The Court Report



February 2009



The Extraordinary Chambers in the Courts of Cambodia Moving Forward Through Justice

In this issue



The ECCC has been recently busy with the Initial Hearing of Duch, which was held 17 and 18 February and attracted a great deal of international and national media coverage.

The Judicial Updates section has reports of the recent activities of the Pre-Trial Chamber, Office of Co-Investigating Judges, Defence Support Section, Office of Co-Prosecutors and Victims Unit.

In the Public Information & Outreach page we publish the ECCC Outreach Officer Chin Hemvichet's report of a weeklong outreach trip to Pursat Province and an article on a conference dealing with Khmer Rouge survivors.

In the NGO page, featured are two important partner NGOs, Open Forum of Cambodia and YRDP.

News & Notes

Robert Petit receives international humanitarian award



ECCC international Co-Prosecutor Robert Petit is this year's recipient of the Cox Center International Humanitarian Awar for Advancing Global Justice.

"I have to say I am a bit uncomfortable with this. Obviously I am honored if only because the previous recipients have included the President of the ICC Philip Kirsch and the UN Legal Adviser Hans Correll", he comments.

"But precisely because of this, I can not help but think that there are more deserving people around. Nonetheless I will try to live up to this the best I can."



Over 200 journalists attended the Duch hearing

On 17 and 18 February the Trial Chamber held the Initial Hearing for Kaing Guek Eav (Duch). The beginning of the trial attracted great attention both internationally and nationally.

Approximately 240 journalists around the world attended the hearing.

In addition to media, NGOs, the diplomatic community and the public have also showed a great deal of interest in the trial. The seats for the hearing were fully booked several days in advance. In total, there are 494 seats in the public gallery of the Courtroom.

New ECCC Reserve Judge appointed

Ms. Florence Mumba, a Zambian National, was sworn as International Reserve Judge of the Pre-Trial Chamber of the ECCC.

Born in 1948, Ms. Mumba was the Vice-President of the ICTY between November 1999 and November 2001. Before joining the ECCC she worked for the International Criminal Tribunal for Rwanda as a member of the Appeals Chamber.

His Majesty Norodom Sihamoni, King of Cambodia, appointed Ms. Mumba on 31 January by Royal Decree.



Judicial Updates

Pre-Trial Chamber

The Pre-Trial Chamber remained seised of seven outstanding appeals, ranging from translation rights to provisional detention. It also remained seised of a disagreement between the Co-Prosecutors. Directions and rulings have been made in respect of the procedural issues leading up to the hearing and/or consideration of these matters.

On 29 January 2009, the Pre-Trial Chamber scheduled hearings in relation to two pending appeals against Orders on Extension of Provisional Detention, in relation to Charged Persons leng Thirith and leng Sary. These hearings are scheduled for 24 February 2009 and 26 February 2009, respectively. Decisions in both appeals will follow shortly thereafter.

On 6 February 2009, the Chamber scheduled one further hearing in relation to two related appeals lodged by Charged Person Khieu Samphan: the appeal against the Order on Extension of Provisional Detention and the appeal against the Order Refusing Request for Release. This hearing is scheduled for 27 February 2009. Decisions in these appeals are also expected to follow shortly after the hearing.

The new Senior Judicial Coordinator, who serves as the overall coordinator



for the Pre-Trial, Trial and Supreme Court Chambers, commenced her functions on 19 January 2009. The new Legal Officer for the Pre-Trial Chamber is expected to report for duty in mid-February. The Pre-Trial Chamber has also been assigned an additional Legal Officer on a consultancy basis, who will be temporarily assigned to the Chamber to assist in its heavier-thanexpected workload.

Office of the Co-Investigating Judges

The OCIJ's investigation into the alleged crimes of the Communist Party of Kampuchea and the responsibility of Nuon Chea, leng Sary, leng Thirith, Khieu Samphan, and Duch is ongoing.

This month, the OCIJ has placed more than 150 witness interviews on the case file. These interviews span the country and relate to nearly all of the crime sites outlined by the Office of the Co-Prosecutor in its Introductory Submission. These interviews also describe general CPK policy, how it was disseminated, and who was responsible for the activities resulting from their promulgation.

More field missions are planned for this February than in any other month so far. Meanwhile the legal team and investigators are analysing and filtering information from the field and crossreferencing it with other primary source evidence in our possession.

