



# The Court Report

## The Extraordinary Chambers in the Courts of Cambodia

Moving forward through justice

### Pre-Trial Chamber Concludes Two Days Hearings In Case 004/01

The Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia concluded two days of hearings in Case 004/01.

The Lawyers for the former Civil Party applicants, the International Co-Prosecutor, the Deputy National Co-Prosecutor, and National and International Defence Co-Lawyers presented their arguments on the case. The charged person did not attend the hearings but was represented by her lawyers.

The Pre-Trial Chamber was seised of an appeal filed by the International Co-Prosecutor against the Closing Order in case 004/01 issued by the Office of the Co-Investigating Judges on 22 February and 10 July 2017, in which the case was dismissed for lack of personal jurisdiction of the ECCC.

The Pre-Trial Chamber will determine whether there is sufficient evidence that Im Chaem is responsible for the crimes alleged and satisfies the criteria of the court's jurisdiction or not. The Chamber will now adjourn to deliberate on its decision whether to dismiss the case or send it to trial. The decision would be final with no further appeals and would require an affirmative vote of at least four out of the five judges. The decision is expected during the second quarter of 2018.

### Statement by the Office of Co-Prosecutors on Case 003

On 14 November 2017, the International and National Co-Prosecutors filed their Final Submissions in Case 003 concerning the investigation of Meas Muth.

A Final Submission is issued by the Co-Prosecutors at the conclusion of an investigation, requesting the Co-Investigating Judges either to indict the Charged Person and send him for trial, or to dismiss the case.

In Case 003, the two Co-Prosecutors filed separate Final Submissions reflecting their differing views on whether the Co-Investigating Judges should issue an indictment against Meas Muth.

Now that the Co-Prosecutors' Final Submissions have been filed, Meas Muth's Defence will have the opportunity to respond to these submissions with its views on the law and evidence. It will then be up to the Co-Investigating Judges to decide whether Meas Muth is subject to the personal jurisdiction of the ECCC and whether the investigation has established his responsibility for crimes within the ECCC's jurisdiction to the standard required to indict him and send him to trial. As with all charged or accused persons at the ECCC, Meas Muth retains the presumption of innocence, which is lifted only if and when guilt is established at trial and confirmed on any appeal.

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- Trial Chamber ordered medical and psychiatric evaluation of Nuon Chea and Khieu Samphan.
- Pre-Trial Chamber was seised of an appeal against a decision on a request for investigative action in case 004.

### Outreach Activities

Public Affairs outreached to more than 5000 Cambodian and 100 international visitors in this two months period. The section also facilitated public attendance during the opening of the Pre-Trial Chamber's hearings in case 004/01 with a total attendance of 322 people.



Photo: ECCC



### Extraordinary Chambers in the Courts of Cambodia

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# Judicial updates:

## Supreme Court Chamber

During the reporting period, the Supreme Court Chamber continued its research on the charges in case 002/02 not covered in case 002/01, namely, forced marriages and genocide. On forced marriages, compared with traditional Khmer marriages, the essence of current jurisprudence on inhumane treatment, sexual slavery, sexual assault, rape and depriving citizens of their dignity, and any conduct on individual liberties in intimate relations, were critically examined. Decisions in international law cases have been cited and are ready for analysis in the event of an acquittal or conviction on any of the charges. On genocide, research was concluded on direct intent in joint criminal enterprise various scenarios under Statute conferring jurisdiction to the ECCC. The research will assist in expediting the appeal process in the event that any party appeals the trial judgement

## Trial Chamber

The Trial Chamber issued four written decisions or memoranda, two of which are public. During this period the Trial Chamber was engaged in the evaluation of evidence and preparation of material for the purposes of drafting the Judgement in case 002/02. The Trial Chamber continues to work towards the deadline of issuing the Judgement in case 002/02 by the end of the second quarter of 2018.

On 15 December 2017 the Trial Chamber issued a memorandum in response to the Lead Co-Lawyers' Request for guidance with respect to additional funding and activities for certain reparation projects. The Trial Chamber recalled that it would rule on reparation projects in its judgement in case 002/02 based on the Final Claim for Reparation which was filed on 30 May 2017 and the supplemental submissions of 30 November 2017, in so far as the latter pertain to proof of secured funding. The Trial Chamber clarified that if a project is expanded upon while remaining substantially the same, the Chamber would treat those changes as part of the original proposed project. The Trial Chamber further clarified that if the changes add new substantive content or novel unforeseen

elements this would be considered a deviation from the originally proposed project and could not be endorsed by the Chamber. The Trial Chamber did welcome additional reparations efforts but noted that these projects would go beyond the reparation framework laid down in Internal Rule 23 *quinquies*.

