



The Court Report

The Extraordinary Chambers in the Courts of Cambodia

Moving forward through justice

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Public attended the hearing on evidence on 17 November 2014. ECCC Photo



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Evidence hearings postponed as Khieu Samphan Defence fail to appear

On Monday 17 November, 2014, the Trial Chamber convened for the evidence and hearing of witness "TCW 936." The Defence council of Nuon Chea and Khieu Samphan had earlier been put on notice that firm action would be taken if they failed to abide by the court order to appear.

Nuon Chea's Defence were present, following a 14 November 2014 decision of a Special Panel of the Trial Chamber to dismiss his and Khieu Samphan's applications to disqualify the current bench of Trial Chamber judges in Case 002/02. However, Khieu Samphan stated that his Defence were not present "based on [his] instruction," and were "working hard on his appeal [for Case 002/01]", before adding that his international council was in Paris.

The court heard from International co-prosecutor Nicholas Koumjian, who repeated his earlier call to appoint an amicus curiae. Stating that the proposal is designed "simply not to give the defendants control

of the court proceedings," he ended by highlighting the prosecution's desire to move forward with the case, "the proceedings must go on."

The Court heard from the Civil Parties, who also spoke of their desire for progress, "I believe that some civil parties will die without even seeing justice being done... for that reason we need to find ways to move forward while respecting the rights of all parties."

Khieu Samphan reiterated that his decision to request his Defence not to attend is due to a lack of resources, and because of the need "to focus on the appeal." He further added, "I am trying to show to the Supreme Court Chamber that your judgement is not right." The absence of Khieu Samphan's Defence council prompted Trial Chamber President Nil Nonn to call an early recess, in order to allow the judges to decide upon suitable action.

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Following the break, Khieu Samphan was presented with two alternatives. Either reverse the boycott by 4:30pm the next day or the court would have to “take further steps it considers necessary to secure a fair and expeditious processing.” President Nonn stated that the “right to be defended by counsel of your choice is not absolute,” and that the “Chamber might decide to appoint counsel.” He then clarified the possible options open to the court as the following:

- 1.Reappointment of the current lawyers as court appointed counsel
- 2.Appointment of new lawyers as counsel but not of Khieu Samphan’s choice
- 3.And any other action deemed appropriate

Judge Lavergne remarked that Khieu Samphan’s right to select his counsel is not absolute and that a new lawyer may be appointed if he “does not change his position.”

Khieu Samphan was ordered by President Nonn to inform the Trial Chamber by 4:30p.m on Tuesday 18 November, 2014 if he had withdrawn his instructions to his counsel not to participate in the current case. This did not happen, and the Trial Chamber will now decide on what action to take.



Special Panel dismisses disqualification motions

A super-majority of judges of a Special Panel of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) has dismissed applications from Nuon Chea and Khieu Samphan to disqualify the current bench of Trial Chamber judges in Case 002/02.

By unanimous decision, the Special Panel decided to admit Nuon Chea’s application, as well as Khieu Samphan’s Application and his Renewed Application, under Internal Rule 34(4).

After due deliberation, the Special Panel unanimously chose to dismiss Khieu Samphan’s Applications insofar as they concerned the disqualification of Judge Claudia Fenz.

A majority of four judges, with Judge Rowan Downing dissenting, dismissed Khieu Samphan’s Applications insofar as they concerned the disqualification of President Nil Noon, and Judges Ya Sokhan, Jean-Marc Lavergne and You Ottara. A majority of four judges, with Judge Rowan Downing dissenting, dismissed Nuon Chea’s Application.

The decisions relate to three applications made by the defendants:

- Khieu Samphan’s 25 August 2014 Application seeking to disqualify President Nil Nonn and Judges Silvia Cartwright, Ya Sokhan, Jean-Marc Lavergne, You Ottara and Claudia Fenz from adjudicating Case 002/02.

- Nuon Chea’s 29 September 2014 Application seeking to disqualify President Nil Nonn and Judges Ya Sokhan, Jean-Marc Lavergne and You Ottara from further proceedings against Nuon Chea

- Khieu Samphan’s 10 October 2014, renewed application, seeking to adopt the arguments advanced in Nuon Chea’s Application, in support of his first Application, while removing Judge Silvia Cartwright, who is no longer a judge at the ECCC



International Co-Prosecutor files Supplementary Submission in Case 003

ECCC Internal Rule 54 requires that any Introductory or Supplementary submission by the Co-Prosecutors shall be confidential documents. It provides however that the Co-Prosecutors “may provide the public with an objective summary of the information contained in such submissions.” Accordingly, taking into consideration the interests, security and privacy of victims and witnesses, the rights of suspects who are entitled to the presumption of innocence, and the requirement of rules that the investigation shall be confidential, the International Co-Prosecutor Nicholas Koumjian issued a statement on November 4, 2014 providing the following information.

On Friday 31 October 2014, the International Co-Prosecutor filed a Supplementary Submission in Case 003 that was principally intended to remove any ambiguities concerning the scope of the Introductory Submission. The International Co-Prosecutor first reaffirmed clarifications submitted in various previous filings regarding crimes falling within and outside the scope of the investigation, and then provided further clarifications.

A request was also made to include in the investigation additional possible crimes in Kompong Som that have come to light after the fil-



ing of the Case 003 Introductory Submission. The International Co-Prosecutor requested that the Co-Investigating Judges consider the additional crime of forced marriage and evidence that these couples were coerced to have sexual relations (rape). Evidence now available indicates instances where groups of up to 20 couples were forcibly married in a single ceremony,

and where women sent from other zones or sectors to Kampong Som were forcibly married to military cadres.

