

The Extraordinary Chambers in the Courts of Cambodia Moving forward through justice



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Office of co-Investigating Judges noted an incorrect reporting about the outcome of cases 003, 004 and 004/2

Con'd on page 2

The Co-Investigating Judges have informed Public Affairs Section that they note with concern the inaccurate reporting or opinions expressed in some media about the potential outcome of cases 003 (Meas Muth), 004 (Yim Tith)) and 004/2 (Ao An). It is factually and legally wrong to say that the cases have been "dropped" or that it has been decided that the cases "will not proceed". The investigation in case 004 was concluded under Internal Rule 66(1). The parties now have a period of time to request further investigative action before the case will be forwarded to the Co-

News Updates:

Concluded investigations, closing statements, outcome of cases 003, 004 and 004/2 and more on pages 2-3

In this issue...

Judicial Updates

During the months of May and June, the Trial Chamber concluded the Closing Statements in Case 002/02, Nuon Chea and Khieu Samphan defense team submitted thier closing briefs and investigations in case 004 were conclude. For more judicial updates, see pages 4-6

Outreach Activities



Photo: ECCC

Public Affairs has been busy with outreach activities throughout the country, read more on page 7



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Extraordinary Chambers in the Courts of Cambodia

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Prosecutors for final submissions. The same applies regarding case 004/2, where a forwarding order was recently made sending the case file to the Co-Prosecutors for final submissions in preparation of a closing order in due course. Case 003 has also been concluded under Internal Rule 66(1) and will in due course be forwarded bγ International Co-Investigating Judge to the CoProse cutors for final submissions.The Co-Investigating Judges have also informed Public Affairs Section that they are currently considering the arguments of the parties and of the Office of Administration regarding the request for submissions on a stay of proceedings. A decision is no longer expected before 30 June 2017. As a matter of judicial diligence, however, all cases are being progressed as efficiently as possible until a decision on whether to issue a stay has been taken.

OCIJ to conclude the investigation in Case 004 against Yim Tith

PRESS RELEASE by the Office of the Co-Investigating "Judges Judicial investigation against Yim Tith concluded"

13 June 2017

The Co-Investigating Judges today notified all parties in Cases 004, 004/01 and 004/02 that they consider the judicial investigation against Yim Tith in Case 004 to be concluded. The International Co-Investigating Judge issued a separate decision reducing the scope of the judicial investigation pursuant to Internal Rule 66 bis. Today's notification marks the conclusion of over eight years of judicial investigation against Yim Tith for alleged crimes committed between 17 April 1975 and 6 January 1979. The judicial investigation against Yim Tith was initiated following receipt of the Third Introductory Submission filed by the International Co-Prosecutor on 20 November 2008. The scope of Case 004 was subsequently expanded by Supplementary Submissions filed by the International Co-Prosecutor on 18 July 2011, 24 April 2014, 23 June 2014, and 20 November 2015.



Photo: ECCC

Background on the investigations in Case 004

This decision signals the conclusion of the last of the four investigations of which the Colnvestigating Judges were seised. The judicial investigation against Im Chaem in Case 004 was severed to create Case 004/01 and terminated by closing order of 22 February 2017. The judicial investigation against Ao An in Case 004 concluded on 16 December 2016 and the case was severed on 16 December 2016 to create Case 004/02. On 29 March 2017, the International Co-Investigating Judge issued the second notice

TC concluded the Closing Statements in Case 002/02

Press Release by Trial Chamber "Closing Statements in Case 002/02 conclude", 23 June 2017

On 23 June 2017, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) concluded nine days of closing statements in Case 002/02 against Nuon Chea and Khieu Samphan. The Chamber will now withdraw for deliberations. Evidentiary hearings in the trial commenced with opening statements on 8 January 2015 and concluded on 11 January 2017. The trial, including closing statements, lasted for a total of 283 hearing days. During the trial, the Chamber heard the testimony of 185 individuals: 114 fact witnesses, 63 Civil Parties and 8 experts.

