the backdrop for the ECCC's genocide and persecution charges against the remaining Khmer Rouge senior leaders in *Case 002*. Dozens of Vietnamese survivors — most of them from among the deportees who later returned — applied to join the ECCC trials as civil parties.

¹¹ Lyma Nguyen and Christoph Sperfeldt, *A Boat without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia Under Domestic and International Laws Governing Nationality and Statelessness* (Jesuit Refugee Service 2012) 6 ('*Boat without Anchors*').

¹² See Lucrezia Canzutti, '(Co-)Producing Liminality: Cambodia and Vietnam's "Shared Custody" of the Vietnamese Diaspora in Cambodia', (2019) 71 *Political Geography* 26, 28–30; Christoph Sperfeldt, 'Legal Identity and Minority Statelessness in Cambodia' (2021) 3(2) *Statelessness & Citizenship Review* 347, 347–8 ('Legal Identity and Minority Statelessness in Cambodia').

¹³ Christoph Sperfeldt, 'Minorities and Statelessness: Social Exclusion and Citizenship in Cambodia' (2020) 27(1) *International Journal on Minority and Group Rights* 94, 95–6.

¹⁴ *Global Trends: Forced Displacement in 2021* (UNHCR Report, June 2022) annex Table 5 <<https://www.unhcr.org/statistics/2021-global-trends-annex-table-statelessness.xlsx>>, archived at <<https://perma.cc/FQ6F-2Y2C>>.

¹⁵ Ben Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia Under the Khmer Rouge, 1975–79* (3rd edn, Yale University Press 2008) 26.

¹⁶ *ibid* 296; Ramses Amer, 'The Ethnic Vietnamese in Cambodia: A Minority at Risk?' (1994) 16(2) *Contemporary Southeast Asia* 210, 218.

¹⁷ Kiernan (n 15) 296–7.

¹⁸ Ewa Tableau, *Khmer Rouge Victims in Cambodia, April 1975–January 1979: A Critical Assessment of Major Estimates* (Demographic Expert Report, D140/1/1 Public Redacted Version, 30 September 2009) 47–9.

III THE ECCC'S *SUI GENERIS* REPARATION SCHEME

The ECCC belongs to the few international(-ised) criminal courts that combine criminal trials with a reparations mandate.¹⁹ In part, this resulted from Cambodia's civil law tradition that allows for the participation of victims as civil parties in criminal trials to represent their interests and request reparations.²⁰ Similar provisions found their way into the ECCC's procedural rules. Given the scale of atrocities in Cambodia, however, the ECCC judges limited the scope of reparations to 'collective and moral' measures only, excluding monetary awards from the permissible reparations.²¹ In the traditional civil party system, reparations are directed against the charged persons. This modality failed to meet victims' expectations in *Case 001* after the convicted person was found to be indigent, and the judges only granted two symbolic awards.²² After this disappointing outcome, the judges amended the ECCC's reparations framework by expanding the mandate of the Court's own Victims Support Section to seek donor funding and engage in reparation projects in collaboration with external actors.²³ The new modality separated the reparations award from the liability of the defendant when it comes to paying the costs for reparations. This was meant to prepare the Court for the large number of participating civil parties in *Case 002*, ultimately amounting to 3,869 civil parties, among them Vietnamese Cambodian survivors.²⁴ It was this project-based reparations regime that applied to the civil parties in *Case 002/02*.²⁵

IV FACTS: CIVIL PARTIES' COLLECTIVE HARM AND THE NEXUS TO THE CHARGED CRIMES

In order to be eligible for civil party reparations, victims need to prove a link between the harm they suffered and the crimes for which defendants are ultimately convicted.²⁶ In 2010, the ECCC's co-investigating judges in *Case 002* charged

¹⁹ Christoph Sperfeldt, *Practices of Reparations in International Criminal Justice* (Cambridge University Press 2022) 217.