The International Co-Prosecutor reminds the public that all suspects are entitled to the presumption of innocence and that Case 003 is still under investigation. New evidence continues to come to light and as in any criminal investigation, it is important to avoid conclusions until the investigation is complete and the suspects, through their own counsel, are given the right to be heard before the Co-Investigating Judges.

Finally, the International Co-Prosecutor acknowledges the courage of the witnesses and Civil Party victims who have come forward to provide this evidence. In armed conflicts and atrocity campaigns around the world, it is a recurring phenomenon that sexual violence is grossly under-reported. All victims of such violence bear the emotional and often physical scars from these crimes for the rest of their lives. Accordingly, he also recognises that it is the prosecution's solemn duty to do all they can to ensure that the physical security and privacy concerns of these victims are respected and that the truth about their suffering is recognised.

Officials from the Ministry of Justice of Japan come to learn about the work of the ECCC

On 18 November 2014 nine people from the Japanese Ministry of Justice (MOJ) visited the ECCC. The tour was part of their training programme in Phnom Penh which allows employees at the MOJ to understand a hybrid criminal tribunal such as the ECCC where both national and international mechanisms are involved. Therefore, this tour was a fundamental step in a training process focusing in preparing these Japanese lawyers for the work they have to do at the International Co-operation Department of the MOJ in Japan.

After attending the morning session of the evidentiary hearing in Case 002/02 they have requested a presentation to the Public Affair Section which was held by the ECCC press officer, Mr. Pheakra Neth.

The participants were highly interested and they paid attention not only to explanations concerning the more technical sides of the court, but were also extremely curious in knowing more about the other aspects the court is involved in, such as the outreach activities, support for the

victims and the public's reaction to court decisions. They were aware that hearing the witness testimonies, and the graphic information many contain, is not easy matter for many Cambodians to hear. However, it is the goal of the ECCC to bring to trial the senior leaders Khmer Rouge leaders during the Democratic Kampuchea, with the intent of giving to all Cambodians a sense peace and justice in a country still affected by what happened more than 30 years ago.

The Japanese lawyers revealed how having visited S-21 and the Killing Fields the previous days gave them a visual sense of the actions of the Khmer Rouge, and a better understanding of the ancient pain which, in many cases, has not yet healed. They compared Cambodian suffering with the terrifying disasters of Hiroshima and Nagasaki, not because of the acts involved, they specified, but because suffering has no language barrier and cannot be justified when mass atrocities toward innocent civilians are involved.

After touching on this sensible and unfortu-

nately familiar topic, the group inevitably asked about the current generation's knowledge of the Khmer Rouge, because to them it is very important to educate new generations in order to avoid similar violence happening again in the future. It was explained that in the past the Khmer Rouge period was not taught in school nor discussed in at home, as it was felt to be less painful to try to forget. However, in recent years and with the help of many NGO's, the outreach activities of the court are focused on breaking the chain of ignorance, with the goal that every Cambodian national will be aware of the country's terrifying past.

The group was appreciative for the presentation, as well as the efforts of the staff working towards the tribunal's goals. They stated their wish that the ECCC work carries on in the same great way that is been doing for years, but they acknowledged that there is a necessity to continue to receive donations in order to do so. Therefore, they voiced their desire for all foreign governments to keep supporting the ECCC.

Supreme Court Chamber

In October 2014, the Supreme Court Chamber continued its review and research on issues relating to case 002/01. It also continued its examination of 2 requests filed by Nuon Chea for the admission of additional evidence on appeal against the case 002/01 judgement. In addition, on 2 October 2014, NUON Chea filed a request for extension of time and page limits for the filing of his appeal brief. Khieu Samphan filed a similar request on 6 October 2014. On 16 October 2014, the Co-Prosecutors filed a consolidated response to NUON Chea's and KHIEU Samphan's requests, to which NUON Chea and KHIEU Samphan replied on 20 and 21 October 2014, respectively.

On 31 October 2014, the Supreme Court Chamber granted the requests in part, and set the schedule for the appeal and response briefs, along with applicable page limits. The Supreme Court Chamber considered that no cause had been shown to grant an extension of time to the Co-Prosecutors' for the filing of their appeal brief, which is therefore due no later than 28 November 2014. It did consider, however, that good cause had been shown to grant extensions of time and page limits to Nuon Chea and Khieu Samphan, and accordingly granted them permission to file their appeal briefs no later than 29 December 2014, with a limit of 210 pages each in English or French. The Supreme Court Chamber also permitted the Co-Prosecutors to file a consolidated response of no more than 280 pages, no later than 30 days after the filing of the Khmer versions of the appeal briefs. Finally, it specified that no replies to any responses would be permitted, as an appeal hearing would be eventually held on a date to be determined in due course.

Consideration of the requests for additional evidence, as well review and research on issues relating to case 002/01 in light of the notices of appeal, remain ongoing.

Trial Chamber

On 4 September, the Judicial Administration Committee (JAC) had appointed a Special Panel of the Trial Chamber to hear motions for disqualification of members of the Trial Chamber. On 7 October, the President of the Special Panel notified the JAC of a NUON Chea Defence application to disqualify one member of the Special Panel, Judge Pen Pichsaly, and requested the JAC to appoint a reserve Judge to address the NUON Chea application. On 13 October, after Judge Pen Pichsaly voluntarily excluded himself from the Special Panel, the



ECCC courtroom after the public attended the judgement hearing of Case 002/01 on 7 August 2014 (Photo Credit: ECCC)

President of the Special Panel requested the JAC to appoint a Judge to replace Judge Pen Pichsaly. On 14 October, the JAC appointed Judge Prak Kimsan to replace Judge Pen Pichsaly.