OCIJ has also immediately The responded and implemented improved access to the case file following requests from both civil parties and the Charged Persons and their legal representatives. These decisions can be seen on the ECCC website. Decisions on other requests for investigative acts are being constructed or carried out in accordance with the Internal Rules of Procedure and the OCIJ work calendar.

The four Charged Persons are having their tri-annual hearings on the conditions of their detention in accordance with Internal Rule 63(8). These hearings allow the Charged Persons to report any concerns regarding their pre-trial detention to the Co-Investigating Judges.

There are currently 29 civil parties in Case File 2 while numerous other reviewed applicants are pending. The OCIJ, in conjunction with the Victims Unit, is also in the process of reviewing all civil party applications. Finally, the analysis unit of the OCIJ met with the Victims Unit and reconfigured its analytical software. The new software is compatible with OCIJ programs and enables civil party applications to be processed by the Victims Unit while at the same time making the information available to the judicial investigation.

Defence Support Section

New Head of the Defence Support Section



Richard Rogers was officially appointed Head of the Defence Support Section (DSS) this month. After the departure of Rupert Skilbeck as Head of the DSS in July 2008, Richard Rogers, who had been Deputy Head of DSS for the past two years, was the officer in charge of the DSS. Richard has worked in the field of international criminal law since 1998. Initially he served for four years in the Trial and Appeals Chambers of the ICTR and ICTY. He then moved to Kosovo as Chief of the OSCE's Legal System Monitoring Section, where he monitored the UN administered war crimes trials. Before joining the ECCC, he worked as a consultant at the Center for Social Development on the Court Watch Project; at the State Court of Bosnia and Herzegovina (in OKO) advising defence lawyers in a genocide



case; and at OSJI where he drafted a report on challenges for the defence at the ECCC. Prior to his international work, Richard practised as a defence lawyer in London and as an attorney in California. He is currently a non executive Director of International Criminal Law Services Foundation.

Defence Teams Update



Following the resignation of Dr Say Bory for health reasons in July 2008, Dr Sa Sovan was appointed Co-Lawyer of Mr Khieu Samphan. Dr Sa has been a member of the Bar Association of the Kingdom of Cambodia since 2001, and is also a member of the Bar Council. He received his doctorate from Paris II University of Laws in 1972. Prior to joining the Cambodian Bar he held a number of positions, including as senior legal adviser of the Cambodian National Assembly, professor of Civil Law and as an expert within the Ministry of Justice. He has been involved in legal education for many years, and has published widely in both French and Khmer on including legal issues criminal procedure, international law and commercial law.

While the Duch Defence Team is actively preparing for trial, all Defence Teams continue to participate in the judicial investigation of Case File 002. The DSS has been providing full legal and administrative support to defence lawyers.

Legacy: Outreach and Capacity Building

Over the past few months, the DSS has held seminars in various Cambodian universities, including the Cambodian University for Specialties, the Royal University of Law and Economics, the Paññâsâstra University of Cambodia, the Norton University, and the Build Bright University.

The purpose of these seminars is to explain the importance of fair trial and the role of the defence to law students. Each session gathered between 100 and 200 students.

Last December, the DSS, in conjunction

with the Institute of Human Rights of the Montpellier Bar, organised a mock trial in the ECCC courtroom, and invited Cambodian law students to attend. This provided an opportunity to observe a typical French criminal trial and to gain a better understanding of the role of each party in the proceedings.

Office of the Co-Prosecutors

Legal Work:

In January 2009, the OCP continued its participation in the judicial investigation and the appellate proceedings in Case File No. 002 in which charged persons Duch, Khieu Samphan, Ieng Sary, Ieng Thirith and Nuon Chea are being investigated. In particular, on 9 January, it filed its responses before the Pre-Trial Chamber to Ieng Sary, Ieng Thirith and Khieu Samphan's



appeals against extension of their respective periods of provisional detention. In addition, on 22 January, the OCP filed its response to Khieu Samphan's appeal against the refusal of his release by the Co-Investigating Judges.

Trial Preparation:

The OCP accelerated its trial preparation in Case File No. 001 that deals with the Khmer Rouge's S-21 Security Centre in Phnom Penh. The OCP complied with the directions issued to it during the Trial Management Meeting of 15-16 January 2009 and is now preparing for the Initial Hearing scheduled for 17 February. It is also preparing to respond to the preliminary challenges raised by the accused Duch.