On 28 December, the Trial Chamber ordered an expert medical and psychiatric evaluation of Nuon Chea and Khieu Samphan to ensure that the accused can fully participate in the delivery of the judgment in case 002/02. The Trial Chamber appointed two medical experts to conduct this examination on 29 and 30 January 2018 and to report on their findings to the Trial Chamber by 30 January 2018.

## Pre-Trial Chamber

On 11 and 12 December, the Pre-Trial Chamber held a hearing on the appeal against the closing order in case 004/1 concerning Im Chaem. The Lawyers for the former Civil Party applicants, the International Co-Prosecutor, the Deputy National Co-Prosecutor, and the National and International Defence Co-Lawyers presented their arguments on the case. The charged person did not attend the hearings but was represented by her lawyers. The Chamber had become fully briefed with all written submissions in this case on 14 November and entered into deliberations after the hearing. The decision is expected during the second quarter of 2018.

The Pre-Trial Chamber notified two judgements in November and December 2017, including a judgement on an appeal against a Defence request for adequate preparation time in case 004 and a judgement on an application for annulment of four allegedly torture-derived written records of interview in case 003. These judgements are available in the ECCC website.

The Pre-Trial Chamber also became fully briefed on an International Co-Prosecutor's appeal against a decision on a request for investigative action in case 004 and on a Defence application for annulment of certain documents relating to civil parties in case 004. It further advanced preparations on an application for

annulment of torture-tainted evidence in case 003 and on an appeal related to the classification of the closing order in case 004/01. The next deliberations are expected to take place in January.

In 2017, the Pre-Trial Chamber has issued a total of twenty-two judgements and eight orders and is currently seised with five cases.

## Office of the Co-Investigating Judges (OCIJ)

During the months of November and December, the Office has been processing investigative material, and addressing investigative requests in Case 004 and procedural motions in all cases, including the review of investigative material in Khmer language.

The Co-Investigating Judges ("CIJs") are currently the drafting Closing Order in Case 004/2, after the response by the Defence to the Prosecution's final submissions was received.

The CIJs are considering the final submissions submitted by the Co-Prosecutors in Case 003.

## Defence

### NUON Chea

During the reporting period, the Nuon Chea Defence Team carried out ongoing research and analysis work on Case 002/02 while awaiting receipt of that trial judgement.

### KHIEU Samphân

During the reporting period, the KHIEU Samphân Defence team was engaged in the preparation of the future appeal in Case 002/02.

### MEAS Muth

In November, The Meas Muth Defence filed a submission to the Office of the Co-Investigating Judges that has been classified as confidential. The Defence continues to review material on the Case File and to prepare submissions to protect Meas Muth's fair trial rights and interests.

In December, The Meas Muth Defence was preparing its respond to the Co-Prosecutors' final submissions in Case 003, reviewing material on the Case File

and drafting submissions to protect Meas Muth's fair trial rights and interests.

#### **IM Chaem**

In November, the Defence has been preparing for the hearings before the Pre-Trial Chamber concerning the International Co-Prosecutor's Appeal against the Closing Order (Reasons). Further, the Defence filed a confidential letter to the Pre-Trial Chamber relating to the hearings and its Response to the Civil Party Co-Lawyers' Submission on ECCC Position within the Cambodian Legal System.

In December, the Defence prepared for and attended oral hearings before the Pre-Trial Chamber, held *in camera*, concerning the International Co-Prosecutor's Appeal of the Closing Order (Reasons).

In particular, on 12 December the Defence presented oral arguments in response to submissions made by the International Co-Prosecutor and Lawyers for the former Civil Party Applicants in Case 004/01.

The Defence continues endeavouring to safeguard the client's fair trial rights in the remaining proceedings of the pre-trial stage of Case 004/01.

#### **AO An**

During the reporting period, the AO An Defence filed the Khmer translation of the Response to the Co-Prosecutors' Rule 66

Final Submissions. The Defence continued to review all materials on the Case File and to undertake all necessary measures to safeguard Mr AO An's fair trial rights in light of the impending Closing Order.

#### **YIM Tith**

During the reporting period, the Yim Tith Defence continued to analyse the contents of Case File 004 in order to seek to prepare Yim Tith's defence and endeavour to protect his fair trial rights.

### **Office of the Co-Prosecutors**

During the reporting period, staff and interns of the Office of the Co-Prosecutors were engaged across all cases, with ongoing investigations and litigation in cases 003, 004, and 004/01.