²⁰ Julie Bernath, Somaly Kum and Boravin Tann, 'Symposium on the ECCC: Victim Participation at the ECCC – Final Justice for the Victims of the Khmer Rouge?', *Opinio Juris* (Blog Post, 2 November 2022) <<http://opiniojuris.org/2022/11/02/symposium-on-the-eccc-victim-participation-at-the-eccc-final-justice-for-the-victims-of-the-khmer-rouge>>, archived at <<https://perma.cc/A6M4-XE6P>>.

²¹ See Christoph Sperfeldt, 'Reparations at the Extraordinary Chambers in the Courts of Cambodia', in Carla Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making* (2nd rev edn, Brill Nijhoff 2020) 483.

²² The judges only agreed to the inclusion in the judgment of the names of civil parties and their relatives who died, and to publish statements of apology by the convicted person. See *Case 001, (Judgment)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No 001/18-07-2007/ECCC/TC, E188, 26 July 2010) 240–1.

²³ Extraordinary Chambers in the Courts of Cambodia, *Internal Rules* (Rev 6), (revised 17 September 2010) r 23 *quinquies* [1]–[3].

²⁴ Initially the Office of Co-Investigating Judges admitted 2,117 individuals. Additional civil parties were admitted by the Pre-Trial Chamber following appeals against the admissibility decision: *Case 002/02 (Civil Party Lead Co-Lawyers' Closing Brief)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No 002/19-09-2007-ECCC/TC, E457/6/2, 2 May 2017) [1]–[5].

²⁵ See Christoph Sperfeldt and Rachel Hughes, 'The Projectification of Reparation' (2020) 12(3) *Journal of Human Rights Practice* 545, 549.

²⁶ Extraordinary Chambers in the Courts of Cambodia, *Internal Rules* (Rev 10), (revised 27 October 2022) r 23 *bis*.

Khieu Samphan and Nuon Chea with genocide against the Vietnamese, deportation of the Vietnamese as a crime against humanity and crimes specific to the treatment of the Vietnamese.²⁷ The Closing Order set out the factual evidence of the application of the Khmer Rouge policies of widespread and systematic expulsion and execution of the Vietnamese as constituting crimes against humanity.²⁸ This factual evidence also established both the *actus reus* and *mens rea* elements of genocide, with the intention of the senior leaders inferred from the context of escalating deportations, persecution, incitement of hatred and anti-Vietnamese war propaganda as directed by the Khmer Rouge leaders.²⁹

In the build-up to the trial, a sizable group of 43 Vietnamese civil parties from Kampong Chhnang Province had sought civil party status, represented by a mixed international–Cambodian pro bono legal team.³⁰ During the application process, a significant number of these survivors had indicated on their Victim Information Form that they sought ‘Cambodian nationality’ as a moral and collective reparation. This prompted the civil party lawyers to further examine their request. Together with Minority Rights Organization (‘MIRO’) and the Jesuit Refugee Service Cambodia, the lawyers conducted a detailed assessment of the civil parties’ legal status under Cambodian and Vietnamese nationality laws and regulations.³¹

The civil party lawyers argued that the harm suffered by their clients resulted from crimes alleged in *Case 002/02*, including persecution and deportation, and specifically from the genocidal intention to eradicate the Vietnamese minority group and its identity from Cambodian territory.³² Civil party records established that the crimes to which they were subjected caused, in part, their present-day harm, in that during the various occasions in which they were forcibly relocated by the Khmer Rouge in 1975, victims were forced to leave behind, destroy or otherwise lost, important documentary proof demonstrating their ties to Cambodia.³³ As a result of this loss, these civil parties suffered harm in that, upon their return to Cambodia in the early 1980s, they could not establish their identities and were instead treated as ‘immigrants’ or ‘foreign residents’ by Cambodian officials. This rendered them stateless or at risk of statelessness, as neither the Cambodian nor the Vietnamese authorities regard them as nationals under the operation of their respective laws. This situation resulted in continuous harm from a lack of access to basic social, economic, political and human rights. It also expanded to intergenerational harm, as the long-term consequences of these past

²⁷ *Case 002 (Closing Order)* (Extraordinary Chambers in the Courts of Cambodia, Office of the Co-Investigating Judges, Case No 002/19-09-2007-ECCC-OCIJ, 15 September 2010) [1343]–[1404] (‘*Case 002 (Closing Order)*’). Two more defendants were charged by the closing order but subsequently died before the conclusions of the trial.