On 13 October, the Trial Chamber issued a clarification of the consequences of the severance of Case 002. The Trial Chamber noted the following guidance of the Supreme Court Chamber: the Case File remains the same for each trial in Case 002; the evidence admitted in Case 002/01 is common to Case 002/02; there is no formal need to renew any assessment of admissibility concerning such evidence, although the parties will be given the opportunity to test and challenge new evidence already put before the Chamber in Case 002/01 insofar as it relates to new charges in Case 002/02; factual findings must be established anew; and the Trial Chamber will not import any attribution of criminal responsibility from Case 002/01 into Case 002/02.

On 14 October, the Trial Chamber issued a decision on the Civil Party Lead Co-Lawyers' request to make opening remarks on the first day of the substantive hearings in Case 002/02. The Trial Chamber recalled that it has previously denied such requests because there is no provision in the ECCC legal framework for the Civil Party Lead Co-Lawyers to make such remarks. As there was no change in circumstances relevant to the opening statements since these decisions, the Trial Chamber denied the request.

On 16 October, the Trial Chamber addressed the KHIEU Samphan Defence request

to order the Office of Administration to reinforce the capacity of the Interpretation and Translation Unit (ITU) and to order ITU to address all past and future requests of the Defence as quickly as possible. The Trial Chamber noted that ITU and its services are the responsibility of the Office of Administration and directed that office to ensure that ITU is provided with the necessary resources to enable the Chambers and the Parties to fulfil their duties and to prevent unnecessary delays in the trial proceedings in Case 002/02.

Also on 16 October, the Trial Chamber rejected the KHIEU Samphan Defence request to reconsider the Scheduling Order for Hearing on the Substance in Case 002/02, finding that there were no new circumstances or evidence to justify the application.

On 17 October, the Trial Chamber commenced the hearing on the substance in Case 002/02 against NUON Chea and KHIEU Samphan. The Co-Prosecutors, Defence and Accused persons made opening statements, before the Defence for KHIEU Samphan and NUON Chea abandoned the courtroom. NUON Chea asserted that Cambodian procedure does not permit the judges subject to a disqualification motion to continue the proceedings in the case. The KHIEU Samphan Defence submitted that it could not participate in the proceedings in Case 002/02 and the appeal in Case 002/01 at the same time, because the Accused was not able to do so and the Defence did not have enough resources to mount an effective defence in both. Both Accused there-



fore announced that they had instructed their counsel not to participate in Case 002/02 until their complaints had been resolved.

On 21 October, the Trial Chamber affirmed its prior ruling in which it held that Internal Rule 87(4), regarding new evidence, is applicable to all witnesses, Civil Parties and documents proposed by the parties after the Initial Hearing in June 2011. However, noting that a significant amount of time had passed since the 2011 lists were filed, the Trial Chamber exceptionally considered the updated lists submitted by the parties prior to the commencement of hearings in Case 002/02 as a permissible revision to the 2011 lists. The Trial Chamber emphasized that proposals to put before the Chamber any new documents or any request to hear new witnesses in future must satisfy the requirements of Internal Rule 87(4).

On 21 October, the Trial Chamber held a Trial Management Meeting in order to discuss new disclosures by the Co-Prosecutors and resource issues raised by the KHIEU Samphan Defence. Despite all parties being directed to attend, the Defence for KHIEU Samphan and NUON Chea failed to appear and did not provide any justification for their absence. The Trial Chamber questioned members of the Office of Administration regarding resources made available to the Defence. On 24 October, the Trial Chamber issued an official warning to counsel for NUON Chea and KHIEU Samphan for misconduct, finding that their conduct in abandoning the courtroom during open-

ing statements and in failing to attend the Trial Management Meeting amounted to an obstruction of proceedings. The Chamber ordered counsel to attend a follow-up Trial Management Meeting and indicated this would be their last opportunity to address the resource issue. On 28 October, another Trial Management Meeting was held, at which resource issues were discussed, as well as the Co-Prosecutors' request to assign amici curiae counsel to represent the interests of the Accused and advance the proceedings in Case 002/02.

On 31 October, the Trial Chamber dismissed the Defence preliminary objections regarding a statute of limitations for grave breaches of the Geneva Conventions of 12 August 1949. The Trial Chamber found that the ECCC Law and international law do not impose a temporal limit on the prosecution of grave breaches and that there was accordingly no statute of limitations applicable to the grave breaches provision of the ECCC Law.

Also on 31 October, the Trial Chamber issued a ruling following the Trial Management Meeting of 28 October. Having considered the submissions of the Defence in relation to their previous conduct, including statements of their unwillingness to attend future substantive hearings prior to the occurrence of specified events, and with a view to balancing the needs outlined by the KHIEU Samphan Defence with the rights of the other Parties to an expeditious trial, the Trial Chamber decreased the number of sitting days to two per week

during the months of November and December. The Trial Chamber noted that it remained seized of the Co-Prosecutors' motion to assign amici curiae and reserved its position on this request. The Trial Chamber ordered the Parties to appear at the hearings on the substance in Case 002/02, starting on 17 November. The Trial Chamber warned the Defence that it will take firm action should they fail to abide by the order to appear in court.

In October, the Chamber also granted three applications to recognise the succession of Civil Parties.

