



Extraordinary Chambers  
in the Courts of Cambodia

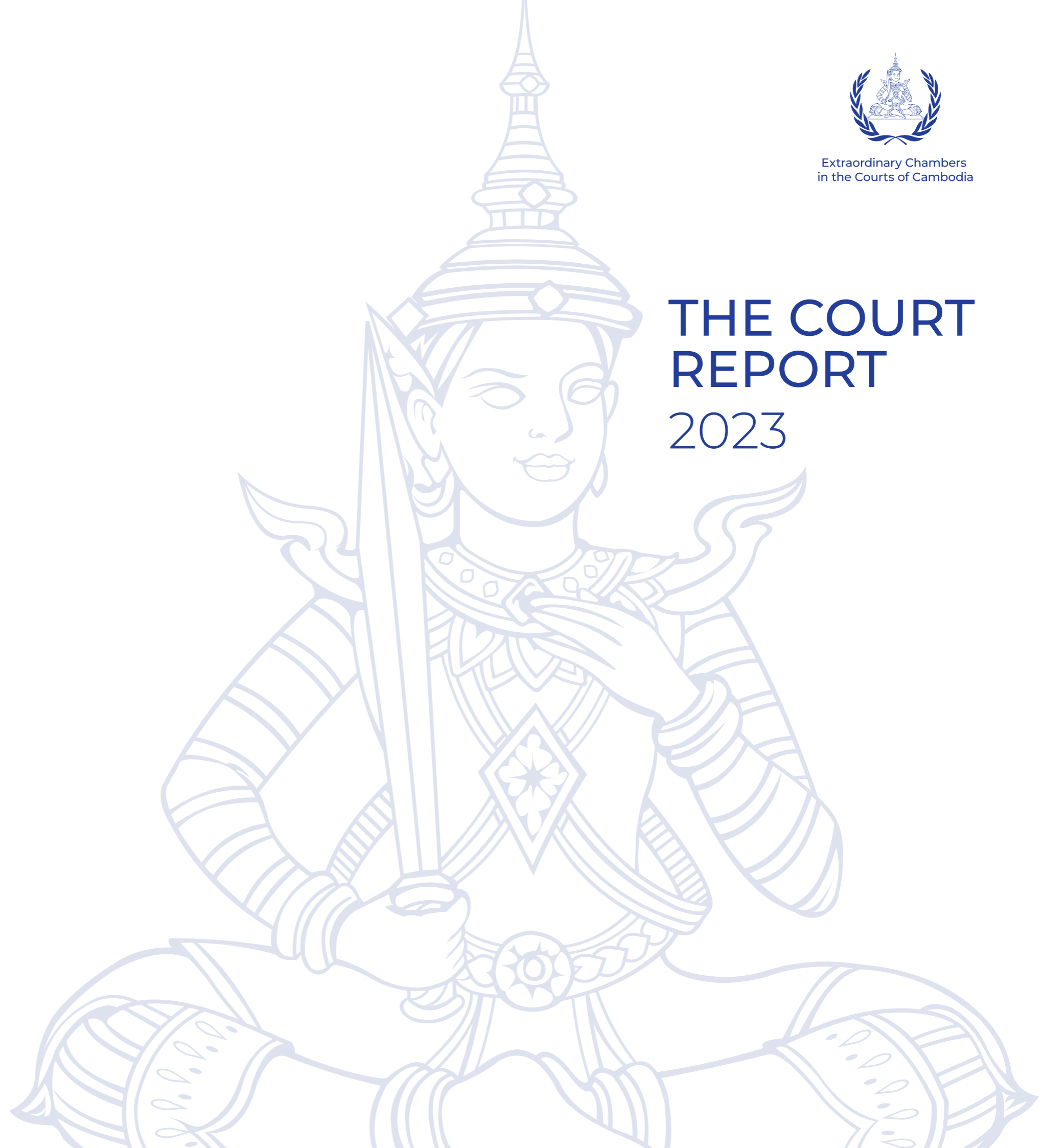
# THE COURT REPORT 2023





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# TABLE OF CONTENTS



## SUMMARY 04

## RESIDUAL FUNCTIONS OVERVIEW 06

## JUDICIAL UPDATES

- 8 The Case 002/02 Appeals Judgment
- 10 Appointment of new International Co-Prosecuter
- 11 Transfer of Khieu Samphan to Kandal Provincial Prison
- 12 Reclassification of case file documents
- 13 Orders and decisions
- 14 Case 002/02 reparations

## RESIDUAL PHASE ACTIVITIES UPDATE

- 16 Relocation
- 20 The Archive
- 24 The Resource Centre
- 25 International Humanitarian Law moot court competition
- 26 Website redevelopment
- 27 Educational videos

## OUTREACH UPDATES

- 28 Civil Party Focal Persons
- 28 Civil Party Applications in Cases 003, 004, 004/01, and 004/02
- 31 Outreach activities
- 32 Partnerships

## LOOKING AHEAD 34





# SUMMARY

**The Extraordinary Chambers in the Court of Cambodia** commenced residual functions on 1 January 2023. In concluding judicial work, the Supreme Court Chamber upheld Khieu Samphan's convictions for genocide, war crimes, and crimes against humanity in the Case 002/02 Appeals Judgment. The decision marks the first time in which a national appeals court upheld a genocide conviction against a former head of state.

Following the Appeals Judgment, the Supreme Court Chamber, as the last judicial office seised of Case 002, is responsible for reviewing the security classifications of all documents on the case file, and declassifying documents where a confidential classification is no longer necessary. A similar process is underway in Case 004/02.

Reclassification is a crucial part of the ECCC's legacy. Following the completion of Case 002, the ECCC is working to notify Civil Parties across the country about the case through focal points and provincial meetings.

