IN PURSUIT OF JUSTICE:
A RETROSPECTIVE REVIEW OF THE ECCC

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Introduction

In 2005, the Extraordinary Chambers in the Courts of Cambodia (ECCC) came into being after lengthy negotiations between the United Nations (UN) and the Royal Government of Cambodia (RGC). In its foundational documents, the UN and RGC defined the purpose of the ECCC as bringing to trial senior leaders of Democratic Kampuchea and those most responsible for certain international and domestic crimes committed during the regime. The Court was based on a predominantly inquisitorial criminal justice model, with some common law aspects. Within this model, Cambodian and international judges, prosecutors, defence counsel, civil party lawyers, and administrators carried out the Court's work.

This Retrospective provides the former International Co-Prosecutor's informed perspective of the ECCC. Its primary purpose is to present an objective snapshot of the Court to the Cambodian people, including civil society and judicial institutions, as well as to the international community, particularly those operating in the justice, human rights, and academic fields.

The Retrospective identifies in summary form the key features of the ECCC and explores its operational, participatory and normative legacies. It covers four broad areas. *First*, it outlines the institutional framework of the ECCC, including its mandate, jurisdiction, structure, composition, judicial process and unique features. *Second*, it provides an overview of the proceedings and results of the seven cases prosecuted. *Third*, the Retrospective reports on the ECCC's key accomplishments. *Finally*, it explores the challenges faced by the Court, solutions found, and lessons learned.

The Retrospective is a unique product, bringing together, in an accessible and informed manner, aspects of the ECCC's work currently found in disparate sources.

Dedication

This Retrospective is dedicated first and foremost to the victims, living and dead, of the horrific crimes committed by the Khmer Rouge against them, to those who came forward to provide information on or testify about those crimes, and to all the dedicated professionals in all organs and sections of the Court whose expertise and hard work brought some measure of justice to those who suffered unimaginable horrors.

Acknowledgements

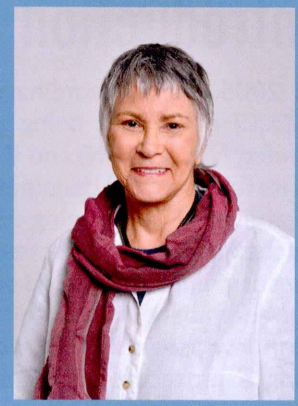
The former International Co-Prosecutor thanks the staff and interns of the Office of the Co-Prosecutors who contributed to the creation of this Retrospective: Naroeun Chhay, Bunnath Moeung, Vannarith Toch, William Smith, Vincent de Wilde d'Estmael, Ruth Mary Hackler, Nisha Patel, Kate Mac Sweeney, Malina Gilka, Deniz Güzel, Roberta Spiteri, Serena Daoli, Charlotte Munk, Charlotte Soubelet, Angèle Richermoz, Eponine Howarth, Muskan Yadav, Moïra Van de Poël and Lau Shun Nok Ryan.

Special thanks are owed to Chloé Veuve who conceptualised the initial design and content, produced drafts and co-ordinated the assembly of the Retrospective in both English and Khmer. Particular thanks also go to Helen Worsnop for her development and co-ordination of the Retrospective, and for drafting many of its sections and reviewing, editing and synthesising the drafts provided by the individual contributors.

Finally, the former International Co-Prosecutor is very grateful to the Documentation Center of Cambodia (DC-Cam) and the Association of International Criminal Law Prosecutors (AICLP) who are publishing and disseminating this work.

Brenda J. Hollis

Former International
Co-Prosecutor (2019-2022)