#### **Case 002/02**

In case 002/02, the Office of the Co-Prosecutors filed an amended version of their closing brief to the Trial Chamber, following finalizing some transcripts of trial testimony by translation unit. Case 003

#### **Case 003**

In case 003, the international co-prosecutor and the national co-prosecutor each confidentially filed their final submission to the co-investigating judges in November. The co-prosecutors also each issued a public summary of their respective

submissions. The national co-prosecutor outlined her reasons for seeking dismissal of the charges – submitting that the Extraordinary Chambers lacked jurisdiction to proceed with the case. The international co-prosecutor summarized his reasons for requesting an indictment submitting that Meas Muth held several high-level military and political positions at both the national and regional levels, including: Secretary of Division 164, the largest division of the Revolutionary Army of Kampuchea (RAK); Secretary of the Kampong Som Autonomous Sector, with 8,000-9,000 civilians under his direct authority; Deputy Secretary of the RAK General Staff; and a position on the Communist Party of Kampuchea Central Committee.

#### **Case 004**

In case 004, the Office of the Co-Prosecutors continued to review and analyze the evidence collected by the co-investigating judges. Further, the international co-prosecutor confidentially filed a notice of appeal to the co-investigating judges, and one response and a submission to the Pre-Trial Chamber.

#### **Case 004/01**

In case 004/01, on 11 and 12 December, the co-prosecutors presented submissions before the Pre-Trial Chamber hearings regarding the international co-prosecutor's



Pre-Trial Chamber hearings against closing order in case 004/01, 11 December 2017

Photo: ECCC

appeal against the co-investigating judges' closing order. The international co-prosecutor also confidentially filed one submission to the Pre-Trial Chamber.

### Outreach

Representatives of the Office of Co-Prosecutor participated in meetings at the Court premises with students visiting from St Ignatius and Mercedes High Schools and the Australian National University, explaining the substantive law and structure of the court as well outlining the cases and the work of the office. Members of the office were also involved in providing judicial training for legal practitioners at the Royal Academy of Judicial Professions in Phnom Penh.

## Victime Support Section

### Legal Representation

ECCC-funded Civil Party Lawyers participated in the legal aid network meeting on mental health service for gender based-violence victims. They also met with al lawyers to discuss the technical work of cases 003 and 004 to prepare for hearing of case 004/01

### Processing and Analysis

The team continued to edit applications and supplementary information in case 004 and 003 and filed Power of Attorney letters to the Chambers for civil parties.

### Reparation and Non-Judicial Measure (R&NJM)

The team's members had the meeting with the following partner organizations to update the status of proposed reparation projects in case 002/02:

- Youth for Peace (YFP) to update the status of projects, "Memory Sketch of Kraing Ta Chan", "Youth Contest for the Creation of Cambodian's Remembrance Song" and "Phnom Sampeou Community Peace Learning Center and Treatment of Buddhist during the Khmer Rouge Regime"
- Meta House to update the status of projects, "The Turtle Project: Innovative Cross Media Project, Promoting Historical Awareness and Civil Courage", "Community Media Project: The Cham People and the Khmer Rouge" and "Community Media project: Indigenous People and the Khmer Rouge".
- Bophana to update the status of the project, "App-Learning on Khmer Rouge

### History".

• Kdei Karuna (KDK) to update the projects, "Phka Sla Kraom Angkar: Forced Marriage under the Khmer Rouge Regime" and "Voices from Ethnic Minority: Promoting Public Awareness about the Treatment of Ethnic Minorities during the Khmer Rouge Regime".

- DC-Cam to update the status of the projects, "Khmer Rouge History Education through Teacher and University Lecturer Training and Workshops" and "Public Education Forums & Permanent Exhibitions on the History of the Democratic Kampuchea".

- HelpAge Cambodia to update the proposed reparation project to SDC.

- Khmer Art to update the status of the project, "Phka Sla Kraom Angkar: Forced Marriage under the Khmer Rouge Regime".

- Minority Rights Organization (MIRO) to update the status of project, "Legal and Civic Education for Minority Civil Parties".

- Legal Document Center (LDC) to update the status of the project, "Legal Document Center of the ECCC".

- Transcultural Psychosocial Organization (TPO) to update the status of the project, "Promoting Healing and Reconciliation in Cambodia through Psychosocial Interventions".

The team also met with LCLs to discuss the reparation project in Case 002/01 "National Day of Remembrance" Sub-Decree which VSS has not yet received from the Prime Minister.

The section participated in the Inauguration of the Memorial to the Victims of the forced Displacement for the proposed reparation project for Case 002/01, "Memorial for Khmer Rouge Victims: For Those Who Are No Long Here" at the French Embassy in Phnom Penh.

### Project on Gender-Based Violence during the Khmer Rouge

Gender-Based Violence Project of the section has coordinated and implemented its project through the following activities with its partners.

- The staff member participated in the award ceremony of "Legacy Film Lab" competition encouraging young Cambodian filmmakers to reflect on their nation's past which organized by the WSD Handa Center for Human Rights and International Justice.

- The section organized a meeting with Ending Violence against Women (EVAW) Legal Aid Network on "Mental Health Services for GBV Victims".