2023 has also seen other important activities, including the relocation of the ECCC from its old compound to new premises located in the heart of Phnom Penh. The new space serves as a hub for the ECCC to disseminate information about its work of the past 16 years. The new premises hosts a public and freely accessible Resource Centre and will soon complete works on an international standard archive repository. These facilities and resources help to bring the public one step closer to the work and the legacy of the ECCC.

Furthermore, 2023 saw the ECCC becoming a member of the International Council on Archives (ICA) and partner with many local and international institutions and associations through MoUs. The development of a modern and interactive legacy website is well underway. Once completed, the new website will shift the way users approach and research the history of the Khmer Rouge and the ECCC.







# RESIDUAL FUNCTIONS OVERVIEW

THE ECCC COMMENCED ITS RESIDUAL FUNCTIONS ON 1 JANUARY 2023. THE ADDENDUM TO THE UN-RGC AGREEMENT SET AN INITIAL PERIOD OF THREE YEARS FOR THE ECCC'S RESIDUAL FUNCTIONS.

The ECCC's residual functions can be categorized into three main areas:

## 1. Conclusion of all judicial functions

- Reviewing applications for revising final judgments
- Providing protection for victims and witnesses
- Sanctioning or referring wilful interferences with the administration of justice
- Supervising the enforcement of sentences
- Monitoring the treatment of convicted persons

## 2. Dissemination of information about the ECCC

- Reviewing and declassifying case files
- Maintaining, preserving, and managing the ECCC's archive

- Responding to requests for document access
- Implementing activities to disseminate the contents of the archives as broadly as possible

## 3. Outreach

- Monitoring the enforcement of reparations awards to Civil Parties.
- Imparting information to the public, including victims and youth, about the ECCC.



# JUDICIAL UPDATES

## THE CASE 002/02 APPEALS JUDGMENT

Public gallery during the pronouncement of the Appeals Judgment in Case 002/02 on 22 September 2022.



The Case 002/02 Appeals Judgment, in which the Supreme Court Chamber upheld Khieu Samphan's convictions for genocide, war crimes, and crimes against humanity, marks the first time in which a tribunal upheld a contested genocide conviction against a former head of state. The Appeals Judgment (1,220 pages in Khmer and 826 pages in English) is also noteworthy in several other respects. This article summarizes some of its major legal findings and contributions to international criminal law.

The "marriage ceremony" of Nun Huy (aka Huy Sre) (left) and Prok Khoenun (aka Prak Samuth) (right). The SCC confirmed that the Khmer Rouge's policy to forcibly marry couples was criminal. (Photo source: DC-Cam's Archives).



### SEXUAL VIOLENCE WITHIN FORCED MARRIAGES

The Supreme Court Chamber found ample evidence that men who were forced to consummate marriages arranged by the Khmer Rouge were the victims of sexual violence. The Chamber considered that the Trial Chamber did not apply the legal standard of the crime against humanity of "other inhumane acts" correctly, and was mistaken when it concluded that only women could be victims in this context. In its landmark ruling, the Supreme Court Chamber confirmed that husbands and wives of forced unions can suffer a serious attack on their human dignity when they are coerced to consummate their marriages.

### JOINT CRIMINAL ENTERPRISE AND DOLUS EVENTUALIS

On its own initiative, the Supreme Court Chamber recharacterised Khieu Samphan's liability for murders committed with *dolus eventualis* at the Tram Kak Cooperatives, the Trapeang Thma Dam Worksite, 1st January Dam Worksite, and Kampong Chhnang Airfield Construction Site, as well as at the S-21 and Kraing Ta Chan Security Centres from aiding and abetting to participation in a joint criminal enterprise (JCE).

The Trial Chamber erroneously concluded that JCE liability could not be applied to these murders, because it considered that JCE liability required the accused to have direct intent to commit these crimes. The Supreme Court Chamber clarified that JCE liability can arise in situations where the probable commission of a crime was jointly and willingly agreed upon by all JCE participants. Thus, senior Khmer Rouge leaders who agreed to establish cooperatives and worksites can be held responsible for deaths which were foreseeable due to the poor conditions being imposed there (particularly food deprivation, lack of accommodation, inadequate medical care, and poor hygiene, as well as hard labour, unsafe working conditions and ill-treatment in detention). As JCE liability is a more



DK leadership at Pochentong Airport (Photo source: DC-Cam's Archives).

direct form of liability than aiding and abetting, recharacterisation was necessary to better reflect Khieu Samphan's responsibility for the crimes at the cooperatives, worksites, and security centres.

### THE CRIME AGAINST HUMANITY OF PERSECUTION

The Supreme Court Chamber determined that undifferentiated treatment – treatment applied to everyone regardless of membership in a particular group, such as a blanket prohibition on religious practices or a requirement that everyone eat pork – could amount to discrimination, and thus to persecution. This was the first time in international criminal law that such mistreatment was found to legally constitute persecution.

### OVERTURNED FACTUAL FINDINGS RELATED TO CRIMES AGAINST HUMANITY

The Supreme Court Chamber reversed the Trial Chamber's finding that two murders had been committed at Phnom Kraol Security Centre because this finding relied on insufficient evidence. In particular, the Trial Chamber incorrectly based its conviction on written records of interview and Civil Party applications which could not be tested during the trial because the witnesses had passed away.

The Supreme Court Chamber also reversed the Trial Chamber's finding that "New People" had been persecuted at the 1st January Dam Worksite. The Trial Chamber incorrectly concluded that conduct towards New People violated a right to equal treatment which did not exist in Cambodia in 1975-1979 under customary international law or treaty law.

Members of the Cham community attend an outreach program in the ECCC courtroom.