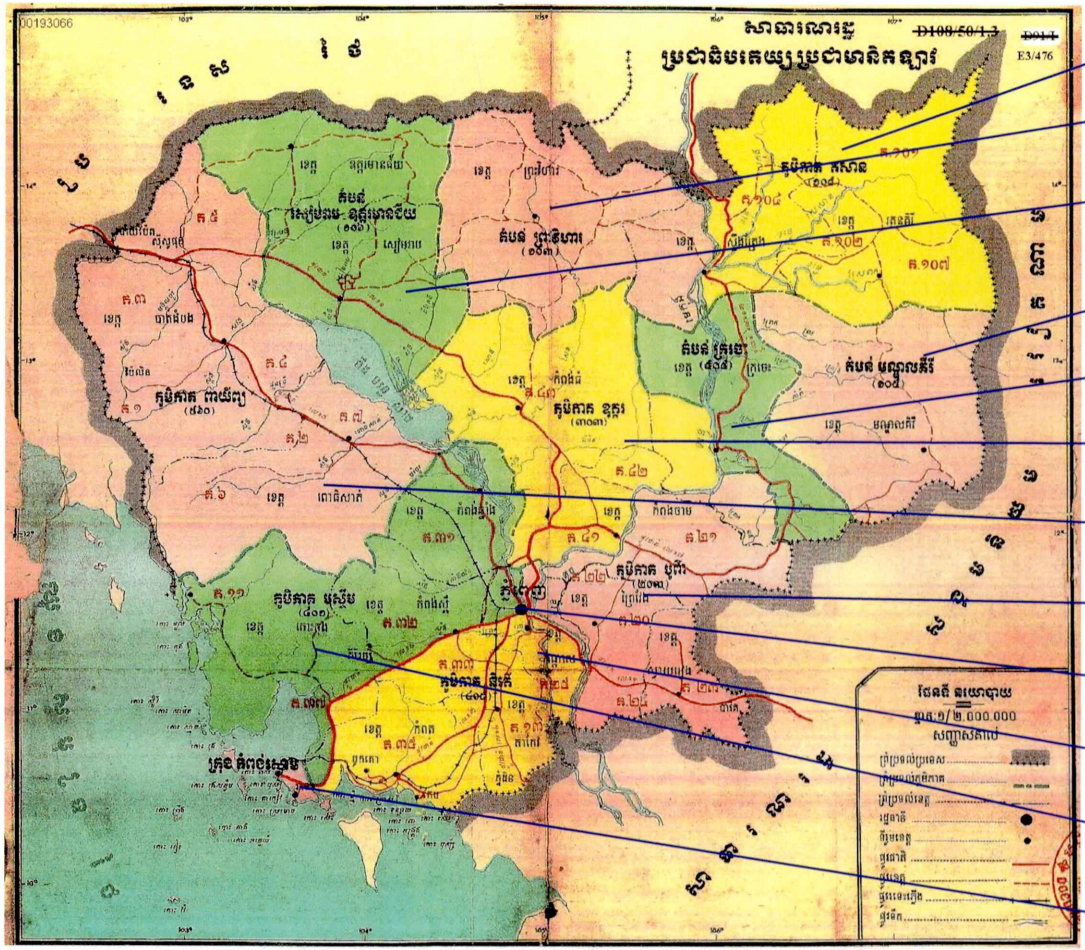


Abbreviations and Acronyms

1956 Penal Code	Penal Code of Cambodia, 1956
AJ	Appeal Judgment
AP I	First Additional Protocol to the 1949 Geneva Conventions, and Relating to the Protection of Victims of International Armed Conflicts
AP II	Second Additional Protocol to the 1949 Geneva Conventions, and Relating to the Protection of Victims of Non-International Armed Conflicts
BAKC	Bar Association of the Kingdom of Cambodia
CAH	Crime(s) against humanity
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
CCCP	Cambodian Code of Criminal Procedure
CIJ(s)	Co-Investigating Judge(s)
CivPL(s)	Civil Party Lawyer(s)
CivP(s)	Civil Part(y/ies)
CO(s)	Closing Order(s)
CP(s)	Co-Prosecutor(s)
CPLCL(s)	Civil Party Lead Co-Lawyer(s)
CPK	Communist Party of Kampuchea
CPNLAF	Cambodian People's National Liberation Armed Forces
CZ	Central Zone
DC-Cam	Documentation Center of Cambodia
DK	Democratic Kampuchea
DSS	Defence Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECCC Agreement	Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 2003
ECCC Law	Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (as amended), 2004
ES	Execution site
EZ	East Zone
FUNK	National United Front of Kampuchea
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, 1948
Grave Breaches	Grave Breaches of the 1949 Geneva Conventions
GC(s)	The 1949 Geneva Convention(s)
GC III	The 1949 Geneva Convention Relative to the Treatment of Prisoners of War

GC IV	The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War
GRUNK	Royal Government of the National Union of Kampuchea
ICIJ	International Co-Investigating Judge
ICC	International Criminal Court
ICL	International Criminal Law
ICP	International Co-Prosecutor
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the ex-Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IJs	International Judges
IR(s)	Internal Rule(s) of the ECCC
JAC	Judicial Administration Committee
JCE	Joint criminal enterprise
KR	Khmer Rouge
NCIJ	National Co-Investigating Judge
NCP	National Co-Prosecutor
NGO	Non-governmental organisation
NJs	National Judges
NEZ	Northeast Zone
NWZ	Northwest Zone
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors
OIA	Other inhumane acts
OoA	Office of Administration
PTC	Pre-Trial Chamber
RAK	Revolutionary Army of Kampuchea
RGC	Royal Government of Cambodia
RPC	Rules and Procedure Committee
SC	Security Centre
SCC	Supreme Court Chamber
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
SWZ	Southwest Zone
TC	Trial Chamber
TJ	Trial Judgment
UN	United Nations
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
UNSG	United Nations Secretary-General
VSS	Victims Support Section
WRIs	Written records of interview
WS	Worksite