Pre-Trial Chamber

During the reporting period, the Pre-Trial Chamber was seized of nine appeals related to the investigative proceedings in Case 004 in addition to one appeal and one investigation into a possible interference with the administration of justice related to the investigative proceedings in Case 003. The Pre-Trial Chamber disposed of four of these appeals by issuing its Decisions on Appeals PTC06, PTC08, PTC10 and PTC12 which are related to the investigative proceedings in Case 004. All these appeals are classified as "confidential"; however, the Pre-Trial Chamber makes available to the public its decisions on appeals in redacted form.

Case 003

PTC11 (Rule 35 Investigation ongoing)

The Pre-Trial Chamber is currently conducting an investigation under Internal Rule 35 into the unlawful disclosure to the media of the confidential version of its decision on the appeal against the International Co-Investigating Judge's rejection of Mr. Michael Karnavas and Mr. Ang Udom's appointment as Co-Lawyers for a suspect in Case 003.

PTC13 – new appeal

On 27 October 2014 the Pre-Trial Chamber was seized of an appeal against the International Co-Investigating Judge's Order on Suspect's Request concerning an order by one Co-Investigating Judge. The Appeal was notified in English and Khmer languages on 27 October 2014.

Case 004

PTC06 and PTC10 – Decision on Appeal issued in October 2014

On 31 October 2014 the Pre-Trial Chamber issued its Considerations on two Appeals filed by a suspect in Case 004 against: 1) the International Co-Investigating Judge's Deci-

sion rejecting the suspect's request to have immediate access to the case file pending the International Co-Investigating Judge's reconsideration of a Notification issued by the previous Reserve International Co-Investigating Judge which informed the suspect of the right to access the case file, and 2) another Decision by the International Co-Investigating Judge rejecting the suspect's urgent request for access to the case file and to participate in the judicial investigation. In its Considerations on these Appeals, the Pre-Trial Chamber declared that it had not assembled an affirmative vote of at least four judges for a decision on Appeals. Consequently and pursuant to Internal Rule 77(13) both Impugned Decisions shall stand.

PTC08 – Decision on Appeal issued in October 2014

On 13 October 2014 the Pre-Trial Chamber issued the Decision on an appeal filed by a suspect in Case 004 against a Decision of the International Co-Investigating Judge rejecting the suspect's motion for annulment of investigative action. Having found that the Appeal raised an issue that is substantially the same (in fact and law) as another matter already examined by the Pre-Trial Chamber in respect of the same party and upon which the Pre-Trial Chamber could not reach a majority of four votes to issue a decision, the Pre-Trial Chamber dismissed the Appeal without entering into a consideration of its admissibility or merit.

PTC11 - pending

The Pre-Trial Chamber remained seized of an appeal filed by one of the Suspects in Case 004 against a "Decision of the International Co-Investigating Judge Denying his Request for Clarification of the Law should there be a Disagreement between the Co-Investigating Judges when Issuing the Closing Order". The Appeal was filed in English only on 20 August 2014 and then in Khmer on 25 September 2014. The written proceedings on appeal are completed, the Pre-Trial Chamber is finalizing its deliberations and a decision will be issued in due course.

PTC12 – Decision on Appeal issued in October 2014

On 22 October 2014, the Pre-Trial Chamber issued the Decision on an Appeal filed by one of the suspects in Case 004 alleging constructive dismissal by the Co-Investigating Judges of a Request for Investigative Action. The Pre-Trial Chamber dismissed the Appeal as inadmissible.

PTC13 – pending

On 4 and 5 September 2014, the Pre-Trial Chamber was seized of, respectively, the English and Khmer versions of an appeal filed by one of the suspects in Case 004 against a Decision of the International Co-Investigating Judge denying an application requesting the Co-Investigating Judges to seize the Pre-Trial Chamber with a view to annul the judicial investigation. The written proceedings on appeal are completed and the Pre-Trial Chamber will dispose of the matter in due course.

PTC14 – pending

On 15 September 2014, the Pre-Trial Chamber was seized of an appeal filed by one of the Suspects in Case 004 against the "International Co-Investigating Judge's Clarification on the validity of an order issued by One Co-Investigating Judge". The Appeal was initially filed in English only and the Khmer version of the Appeal was filed on 27 October 2014.

PTC15 – new appeal

On 17 October 2014 the Pre-Trial Chamber was seized of an appeal filed by one of the suspects in Case 004 against a Decision of the International Co-Investigating Judge regarding Suspect's Request for Clarification that He Can Conduct His Own Investigation. The Appeal was notified in English and Khmer languages on 20 October 2014.

PTC16 – new appeal

On 17 October 2014 the Pre-Trial Chamber was seized of an appeal filed by one of the suspects in Case 004 against a Decision of the International Co-Investigating Judge regarding Suspect's Motion Requesting Information on Co-Investigating Judges' Written Record of Disagreement dated 5 April 2013. The Appeal was filed in English on 17 October, and the Khmer version was filed on 29 October, 2014.

Office of the Co-Investigating Judges

During the month of October, the international side of the Office of the Co-Investigating Judges ("OICIJ") continued the investigations of Case Files 003 and 004. One field mission was carried out for Case File 003, in the course of which three witnesses were interviewed and five investigative action reports were drafted. Five witnesses were interviewed at ECCC location.

With regard to case 004, three field missions took place, resulting in which thirteen witnesses being interviewed, as well as four investigative action reports and three site identification reports being drafted. Thirteen witnesses were interviewed at the ECCC premises.

During the month of October, the OCIJ Analysts Unit reviewed Khmer Rouge documents at external archives. Review of over 2,000 prisoners logs held at Khmer Rouge Security Centers continued. Additionally, the Analysts Unit assisted and participated in all field missions conducted during the month of October.