**SENTENCING**

Case 002 is the first case tried by an internationalised tribunal that was severed into two trials for case management purposes. When Khieu Samphan was sentenced by the Trial Chamber to life imprisonment in Case 002/02 after having already been sentenced to life imprisonment in Case 002/01, the Supreme Court Chamber had to clarify whether he serves a single life sentence or two life sentences that run concurrently. The Supreme Court Chamber explained that Khieu Samphan serves a single life sentence, which is the maximum sentence permitted under Cambodian law. Even if Case 002 had not been severed, a single life sentence is still the maximum sentence Khieu Samphan could have received.



*Khieu Samphan in the courtroom during the pronouncement of the Appeals Judgment in case 002/02*

**APPOINTMENT OF NEW INTERNATIONAL CO-PROSECUTOR**



*Dale Lysak, formerly Assistant Co-Prosecutor, in court during trial hearings in Case 002 on 12 March 2012.*

Upon the nomination by the Secretary-General of the United Nations and the approval by the Supreme Council of the Magistracy, His Majesty King Norodom Sihamoni appointed Mr. Dale Lysak of Canada as the new International Co-Prosecutor. Mr. Lysak replaces Ms. Brenda J. Hollis (USA), who resigned in July 2022 and was herself replaced in the interim by Reserve International Co-Prosecutor, Mr. Fergal Gaynor (Ireland), per the ECCC's legal framework.

Mr. Lysak worked in the Office of Co-Prosecutors from 2008 to 2017, serving as a senior litigator in Case 002. Prior to joining the ECCC, Mr. Lysak practised law in the United States for 20 years and is currently counsel at a law firm in Vancouver, Canada.



*Khieu Samphan is transferred to the custody of national authorities to continue to serve his life sentence.*

**TRANSFER OF KHIEU SAMPHAN TO KANDAL PROVINCIAL PRISON**

Under the ECCC's Internal Rules, the Co-Prosecutors are responsible for initiating and implementing the enforcement of sentences, in cooperation with the national authorities. The Addendum to the UN-RGC Agreement provides that the ECCC will supervise the enforcement of sentences and monitor the treatment of prisoners during the phase of residual functions.

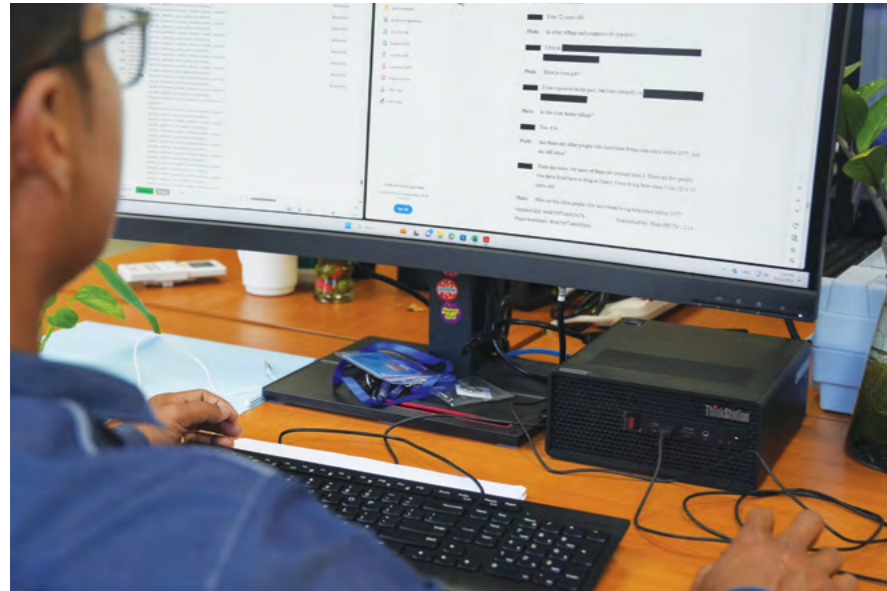
Before the Case 002/02 Appeals Judgment was issued, the Co-Prosecutors began discussions with the General Department of Prisons of the Cambodian Ministry of the Interior to identify an appropriate detention facility for Khieu Samphan, since he was sentenced to life imprisonment in Case 002/01. The Kandal Provincial Prison was selected, and the Co-Prosecutors made multiple trips to

the prison to confirm that it met with Cambodian and international standards, which require that Khieu Samphan's advanced age and fragile state of health be considered when making detention arrangements. For example, a separate area of the prison had to be refurbished into a cell for Khieu Samphan because none of the existing cells could accommodate his wheelchair. Provisions were also made to ensure that he would continue to receive appropriate medical care.

On 30 January 2023, Khieu Samphan was transferred to the Kandal Provincial Prison to continue to serve his life sentence. The International Committee of the Red Cross carries out regular visits to monitor conditions and treatment.



## RECLASSIFICATION OF CASE FILE DOCUMENTS



A team of analysts reviews documents per the Supreme Court Chamber's order on reclassification in Case 002/02.

The Supreme Court Chamber, as the last judicial office seized of Case 002, is responsible for reviewing the security classifications of all documents on the case file, and declassifying documents where a confidential classification is no longer necessary.


To perform this review, the Supreme Court Chamber sought input from the parties and other sections of the ECCC on proposed guidelines for the reclassification process. It noted that there were 106,836 confidential and 4,763 strictly confidential documents on Case File 002. After considering various inputs, the Chamber adopted guidelines for the reclassification of documents on Case File 002.

On 28 April 2023, the Supreme Court Chamber notified the parties that it had completed its review of the Case File 002 documents, and it ordered

the Records and Archives Unit to declassify over 24,000 documents comprising approximately 260,000 pages, some of which required redaction, and to publish a list of all documents made public. On 5 May 2023, the Supreme Court Chamber adopted these same guidelines for reviewing documents on Case File 004/02.