The trial has been subject to considerable public interest, with 82,780 persons attending the hearings. The accused persons on trial in Case 002/02 are Nuon Chea, who was the deputy secretary of the Communist Party of Kampuchea, and Khieu Samphan who was the head of state of Democratic



Photo: ECCC

Kampuchea. The charges in Case 002/02 focus on alleged crimes against humanity, genocide and Grave Breaches of the Geneva

Conventions based on the following alleged crime sites and factualallegations: worksites and cooperatives (Tram Kok Cooperative,

Trapeang Thma Dam Worksite, 1st January Dam Worksite and Kampong Chhnang Airport Construction Site), security centres

execution sites (S-21 Security Centre, Kraing Ta Chan Security Centre, Au Kanseng Security Centre and Phnom Kraol Security Centre), genocide against the Cham and the Vietnamese, the treatment of Buddhist and former Khmer Republic Officials, and the nationwide regulation of marriage. The Trial Chamber has also heard evidence about the nature of the alleged international armed conflict between Democratic Kampuchea and the Socialist Republic of Vietnam, the accused persons alleged roles within the government, as well as evidence on administrative and communications structures within the Democratic Kampuchea regime. The Chamber will provide more information about the date for issuing the Judgement at the appropriate time.



Photo: ECCC

The Co-Investigating Judges published a statement on the article "Staying Khmer Rouge Tribunal cases mulled" in The Phnom Penh Post of 8 May 2017

8 May 2017

The Co-Investigating Judges have taken note of the above-mentioned article and have decided to inform the public directly in order to avoid speculations based on inaccurate facts, not least because some parties have already explicitly or implicitly acknowledged the existence of the decision to the press. It is correct that a request for submissions has gone out to the parties in Cases 003, 004 and 004/2 and to the court's Office of Administration, expressing the Judges' deep concerns about the funding situation of the Tribunal and what it may mean for the future of these cases. The request was sent as confidential because it is on the one hand part of the investigation phase, which is generally confidential, and on the other hand, because of the highly sensitive nature of the issue since it is obvious that the Office of Administration will have to consult with the UN and the Government of Cambodia about the budget-related issues. This is a delicate matter and not properly discussed in the public domain at this stage. The article is also inaccurate in that, firstly, this was a decision taken by both Judges jointly - it is therefore incorrect to attribute its contents and motivation to the International Co-Investigating Judge alone. Secondly, there is no "official summary" of the decision. The Phnom Penh Post quotes verbatim from either the document or an excerpt provided by the informant. This information



was leaked in violation of informant's duty of confidentiality and constitutes a serious and regrettable breach professional of trust. The Co-Investigating Judges have no further comments on the matter.

Forwarding order for final submissions issues Case 004/2 (Ao An)

Press Release by Office of Coinvestigating Judges, 19 May 2017

On 19 May 2017, the Co-Investigating Judges issued a forwarding order under Internal Rule 66(4) requesting the Co-Prosecutors to file their final submission in Case 004/2. Under Internal Rule 66(5), the Co-Prosecutors now have up to three months to file their submission. After that, the Defence will be given adequate time to respond the Co-Prosecutors' final submission. The Co-Investigating Judges will issue the Closing Order in due course after having received submissions from both sides.



Photo: ECCC

Judicial updates:

Supreme Court Chamber

"The Supreme Court Chamber continues Pre-Appeal research on legal issues in the Closing Order of Case 002/02, not yet decided by the Supreme Court Chamber.

The jurisprudence set by International Tribunals for crimes of genocide and enslavement is wide and varied.: Elements of the gender specific crimes such as forced marriages or sexual assaults, envisaged in the judgment of the Trial Chamber, may be wide. The research is intended to enhance the appeal process in the event that parties file appeals. The work may enable the Supreme Court Chamber to meet the time line set in the ECCC latest Completion Plan".

Trial Chamber

During the month of January 2017, the The final briefs in Case 002/02 were filed by the parties on 2 May 2017. The parties presented their Closing Statements from 13 to 23 June 2017. NUON Chea declined to make a final statement. KHIEU Samphan made a final statement on 23 June 2017. After KHIEU Samphan's final statement the Trial Chamber declared closed the evidentiary proceedings in Case 002/02.

The Trial Chamber issued eight written decisions or memoranda in May and June 2017, four of which are public. The Chamber was also engaged in the evaluation of evidence in preparation for the drafting of the Judgement in Case 002/02.

On 2 May 2017, the Trial Chamber having regard to the confidentiality restrictions which were still in place, ordered that all Closing Briefs be filed confidentially by 2 May 2017 with public redacted versions to be submitted by 16 May 2017.

