



# The Court Report

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

### Office of Co-Prosecutors files Final Submissions for case 004/02

The National and International Co-Prosecutors filed their Final Submissions for Case 004/02, the investigation of Ao An, on 18 and 21 August 2017, respectively. The separate filing reflects the Co-Prosecutors differing views of the case. Ao An's Defence will now have the opportunity to respond to the Final Submissions with their view of the evidence. It will then be up to the Co-Investigating Judges to decide whether Ao An 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, Ao An retains the presumption of innocence, which is lifted only if and when guilt is established at trial and through appeal.



Photo: ECCC

#### National Co-Prosecutor's Submissions

The National Co-Prosecutor reiterates that only the existing accused (Nuon Chea and Khieu Samphan) at the ECCC are the senior leaders and most responsible persons of Democratic Kampuchea. The priority, therefore, should be given to the prosecution of those, who sufficiently fulfill the mandate of this tribunal, as the ECCC Law and the Agreement between the Royal Government of Cambodia and the United Nations envisaged only the prosecution of this small group of individuals. Therefore the National Co-Prosecutor stands on the ECCC Law and the Agreement that Ao An is not subject to the personal jurisdiction of the ECCC.

## News Updates

Read the Final Submissions of OCP for case 004/02, OCIJ's decision on the impact of the funding situation on Cases 003, 004 and 004/02 and its reasoning for dismissal of case 004/01 on pages 1-2

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### Judicial updates

- Supreme Court Chamber was seized with pre-appeal research on charges of genocide and forced marriages, as alleged in the case 002 /02 indictment.
- Trial Chamber evaluated evidence in preparation for the drafting of the Judgement in Case 002/02.
- Pre-Trial Chamber notified a total of five judgements on appeals and motions and three decisions on interlocutory requests. **Read more on pages 4-6.**

### Outreach Activities

Public Affairs outreached to more than 5726 Cambodian and 146 international visitors in this two months period. Additionally over 300 students took part in the screening of "Duch, Master of the Forges of Hell" at the Royal University of Phnom Penh. **Read more on page 6**



Photo: ECCC



### Extraordinary Chambers in the Courts of Cambodia

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## International Co-Prosecutor's Submissions

The International Co-Prosecutor submitted that in his view of the evidence, Ao An was both a “senior leader” and one of the persons “most responsible” within the meaning of the ECCC’s governing law, thus establishing the Court’s personal jurisdiction over the cases. The International Co-Prosecutor also provided his analysis of the evidence collected in the investigation and an explanation regarding why, in his view, it establishes Ao An’s responsibility for serious crimes within the jurisdiction of the ECCC to the standard necessary to indict him and send him to trial.

The International Co-Prosecutor’s Final Submission argues that Ao An held positions of responsibility that enabled him to make a significant contribution to crimes committed in areas over which he exercised authority. The case focuses on the period from early 1977-1979 when Ao An was the Deputy Secretary of the Central Zone (under Secretary Ke Pauk) as well as Secretary of Sector 41.

## OCIJ issued decision on the impact of the funding situation on Cases 003, 004 and 004/02

PRESS RELEASE by the Office of the Co-Investigating Judges, 11 August 2017

The Co-Investigating Judges have decided to defer the decision on a stay of proceedings for the time being due to the responses received from the United Nations (“UN”), the Principal Donors Group (“PDG”) and the ECCC’s Office of Administration (“OA”), as well as the noticeable improvement in the funding situation since the request for submissions was issued.

They informed the Parties and the OA that they will remain actively seized of the matter until the last closing order has been issued. Should a future lack of funds or financial uncertainty threaten judicial independence, fairness, and the integrity of the proceedings, they will take the measures that they consider necessary to address the situation.

This approach of judicial restraint will, however, only remain viable if the future funding matches the court’s requirements by complying with the budget accepted and endorsed by the UN and the PDG in

a timely fashion and ideally with early and reliable assurance of compliance, as well as joined-up communication channels. There can be no bridge from the “is” of the prevalent imperfect funding practice on the international level to the “ought” of determining the normative parameters of judicial independence, fair trial and due process.