- The staff member attended a preparation meeting to discuss the 16 Days campaign, the International Day for the Elimination of Violence against Women organized by UN Women in Phnom Penh.

- The project organized the radio live show on "Community Resource Person".

- The second "Mobile Exhibition and Intergenerational Dialogue and film Screening on Forced Marriage under the Khmer Rouge Regime", was organized by the section in cooperation with the TPO and Bophana Audiovisual Resource Center at Siem Reap province. Approximately 600 participants, including Deputy Governor of Seim Reap Province, representatives from provincial departments of culture & Fine art, and education, donors, Civil Parties, students, teachers, NGO staffs, media and the general public guests were in this two-day event.

- In cooperation with TPO, the section conducted 16 Days of Activism against Gender-Based Violence Campaign at Angkor Temple, Seim Reap province. The campaign is intended to raise awareness about Violence against women and its impact, to prevent and to eliminate violence against women and girls.

- The radio live show was conducted in cooperation with the Women Media Center on the topic "Voices of victims of Gender-Based Violence under the Khmer Rouge regime through Mobile exhibitions".

- The radio quiz show was conducted in cooperation with the Women Media Center at the end of the year to evaluate the knowledge of public about gender based-violence issue and to assess the impact of the show. The show was lived by providing questions to callers. If they give the right answers, they get one T-Shirt as awarded.

## Civil Parties Co-Lawyers

### Key Legal Issues and Submissions

During November, the Lead Co-Lawyers worked closely with the Victims Support Section and reparation project partners on their supplemental submission relating to the funding of six proposed reparation projects. On 30 November, the Lead

Co-Lawyers filed the submission, which included two fully funded projects, and a request for guidance relating to additional funding secured for extending the activities of six projects already proposed in the Final Claim for Reparation.

#### **Meetings and Outreach**

The National Lead Co-Lawyer attended the Exhibition Opening & Film Premiere, "Cham Culture after Khmer Rouge: The

Next Generation" on 4 December as part of the Community Media Project: The Cham People and the Khmer Rouge, a proposed reparation project in case 002/02. Ten civil parties participated in the event.

On 7 December, the National and International Lead Co-Lawyer attended the inauguration for the case 002/01 reparation project Memorial for Khmer Rouge Victims: "For Those Who Are No Longer Here" at the French Embassy. Twenty civil parties

were invited to attend the ceremony. On 17 December, a member of the section attended the closing event and exhibition of the Turtle Project : Innovatice Cross Media Project, promoting historical awareness and civil courage in Cambodia, a proposed reparation project in case 002/02. Eighteen civil parties participated in the event.

# Orders and Decisions

## November

### **Pre-Trial Chamber:**

**14 November 2017:** the Pre-Trial Chamber unanimously dismissed as inadmissible an appeal against a decision on the Defence request for adequate preparation time, finding that its intervention was not justified in this case to prevent irreparable damage to fair trial rights under Internal Rule 21.

## December

### **Pre-Trial Chamber:**

**13 December 2017:** the Pre-Trial Chamber unanimously dismissed an application for annulment of four written records of interview, considering that they were not procedurally defective by relying on torture-tainted evidence or as torture-derived evidence.

## December

### **Trial Chamber:**

**15 December 2017:** Memorandum Responding to the Lead Co-Lawyers' Request for Guidance Regarding Additional Funding and Activities for Certain Reparation Projects.

**28 December 2017:** Order Assigning Experts to assess the Accused's fitness to stand trial and Scheduling Assessment.

# Outreach activities

The Public Affairs Section continued to promote judicial benchmarks. The spokespersons proactively approached the media and provided background information and comments on the ongoing proceedings and facilitated media coverage of the court proceedings. The Section facilitated press releases and responded to several media and public enquiries for information.

During the reporting period, the Section coordinated the printing of the summary of the Supreme Court Chamber's appeal judgement in case 002/01 in Khmer (5000 copies). It also produced and printed the 7th edition of the ECCC Booklet in both Khmer (50,000 copies) and English (5000 copies).

The Section's outreach team continued to organize study tours on non-hearing days to the Cambodian public. During November and December, it facilitated 16 study tours to the court premises, the former S-21 facility and to the Killing Fields Museum. Nearly 5000 Cambodians benefitted from the initiative. The section also briefed some 100 international visitors in 8 groups. On 11 December, the section facilitated public attendance during the opening of the Pre-Trial Chamber's hearings in case 004/01 with a total attendance of 322 people.

In cooperation with Bophana Center, the section facilitated two community video screenings targeting 800 people.



Photo: ECCC

## Find out more about the Extraordinary Chambers in the Courts of Cambodia:



*Victim Support Section project on gender-based violence during the Khmer Rouge*

*Photo: ECCC*

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