²⁸ The Court was particularly seized of treatment of the Vietnamese in Prey Veng and Svay Rieng provinces: *ibid* [206].

²⁹ *Case 002 (Closing Order)* (n 27) [1343]–[1349].

³⁰ These civil parties were jointly represented by Cambodian lawyer, Sam Sokong, and Australian barrister, Lyma Nguyen. See Lyma Nguyen and Christoph Sperfeldt, ‘Victim Participation and Minorities in Internationalised Criminal Trials: Ethnic Vietnamese Civil Parties at the ECCC’ (2014) 14 *Macquarie Law Journal* 97 (‘Victim Participation and Minorities in Internationalised Criminal Trials’).

³¹ Nguyen and Sperfeldt, *A Boat Without Anchors* (n 11).

³² ‘Legal and Civic Education for Minority Civil Parties’, Reparation Project Overview, submitted by Civil Party Legal Team of Lyma Nguyen and Sam Sokong in collaboration with Minority Rights Organisation, July 2016 (‘Reparation Project Overview’). Copy on hand with author.

³³ Nguyen and Sperfeldt, ‘Victim Participation and Minorities in Internationalised Criminal Trials’ (n 30) 107–13.

crimes continue to affect the civil parties' children and grandchildren, perpetuating the cycle of lack of citizenship in new generations.³⁴

V ISSUES: FRAMING NATIONALITY AS REPARATION FOR THE CRIMINAL TRIAL

The Supreme Court Chamber had emphasised that the ECCC ought to be considered as a contribution to the process of national reconciliation, possibly a starting point for the reparation scheme.³⁵ It had also ruled that ECCC reparations aim at 'removing the consequences of the criminal wrongdoing, as well as restoring, to the extent possible, the prior lawful status'.³⁶ In the specific case discussed here, however, the claimants were excluded from citizenship since the country's independence. In such circumstances, restitution to the situation before the violation occurred might not be desirable because the victims were never in a satisfactory position in the first place. The UN Secretary General therefore highlighted that 'reparations have the potential to be transformative and to assist in overcoming structures of inequality and discrimination'.³⁷ The civil party lawyers proposed a reparation measure that not only addressed the harm experienced by civil parties belonging to a minority group, but also offered some potential for transforming the relationship between the majority and minority populations in Cambodia, contributing to the prevention of future violence.³⁸

The civil party lawyers were aware that it was beyond the jurisdiction of the ECCC to grant Cambodian nationality, as it had no leverage over actions that were the prerogative of the government. In their *Case 001* trial judgment, the ECCC judges had made it clear that they would not infringe on areas of state responsibility.³⁹ Hence, the civil parties initially sought a 'project to facilitate acquisition of Cambodian nationality'.⁴⁰ Following rules amendments requiring initial specifications of reparations requests to be submitted at the beginning of the trial in *Case 002*, the civil parties presented their request first as a legal assistance project, which would facilitate an nationality assessment and application process, leaving any decision on the merits with the Cambodian authorities to determine in accordance with the Cambodian laws.⁴¹ The Trial Chamber merely noted in its response that it would endorse reparations that infringe on government

³⁴ See R Killian, L Moffett, A Chilshom, R Hanna, E Vasiliauskaite and K Schwarz, 'Working Paper on Acknowledging and Repairing the Moral and Collective Harm of Ethnic Vietnamese Victims of the Khmer Rouge Genocide' (Queen's University Belfast Human Rights Centre 2016) 10 <https://pureadmin.qub.ac.uk/ws/portalfiles/portal/32180410/QUB_ECCC_Reparations_for_Ethnic_Vietnamese.pdf>, archived at <<https://perma.cc/HP7C-GFBR>>.

³⁵ *Case 001 (Appeal Judgment)* (Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, Case No 001/18-07-2007-ECCC/SC, F28, 3 February 2012) [655].