Reclassification of documents is central to the mandate and legacy of the ECCC. It provides the public with access to historical records and to the ECCC's work, thus facilitating education, research and discourse based on documentary evidence. Recognising this, the United Nations and the Royal Government of Cambodia agreed that it is vital to ensure that the ECCC's archives are preserved in accordance with international standards and that they are as broadly accessible as possible.

## ORDERS AND DECISIONS

		
5 May 2023	Supreme Court Chamber's Decision on guidelines for the reclassification of documents on case file 004/02	E004/2/7/1
28 April 2023	Supreme Court Chamber's Order to the Records and Archives Unit regarding reclassification in case file 002	F71/1/1/9
20 March 2023	Supreme Court Chamber's Direction concerning the disclosure of documents to a third party or parties	F78/2
20 March 2023	Supreme Court Chamber's Decision on guidelines for the reclassification of documents on case file 002	F71/1/1/8
23 December 2022	Case 002/02 Appeals Judgment	F76
22 December 2022	Supreme Court Chamber Decision on Khieu Samphan's request for information from the Co-Prosecutors on planned detention conditions	F77/1/1



## CASE 002/02 REPARATIONS

Civil Parties at the ECCC are entitled to seek collective and moral reparations for the harm they suffered as a result of the crimes which were prosecuted. In Case 002/02, 14 reparation projects were proposed by Civil Parties and 13 of them were endorsed by

the Trial Chamber. The projects focused on several themes relating to commemoration, rehabilitation, guarantees of non-repetition in the form of education, and memorialisation. In May, the Civil Party Lead Co-Lawyers reported the full implementation of all 13 projects.

The legacy of these and other reparations projects in Case 001 and Case 002 will be featured on the new website in 2024, along with non-judicial victim measures implemented by the ECCC.

● **Memorialization** ● **Rehabilitation** ● **Education and documentation**

PROJECT	IMPLEMENTING PARTNER	DONOR
● App-Learning on Khmer Rouge History	Bophana Center	EU through UNOPS, Rei Foundation
● Khmer Rouge History Education through Teacher and University Lecturer Training and Workshops	DC-Cam	EU through UNOPS
● The Turtle Project: Innovative Cross Media Project, Promoting Historical Awareness and Civil Courage in Cambodia	The Cambodian-German Cultural Association	EU through UNOPS, German Institute of Foreign Relations (IFA)
● Community Media Project: The Cham People and the Khmer Rouge	The Cambodian-German Cultural Association	Embassy of Switzerland in Bangkok, Heinrich Böll Foundation
● Phka Sla Kraom Angkar: Forced Marriages under the Khmer Rouge Regime	Khmer Arts, KdK, TPO, Bophana	Swiss Development Cooperation, BMZ/GIZ, USAID
● Voices from Ethnic Minorities: Promoting Public Awareness about the Treatment of Ethnic Minorities During the Khmer Rouge Regime	KdK	GIZ-CPS, Embassy of Switzerland in Bangkok
● The Unheard Stories of Civil Parties Participating in Case 002/02 at the ECCC	CHRAC	Heinrich Böll Foundation
● A Time to Remember: Songwriting Contest 2016, involving Youth in the Creation of Cambodia's Song of Remembrance	YRDP	GIZ-CPS
● Memory of Sketches of Kraing Ta Chan Project	YFP PIC	International Coalition of Sites of Conscience
● Access to the Judicial Records of the Khmer Rouge Trials and Civil Party Materials at the Legal Documentation Center related to the ECCC (LDC)	Council of Ministers	RGC, with building funded by Embassy of Japan
● Healing and Reconciliation for Survivors of the Khmer Rouge Regime	TPO KdK	USAID
● Legal and Civic Education for Minority Civil Parties	The Minority Rights Organization (MIRO)	GIZ-CPS
● 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	HelpAge Cambodia	EU through UNOPS, Swiss Development Cooperation

“ This exhibition and intergenerational dialogue mean a lot to me since I have an opportunity to share my story on forced marriage during the Khmer Rouge time with young people. I feel relief after talking with people, especially students.”

Civil Party in Case 002



Visitors explore the Phka Sla Kraom Angkar exhibition, one of the reparations endorsed in Case 002/02 concerning forced marriages under the Khmer Rouge.



# RESIDUAL PHASE ACTIVITIES UPDATE

## RELOCATION

### DEPARTURE

Once appeal proceedings in case 002/02 completed, the ECCC began to plan for its residual functions at a new location. In December 2022,

after more than 16 years at the site, the ECCC vacated its former premises by the Army Headquarters in Choam Chao.



As we prepared to depart our old compound, a Buddhist ceremony was held together with Civil Parties to pray for and commemorate those who died under the Khmer Rouge regime.



A handover ceremony was held in late December 2022 to officially return the ECCC courtroom and administration buildings to the Royal Cambodian Army.

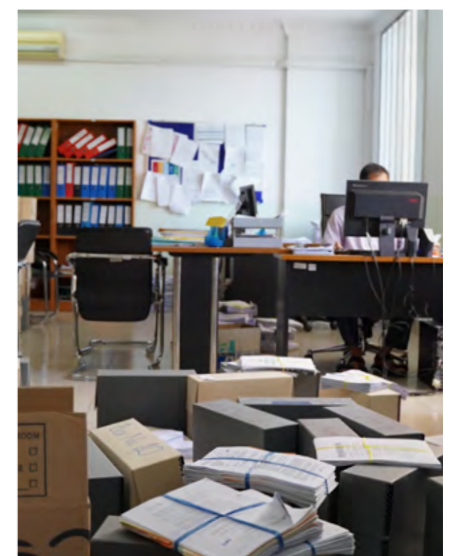


Furniture, equipment, papers and other assets are packed for relocation to new premises.