1976 Map of Democratic Kampuchea



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PART I: OVERVIEW OF THE ECCC

Establishment of the Court

The Court was established as a result of a 21 June 1997 official request from the RGC to the UN for assistance in bringing to justice those responsible for international crimes committed during the rule of the Khmer Rouge from 1975 to 1979.

In February 1999, a UN expert group proposed establishing an international tribunal outside the domestic Cambodian court system. However, after lengthy negotiations – suspended for almost a year from February 2002 – the RGC and the UN signed the **ECCC Agreement** on 6 June 2003 to establish the ECCC within the existing court structure of Cambodia.

The ECCC Agreement was implemented in Cambodia through the **ECCC Law** as adopted on 10 August 2001 and amended on 27 October 2004. Following this amendment, the ECCC Agreement entered into force on 29 April 2005.

On 15 January 2006, the ECCC premises in the Porsenchey District of Phnom Penh were formally handed over by the Royal Cambodian Armed Forces. By the end of October 2006, the OoA, Judicial Chambers, CPs, CIJs and Defence Support Section were all in place.

The Court became fully operational on 12 June 2007 with the adoption of its **Internal Rules** after protracted debate.

Under-Secretary General for Legal Affairs of the UN Hans Corell and His Excellency Senior Minister Sok An on 6 June 2003

Jurisdiction

The jurisdiction of the Court is laid out in articles 1, 2(1) and 9 of the ECCC Agreement and Chapters II and VIII of the ECCC Law.

The ECCC Agreement and ECCC Law recognise the personal and temporal jurisdiction of the Court to bring to trial **senior leaders** of DK and those who were **most responsible** for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed between **17 April 1975** and **6 January 1979**.

The scope of the Court's subject-matter jurisdiction, laid out in articles 3 to 8 of the ECCC Law, includes the following crimes:

- **National Crimes** under the Cambodian 1956 Penal Code: homicide, torture, and religious persecution;
- **Genocide** as defined in the Genocide Convention;
- **CAH** including murder, extermination, enslavement, deportation, imprisonment, torture, persecutions on political, racial and religious grounds, and OIA;
- **Grave Breaches of the GCs** including wilful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health, and wilfully depriving a prisoner of war or civilian the rights of fair and regular trial;
- **Destruction of cultural property** during armed conflict pursuant to the 1954 Hague Convention for Protection of Cultural Property in the Event of Armed Conflict; and
- **Crimes against internationally protected persons** under the 1961 Vienna Convention on Diplomatic Relations.

Article 29 *new* of the ECCC Law provides for individual criminal responsibility for **planning**, **instigating**, **ordering**, **aiding and abetting**, or **committing** the above crimes, as well as superior responsibility for failing to prevent or punish them. JCE was judicially recognised as a form of commission. Article 29 *new* also confirms (i) the unavailability of the defence of acting pursuant to an order of the DK government or a superior, and (ii) that a person's position or rank does not relieve him/her of responsibility or mitigate punishment.

Structure

The ECCC has been described as a 'hybrid' or 'internationalised' court. Whilst these terms can refer to a variety of tribunal structures, in the ECCC's case, they describe a court created under Cambodian domestic law pursuant to an international treaty between the RGC and UN, which operates solely in Cambodia with international participation. The Court's legal framework requires it to apply international fair trial standards.

The ECCC's structure is based on Cambodia's civil law system, derived from the French inquisitorial model. Each organ of the Court is comprised of both national and international staff, consultants and interns.

The official language of the Court is Khmer, with the official working languages being Khmer, English, and French.

The Court is – and remains since its move to residual functions - comprised of four primary organs, with various sections and units within each. In addition, the IRs set up three committees, which have convened with varying regularity.

ECCC Organs and Sections

The Office of the Co-Prosecutors is an independent office within the ECCC. There are two CPs, one Cambodian and one international, with equal authority. Both CPs are required to be independent in the performance of their functions without accepting or seeking instructions from any Government or other source. The NCP and ICP are both appointed by the Cambodian Supreme Council of the Magistracy – in the ICP's case upon nomination by the UNSG – with their appointments confirmed by Cambodian Royal Decree.