Civil party applications in Cases 003 and 004, which presently total in excess of 2,125, are progressively being placed on the case files. Their evidentiary value is subjected to a thorough scrutiny by analysts, investigators and legal officers. All civil party applications have been reviewed for admissibility for both case files and several requests for additional information were sent to civil party lawyers and the victims support section as a consequence.

Office of the Co-Prosecutors

Case 002

The Co-Prosecutors delivered their openings statements in Case 002/02 on 17 October 2014. The office further continued simultaneous preparations to 1) ensure an efficient and thorough trial of the crimes covered in the upcoming Case 002/02, and 2) prepare for the appeal proceedings in Case 002/01. Further, the Co-Prosecutors have devoted a major portion of their resources to a continuing review of all available evidence, including ongoing investigations, to ensure that the Trial Chamber and all parties receive all proper disclosure.

In Case 002/01, the Co-Prosecutors filed: a response to both defence teams' requests for extensions of time and page limits for their appeal briefs, and made submissions in favor of a resolution for the appellate briefing that gave adequate space and time to all parties to make their arguments in the appeals of Case 002/01.

In Case 002/02, the Co-Prosecutors filed a response to a Khieu Samphan motion again seeking to delay the start of trial in Case 002/02 until after the appeal judgment in Case 002/01 was issued. The Co-Prosecutors again opposed the delay. The International Co-Prosecutor filed: a disclosure of documents to the Trial Chamber and parties, and a proposed procedure for the use of documents from other Case Files in court in Case 002/02 without jeopardizing the confidentiality of those investigations.

The Co-Prosecutors participated in two trial management meetings on 21 and 28 October, which addressed: 1) the boycott against proceedings in Case 002/02 implemented by Nuon Chea and Khieu Samphan, and 2) the use of confidential materials from other Case Files in Case 002/02. In response to the boycott, the Co-Prosecutors made two filings. First, because

Nuon Chea premised his boycott on the lack of a decision by the Special Chamber on the disqualification motion he had filed against the Trial Chamber, the Co-Prosecutors asked the Special Chamber to issue a decision as soon as possible with reasons to follow. The Co-Prosecutors noted that they did not agree with the basis for Nuon Chea's boycott, but that it was in all parties' interests to obtain a swift resolution of the disqualification motions. Second, the Co-Prosecutors filed a motion seeking to have proceedings move forward with amicus curiae counsel appointed to Nuon Chea and Khieu Samphan until such a time as they ended their boycott. The Co-Prosecutors noted that the Accused's actions risked delaying proceedings and thus justice, and that the Accused's right to counsel was being fully respected because they had counsel of their own choosing that they were nonetheless instructing not to attend proceedings. The appointment of amicus counsel would therefore fully respect defense rights, while preventing the Accused from wrongfully inhibiting the court proceedings from moving forward expeditiously.

Cases 003 and 004

The Co-Prosecutors have been analysing the evidence gathered and reviewing investigative and procedural developments in Cases 003 and 004, making necessary requests, and responding to Defence submissions.

Outreach

The International Co-Prosecutor participated in an outreach event to Kampong Cham organized by VSS on 24 October, and staff of the OCP made a presentation to visiting Burmese students concerning the work of the OCP and genocide charges at the ECCC.

Defence Support Section

Case 002

At the first substantive hearing of Case 002/02, the accused Nuon Chea and Khieu Samphan informed the Trial Chamber that they had instructed their counsel not to attend any future evidentiary hearings until ongoing problems were adequately addressed. Accordingly, neither they nor their counsel attended the Trial Management Meeting of 21 October 2014.

Following an order of the Trial Chamber, both Defence teams attended the next Trial Management Meeting on 28 October 2014 to discuss their concerns, as well as respond to the Co-Prosecutors' request for amicus counsel to be appointed to replace the accused's counsel of choice. At this meeting, Nuon Chea's Defence team confirmed it would continue to abide by the client's instruction to boycott the Case 002/02 substantive hearings until a special judicial panel had rendered a deci-

sion on its motion to have four of the five Trial Chamber judges in Case 002/02 disqualified, as Cambodian law requires proceedings to be stayed in this event. Khieu Samphan's Defence team announced it would maintain its client's position not to participate in the Case 002/02 proceedings until it had finalised its appeal against the judgement in Case 002/01. Representatives of the Defence Support Section and both Defence teams also informed the Trial Chamber that appointing amicus curiae was an impractical solution, as both Nuon Chea and Khieu Samphan have expressed their unwillingness to participate in proceedings without their current counsel and in any event, it would take several months to recruit appropriate counsel and many more for those counsel to become familiarised with the case.

The Trial Chamber dismissed these legal concerns in a decision dated 31 October 2014 and ordered both Defence teams to appear at evidentiary hearings commencing on November 17. The order also provided notice that continuing the boycott would result in 'firm action'.

The Nuon Chea and Khieu Samphan Defence teams continue to draft their appeals against the judgement rendered in Case 002/01. Both Defence teams also continue to undertake trial preparation for Case 002/02 proceedings.

Cases 003 and 004

The Case 003 Defence team has continued to prepare submissions to protect their client's fair trial rights and continues to review publicly available material, since the Case File remains inaccessible.

Similarly, the three Defence teams in Case 004 continue to protect their clients' rights, particularly while attempting to gain access to the Case File and preparing their defence with publicly available resources.

Civil Party Lead Co-Lawyers Section

Key legal developments

Following the boycott of the Nuon Chea and Khieu Samphan defence teams during the trial proceedings for Case 002/02, the Lead Co-Lawyers reiterated the continuing need to balance the rights of the defence with the need for an expeditious trial in the interests of the Civil Parties.