On 31 May 2017, the Trial Chamber lifted the confidentiality restrictions with respect to a number of witnesses and transcripts. In making this decision, the Trial Chamber had regard to the assessment of the International Co-Investigating Judge with respect to the conditions of confidentiality in Case 002/02 and their impact upon the integrity of ongoing judicial investigations. The Trial Chamber allowed the parties to amend their public redacted Closing Briefs and to re-file them in accordance with this decision. The Trial Chamber also

granted the NUON Chea Defence's request to reclassify as public its Closing Brief.

On 7 June 2017, the Trial Chamber issued guidelines with respect to the conduct of the closing statements. The Trial Chamber provided guidance pertaining to the issues of (i) witness protection and confidentiality; (ii) reference to material which had not been requested for admission; (iii) prior requests for reconsideration; and (iv) reference to potentially torture-tainted evidence.

On 28 June 2017, the Trial Chamber having regard to the ongoing correction of hearing transcripts and the projected completion of this process, set a deadline of 30 September 2017 for the filing of Amended Closing Briefs.

Pre-Trial Chamber

During the months of May and June 2017, the Pre-Trial Chamber notified a total of three judgements on appeals and motions, including one decision on an application to annul parts of records of interview by three investigators (PTC 04/2/37) and two judgements on appeals in cases 004 and 004/2 regarding the International Co-Investigating Judge's interpretation of the 'civilian population' element of crimes against humanity (PTC 04/41 and PTC 04/2/42).

The Chamber was newly seised of five cases, including one appeal against the International Co-Investigating Judge's forwarding order in case 004/2 (PTC 04/2/44) and two motions for annulment of investigative action (PTC 04/2/43 and PTC 04/45). It was further formally seised, pursuant to Internal Rule 75(3), of the two appeals in cases 003 and 004/2 regarding Co-Investigating the International Judge's interpretation of the 'civilian population' element of crimes against humanity (PTC 03/32 and PTC 04/2/42).

The Chamber advanced preparations for deliberations on four cases, including three applications for annulment of investigative actions (PTC 04/38, PTC 04/39 and PTC 04/40) and one appeal against the notification in case 003 of the International Co-Investigating Judge's interpretation of the 'civilian population' element of crimes against humanity (PTC 03/32).

Since January, the Pre-Trial Chamber

has issued a total of eleven judgements and four orders and is currently seised with seven cases, including three cases awaiting to be fully briefed (PTC 04/2/43, PTC 04/2/44 and PTC 04/45). It has yet to be seised with two upcoming appeals from the International Co-Prosecutor and the Defence in case 004 regarding International Co-Investigating Judge's decisions on a request for investigative action and on a request to place materials on case file 004, against which notices of appeal were filed respectively on 15 and 22 June. The next deliberations are expected to take place in July.

Office of the Co-Investigating Judges

During the months of May and June, the international side of the Office of the Co-Investigating Judges ("OICIJ") continued the investigations of case 004.

In May in case 004, two field missions were carried out, generating three interviews. One interview was carried out on ECCC premises.

During the month of May, the legal unit has been processing investigative material, and addressing investigative requests and procedural motions. The Analysts Unit assisted and participated in the field mission. They also assisted legal officers in analysing Khmer language documents and DK contemporaneous documents.

On 24 May 2017, the International Co-Investigating Judge issued the Second Notice of Conclusion of Judicial Investigation against Meas Muth in Case 003.

During the month of June, the international side of the Office of the Co-Investigating Judges ("OICIJ") continued the investigations of case 004. The legal unit has been processing investigative material, and addressing investigative requests and procedural motions. They analyst team assisted legal officers in analysing Khmer language documents and DK contemporaneous documents.

On 13 June 2017, the Co-Investigating Judges issued the Notice of Conclusion of Judicial Investigation against Yim Tith in Case 004.

On the same day, the International Co-Investigating Judge further issued a decision reducing the scope of the investigation under Rule 66bis.

Defence

Nuon Chea

On 2 May 2017, the Nuon Chea Defence submitted its 550-page closing brief in Case 002/02, addressing multiple charges of genocide, crimes against humanity, and grave breaches of the Geneva Conventions. The Defence also filed an extensive Table of Authorities for that brief. Throughout the rest of May, the Defence has focused on preparing its closing oral arguments, which are scheduled to begin in mid-June 2017.