A professional removalist company assists us to relocate within a narrow timeframe.

We all chip in where we can!







A staff town hall is held in the space which will soon be outfitted as the ECCC Resource Centre public facility.



Outfitting of the Resource Centre underway on the first floor.



ARRIVAL

New premises were provided by the Royal Government in the centre of Phnom Penh, offering a more accessible venue from which to provide the public access to the ECCC and disseminate information. Innovative solutions were required to overcome space limitations in terms of archives, office space, and new public services and resources.

Our new premises is situated just off Russian Boulevard in central Phnom Penh.

The new premises are refurbished and retrofitted prior to our arrival.



Containers are used to overcome immediate space limitations.



Revamped facilities allow residual functions to continue unimpeded.







## THE ARCHIVE

Archiving is one of the most important activities of the ECCC, even in its residual phase. Working with nearly 2.4 million pages of documentation, the Records and Archives Unit is required to maintain, preserve and manage these materials in physical and digital format. ECCC's holdings are divided into two broad categories: case files and non-case file documents. Case files are court documents which are submitted during investigations, trials or appeals. Non-case file documents consist of other media which document the official activities of the Extraordinary Chambers. To date, the ECCC has successfully digitized all its documents without backlog and is working to make public documents easily available online.

In 2023, the ECCC became a member of the International Council on Archives (ICA), the largest professional association in the field of archives. Membership will allow the ECCC to exchange experiences with international experts, share practices of good archival management, and pursue the highest standards of archives preservation in Cambodia. This will enhance the ECCC's ability to share best practices with other Cambodian institutions and stakeholders, and facilitate trainings on good governance, accountability and transparency in records management.

“Working with nearly 2.4 million pages of documentation, the Records and Archives Unit is required to maintain, preserve and manage these materials in physical and digital format.”

## THE JOURNEY

Relocation of the ECCC's voluminous paper archive was a logistical feat which needed to follow the ECCC's standard operating and security procedures. This was required to maintain the integrity of the physical documents, avoid harm from environmental factors, and to ensure that access rights and classifications were strictly respected. This means that documents had to be handled, packed, and unpacked in a specific order, with records kept at every step of the way. Once loaded onto transportation vehicles, the documents were never left out of sight. Records and security personnel accompanied every convoy, and custody logs recorded every movement of the documents.

The arrival of the archives to the new premises met with a new set of challenges. Despite being in a more central location, the new ECCC premises is significantly smaller than the former compound. The space for the archive is only about twenty percent of the space previously available, and no repository was immediately available to store it. Temporary and permanent solutions needed to be found to not only store but also provide suitable storage conditions in line with the international archival standards the ECCC is required to observe.



One of several security convoys transporting case file documents prepares to depart the old compound.





▲ Temporary storage at the new premises while the archive repository is being prepared.

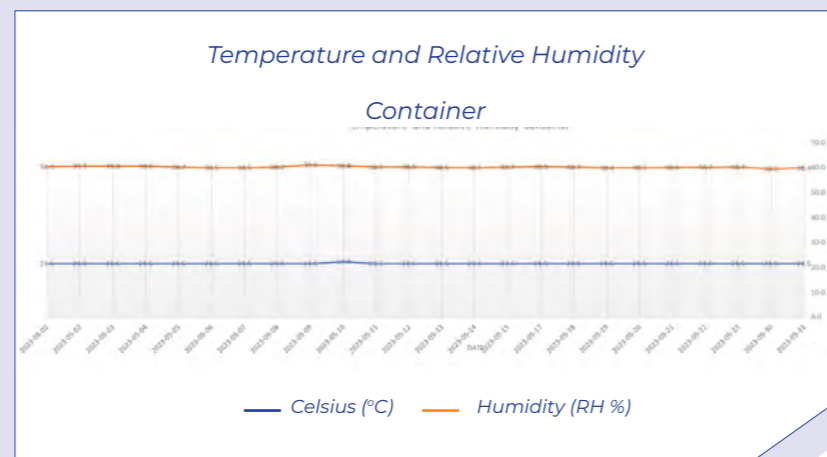
**TEMPORARY REPOSITORIES**

Unlike normal documents, the ECCC's archive documents must be stored in special conditions to maintain their longevity. Many of these documents are decades old and must be protected from the heat, rain, humidity, mould, dust, pollutants, fire and insects. In addition, they must be secured safely in a dedicated space to which access is controlled. Therefore, to safely store the documents, the ECCC repurposed one room and rented a large shipping container to use as temporary repositories while the new ECCC repository is being prepared for use.

**DID YOU KNOW?**

To comply with international standards, the paper repository needs to always be kept at a temperature between 22°C and 24°C and at 55-60% humidity.

Temperature and humidity log from the archive container, showing stable conditions between 1 and 31 May 2023.



**DID YOU KNOW?**

The ECCC's archival documents are stored in acid-free folders and boxes to maximize their longevity. This ensures that they can be kept in prime state for 100 years or more!

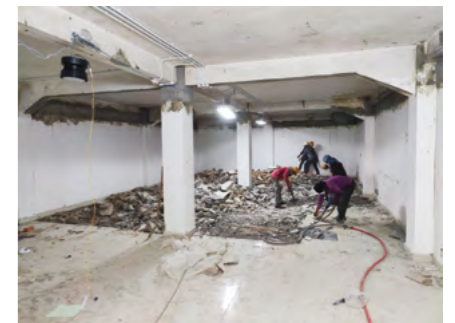
**NEW REPOSITORY**

During 2023, the ECCC worked on refitting part of the ground floor of its new premises to store the archive. Significant refurbishment of the spaces was necessary, and special compact shelves were bought to fit all the documents into this new space.