Key Legal Issues and Submissions

Throughout the month of October, preparation for the hearing for Case 002/02 continued. On 7 and 10 October 2014, the Civil Party Lead Co-Lawyers and the Civil Party Lawyers met to discuss the Civil Party forum held on 6 October 2014 and to prepare for the first segment of Case 002/02.

On 8 October 2014, The Lead Co-Lawyers submitted an Urgent Request to make Opening Remarks on behalf of the Consolidated Group of Civil Parties at the start of the trial proceedings for Case 002/02. The Lead Co-Lawyers submitted that in order to ensure the meaningful participation of civil parties in these proceedings and honor the fundamental principles of transparency, information sharing and victim rights, it was essential that the Lead Co-Lawyers have the opportunity to offer brief opening remarks pertaining to the specific roles and interests of civil parties in the Case 002/02 proceedings. The Lead Co-Lawyers argued that the Civil Parties are a full party to the proceedings whose rights must be taken into account and protected by the Trial Chamber and that civil parties have a very particular role and interests in proceedings before the ECCC—neither of which are fully encompassed in the interests advanced and role carried out by the Co-Prosecutors. This motion was rejected by the Trial Chamber.

During the month of October, submissions were filed on behalf of two civil parties. On 14 October 2014, civil party 2-TCCP-282 requested to be withdrawn from the list of Civil Parties appearing before the Trial Chamber for Case 002/02 due to deteriorating health, and on 28 October 2014 2-TCCP-304 requested a closed session during the civil party's appearance before the Trial Chamber.

On 27 October 2014, the Lead Co-Lawyers filed a motion supporting the Co-Prosecutors' Request for the Appointment of Amici Curiae and to Advance Trial Proceedings.

Meetings and Outreach

On 6 October 2014, a Civil Party consultation forum organized by Victims' Support Section was held in Phnom Penh to inform civil parties on the Judgment of Case 002/01, and updating civil parties on the ECCC's judicial proceedings. The forum discussed the development of reparations in Case 002/02. On the same day, National Lead Co-Lawyer was invited on WMC Radio to be a guest speaker to talk about Case 002/01 Judgment and to give an update ECCC proceeding.

On 31 October 2014, the Transcultural Psychosocial Organization of Cambodia organized a

conference on gender-based violence during the Khmer Rouge Regime. A report titled 'A ghost changes body – A Study on the Impact of Forced Marriage under the Khmer Rouge regime' was launched. Rouge

Victims Support Section

Legal representation

The ECCC-funded civil party lawyers of the VSS reviewed the memo drafted by Lead Co-Lawyer Section on role and responsibilities of the Lead Co-Lawyer Section. In order to have good civil party testimonies, the lawyer team prepared the civil parties who may give the testimony involving in scope of crime sites for the upcoming evidentiary hearing of Case 002/02.

Also, the lawyer team participated in 1) a meeting with Lead Co-Lawyer Section on reparations for Case 002/02, 2) a Trial Management Meeting at ECCC, 3) the civil party meeting on civil party participation and update of court proceeding and implementation of reparation projects in Case 002/01 in Phnom Penh and 4) the workshop on the launch of TPO Cambodia's Study Report on the Impact of Forced Marriage under the Khmer Rouge Regime and Gender Based-Violence during the Khmer Rouge Regime organized by Transcultural Psychological Organization.

During the month, Chief of VSS participated in the ECCC Plenary to discuss about the requests of amendment of Internal Rules 55 bis, 74, 89 ter which proposed by Office of Co-Prosecutors and Rule 12 bis which proposed by VSS.

Processing and analysis

The Processing and Analysis Team of the VSS received a total of four applications in Case 004. As of 31 October, there were 1,780 applications for these two cases in total. In order to have all the applications officially placed on the case file of the ECCC, the team filed all the remaining applications to the Office of Co-Investigating Judges.

Outreach

Chief of VSS was invited to speak on the reparations and non-judicial measures in the ECCC context at the ECCC Legacy Workshop organized by United Nations Office of High Commissioner for Human Rights in Cambodia.

Victims Support Section of ECCC organized the Meeting with 167 Focal Persons including 46 females from all provinces, except Pailin and Phnom Penh, at Kampong Cham province on 24 October. International Co-Prosecutor, Nicholas Koumjian, also participated in the meeting in order to update about the Judgment in Case 002/01, and the proceedings of Case 002/02.



The purposes of the meeting were: 1) to disseminate information on Judgment in Case 002/01 and distribute the Judgment Books, 2) to inform the participants about the proceedings of Case 002/02 and to discuss on the plan to establish Victims Foundation of Cambodia, 3) and to review the activities which have been done and set-up new plans for next year. The Mobile Exhibition, one of reparation projects, jointly organized by Youth for Peace and Kdei Karuna Organizations was also displayed at the meeting where all participants and guest speakers could see the displayed materials on forced transfer and execution of former Lon Nol's officers and soldiers in Tuol Porchrey. This project has been funded by the Federal Ministry for Economic Cooperation and Development of the Federal German Government (BMZ), through Victims Support Section (VSS).

Reparations and non-judicial measures

The Reparation & Non-Judicial Measure (R&NJM) Team has coordinated the implementation of all R&NJM projects (16 projects) through meetings and technical support communication. Many of the R&NJM projects, through the coordination of the Victims Support Section (VSS), have received additional funding from the German Ministry of Economic Cooperation and Development (BMZ) to extend implementation until March 2015. The fund is also allocated to 2 newly initiated projects.