The Nuon Chea Defence prepared Mr. Nuon Chea's closing statements, which took place between 12 and 23 June. The Defence presented Mr. Nuon Chea's case, putting the events of 1975-1979 in the proper context of the existential threat of Vietnam. It argued that the policies regarding security centers, worksites and cooperatives, the treatment of certain groups, and the regulation of marriage, were legitimate and lawful. Furthermore, the Defence highlighted the lack of credible evidence to find the charged crimes occurred beyond a reasonable doubt, accordingly seeking Mr. Nuon Chea's acquittal.

Khieu Samphân

"In May 2017, the KHIEU Samphân Defence filed its closing brief (E457/6/4) and was then fully engaged in preparing the closing statements."

The Khieu Samphân Defence was fully engaged in preparing and attending the closing statements in Case 002/02. During these final hearings, the Defence responded to the Prosecution, while presenting the main arguments raised in its final brief, notably several issues regarding the saisine of the Trial Chamber and the violations of the principle of legality by the Supreme Court Chamber concerning the definitions of murder and Joint Criminal Enterprise I. Conversely, neither during its closing statement nor in its reply did the Prosecution respond to the arguments raised, either in writing or orally, by the Defence. Last to take the floor, Mr. Khieu Samphân made a final statement in which he responded to the questions asked by the civil parties during the trial and denied being a criminal.

Meas Muth

In May, the Meas Muth Defence filed one Request to the Co-Investigating Judges, which has been classified as confidential. The Defence also filed an appeal against the International Co-Investigating Judge's decision that an attack need not be committed against a civilian population to constitute a crime against humanity, but could be committed against a state's own soldiers. The Defence also prepared its submission to be filed in response to a request by Co-Investigating Judges concerning the budgetary situation of the ECCC and its effect on Case 003.

In June, the Meas Muth Defence filed three submissions to the Co-Investigating Judges, each of which has been classified as confidential. The Defence also filed a reply to the Pre-Trial Chamber concerning its appeal against a decision that a state or organization's own military can be considered a "civilian population" for purposes of crimes against humanity. The Defence continues to review material on the Case File and to prepare submissions to protect Mr. Meas Muth's fair trial rights and interests.

Im Chaem

In May, the Im Chaem Defence filed a request raising concerns regarding the impact of the ECCC budgetary situation on Case 004/1. The Defence is currently preparing for a potential response to an appeal against the Closing Order and endeavours to safeguard Ms. IM Chaem's fair trial rights and interests throughout the remaining proceedings of the pre-trial stage of Case 004/1.

The Im Chaem Defence is currently preparing for a potential response to an appeal against the Closing Order and endeavours to safeguard Ms. Im Chaem's fair trial rights and interests throughout the remaining proceedings of the pre-trial stage of Case 004/1.

Ao Ar

In May, the Ao An Defence filed an Application to Seize the Pre Trial Chamber with a View to Annulment of the Investigation; and filed an Appeal Against the International Co-Investigating Judge's Notification on the Interpretation of Attack Against the Civilian Population in the Context of Crimes Against Humanity with Regards to a State's or Regime's Own Armed Forces. The Defence also filed a

submission on the funding situation of the Tribunal and what it may mean for the future of the cases before it. Finally, the Defence continues to review all materials on the Case File and prepare other filings to safeguard Mr. AO An's fair trial rights.

The Ao An Defence filed an Appeal against the Decision on Ao An's Application to Annul the Entire Investigation; and an Appeal against Internal Rule 66(4) Forwarding Order. The Defence also continues to review all materials on the Case File and prepare other filings to safeguard Mr. Ao An's fair trial rights

Yim Tith

The Yim Tith Defence continued to analyse the contents of the Case File in order to participate in the investigation, prepare Mr. Yim Tith's defence and endeavour to protect his fair trial rights.

Victims Support Section

Legal Representation

ECCC-funded Civil Party Lawyers participated in the final conclusion hearing of case 002/02 of the Trial Chamber. In the preparation of the hearing, the lawyer team had meetings with other civil party lawyers and Lead Co-Lawyers to discuss the roles and responsibilities of each lawyer during the hearings. They also attended the inauguration Ceremony of the Legal Documentation Centre Relating to the Extraordinary Chambers in the Courts of Cambodia, a meeting with Ending Violence against Women (EVAW) Legal Aid Network and a workshop on the participation of victims before the ECCC conducted by the section in cooperation with UN Women.