## Japan makes new contribution to ECCC

PRESS RELEASE, 3 August 2017

The Government of Japan has announced a new contribution of US\$1,221,818 to the international component of the ECCC for the fiscal year of 2017.

This contribution brings the total financial assistance provided by the Government of Japan to both the international and national component of the ECCC to approximately US\$ 86 million, which makes Japan the single largest donor to the ECCC since its establishment.

## Office of the Co-Investigating Judges issued reasons for dismissal of case against Im Chaem

On 10 July 2017, the Co-Investigating Judges (CIJs) issued the reasons for the closing order of 22 February 2017, in which they dismissed the case against Im Chaem for lack of personal jurisdiction. This finding is made, firstly, taking into account the evidence related to the crime sites she was charged with.

Secondly, even taking into account the evidence related to the other allegations not charged, she would still fall outside of the jurisdiction of the ECCC. It was thus not necessary for her to be charged with any remaining allegations.

Im Chaem was not a senior leader and would have to fall into the residual category of others who were “most responsible”. However, the evidence does not support such a finding, either – whether it was her position in the hierarchy of Democratic



Photo: ECCC

Kampuchea (DK) or the seriousness of her alleged conduct. There were about a hundred other district secretaries during the time of DK; the position of a district secretary was merely the third rung from the bottom in the hierarchy (above village and commune).

The evidence supports the conclusion that she was tasked by Ta Mok to lead the Southwest Zone cadres to the Northwest Zone and thus had a role which did not correspond to

the average district secretary, yet the fact that she was initially only given a role as a district secretary once in the Northwest Zone, becoming a member of the sector committee only later, must be taken into account. This militates against a significantly elevated formal role.

There is a strong indication that she was initially considered as being one of the persons most responsible because of the alleged number of 40,000 deaths arising from the Phnom Trayoung security centre alone. That was certainly an arguable contention at the time, but the evidence found during the investigation delivered far lower victim numbers on all crime sites, charged or not charged.

In sum, neither the individual nor the combined weight of the factors taken into account allowed the Co-Investigating Judges to arrive at the conclusion that Im Chaem falls into the category of persons most responsible, even assuming that the allegation against her of being responsible for the crimes committed at the sites investigated were founded.

# Judicial updates:

## Supreme Court Chamber

The Supreme Court Chamber is seized with pre-appeal research on charges of genocide and forced marriages as alleged in case 002 /02 indictment. These charges require extensive research as there appears differing nuances in definitions as different crime scenarios dictate. It has become imperative to line up relevant case law to support possible verdicts. The research will, most likely, help bridge time for drafting the appeal judgment as the chamber will be making pronouncements on these charges for the first time. However, the quest for uniformity in international jurisprudence continues.

## Trial Chamber

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

On 7 July 2017 the Trial Chamber ordered that the cognitive function of Nuon Chea and Khieu Samphan continue to be tested on a quarterly basis and set a schedule for those tests until 15 June 2018.

On 7 July 2017 the Trial Chamber granted the request by the Lead Co-Lawyers to file supplemental submissions containing proof of secured funding with respect to specific projects described in their Final Claim for Reparation in Case 002/02. The deadline set for the filing of this information was set at 30 November 2017.

On 18 July 2017 the Trial Chamber issued its decision on witnesses, civil parties and experts who had been proposed to be heard during Case 002/02. This decision was initially filed confidentially on an interim basis and was made public on 18 August 2017.

The Trial Chamber addressed each of the witnesses, Civil Parties and experts who had been proposed by the parties to testify in Case 002/02 and identified which individuals had been selected and had testified with respect to each of the trial segments. The Trial Chamber also provided reasons as to why certain individuals were

not called to testify, including witnesses deemed to be repetitive, irrelevant and/or less relevant. The decision does not address requests for additional witnesses, Civil Parties and experts made by the parties pursuant to Internal Rule 87(4), as these were decided separately.