The Team's members joined a meeting with Kdei Karuna (KdK) on 02 October to discuss about the organization of Mobile Exhibition in targeted provinces. KdK introduced activities to be undertaken during each Mobile Exhibition in the targeted provinces which include Civil Party Forum, Film Screening, Art Workshop, Exhibition, Forum Theater and Educational Music. The meeting involved representatives from VSS, Youth for Peace (YfP), and KdK.

The construction of a Memorial Stupa at Toul Sleng Genocide Museum has been started. The Team's member also participated in an Opening Ceremony of the construction on 08 October at the Museum. Representatives of the Ministry of Culture and Fine Arts and the Victims Association (Chum Mey and Bou Meng) also participated in the ceremony.

During the month, the Final Evaluation Consultant, Mr. Julian Poluda, started his evaluation consultancy work with VSS project of Gender Based-Violence during the Khmer Rouge.

On October 6, Victims Support Sections (VSS) organized another Civil Party Meeting with 226 civil parties from five provinces including 112 gender based-violence survivors and other 51 participants (ECCC officials, Lawyers, NGOs representatives, German Ambassador and media) at Phnom Penh Ecumenical Diakonia Center. The purposes of the meeting were to promote victims participation as civil parties and to provide civil parties an opportunity to receive more information in the Judgment of Case 002/01 and judgment book, to discuss the issues relating to the hearing of Case 002/02 with their lawyers and to get the progress and the implementation of reparation and non-judicial measure projects, especially those relating to gender based-violence during the Khmer Rouge.

At the end of the month, the VSS chief was invited to speak on the future supports of gender base-violence victims at the workshop on the launch of TPO Cambodia's Study Report on the Impact of Forced Marriage under the Khmer Rouge Regime and Gender Based-Violence during the Khmer Rouge Regime organized by Transcultural Psychological Organization. The other two staff members also participated in this workshop.

Genocide- the crime of crimes

Monday 3 November saw part five of ten of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) seminar series.

Dr. Mark D. Kielsgard, Assistant Professor of Law at the City University of Hong Kong spoke on "Genocide as International Crime." With Case 002/02 including allegations of acts of genocide committed against the Cham and Vietnamese minorities, it was therefore a very timely seminar for all the attendees and the audience of ECCC jurists and local law students didn't let the inclement weather dampen their interest in the subject, although it may have limited audience numbers.

Stating that an understanding of the importance of genocide as a crime requires a knowledge of the progression of international law, Dr, Kielsgard started the seminar with a history recap. He began with piracy as the first major issue demanding international laws, with the challenge it presented to existing territoriality laws. The same navies required to enforce anti-piracy measure were again involved in the next major step in the creation of international law - the abolition of the slave trade - which saw moral abhorrence of the act driving calls for its end, rather than business interests. The third example Dr. Kielsgard used was the Armenian genocide in 1915, although as



he explained, the term 'genocide' didn't exist then. The slaughter and mass movement of Armenians by Turkey was largely ignored by the Western powers, despite coming after The Hague Conventions and Geneva Conventions which had formally declared the laws of war and war crimes. As Dr. Kielsgard mentioned, aversion or inability to intervene has been a perpetual Achilles heel in such cases, and this was not missed by Hitler who, in his 1939 Obersalzberg Speech noted, "who, after all, speaks today of the annihilation of the Armenians?"

It was the Nazi's actions - expressly the holocaust - that galvanized support for the acceptance of genocide - a term coined by Raphael Lemkin in 1944 - as a crime against humanity, and eventually saw the Conven-

tion on the Prevention and Punishment of the Crime of Genocide come into effect in 1951. As Dr. Kielsgard pointed out, the five specific acts that are listed as definitions of genocide have not changed since they came into effect, which he suggests shows how well they fit the requirement of a genocide convention. He stated that calls for political groups to be added as victims will diminish genocide as a specific subset of crimes against humanity, and should be resisted.

Questions concerning the difficulty in stopping genocide from happening, which has continued to occur despite the convention, according to Dr. Kielsgard highlighted the need for the convention to be ratified by more countries and receive continuing strong international support.

Decisions/Orders

Public versions of the decisions, orders, opinions and considerations are available on the official ECCC website:

www.eccc.gov.kh/en/document/court

Supreme Court Chamber

Decision on Motions for Extensions of Time and Page Limits on Appeal Briefs and Responses, F9, 31 October 2014.

Trial Chamber

7 October 2014: Trial Chamber Memorandum entitled "Succession of deceased Civil Party in Case 002" <E2/36/1>

7 October 2014: Trial Chamber Memorandum entitled "Succession of deceased Civil Party in Case 002" <E2/37/1>

7 October 2014: Trial Chamber Memorandum entitled "Succession of deceased Civil Party in Case 002" <E2/38/1>

7 October 2014: Decision on the Office of the Co-Prosecutors' Procedural Request <E314/7/1>

7 October 2014: Memorandum on Request to Appoint a Reserve Judge for the Purposes of Addressing NUON Chea's Application for the Disqualification of Judge Pen Pichsaly from the Special Panel <E314/4/2>

13 October 2014: Memorandum on Request to Appoint Judge for the Special Panel in Replacement of Judge Pen Pichsaly <E314/4/4>

13 October 2014: Clarification on the Consequences of the Severance of Case 002 <E318>

14 October 2014: Decision on Civil Party Lead Co-Lawyers' Request to Make Open- ing Statements <E316/1/1>

16 October 2014: Memorandum on KHIEU Samphan Defence Request to Order the Office of Administration to Urgently Reinforce ITU's Capacity <E317/1>

16 October 2014: Decision on KHIEU Samphan's Urgent Request for Reconsideration of Scheduling Order on the Substance of Case 002/02 <E314/5/3>

21 October 2014: S Decision on Joint Request for De Novo Ruling on the Application of Internal Rule 87(4) <E307/1/2>

31 October 2014: Decision on Defence Preliminary Objection Regarding a Statute of Limitations for Grave Breaches of the Geneva Conventions of 12 August 1949 <E306/6>

31 October 2014: Ruling Following the Trial Management Meeting of 28 October 2014 <E320/1>

School visit by PAS: Pong Teuk High School

On Wednesday 13 November 2014, the Public Affairs Section visited Pong Teuk High School in Phnom Penh.