The heavy weight of these shelves required the floor to be strengthened, while the rooms have been fitted out with utilities including air conditioners, dehumidifiers and fire systems.

The archive will be fully operational in 2024 and the non-confidential section will be accessible for public consultation.

Visitors may contact the Resource Centre to arrange a viewing.



▶ Former office space is converted into a state-of-the-art archive repository. Note the ground reinforcement in progress.

**UPGRADE OF DIGITAL ARCHIVE**

The ECCC's digital archive is being upgraded to continue preserving the records securely. The upgraded system, ZyLAB One, will include Optical Character Recognition (OCR) that reads Khmer script, making it possible to search inside the ECCC's Khmer language documents. This is a first in Cambodia! A new analytical module will utilise next-generation technologies to enhance search results, making research easier and accessible directly from the website.

▶ Outfitting of the new archive repository nears completion, seen here awaiting assembly of compact shelves.





## RESOURCE CENTRE

The new Resource Centre is the access point to the ECCC and serves as an information hub for the archives, legal resources, and other materials.

In addition, the centre also provides space for visitors – especially young Cambodians – to consult, research, watch, study, and engage. The Resource Centre is equipped with Wi-Fi, computers, working desks, meeting tables, and other resources to provide visitors with everything they need to learn about the ECCC or related aspects.



▲ The Resource Centre is inaugurated on 27 September 2023. It is now open to the public every day, free of charge.

Six components of Resource Centre once completed:

- 1  a research hub containing the ECCC's book collection and other publications
- 2  a new, updated website with interactive features
- 3  a digital and paper archive managed and preserved according to international standards
- 4  a multi-purpose venue for organising workshops and moot courts
- 5  a consultation and exhibition venue
- 6  a remembrance and reflection space



### DID YOU KNOW?

The Resource Centre's specialised collection of books may be consulted on site and many titles are available in digital format. Simply ask our Resource Centre staff for access on site or by contacting [resource.centre@eccc.gov.kh](mailto:resource.centre@eccc.gov.kh)

## INTERNATIONAL HUMANITARIAN LAW (IHL) MOOT COURT COMPETITION



In early December, the ECCC hosted the final rounds of the ICRC Humanitarian Law Moot Competition. Four teams from the National University of Management (NUM), Royal University of Law and Economics (RULE) and American University of Phnom Penh (AUPP) participated in the Cambodian national rounds over two days. The winning team from RULE will progress to the Asia-Pacific regional finals, to be hosted in Hong Kong in 2024.

◀ The winning team from RULE participates in the competition.

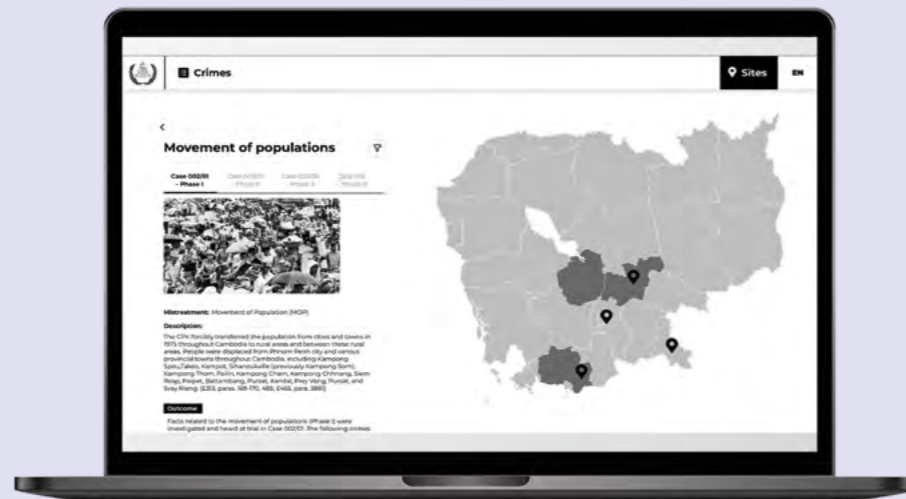


## WEBSITE REDEVELOPMENT

The new website has been reconceived as an engaging informational resource which will complement the Resource Centre as a digital access hub to the archive, interactive and educational features and the ECCC's legacy.

The website will be available across different devices in the ECCC's three languages, and will include:

- ▶ **Archive microsite** – providing direct access to the ECCC's public case records
- ▶ **Historical overview** – including the origins, establishment and operations of the ECCC
- ▶ **Case information** – everything about the investigations and trials
- ▶ **Digital resources** – a one-stop-shop for ECCC publications, media, and updates



▲ Mock-up of one of the new features, an interactive map showing all the sites investigated by the ECCC.

*The ECCC's website is getting an upgrade!*

Every section of the website boasts interactive features that will further ease and assist users to understand and digest information from the judgment.

Two further resources that will progressively be added to the website are an introductory guide to the ECCC, and a legal commentary summarising the ECCC's jurisprudence. The guide will offer a meaningful entry point to the work of the ECCC, providing a factual chronology through public archive documents and case file

materials. The legal commentary will catalogue the ECCC's main decisions and jurisprudence in all cases in an informative way to guide practitioners, scholars and students alike.

Upon its completion, the website will play a significant role in preserving the legacy of the ECCC, and making it easily accessible. By putting information in one place and connecting it transversally, the website will greatly enhance research of the ECCC's archives and Cambodia's path to peace.