The Trial Chamber was unable to reach consensus with respect to the decision to call HENG Samrin, OUK Bunchhoeun and POL Saroeun. The majority (composed of Judges NIL Nonn, YA Sokhan and You Ottara) appended an opinion explaining why the evidence of these proposed witnesses was not sufficiently important or exculpatory to initiate the process to compel their testimony. The minority (composed of Judges Lavergne and Fenz) appended an opinion explaining why, despite their apparent lack of cooperation with the ECCC, the proposed witnesses should have been summoned to testify in Case 002/02 in light of the prima facie relevant and non-repetitive evidence they could have provided.

On 26 July 2017 the Trial Chamber sent a further communication to the Amsterdam Bar Association regarding possible misconduct of Mr. Victor Koppe. The Trial Chamber informed the Bar Association of further conduct which showed open disregard for judicial orders and an apparent violation of a confidentiality order with respect to the Closing Briefs.

## Pre-Trial Chamber

During the months of July and August 2017, the Pre-Trial Chamber notified a total of five judgements on appeals and motions and three decisions on interlocutory requests, including: one judgement on an appeal in case 003 regarding the International Co-Investigating Judge's interpretation of the 'civilian population' element of crimes against humanity (PTC 03/32); three judgements on applications for annulment of investigations (PTC 04/38, PTC 04/39 and PTC 04/40); one judgement on an appeal filed against a decision on a request for investigative action (PTC 04/48); and three decisions on interlocutory requests relating to other ongoing proceedings (PTC 04/46 – Decision D361/4/1/3, PTC 04/1/50 – Decisions D308/3/1/3 and D308/3/1/8). These judgements and

decisions are available in the ECCC website.

The Chamber was newly seized of six cases, including two motions for annulment of parts of the investigation (PTC 03/33 and PTC 03/34); one appeal regarding the International Co-Investigating Judge's decision on a request for adequate preparation time (PTC 04/46); an appeal against a decision on Prosecutor's request to place materials on the Case File (PTC 04/47); an appeal against the International Co-Investigating Judge's decision on a request for Closing Order reasons to be public (PTC 04/1/49); and an appeal against the Closing Order in case 004/1 (PTC 04/1/50).

The Chamber completed deliberations on two pending cases, including one appeal against the International Co-Investigating Judge's forwarding order in case 004/02 (PTC 04/2/44) and one motion for annulment of the entire investigation (PTC 04/2/43), and advanced the preparations for deliberations on another motion for annulment (PTC 04/45).

Since January, the Pre-Trial Chamber has issued a total of sixteen judgements and seven orders and is currently seized with nine cases, from which five cases are yet to be fully briefed (PTC 03/33, PTC 03/34, PTC 04/46, PTC 04/1/49, and PTC 04/1/50). The next deliberations are expected to take place in September.

## Office of the Co-Investigating Judges

During the months of July and August, the legal unit has been processing investigative material, and addressing investigative requests in Case 004 and procedural motions in all cases. The Analysts Unit assisted in the review of investigative material in Khmer language.

On 10 July, the Co-Investigating Judges issued their reasons for dismissal of Case 004/1.

On 25 July, The International Co-Investigating Judge issued a forwarding order requesting the Co-Prosecutors to issue their final submission in Case 003.

On 11 August, the Co-Investigating Judges issued a decision on the impact of the funding situation in Cases 003, 004 and 004/02.

## Defence

### Nuon Chea

During August, the Nuon Chea Defence Team prepared amendments to their closing trial brief in Case 002/02 in light of revisions made to trial transcript content following a comprehensive, ongoing review by the Transcription Unit.

### Khieu Samphan

In August 2017, the Khieu Samphan Defence Team continued to prepare its amended closing brief in Case 002/02 following the transcript review process by the Transcription Unit.