³⁶ *ibid* [699].

³⁷ *Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence* (Office of the High Commissioner for Human Rights Guidance Note, June 2014) 6 <<http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>>, archived at <<https://perma.cc/4C8L-JJTN>>.

³⁸ 'Reparation Project Overview 2016' (n 32).

³⁹ *Case 001* (n 22) [663].

⁴⁰ *Case 002 (Transcript of Hearing)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No. 002/19-09-2007-ECCC/TC, E1/11.1, 19 October 2011) 48–59.

⁴¹ *ibid* 48–52; *Case 002 (Transcript of Initial Hearing)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No. 002/19-09-2007-ECCC, E1/6.1, 29 June 2011) <https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E1_6.1_TR002_20110629_Final_EN_Pub.pdf>, archived at <<https://perma.cc/Y6SA-G7PZ>>.

prerogatives only ‘where it is clear that such measures have been approved or implemented by the Royal Government of Cambodia’.⁴²

Moreover, the request was contested among the Cambodian civil party and defence lawyers, many of whom were not supportive. It was clear that merely talking about Cambodian nationality in relation to this minority group touched upon political sensitivities and sparked controversy.⁴³ What had made matters worse was that at the initial hearing the project had been presented in the translation as a ‘project for granting Cambodian citizenship’.⁴⁴ As a consequence, during consultations with civil parties from the Khmer majority population, a majority did not support the request from this minority group. The Civil Party Lead Co-Lawyers, who represented the civil party collective at trial, tried to clarify misunderstandings but were unable to appease deeply held prejudices. Concerned that the proposal might not even reach the Trial Chamber, the lawyers for the Vietnamese civil parties amended the project, mainly by avoiding talk about nationality. The project first changed to ‘initiative to reconstitute the civic identity of civil parties and facilitate (re)integration into Cambodian society’,⁴⁵ and finally to ‘legal and civic education for minority civil parties’.⁴⁶ The final project was reduced to awareness-raising among civil parties to enable a better understanding of the legal and administrative framework surrounding nationality and civil registration, accounting for the complex and confusing nature of Cambodia’s legislation and administrative practice. This approach aimed at empowering civil parties by providing them with the knowledge that may, at a later stage, assist with accessing Cambodian nationality.

The lawyers noted that the ‘moral and collective’ nature of this reparative measure is founded upon the collective harm, both mental and material, suffered by a minority group of civil parties as a direct result of the targeting of victims belonging to, and identified as a distinct ethnic or racial group by the Khmer Rouge regime. The reparation measure addressed reconstituting the legal identity of surviving members of this minority group, in a case where identity was at the core of the charges of genocide and the implementation of policies aimed at eliminating an ethnic group based on that identity brought against the senior leaders. Although the loss of documentation was not exclusive to this minority group during the wide-scale crimes committed by the Khmer Rouge regime, the consequential impact is one that specifically concerns survivors of Cambodia’s long-term ethnic Vietnamese minority, including civil parties, many of whom

⁴² *Case 002 (Initial Specification of the Substance of Reparations Awards Sought by the Civil Party Lead Co-Lawyers Pursuant to Internal Rule 23 quinquies [3])* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Memorandum, E125, 23 September 2011) 3 <https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E125_EN.PDF>, archived at <<https://perma.cc/D2VF-A68Z>>.

⁴³ Ben Mauk, ‘Persecuted on Land, a Minority in Cambodia Takes Shelter on the Water’, *The New York Times* (online, 28 March 2018) <<https://pulitzercenter.org/stories/persecuted-land-minority-cambodia-takes-shelter-water>>, archived at <<https://perma.cc/4EKH-D4QX>>.

⁴⁴ *Case 002 (Initial Specification of the Substance of the Awards that the Civil Party Lead Co-Lawyers Intend to Seek – Hearing of 19 October 2011)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No 002/19-09-2007-ECCC, 12 March 2012) [88]–[93].