As part of the outreach programme of the court, PAS distributed information leaflets to over 700 school children and all of the teachers received copies of the Case 002/02 Judgement. We were helped by ten very helpful 12th grade students who received an ECCC t-shirt and cap for their assistance.

Studying about Democratic Kampuchea forms an important part of the national curriculum and the resources we are able to provide are intended to be of great help to the students' studies. The "Introduction to The Khmer Rouge Trials" booklet is in its 5th edition, and features information on all aspects of the tribunal; answering why it was created, who is being tried and for what criminal accusations, the role of civil parties and witnesses, as well as information about the legal systems being employed. It is hoped that these booklets will give the students, who have grown up in post-DK Cambodia, a better idea of the history surrounding the Khmer Rouge and of Cambodia's recent history, while aiding them in their final exams.



ECCC outreach

The Public Affairs Section of the ECCC hosts Khmer Rouge Tribunal Study Tours, bringing groups of 200-300 villagers from areas throughout Cambodia twice a week to the ECCC, the Tuol Sleng Genocide Museum and the Choeung Ek killing fields for a guided tour and briefings. During the trial recesses, the Public Affairs Section also conducts school visits to give briefings, as well as hosting community video screenings across Cambodia. It also welcomes international group visitors and provides briefings and court tours.

| October 2014 | | | | | | |
|--------------|---|---------------------------------------|---------------------------------|---------------------------------------|---|-----|
| SUN | MON | TUE | WED | THU | FRI | SAT |
| | | | 1 | 2 | 3 Study tour, from IFFAsia Institute of formation (24) | 4 |
| 5 | 6 | 7 Study tour Pursat Province (400) | 8 | 9 Study tour Pursat Province (400) | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 Study tour, Phnom Penh (50) | 17 Start of court hearings for case 002/02 Pursat (300) and Prey Veng (250) | 18 |
| 19 | 20 Study Tour 350 people from Battambang | 21 | 22 Study Tour 500 from Purat | 23 | 24 | 25 |
| 26 | 27 Study Tour | 28 | 29 | 30 Study Tour | 31 | |

| November 2014 | | | | | | |
|---------------|--|--|---|-----|-----|-----|
| SUN | MON | TUE | WED | THU | FRI | SAT |
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| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 Study tour, Pursat Province (450) | 12 Study tour, Pursat Province (450) | 13 | 14 | 15 |
| 16 | 17 EVIDENCE HEARING CASE 002/02 - Institute of Khmer NG, Phnom Penh (300) - Law University, Phnom Penh (150) | 18 Study tour, Prey Veng Province (250) | 19 Study tour, Pursat Province (480) | 20 | 21 | 22 |
| 23 | 24 Study tour, Pursat Province (400) | 25 Study tour, Prey Veng Province (250) | 26 | 27 | 28 | 29 |
| 30 | | | | | | |

Outreach activities



Radio show on 17 November 2014 at Radio FM102

18 October 2014: The 'Scope of the Case 002/02 at the ECCC' was rebroadcasted by the KRT Watch Radio Call-in show where Mr. Pich Ang, National Civil Party Lead Co-Lawyer at ECCC, discussed with the public what case 002/02 involves and the reasons behind its creation.

31 October 2014: The Cambodian Human Rights Action Committee (CHRAC) held the 'Khmer Rouge Tribunal Meeting Theme' where three main topics were discussed: 1) Some challenges of the proceeding in case 002/2 due to the boycott of defense lawyers' team; 2) Demand of ECCC civil parties for their case reparation; and 3) Graves in Siem Reap.

17 November 2014: Ms Si Soworn, National Civil Party Lawyer at the ECCC and Mr. Neth Pheakra, the ECCC Press Officer, were hosted by the KRT Watch Radio during their Call-in Show to discuss on "The current development of case 002/02" with the intention of making the public more aware of progressions in the mentioned case. The public participated widely and some reactions from the victims were heard. The show will be rebroadcast on 22 November 2014 from 4.10 to 5.00 p.m.

End of November 2014: Around 200 students from the Khmer speaking section of the Royal University of Law and Economics in Phnom Penh will attend a half-day Legacy Workshop to enhance their understanding on "Applying the ECCC's Good Legacies Focusing on Fair Trial Rights". At the end of the workshop each student will receive a booklet on "Additional Understanding of ECCC Proceedings", which will be distributed by the CHRAC.

End of November 2014: An estimated 500 booklets titled "Additional Understanding of ECCC proceedings" will be printed in cooperation with CHRAC and AIJI. The copies will be sent to students from different provinces, universities and for those who previously participated in workshops related to the work of the ECCC.



FIND OUT MORE ABOUT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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Case 002/01 day by day
Watch video recordings, summaries, transcripts, trial records and witness information from each day of the trial in Case 002/01.

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