Analysis:

Amongst many other activities, the OCP maintained and updated its case management database (CaseMap), witness prepared summaries of potential witnesses, analysed open source and in-house documents, updated chronologies of the accused, prepared audio-visual case presentation aids and continued its microfilm digitisation project.

It continued to analyse the Case File and prepared Trial Readiness Assessment Reports (TRAR) to assess the requirements of making further investigative requests to the Co-Investigating Judges.

Prosecutorial Disagreement:

The Co-Prosecutors now await the determination of the Pre-Trial Chamber in respect of the disagreement proceedings. The pleadings in these proceedings are complete. While the International Co-Prosecutor filed his Statement of Disagreement on 1 December 2008, the National Co-Prosecutor filed her Response on 29 December 2008.

Notwithstanding the disagreement, the Co-Prosecutors have been and shall continue to work together, in all their cases, to ensure that justice is rendered to the victims of the Khmer Rouge.

External Activities:

On 29 January, Co-Prosecutor joined other principal international prosecutors to speak at the Atrocity Crimes Litigation Year-in-Review Conference at the Northwestern University School of Law, Chicago.

On 31 January, Co-Prosecutor Robert Petit received the Cox Center International Humanitarian Award for Advancing Global Justice at the Case Western School of Law, Cleveland.

On 30 January, Senior Assistant Prosecutor Anees Ahmed addressed graduate students of the New York University and National University of Singapore (NUS) at the NUS Campus, Singapore.

Victims Unit

The last month at the Victims Unit has been marked by the deadline for the submission of Civil Party applications in Case File No. 001. The Trial Chamber has announced that the Initial Hearing in Case 1 would be on 17 February 2009. According to Rule 23(4) of the Internal Rules, victims who wish to participate as Civil Parties in the proceedings had to submit their Civil Party applications ten working days before the Initial Hearing. Thus the time limit for the submission of Civil Party applications in Case 1 expired on 2 February 2009.

Informing about the deadline

Consequently, the Victims Unit, in collaboration with the Public Affairs Section, focused on informing victims about the time limit in order to ensure that everybody who wished to submit a Civil Party application in Case File No. 001 did so before the deadline. The Victims Unit published a press statement on the ECCC website announcing the expiry of the deadline. It printed an updated flyer which was distributed with the assistance of the Public Affairs Section to the Tuol Sleng Genocide Museum as well as the Choeung Ek memorial site and, with the help of the Cambodian Human Rights Action Committee (CHRAC), to other parts of the city. On the request of the Victims Unit, information about the deadline was also broadcast by Radio FM 102. Furthermore, the Victims Unit opened its offices at the Information Center for the two weekends preceding the deadline in order to offer its assistance to victims wishing to submit their applications.



Up to 2 February 2009, the Victims Unit has received a total of 94 Civil Party applications related to Case File No. 001. Of these, 28 Civil Party applications had already been admitted and transferred to the Trial Chamber by the Office of the Co-Investigating Judges. 66 Civil Party applications have been received between the issuance of the closing order and 2 February 2009. In addition, the Victims Unit received new complaints related to Case 1 which brings the total of complaints in Case 1 to 28. As there is no deadline for the submission of complaints (as opposed to Civil Part applications), the Victims Unit will continue to process the complaints filed by victims and to submit them to the Office of the Co-Prosecutors.

Welcoming new staff

The Victims Unit is still recruiting staff members and would like to welcome and introduce the new colleagues who have recently joined the ECCC. Three Outreach Facilitators have started working for the Victims Unit. *Leoung Sophal* studied at the Royal University of Law and Economics in Phnom Penh graduating in Public Administration. He also studied Education at the Institute of Foreign Languages. Sophal worked part-time as an English teacher at the American Intercon Institute and full time as a legal researcher at the Brothers Investment Group real-estate company. *Heng Kim Huch* graduated in management at the National University of Management in Phnom Penh. She worked as a project secretary at Build Bright University in Phnom Penh with a bachelor degree in Education. He worked at the World Vision Cambodia as a school feeding facilitator became and later а sponsored volunteer checking child data validation forms. Eae Yeng Ty has a bachelor degree in Information Technology from the Norton University in Phnom Penh. He worked at the Khmer Asian Friendship Society NGO as an administrative assistant and then as an external monitoring consultant at the Japan International Corporation Agency



Several new staff members joined the Victims Unit last month.