During the judicial phase of the ECCC, the CPs' role was to prosecute those they believed, in the exercise of their discretion, the evidence established were senior leaders of the Khmer Rouge and/or most responsible for the crimes committed during the DK period. Together with their staff, they processed complaints, conducted preliminary investigations, participated in judicial investigations, and prosecuted cases throughout the pre-trial, trial and appellate stages, including enforcing the final sentence imposed by the Chambers. The CPs were also charged with ascertaining the cause of death of a person in ECCC custody, as they did when Ieng Sary and Nuon Chea died (IR 32 *bis*).

The CPs and their staff also participated in outreach and promoted capacity building with national and international staff and interns.

As at September 2024, there have been one NCP, Chea Leang, and five ICPs, Robert Petit (Canada; 2006-2009), Andrew Cayley KC (United Kingdom; 2009-2013), Nicholas Koumjian (United States; 2013-2019), Brenda J. Hollis (United States; 2019-2022) and Dale Lysak (Canada; 2023-present). After Ms Hollis resigned, she was replaced in the interim by Reserve ICP Fergal Gaynor (Ireland).

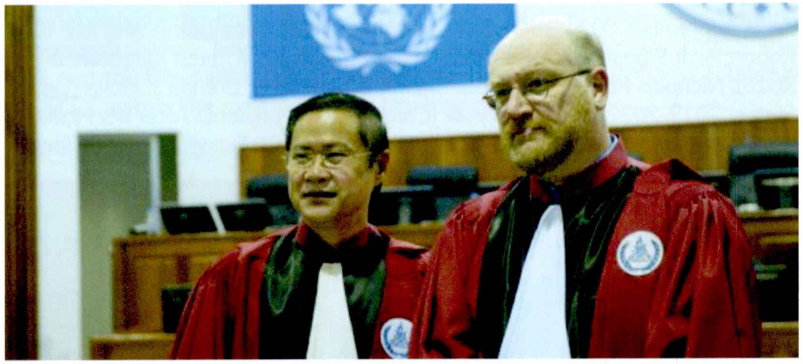
Former ICP Nicholas Koumjian and NCP Chea Leang © ECCC Flickr

The Office of the Co-Investigating Judges is another independent ECCC office. It is comprised of two CIJs, one Cambodian and one international, both independent and with equal authority. They are similarly appointed by the Supreme Council of the Magistracy – in the ICIJ's case upon nomination by the UNSG – and confirmed by Royal Decree.

During the judicial phase, the CIJs were afforded the primary investigatory role (IRs 55-69), being responsible for collecting evidence and investigating facts set out in the CPs' introductory and supplementary submissions. In practice, investigations were carried out by the OCIJ staff and investigators

pursuant to rogatory letters (IR 62). After the investigation was concluded, the CIJs issued (a) closing order(s). A closing order can be an indictment with an order to send a case for trial, or a dismissal order terminating proceedings.

To date, there have been one NCIJ, Judge You Bunleng, and four ICIJs, Judges Marcel Lemonde (France; 2006-2010), Siegfried Blunk (Germany; 2010-2011), Mark Harmon (United States; 2012-2015) and Michael Bohlander (Germany; 2015-present). Reserve ICIJ Laurent Kasper-Ansermet acted as ICIJ for a short period between 2011 and 2012.



NCIJ You Bunleng and ICIJ Michael Bohlander © ECCC website

The Judicial Chambers are made up of Cambodian and international judges and reserve judges in three Chambers: the SCC, the PTC and the TC, each with a Cambodian President. Each judge must be independent and have the requisite legal experience. The Supreme Council of the Magistracy appoints all judges, the international judges having been nominated by the UNSG. The appointments are then confirmed by Royal Decree.

- **Pre-Trial Chamber**

The PTC consists of three NJs and two IJs, and decisions require a supermajority vote (at least four out of five judges). Thus, any decision requires the affirmative vote of both NJs and IJs, although the precise mix can vary. PTC decisions are final.