### Meas Muth

The Meas Muth Defence filed several submissions to the Co-Investigating Judges and the Pre-Trial Chamber, each of which 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.

### Im Chaem

In August, the Defence has been preparing for the response to the Appeal against the Closing Order (Reasons) filed by the International Co-Prosecutor as well as another response to a confidential appeal.

The Defence also filed a confidential request regarding the Appeal against the Closing Order (Reasons) and a confidential response to a request from civil party applicants before the Pre-Trial Chamber.

The Defence endeavours to safeguard Ms. Im Chaem's fair trial rights and interests throughout the remaining proceedings of the pre-trial stage of Case 004/01.

### Ao An

In August, the Ao An Defence team filed to the Office of the Co-Investigating Judges an urgent request for disclosure of documents in the Case File and a request to establish a schedule for the Response to the two Final Submissions separately submitted by the two Co-Prosecutors. The Defence also continues to review all materials on the Case File and to prepare other filings to safeguard Mr. Ao An's fair trial rights.

### Yim Tith

In August, the Yim Tith Defence continued

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

## Office of the Co-Prosecutors

In July and August, staff and interns of the Office of the Co-Prosecutors were engaged across all cases, with the ongoing investigations and litigation in cases 003, 004, 004/01 and 004/02.

### Case 003

Review and analysis of the evidence collected to date by the Co-Investigating Judges and the preparation of the Co-Prosecutors' Final Submission continued. Additionally, the International Co-Prosecutor confidentially filed two requests to the Co-Investigating Judges.

### Cases 004

Review and analysis of the evidence collected in the investigation against Yim Tith was ongoing. The International Co-Prosecutor also confidentially filed four requests, four responses and a reply to the Co-Investigating Judges, and a submission to the Pre-Trial Chamber.

### Case 004/01

The International Co-Prosecutor publicly filed his notice of appeal against the Co-Investigating Judge's Closing Order (Reasons) in the case against Im Chaem in July. Additionally, the International Co-Prosecutor confidentially filed two requests, a reply and two appellate submissions before the Pre-Trial Chamber.

### Case 004/02

The International and National Co-Prosecutor each confidentially filed their Final Submission to the Co-Investigating Judges in August. The Co-Prosecutors also issued a joint public summary of their respective submissions. The National Co-Prosecutor outlined her reasons for seeking dismissal of the charges – submitting that the Court lacked jurisdiction to proceed with the case. The International Co-Prosecutor summarised his reasons for requesting an indictment submitting that Ao An is responsible, as Sector 41 Secretary and Central Zone Deputy Secretary, for crimes in the Central Zone. This included responsibility for numerous security centres, execution sites and a work site; as well as persecution and genocide of the Cham population, and

forced marriages and rapes throughout the zone.

### Outreach

Representatives of the office participated in meetings at the Court premises with students visiting from the Niigata University of Japan, Texas State University of the United States, Central Queensland University of Australia and RULE University from Phnom Penh; as well as with members of the Rotary Peace Center and the Justice and Peace Performing Artists Group – explaining the substantive law and structure of the court as well outlining the cases and the work of the office.

## Victims Support Section

### Legal Representation

ECCC-funded Civil Party Lawyers participated in the Civil Party Regional Forum organized by the section. They also attended the meeting between national and international civil party lawyers to discuss the future strategy to deal with cases 003 & 004. Also, the lawyer team worked on technical work of cases 002, 003 & 004.

### Outreach

VSS's Chief participated in Tuol Sleng exhibition on Koma Angkar – Children of the Organization – and was interviewed by Youth Resource Development Programme (YRDP) on memory work and young generation education. At the ECCC, the Chief and his team met with a new representative of Swiss Agency for Development and Cooperation (SDC) to have a discussion about the work of the VSS and the issues of Khmer Rouge and its consequences in current society. The talks also explored the possibility to pursue the cooperation to deal with the issues.