Phnom Penh International airport. In addition, Kim Huch was a Young Partner in the development team of the Khmer Youth Association. The program she was involved in led her to work for months three in Sweden. Huy Samphors graduated from the faculty of archeology at the Royal University of Fine Arts. She also has a degree in English from the Foreign Languages institute of the Royal University of Phnom Penh. Samphors then worked as a team assistant in the International Finance Corporation.

Moreover, five new Complaints/Applications Data Entry Clerks have joined the Victims Unit. *Chea Sopheak* graduated from the (JICA). He also was an administrative assistant at the Pisnoka International Corporation. So Vannak graduated from the Royal University of Law and Economics in Economics. He also obtained in 2007 an MBA in financial development. Before joining the Victims Unit, he worked as an aid coordinator in the Council for Development of Cambodia (CDC). Sour Sotheavy graduated at the Royal University of Law and Economics in Law and also at the Royal University of Phnom Penh in English. She was an administrator in Pidana Co. Ltd. She also volunteered at the Documentation Centre of Cambodia (DC-Cam). She worked as a legal assistant in a notary office and is a former English teacher.

Sreang Sreng obtained his bachelor of law degree at the Royal University of Law and Economics in Phnom Penh and at the Lumière (Lyon 2) University in Phnom Penh. Before joining the Victims Unit, he worked for five months as a legal officer at the Trade Union.

These new colleagues will help the Victims Unit to comply with its comprehensive mandate. The Victims Unit will be able to accelerate the processing of complaints as well as Civil Party applications and to extend its outreach activities in order to inform Victims about their rights.

Information on the Web







Outreach & Public Information

This year's outreach program began in Pursat province

ECCC Public Affairs Section and the Victims Unit operate an outreach program to disseminate information on the ECCC mandate, the development of the ECCC, and especially the victim participation at the tribunal, to the general public. The aim is to inform people to be involved in this historic event and to be able to educate their children on the benefits from the court. Victims of the Khmer Rouge regime are encouraged to join the FCCC proceedings as well.

Public Affairs Section has made plans for the whole year 2009 and will monthly visit different provinces. Public Affairs also coordinates participation of senior staff, judicial officers and judges in public forums organized by NGOs. Outreach materials for distribution at each destination will include booklets, posters, caps, t-shirts and victim information flyers. During the trip to Pursat province, 3,000 Khmer booklets, 750 small posters, 300 big posters, 100 caps and 80 t-shirts were distributed in various places and to people from all walks of life. During the Pursat outreach mission, two civil party applications were received and forwarded to the Victims Unit. Local people and authorities expressed their wish to join the ECCC proceedings. Although sometimes they are concerned about their capability of filling up the information form and sending it to the Victims Unit, these matters were explained carefully.



Outreach in Pursat province.

ECCC media monitoring

The Public Affairs Section of the ECCC has been carefully following Cambodian press coverage of the ECCC since its beginning. Reviewing press articles and radio programs related to the ECCC weekly, we were able to compile following information on the last two years.

Print media

In 2007, **a weekly average of 21.9 articles** relating to the ECCC was published in the Cambodian Press – i.e. in Cambodian newspapers publishing in Khmer, English and French. The highest count was 58 articles published mid-November (12-18 Nov), mainly reporting on the arrest of leng Sary and leng Tirith.

This average has gone up to **27.3 articles per week in 2008**. The highest count was 48 articles published beginning of February (4-10 Feb) and November (1-7 Nov). The articles beginning of November focused mainly on the complaints received by the ECCC concerning gender-based violence under the Khmer Rouge regime.

Radio

From May to December 2007, **a** weekly average of **22.3** radio programs were aired on issues related to the ECCC.

From January to June 2008, an average of 19.6 radio programs per week related to the ECCC. With numerous radio programs reporting on the meeting of ECCC judges and former Khmer Rouge cadres in Pailin in January 2008 (14-20 Jan), 38 radio programs reported on issues related to the ECCC that week.