[www.eccc.gov.kh](http://www.eccc.gov.kh)

## EDUCATIONAL VIDEOS



In September, an educational video series was launched to the public. Produced in cooperation with Khmer Mekong Films, the video series highlights a wide range of topics related to the trials and investigations over 16 years. The series is an integral part of the information dissemination mandate, one of the main pillars of the ECCC's residual functions.

Directed at Cambodia's younger generations, the video series is being released on all the ECCC's social media platforms including Facebook, YouTube, Telegram, and TikTok. Successive episodes, a total of 40, will be released twice a week.

◀ A user views an episode of the series on Facebook.



# OUTREACH UPDATES

## CIVIL PARTY FOCAL PERSONS

In July, October, November and December, the Victims Support Section and Civil Party Lead Co-Lawyers held meetings with Civil Party focal persons from across the country in Phnom Penh, Kampong Cham and Battambang.

The meetings were held to:

1. provide updates on case 002/02 and the ECCC's work during the residual phase

2. discuss outreach to all Civil Parties in Cambodia
3. distribute informational booklets about Case 002/01 and Case 002/02
4. hand out certificates of appreciation to each Civil Party

The notification of Civil Parties by their focal persons will be followed by a countrywide outreach campaign covering all 25 Cambodian provinces.



▲ Meeting with Civil Party focal persons in Kampong Cham in November 2023.

## CIVIL PARTY APPLICATIONS IN CASES 003, 004, 004/01, & 004/02

The participation of victims as Civil Parties at the ECCC is unique among internationalised criminal tribunals. No other such tribunal grants victims the status of parties to the proceedings or allows them to have such broad participatory rights.

In **Case 001**, the first case to be tried at the ECCC, 90 Civil Parties participated in the proceedings. As reparation for the harm the victims suffered, the Extraordinary Chambers endorsed the publication of all Civil Parties' names on the ECCC's website and compilation of the statements of apology and acknowledgements of responsibility made by Kaing Guek Eav (Duch) during the trial and appeal stage.

In **Case 002**, 3,869 victims were admitted as Civil Parties (two later withdrew) and 24 reparations

projects were endorsed in recognition of their collective suffering. This article will discuss the treatment of Civil Party applications in the ECCC's final cases, and the impact the Civil Party applicants have had, even though the cases did not proceed to trial.

In **Case 003** and **Case 004** (including its subcases), the Co-Investigating Judges (CIJs) received over 2,600 Civil Party applications. In Case 004/01, the CIJs determined that Im Chaem was not one of those "most responsible" for crimes punishable before the ECCC. The CIJs terminated the case against Im Chaem, resulting in the dismissal of all the Civil Party applications in her case. However, in Cases 003, 004, and 004/02, the CIJs disagreed on whether the charged persons could be prosecuted, resulting in each

Co-Investigating Judge issuing a separate closing order in each case (one an indictment and the other a dismissal order) and treating the Civil Party applications differently.

In Case 003, four individuals filed Civil Party applications before the CIJs' initial 14 May 2011 deadline when they closed the Case 003 investigation. The CIJs jointly declared each of those applications inadmissible. The applicants appealed, but the Pre-Trial Chamber could not attain the required majority to decide on the appeals, resulting in the CIJs' decision standing. One applicant later withdrew her application.

After CIJ Blunk resigned, the reserve international CIJ reconsidered the applications of the other three and granted them Civil Party status. He reopened the judicial investigation

and later granted Civil Party status to other applicants.

After the judicial investigation was reopened, 642 additional Civil Party applications were received. Of these applicants, 18 later died and one withdrew his application. On the same day they issued separate closing orders in the case, each CIJ issued a separate order on the admissibility of the Civil Party applications.

The national CIJ dismissed all Civil Party applications that were filed after 14 May 2011, the date he still considered to be the deadline for Civil Party applications, following the initial close of the investigation. The international CIJ, on the other hand, issued a decision setting out the legal principles and criteria he used in determining the admissibility of Civil Party applications and examined each

application on the merits, including reassessing the status of the Civil Parties already admitted by the reserve international CIJ. He declared some applications admissible and others inadmissible.

The Civil Party applicants rejected by the international CIJ appealed the decision, but the Pre-Trial Chamber was unable to obtain the requisite majority to reach a decision on the appeal. The national judges considered that all the Civil Party applicants should be rejected because they agreed with the national CIJ that Case 003 should be closed. The international judges disagreed, and considered that the national CIJ's order dismissing all the Civil Party applications was void, since it relied on his order dismissing Case 003, which they also considered void. They considered each ground

of appeal relating to the international CIJ's dismissal of certain Civil Party applications and stated that they would have overturned his dismissal of five Civil Party applicants.

In Cases 004 and 004/02, as in Case 003, certain Civil Party applications were rejected jointly by CIJs Blunk and You during the investigation. The Pre-Trial Chamber was unable to reach the necessary majority to decide on appeals against the decisions rejecting these applicants, resulting in the dismissal decisions standing. As in Case 003, most Civil Party applications were dealt with at the same time the closing orders were issued.

The national CIJ issued orders rejecting all Civil Party applications, not because he believed that they had been filed after the applicable





A Civil Party Focal Person reads the informational booklet which will soon be distributed to all Civil Parties in Case 002.

deadline as in Case 003, but because he considered that the charged persons in Cases 004 and 004/02 did not fall under the ECCC's jurisdiction so the cases should be dismissed. The international CIJ, as he did in Case 003, considered each of the Civil Party applications on the merits and admitted some while rejecting others. The Civil Party applicants rejected by the international CIJ appealed their rejection, but the Pre-Trial Chamber could not reach a decision on the appeal.