The Chief also met and worked with Civil Peace Service (CPS) of GIZ to find a possibility to conduct meetings and forums with Civil Parties of case 002/02 so that they could be updated on the ECCC's judicial developments and reparation.

### Processing and Analysis

In order to become a recognized international civil party lawyer before the ECCC, staff member of the team accompanied one international lawyer who was admitted by the Cambodia Bar Association to do the swearing-in ceremony at the Appellate Court.

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

Staff member had two meetings with Youth For Peace (YFP) separately to firstly discuss further funding for a proposed reparation project, “Memory Sketch of Kraing Ta Chan”, for Civil Parties in Case 002/02 before the ECCC and secondly discussed and developed a proposal for a proposed reparation project for Civil Parties in Case 002/02, “Phnom Sampeou Community Peace Learning Center and Treatment of Buddhists during the Khmer Rouge Regime” at YFP’s office. Another meeting was held with Help Age Cambodia to discuss funding for a proposed reparation project for Civil Parties in Case 002/02 “Improving health and mental well-being and reducing the risk of poverty and social exclusion for some civil parties and other vulnerable older people in Cambodia” at S-Café, Phnom Penh.

Also, staff member attended an event on “University Lecturer Training” organized by Documentation Center of Cambodia at the National Institute of Education. Civil parties, university lecturers, and representatives of both national and international institutions were present in the event and attended an inauguration ceremony on “App-Learning on Khmer Rouge History” conducted by Bophana Center at Bophana Center.

Additionally staff member delivered a speech on Reparations in “Lessons from the Past”, organized by MetaHouse at Toul Sleng Genocide Museum.

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

The representatives from the UN Trust Fund to End Violence against Women visited the project team, including the project partner

Transcultural Psychosocial Organization (TPO) Cambodia, and had a site visit to Prey Veng province to meet the beneficiaries.

The project organized a Forum on the Developments of ECCC’s Proceedings and Reparations in Case 002/02 for 167 Civil Parties in Case 002. The purposes of the forum were (i) to inform civil parties about the developments of the ECCC’s trial proceedings against Nuon Chea and Khieu Samphan; (ii) to provide opportunities for civil parties and their lawyers to discuss the issues related to the hearings of case 002/02 and to update the progress of implementation of case 002/01 reparation projects and proposed reparation requests in case 002/02.

Two radio live shows were conducted in cooperation with the Women Media Center on the topics “Youth’s engagement to combat gender-based violence against women today” and “Sexual and Gender-based violence and its past and present impacts”. There were ten off-air and seven on-air callers, bringing the total to 17 callers for both shows.

A mobile exhibition on “Forced Marriage during the Khmer Rouge Regime” was held during a film screening called “Duch, Master of the Forges of Hell” at the Legal Documentation Center. This screening was co-organized by the Ministry of Culture and Fine Arts, Extraordinary Chambers in the Courts of Cambodia (ECCC) and Bophana Audiovisual Center. More than 250 participants attended the event including ECCC officials and university students.

The Training on “Gender Responsive Project Design, Monitoring and Evaluation”, was jointly organized by the Victims Support Section of the ECCC and the Ministry of Women’s Affairs. The training was attended

by 39 participants from a variety of local organizations.

## Civil Parties Co-Lawyers

### Key Legal Issues and Submissions

In July and August, the Lead Co-Lawyers have been preparing their Amended Closing Brief as per the Trial Chamber’s directive, and have worked closely with the Victim’s Support Section and their reparation partners on their supplemental submission relating to the funding of six reparation projects.

On 23 July, the International Lead Co-Lawyer attended a performance of Phka Sla Kraom Angkar in Kampong Thom and participated in an intergenerational dialogue following the performance. The performance was part of a proposed reparation project for the benefit of civil parties in case 002/02. Fifty-two civil parties were invited to attend the performance.

The International Lead Co-Lawyer participated in the launch of the proposed reparation project, “App-learning on Khmer Rouge History,” hosted by the Bophana Center on 25 July 2017. Several civil parties were also invited to attend the event.