Redefining relationships between dead and living after the Khmer Rouge

On February 2, a conference on *"Testimonies of Cambodian refugees and the Khmer Rouge intention of genocide"* was held at the Bophana Center in Phnom Penh. In the conference, French psychiatrist and anthropologist Richard Rechtman, who has been working among Cambodian refugees in France, was speaking about the Khmer Rouge regime and its survivors.

According to Rechtman, human beings are defined through the process of funeral rites, which separate the living from their dead loved ones by honouring them - not as corpses but as living who are no more. However, what struck him in his experience as psychiatrist for Cambodian refugees is that their universe of life is permanently invaded by their dead. The dead were not remembered as departed loved ones - remembered from when they were alive - but were only thought of as dead. They physically and psychologically invaded the everyday life of survivors.

For Rechtman, this overwhelming presence of the dead could not only be explained through the very strong relation between the departed loved ones and the living within Cambodian society, where being remembered as dead for instance exists through the belief in ghosts. Rather, it is for him the sign of an unquestionable Khmer Rouge intention of genocide: destroying the separation between life and death, taking humans out of their conditions as humans, killing and death the production of becomes the extreme. When and where executions were to be carried out was not told, people were taken away "to study" or "to help soldiers", without leaving any trace. The living were no longer living but merely awaiting death, remaining in the same space as the dead.



Since 1986, Richard Rechtman has been working as a psychiatrist with some of the more than 40.000 Cambodian refugees living in France. As an anthropologist, he embraced the refugees' testimonies as traces for a reconstruction of history, and most of all, of how people – victims and perpetrators – think of history.

Visiting Cambodia for the very first time this month, Richard Rechtman – as well medical director of the Institut Marcel Rivière, researcher at the IRIS (Interdisciplinary Research Institute on Social Issues in Paris) and editor-in-chief of the French magazine *L'Evolution Psychiatrique* – presented his experience at the Bophana Center to a large audience of Cambodians and internationals.

The paradox of the survivor

With this, the survivors seem to find themselves in a situation with no solution. Permanently invaded by their dead, they are not able to live, feeling dead and living in the same world as the dead, thereby fulfilling the intention of the Khmer Rouge.

But if they forget their dead loved ones, if they abandon them in trying to live, the Khmers Rouges would then succeed in killing their dead loved ones as if they never had existed and in dehumanizing the survivors.

A pathway towards healing?

Redefining the relationship between the dead and the living therefore appears central to Rechtman. This is a 'revolutionary approach' he identified in the work of the Bophana Center, namely in Rithy Panh's movie "S-21, the Khmer Rouge killing machine": survivors are no longer of societal interest as sole witnesses able to narrate death and past atrocities, but can be asked to discuss the living – their loved ones before they died – leaving the narrative of death to the executioners.

Finally, to Rechtman, such approach allows and gives a specific meaning to tribunals as answer to mass atrocities, while allowing other media such as art and history to play their own role.

Court Calendar



Recent Decisions

29 January 2009: Decision on Co-Prosecutors' Request to Determine the Appeal on the Basis of Written Submissions and Scheduling Order [leng Thirith's Appeal against Extension of Provisional Detention]

29 January 2009: Decision on Co-Prosecutors' Request to Determine the Appeal on the Basis of Written Submissions and Scheduling Order [leng Sary's Appeal against Extension of Provisional Detention]

4 February 2009: Decision on the Co-Prosecutors' Request to File a Document as an Annex to their Appeal Response [Nuon Chea's Appeal against Extension of Provisional Detention] **6 February 2009:** Decision on Co-Prosecutors' Request to Determine the Appeal on the Basis of Written Submissions and Scheduling Order [Khieu Samphan's Appeal against Extension of Provisional Detention]

(Note: Published decisions are available for download on the ECCC Website under Court Documents at: www.eccc.gov.kh)

Scheduled Court Activities

20 February 2009: Public Hearing for delivery of Pre-Trial Chamber's decision of Khieu Samphan's Appealagainst the Order on Translation Rights and Obligations of the Parties

24 February 2009: Public hearing for leng Thirith's Appeal against the Order on Extension of Provisional Detention

26 February 2009: Public hearing for leng Sary's Appeal against the Order on Extension of Provisional Detention

27 February 2009: Public hearing for Khieu Samphan's Appeals against 1) the Order on Extension of Provisional Detention and 2) the Order Refusing Request for Release