⁴⁵ *Case 002 (Civil Party Lead Co-Lawyers’ Interim Report on Reparations in Case 002/02 and Related Request)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No 002/19-09-2007-ECCC/TC, E352, 17 June 2015) 9.

⁴⁶ *Case 002 (Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No E457/6/2/1, 002/19-09-2007-ECCC/TC, 30 May 2017) 26 [56] (‘Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02’).

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suffer adverse treatment as non-citizens in a country they consider to be their homeland.⁴⁷

VI HOLDING: THE *CASE 002/02* TRIAL JUDGMENT

Despite the changes to the reparations request, which reduced it to a mere legal education project, many Cambodian lawyers continued to oppose the request, as confusion surrounding the ‘request for nationality’ continued. Ultimately, this reparation request was put forward under the category ‘guarantees of non-repetition’ but only with the support of the International Civil Party Lead Co-Lawyer, the only reparation project at the ECCC where such a split between the national and international side occurred, highlighting the controversial and sensitive nature of the request.⁴⁸

In their 2018 *Case 002/02* judgment, the trial judges found both defendants guilty of genocide of the Vietnamese — the conviction was upheld on appeal in 2022. As to reparations, the trial judges had less issues with the proposed project, given that it had no bearing on state responsibility. Not only did the judges recognise the project as a reparative measure, they also highlighted the link between the civil parties’ present day stateless situation and their past deportation out of Cambodia. The judges noted in their very brief assessment of the reparation request:

The Chamber has determined that Civil Parties affected by the treatment of the Vietnamese suffered harm including psychological trauma, discrimination, material deprivation and, importantly in this context, the loss of legal status due to the loss of documentation showing their ties to Cambodia, as a result of the crimes related to the treatment of which they were victims during the DK period. The Chamber finds that by providing legal and civic education to allow Civil Parties to better understand their legal status according to Cambodian law, the specific reparation measures ... acknowledge the harm suffered by these Civil Parties and provide benefits to them which address this harm. It also finds that these measures constitute collective and moral reparations within the scope of the ECCC legal framework.⁴⁹

This very modest project was ultimately implemented by MIRO with a small funding contribution from the German Civil Peace Service, a program funded by the German Federal Ministry of Economic Cooperation and Development (‘BMZ’).⁵⁰ Since then, the few civil parties still alive have been relocated by authorities from their floating homes on the Tonlé Sap Lake. Their future in Cambodia remains uncertain.⁵¹

VII CONCLUDING OBSERVATIONS

At a time when the International Criminal Court is investigating a case involving the largest known stateless group in the world — namely the Rohingya from

⁴⁷ ‘Reparation Project Overview 2016’ (n 32).

⁴⁸ *Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02* (n 46) [55]–[58].

⁴⁹ *Case 002/02 (Judgment)* (n 3) [4459].

⁵⁰ *Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02* (n 46) 26–7 [56]–[58].

⁵¹ Sperfeldt, ‘Legal Identity and Minority Statelessness in Cambodia’ (n 12).

Myanmar, including their deportation and persecution⁵² — the case of the nationality-related reparation request of Vietnamese Cambodian civil parties at the ECCC holds some cautionary lessons. Indeed, international criminal trials are a difficult forum for considering nationality as a form of reparation after mass atrocities. Their focus on individual criminal responsibility and their lack of leverage over matters of state responsibility makes them unsuitable as an avenue for direct relief. Importantly, courts struggle to conceive of reparative measures that, while addressing a specific harm, also address the larger structural causes of genocide and other serious international crimes. Yet the reparation request of the minority survivors in *Case 002/02* has highlighted how victim participation in a criminal trial can shed light on statelessness. Criminal trials and associated reparations programs may provide a platform for exposing broader human rights issues affecting marginalised minority communities in a post-conflict society, including statelessness resulting from discriminatory nationality regimes. Collective reparations in particular have the potential to draw attention to the harm shared by an entire group of individuals, as demonstrated by the case of the Vietnamese minority civil parties.

⁵² ‘ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar’, *International Criminal Court* (online, 14 November 2019) <<https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar>>, archived at <<https://perma.cc/M44P-SNN3>>.