The Lead Co-Lawyers also participated in the Documentation Center of Cambodia’s University Lecturer Training held at the National Institute of Education from 25 to 27 July as part of a proposed judicial reparation project in case 002/02. Four civil parties were invited to participate in the event.

On 20 July, the Lead Co-Lawyers attended a Civil Party Forum in Kampong Thom in which 153 civil parties participated. Civil parties were informed of the proceedings and the proposed judicial reparation projects for case 002/02.

On 24 August, a representative of the Section attended an exposition at Toul Sleng as part of “The Turtle Project: Innovative Cross Media Project, promoting historical awareness and civil courage in Cambodia,” a proposed reparation project in case 002/02. Forty-nine civil parties were invited to attend the event, which featured photographs of civil parties, their stories, and their messages for the younger generation.



Photo: ECCC

# Orders and Decisions

## July

### Trial Chamber:

7 July 2017: Order for Quarterly Cognitive Testing of the Accused and Scheduling the Tests (E389/5/2)

7 July 2017: Decision on the Lead Co-Lawyers' Request for an Extension of Time to File Supplemental Submissions Containing Proof of Secured Funding by 30 November 2017 for Six Reparations Projects (E457/6/2/2)

18 July 2017: Decision on Witnesses, Civil Parties and Experts Proposed to be heard during Case 002/02 (E459) [made public by the Trial Chamber on 18 August 2017]

26 July 2017: Second Addendum – Possible Misconduct of a Lawyer Admitted to your Bar Association – Mr. Victor Koppe (E378/5)

### Pre-Trial Chamber:

18 July 2017: the Pre-Trial Chamber issued a unanimous judgement finding inadmissible the appeal in case 003 regarding the International Co-Investigating Judge's interpretation of the 'civilian population' element of crimes against humanity (D191/18/1/8).

25 July 2017: the Pre-Trial Chamber unanimously found admissible an application for annulment of a part of the investigation and declared that it could not reach a majority of votes for a decision on merit. The opinions of various Judges of the Chamber were appended (D344/1/6).

## August

### Pre-Trial Chamber:

11 August 2017: the Pre-Trial Chamber unanimously found admissible an

application for annulment of a part of the investigation and declared that it could not reach a majority of votes for a decision on merit. The opinions of various Judges of the Chamber were appended (D345/1/6).

11 August 2017: the Pre-Trial Chamber unanimously found inadmissible, as untimely, an appeal filed by the International Co-Prosecutor against a decision on a request for investigative action (D338/1/1/3).

25 August 2017: the Pre-Trial Chamber unanimously found admissible an application for annulment of investigative material produced by an OCIJ Investigator and granted it in part (D351/1/4).

# Outreach activities

During July and August 2017, more than 5726 Cambodian villagers and students visited the ECCC. Public Affairs Section staff briefed them about the establishment of the court, its mandate, the legal proceedings and caseloads. Public Affairs Section organized for the participants to visit Tuol Sleng Genocide Museum and Boeung Cheung Ek Killing Field afterwards.

In addition, Public Affairs Section staff briefed 146 international visitors from different nationalities and backgrounds during the two months period.



Photo: ECCC

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In July 2017, the ECCC, in cooperation with Legal Documentation Center and Bophana Audiovisual Center, screened a film titled “Duch, Master of the Forges of Hell” to around 300 students from Royal University of Phnom Penh with presence of film director Rithy Panh.

H.E. Kranh Tony, acting director of administration of the ECCC, said in his opening speech that films telling the story of the Khmer Rouge would strengthen the knowledge of the young generation and contribute to the commemoration of the past. This is a duty of all, he added.

In collaboration with Bophana Audiovisual Center, another film titled “Bophana, a Cambodian Tragedy” was screened at ECCC’s public gallery with the participation of more than 300 local villagers from Prey Veng Province.



Photo: ECCC



Photo: ECCC

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

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