NGO Page: Partners in ECCC Outreach

Khmer Rouge Trial Portal / Open Forum of Cambodia



Open Forum of Cambodia

Bitter tragedies and bloody wars which Cambodians experienced in the period of 3 years, 8 months, and 20 days during the Democratic Kampuchea Regime, commonly known as the Khmer Rouge regime, from 1975 to 1979, killed nearly 2 million Cambodians and destroyed all kinds of country's infrastructure. the The sufferings from the Khmer Rouge

regime like mental health problems, traumas, and serious mental health influence symptoms still every is the Cambodian. Hence, justice effective medicine to cure those victims.

Justice insisted by Cambodians and the supported by international community and the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) for the prosecution of the former Khmer Rouge leaders and the people most responsible for the crimes committed during the Khmer Rouge regime will contribute to the success of finding the truth and justice for victims and prevent this kind of regime from happening again. However, we must also consider security, political stability, and national unity and must pay respect to the sovereignty of the country.

This workshop share aims to information about the process of the Khmer Rouge regime to determine the areas in which the civil society organizations can participate to disseminate information concerning the process of the Khmer Rouge regime and to provide a number of good strategies in finding information related to the process of the Khmer Rouge trial.

Workshop on "Sharing Information about the Process of the Khmer Rouge Trial"

23 February 2009

The Svay Teab District Office, Svay Rieng Province, Cambodia

Youth Resource Development Program



Upcoming activities

15 February 2009: YRDP students attend the film showing of "Time for Justice" at YRDP. 30 students from different Cambodian universities and YRDP will gather together to watch the

film. Then the participants will discuss the film in order to share their concerns about the Pol Pot Regime and to learn about the survivors of the Khmer Rouge and how the Khmer Rouge will be held to account?

17 February 2009: YRDP invites 50 participants including students from different universities, volunteers from youth clubs and YRDP students to attend the public hearing of Kaing Guek Eav (Duch) who headed the Tuol Sleng Prison in Phnom Penh. The aim of this event is to understand the judicial system and the path to reconciliation. At the end of the hearing, there will be a student discussion at YRDP in order

to share what participants have learnt from this experience and what are their concerns about this process.

28 February 2009: YRDP will organize a study tour to Tuol Sleng and Cheung Ek killing fields for 50 students. The aims of this event are to promote knowledge in youth and to offer them the possibility to improve their critical thinking about Cambodian history. At the end of this study tour, YRDP will organize a group discussion in order to allow students to show their opinions, feelings and concerns about the Khmer Rouge period.

Outreach Calendar



Recent Activities- ECCC and Partner NGOs

21 January: Journalists Nic Dunlop and Putsata Reang interviewed Co-Investigating Judge HE You Bunleng, Co-Prosecutors Chea Leang and Robert Petit and Chief of Public Affairs Dr. Helen Jarvis.

21 January: A group of German journalists facilitated by GTZ visited the court and met Co-Prosecutor Chea Leang, Acting Director of Administration Tony Kranh, Deputy Director of Administration Knut Rosandhaug, Chief of Public Affairs, and and Press Officer Reach Sambath.

21 January: A delegation from the ECCC attended a workshop where "A survey of attitudes about social reconstruction and ECCC" by Human Rights Center of University of California Berkeley was presented.

22 January: A group from Human Rights Center, University of California Berkeley, visited the Court and presented the results of their survey to the staff members of ECCC.

23 January: A Swiss TV crew from *Televisione svizzera di lingua italiana* (TSI) met the Chief of Public Affairs and national and international judicial officers.

23 January: A group of Women's International Group members visited the court and met with the Trial Chamber Judge Jean-Marc Lavergne.

24 January: A group from the Center for Peace and Conflict Studies visited the court.

30 January: Senior Assistant Prosecutor Anees Ahmed spoke to graduate students of New York University (NYU) and the National University of Singapore (NUS) on the activities of the ECCC. The lecture was held at the NUS campus in Singapore.

11-12 February: Press Officer Reach Sambath, International Deputy Co-Prosecutor William Smith and Head of the Defence Support Section Richard Rogers visited the Foreign Correspondents' Club of Thailand in Bangkok and met media representatives.





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Find out more about the ECCC

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