Outreach

During the two-month period, Outreach Team invited 61 Civil Parties (60 females) from Kampong Cham, Kampot, Pursat, Sihanouk Ville, Takeo, Kandal and Kampong Thom, to attend the hearings of final conclusion in Case 002/02 at the ECCC. At lunch break of each hearing day, they were arranged to meet with their lawyers to be briefed on what already had happened and discussed in the courtroom. After hearings ended in each day, Judgment Books of Case 002/01 of the Supreme Court Chamber (SCC), radios and VSS newsletters were distributed to those CPs.

Processing and Analysis

During the two-month period, the team

received 2 civil party applications applied for case 004 and filed them to the Office of Co-Investigation Judges. As of 30 June, there were 2133 applications in total for both cases 003&004.

Reparation and Non-Judicial Measure (R&NJM)

The team's member had a meeting with the International Lead Co-Lawyer to update information about a VSS's proposed reparation project for civil parties in case 002/02 before the ECCC entitled "Phnom Sampov Community Peace Learning Center and Treatment of Buddhists during the Khmer Rouge Regime". Another meeting was held with DC-Cam staff to discuss a proposed Non-Judicial Measure project entitled "The Anlong Veng Peace Center".

Fundraising campaign among national and international NGOs as well as foreign embassies through e-mails was conducted. The campaign was intended to seek additional funding for the Case 002/02 proposed reparation projects which were not yet fully funded. They also sent the concept note and the leaflet of a proposed reparation projects for Case 002/02 of HelpAge Cambodia entitled "Improving Health and Mental Wellbeing and Reducing the Risk of Poverty and Social Exclusion of Some Civil Parties and Other Vulnerable Older People in Cambodia" to national and international NGOs working on health sector. In addition, they sent the remaining concept notes of the seven proposed reparation projects not yet fully funded to national and international NGOs to seek funding.

Project on Gender-Based Violence during the Khmer Rouge

- Project Manager had a skype meeting with National Institute for Trial Advocacy (NITA), and Lawyers without Borders representatives to discuss the cooperation opportunity between NITA and VSS with regard to the upcoming training on gender-sensitivity for student lawyers and practicing lawyers to be held in September 2017.
- The Chief and Project Manager met with Director of Department of Planning and Statistics of Ministry of women's affairs to discuss the cooperation opportunity between the section and the ministry regarding the trainings to NGOs

and ECCC staff.

- Project Manager provided a short presentation about GBV project to a group of 40 participants during half-day training on "Case management and working with vulnerable group", organized by Defense Support Section of the ECCC in cooperation with the Linklaters Law & Business School and Hagar organization. Participants were lawyers, legal professional from defense team and lawyers from NGOs such as Hagar and APLE.
- Two radio live shows were conducted in cooperation with the Women Media Center on the topics "Community Psychological Support to Gender-based Violence's Victims" and "Gender-based Violence and the discrimination today". There were a total of 13 callers which includes 9 off-air and 4 on-air callers.
- The section organized a mobile exhibition on "Forced Marriage during the Khmer Rouge Regime" during the inauguration Ceremony of the Legal Documentation Centre Relating to the Extraordinary Chambers in the Courts of Cambodia.
- The project of the section in cooperation with UN Women in Cambodia organized a meeting with Ending Violence against Women (EVAW) Legal Aid Network to discuss the topic "Health Services for GBV Victims". 15 members from various organizations participated in this meeting.

Civil Parties Co-Lawyers

Key Legal Issues and Submissions

On 2 May 2017, the Lead Co-Lawyers filed their Closing Brief in Case 002/02 (E457/6/2) in which they described civil party participation in case 002/02 and presented the oral testimonies of the 64 civil parties who testified during the course of the proceedings. The Lead Co-Lawyers submitted that such evidence would assist the Trial Chamber in assessing the material elements of the indicted crimes and requested that the Trial Chamber acknowledge the harm suffered by civil parties as a result of crimes within the scope of case 002/02.