During the judicial phase, the PTC's roles were multifaceted. Originally designed as the body to resolve disagreements between the CPs and CIJs (IRs 71 & 72), its primary function in practice was as the pre-trial appellate chamber. It therefore heard appeals from all parties against decisions and orders issued by the CIJs (IR 74), as well as applications to declare aspects of the preliminary or judicial investigations null and void (IR 76). Similar to the Cambodian judiciary's Investigation Chamber, it also acted as "the control body at the investigative stage", with inherent jurisdiction to review and revise cases to ensure that the investigations were complete and legal. It additionally had jurisdiction over applications to disqualify CIJs (IR 34) and appeals against certain administrative decisions (IRs 11, 22, 23 *quater* & 38) and determinations regarding interference with the administration of justice (IR 35).

As at September 2024, the following Judges serve or have served as PTC Judges: the NJs, Judges Prak Kimsan (President; 2006-present), Ney Thol (2006-present), Huot Vuthy (2006-present) and Pen Pichsaly (Reserve; 2006-present), and the IJs, Judges Baik Kang Jin (Republic of Korea; 2015-present), Olivier Beauvallet (France; 2015-present), Steven J. Bwana (Reserve; Tanzania; 2013-present), Katinka Lahuis (The Netherlands; 2006-2012), Rowan Downing (Australia; 2006-2015), Catherine Marchi-Uhel (France; 2010-2011) and Chang-ho Chung (Republic of Korea; 2011-2015).

- **Trial Chamber**

Like the PTC, the TC is made up of three NJs and two IJs, with the same supermajority voting requirement. Unlike the PTC, reserve TC judges had to be present at all stages of proceedings, but they did not have the right to express any opinion or make any decision until appointed to replace a sitting judge (IR 79(3)).

The TC conducted the ECCC's trials and issued the trial judgments. It determined whether the evidence proved the accused's guilt of the charges against him or her, and issued a judgment rendering a verdict of guilty or not guilty. The TC could also conduct new investigations under the same conditions as the CIJs (IR 93). Where there was a guilty verdict, the TC decided on the sentence and could award reparations to CivPs.

To date, the following Judges serve or have served in the TC: the NJs, Judges Nil Nonn (President; 2006-present), Ya Sokhan (2006-present), You Ottara

(2006-present) and Thou Mony (Reserve; 2006-present), and the IJs, Judges Claudia Fenz (Austria; 2014-present), Martin Karopkin (United States; 2019-present), Dame Silvia Cartwright (New Zealand; 2006-2014) and Jean-Marc Lavergne (France; 2006-2019).

ECCC Courtroom © ECCC website

- **Supreme Court Chamber**

The SCC is made up of four NJs and three IJs, and decisions and judgments require a supermajority vote (at least five out of seven judges). SCC decisions are final.

The SCC substitutes the Court of Appeal and Supreme Court in the national Cambodian system with one judicial body, and serves as both an appellate chamber and the ECCC's court of final instance, i.e. the ECCC's highest judicial authority whose decisions cannot be reviewed.

It could hear appeals from all parties against decisions and judgments issued by the TC. Its standard of review closely resembled that found at the ICTY, ICTR and SCSL; unlike the Cambodian Court of Appeal, it did not decide cases *de novo*. However, the SCC could examine evidence and call or admit new evidence to determine an issue (IR 104(1)). As the court of final instance, it also had jurisdiction to act in the interests of justice to provide legal clarity and certainty.

To date, the following Judges serve or have served in the SCC: the NJs, Judges Kong Srim (President; 2006-present), Som Sereyvuth (2006-present), Ya Narin (2006-present), Mong Monichariya (2006-present) and Sin Rith (Reserve; 2006-present), and the IJs, Judges Chandra Nihal Jayasinghe (Sri Lanka; 2006-present), Florence Ndepele Mwachande Mumba (Zambia; 2012-present), Phillip Rapoza (United States; 2022-2024), Maureen Harding Clark (Ireland; 2019-2022), Motoo Noguchi (Japan; 2006-2012; Reserve 2024-present), Agnieszka Klonowiecka-Milart (Poland; 2006-2018) and Katrien Gabriël Witteman (Netherlands; 2024-present).

The Office of Administration is headed by a Director appointed by the RGC, and a Deputy Director appointed by the UNSG. The Deputy Director is also the Coordinator of UNAKRT, the UN mission providing technical assistance to the ECCC.

OoA was responsible for supporting and facilitating the judicial processes of the ECCC, including the recruitment of ECCC staff and management of the ECCC's detention facilities. As discussed later, it has now assumed a dominant role during the residual phase. Within certain parameters, OoA serves as the ECCC official channel for both internal and external communication, drafts and reviews the ECCC's official documentation, and has overall responsibility for managing relations with the RGC, UN and the donor community. The Deputy Director administers the resources provided through the UN Trust Fund.