The national judges considered that all Civil Party applications should be rejected because they believed the cases should be dismissed, while the international judges considered the national CIJ's orders dismissing the Civil Party applications to be void and stated that they would have overturned the international CIJ's dismissal of 12 Civil Party applications in Case 004/02 and 14 Civil Party applications in Case 004.

In Cases 003, 004, and 004/02, the Supreme Court Chamber clarified that because of the separate

closing orders and resulting lack of a definitive enforceable indictment, the cases were terminated. Although no definitive answer as to the Civil Party status of the applicants in Cases 003, 004, and 004/02 was possible before termination, the participation of each Civil Party applicant greatly contributed to the work of the ECCC.

Each Civil Party application was placed on the case file and was scrutinised by judges and lawyers, increasing their understanding of the events at issue in the cases. Many Civil Party applicants were interviewed by the Office of the Co-Investigating Judges and these interviews also form part of the case files. As many applications were relevant to Case 002, they were disclosed to that case and reviewed by the Trial Chamber's judges during its deliberations.

Many of the Civil Party applicants thus also assisted in the Case 002 convictions of Nuon Chea and Khieu Samphan. To the extent the Civil Party applications and the related interviews and other

evidence are made public, [see article on reclassification on p. 12], they will continue to be of value, by contributing to the historical record, education and research. The Civil Party applicants' strength and fortitude in coming forward to share their stories, and reliving a difficult period of their lives, is commendable not only for its impact at the ECCC but for its meaningful contribution to Cambodian society.



*The participation of each Civil Party applicant greatly contributed to the work of the ECCC.*



## OUTREACH ACTIVITIES

The ECCC's weekly outreach study tours with students, youth, and the public raise general awareness about crimes committed by the Khmer Rouge and the work of the ECCC.

Organised by the Public Affairs Section (PAS), the tours consist of visits to the ECCC, Tuol Sleng Museum, Choeung Ek "Killing Fields", and the Win-Win Memorial.

In 2023, PAS has so far conducted 95 outreach activities involving 18,225 participants from Phnom Penh and nine provinces.



Students take notes during an outreach event at Tuol Sleng Museum in Phnom Penh - the site of the former S-21 Security Centre.



# PARTNERSHIPS

The ECCC strives to foster partnership with national and international institutions to exchange legal knowledges and experiences, provide resources for students and researchers, and disseminate the

ECCC's contributions to Cambodia. Through partnerships, the ECCC aspires to share knowledge about its practices to the next generations of Cambodia's legal and non-legal professionals.

## Memoranda of Understanding (MoU) signed in 2023

### NOVEMBER



#### GIZ

MoU for deployment of peacebuilding advisors to support the implementation of victim-centred outreach activities.

### OCTOBER



#### International Committee of the Red Cross (ICRC)

MoU on the organization of the ICRC International Humanitarian Law (IHL) Moot Court Competition in Cambodia, which aims to foster knowledge of IHL among students, academics, and other relevant stakeholders.

### OCTOBER



#### Educational Broadcasting Cambodia (EBC)

MOU on cooperation on the creation and dissemination of educational content to the public. Part of this video production will focus on memorializing victims' statements made during trial hearings, styled as "My Story".

### SEPTEMBER



#### The Bar Association of Cambodia (BAKC)

MoU on cooperation, training and enhancing legal knowledge in Cambodia.

### AUGUST



#### Sala Traju Association

MoU on the exchange knowledge, legal expertise, research, and the practice of the ECCC to the members of the associations through collaborative training programs that includes workshops, curriculum development, study tours, moot court at the ECCC and disseminating documents related to legal knowledge.

### JUNE



#### National University of Battambang, Southeast Asian University Partnership for Peace Building and Conflict Transformation (SAUP) - GIZ/ CPS

MoU on information dissemination and education of the ECCC achievements in higher education.

### APRIL



#### GIZ

MoU on promoting the dissemination of information about the ECCC in the field of higher education, including developing and implementing practical education tools.



## LOOKING AHEAD

That's a wrap for 2023. Below is what to look forward to in the upcoming year as the ECCC continues its residual functions.

### MOBILE RESOURCE CENTRE

2024 will see the Resource Centre growing wheels and engaging with the public and victims of the Khmer Rouge across the country.

### GUIDE TO THE ECCC

A comprehensive handbook on the ECCC, its cases and operations will be made available to the public.

### LEARNING FACILITY

Plans for a new learning and mooted space are well underway to provide a place for engagement, consultation and education.

### LEGAL COMMENTARY

Production will commence on a catalogue of all the ECCC's jurisprudence - easy to read and all in one place!

*Stay tuned for more developments!*

## CONTACT US

### ECCC Resource Centre

Building 40, Russian Federation Blvd (110),  
Sangkat Mittapheap, Khan 7 Makara, Phnom  
Penh, Cambodia  
Tel: 023 861 525  
[resource.centre@eccc.gov.kh](mailto:resource.centre@eccc.gov.kh)

For archive enquiries or document access requests, contact  
[archive@eccc.gov.kh](mailto:archive@eccc.gov.kh)

For general information, contact  
[pas@eccc.gov.kh](mailto:pas@eccc.gov.kh)

### Online

Website: [www.eccc.gov.kh](http://www.eccc.gov.kh)  
Facebook: [www.facebook.com/krtribunal](https://www.facebook.com/krtribunal)  
Tiktok: [@eccckh](https://www.tiktok.com/@eccckh)  
Instagram: [@krtribunal](https://www.instagram.com/krtribunal)  
YouTube: [www.youtube.com/krtribunal](https://www.youtube.com/krtribunal)  
Flickr: [www.flickr.com/krtribunal](https://www.flickr.com/krtribunal)

### Contributors

- Tanya Pettay
- Darathey Din
- Phoenix Design Aid