On 30 May 2017, the Lead Co-Lawyers filed their Final Claim for Reparation in Case 002/02 with Confidential Annexes (E457/6/2/1). The National International Lead Co-Lawyer put forward 17 projects for acknowledgement as judicial reparation awards in case 002/02, and the International Lead Co-Lawyer put forward an additional project for consideration. The Lead Co-Lawyers sought to design and develop projects with project partners that are consistent with the requests of civil parties themselves, and that reflect the right of reparation for victims of crime as provided for by the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims

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Photo: ECCC

Orders and Decisions

May

Decisions and Orders Issued between 1 and 31 May 2017

Trial Chamber:

2 May 2017: Decision on the Co-Prosecutors' Request to Lift Redactions and Use of Pseudonyms for Case 002/02 Testimony <E319/35/12>

9 May 2017: Admission of newly disclosed written records of interviews from Case 004 of witnesses heard in the course of the Case 002 trial proceedings <E319/69>

31 May 2017: Further Decision on the Co-Prosecutors' Request to Lift Redactions and Use of Pseudonyms for Case 002/02 Testimony and on the NUON Chea Defence request to reclassify their Closing Brief <E319/35/15>

Pre-Trial Chamber:

Judgement in case PTC 04/2/37: On 11 May, the Pre-Trial Chamber unanimously

dismissed an application to annul parts of records of interview by three investigators.

June

Decisions and Orders Issued between 1 and 30 June 2017

Trial Chamber:

7 June 2017: Guidelines for Closing Statements in Case 002/02 <E457/7>

28 June 2017: Schedule for Amended Closing Briefs <E457/8>

Pre-Trial Chamber:

Judgement in case PTC 04/41: On 30 June, the Pre-Trial Chamber issued a unanimous judgement

finding inadmissible the appeal in case 004 regarding the International Co-Investigating Judge's interpretation of the 'civilian population' element of crimes against humanity. Judgement in case PTC 04/2/42: On 30 June, the Pre-Trial Chamber issued a unanimous judgement finding inadmissible the appeal in case 004/2 regarding the International Co-Investigating Judge's interpretation of the 'civilian population' element of crimes against humanity.



Photo: ECCC

Outreach and Activities

On 25 May 2017, 45 Police Officers from the Cybercrime Department and several related Department will do a study tour at the ECCC and met with ECCC' officials from CMS, ICT and WESU. These Police Officers are very interested in the work of the ECCC and visiting some facilities as part of their enrichment program.

4849 local villagers from Prey Veng, Kampong Speu, Pursat, Kampong Cham, Battambang, Takeo provinces attended the closing statement in Case 002/02 against Nuon Chea and Khieu Samphan from 13 to 23 June, 2017. They also visited S-21 and Cheung Ek Killing fields as part of the study tours program organized by ECCC' PAS.







Photos: ECCC

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of Gross Violations of International **Human Rights Law and Serious Violations** of International Humanitarian Law, particularly guarantees of non-repetition (5 projects and 5 projects addressing harms suffered by specific groups of civil parties), satisfaction (5 projects), and rehabilitation (2 projects). Of these projects, four projects have been fully implemented and seven have begun implementation.

On 13 June 2017, the Lead Co-Lawyers made their final oral submissions before the Trial Chamber. During their presentation, the Lead Co-Lawyers and Civil Party Lawyers presented 33 video clips of civil party testimony relevant to the crimes litigated in case 002/02. The Lead Co-Lawyers further presented the proposed reparation projects in case 002/02, together with video clips of project activities from four project partners. On 21 June 2017 responded in rebuttal to the arguments raised by the Defence teams for Nuon Chea and Khieu Samphan.

Meetings and Outreach

Together with the Victims Support Section and their NGO partners, the Lead Co-Lawyers continued to participate in the development of reparation projects for case 002/02 and the implementation of judicial reparation projects for case 002/01.

On the 24 June, the National Lead Co-Lawyer participated in a mobile exhibition on Phka Sla Krom Angkar, a proposed reparation project in case 002/02, organized in Kompong Siem district, Kompong Cham. This event was organized by the Kdei Karuna Organization.

On 27 June, the National Lead Co-Lawyer and members of the section were represented at the inauguration of the Legal Documentation Center, a reparation project partner. Four civil parties were invited to participate and speak at the



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