OoA includes the Budget and Finance Section, the Court Management Section (incorporating the Audio-Visual Unit, Detention Facility Liaison Unit, Interpretation and Translation Unit, Front Office, Records Archives Unit, Transcription Unit and Witness and Expert Support Unit (WESU)), the General Services Section, the Information and Communication Technology Section, the Human Resources Management Section, the Public Affairs Section, the Security and Safety Section and VSS. DSS and the CPLCL section also come under the remit of OoA. However, importantly, these two sections are mandated to be autonomous regarding substantive matters.

The Acting Director is H.E. Kranh Tony and the Deputy Director is Knut Roesandhaug (Norway). H.E. Sean Visoth was Director from 2005 to 2008 and the former Deputy Director was Michelle Lee (China; 2005-2008).

- **Defence Support Section**

Each defence team consisted of two or more Co-Lawyers, at least one Cambodian and one international, who were supported by various assistants, in-

cluding legal consultants and a case manager. ECCC defence was an exception to the dualist funding structure at the ECCC; under article 17(c) of the ECCC Agreement, defence costs were borne solely by the UN.

DSS was established under IR 11 to manage the administrative aspects of the defence function and operated under the IRs and its own administrative regulations. It was the only section administered exclusively by UN staff, with a Chief of Section who reported directly to the Deputy Director of OoA. As administrator of the ECCC Legal Assistance Scheme, DSS served the important function of providing indigent accused with lists of national and international lawyers who could defend them, entering into legal services contracts with the chosen lawyers, assessing fulfilment of those contracts and authorising payment. It also approved the appointments of the other defence team members.

In addition, DSS had support responsibilities in respect of all lawyers approved to defend persons before the ECCC, including i) working with BAKC to determine their eligibility to appear before the ECCC, ii) providing basic legal assistance and administrative support, and iii) organising training for them in consultation and cooperation with BAKC. It also acted as a voice for the defence at outreach events and in the media, and organised an internship programme for young lawyers.

- **Victims Support Section and Civil Party Lead Co-Lawyers**

Victim Participation at the ECCC

Victims could engage with ECCC proceedings in various ways. For example, they could choose to follow the proceedings informally, or participate formally as either complainants or CivPs. Victim participation is governed by the IRs (with the general principles set out in IRs 23 and 23 *bis*, *ter*, *quater*, *quinquies*) and the Practice Direction on Victim Participation.

Under the ECCC judicial framework, CivPs are parties to the proceedings. They have a right to be represented in the proceedings and to seek collective and moral reparations where they demonstrate they have suffered physical, material or psychological injury as a direct consequence of at least one of the crimes alleged against the accused. At the pre-trial stage, they participated individually, as groups, or as part of a Victims' Association, and had to be represented by a CivPL from at least the issuance of a Closing Order onwards. In practice, many appointed lawyers at an earlier stage, and it is these CivPLs who could litigate on behalf of the CivPs during the pre-trial stage, including on matters such as investigative steps that should be taken by the CIJs. Three Cambodian CivPLs were and are remunerated by the national side of OoA; most of the rest, though initially funded from external sources like NGOs, are now unpaid.

In February 2010, after the Case 001 trial, the IRs were amended to consolidate CivPs into one group at the trial stage and beyond, with the CPLCLs appointed to represent their interests, acting as an umbrella structure for the CivPLs.

Victim Support Section

VSS, established by IRs 12 and 12 *bis*, is the initial contact point between the ECCC and victims and is mandated to play various roles to facilitate effective victim participation in ECCC proceedings.

Under the supervision of the CPs and CIJs, as appropriate, it processed complaints and CivP applications. It also provided and continues to provide general information to victims (a broader category of persons than those granted status as CivPs).

For CivPs specifically, VSS prepared and maintained a list of national and international lawyers registered with BAKC to represent them before the ECCC and facilitates that representation. It also maintained a list of approved Victims' Associations to act on behalf of CivPs when required. VSS assisted and supported CivPs' and complainants' attendance at court proceedings, although where a victim testified before the Chambers or CIJs, WESU provided all necessary support for that purpose. VSS also worked with the CivPL and CPLCLs, in liaison with governmental organisations and NGOs as appropriate, to support the identification, design and implementation of reparation projects. It facilitated other non-judicial measures, such as psychological support, for the benefit of victims in general.

VSS also provides support to the CPLCLs and CivPLs when they meet with their clients, i.e. CivPs. For these meetings, VSS arranges logistics and also receives and manages the external donor funds received for this purpose.

Civil Party Lead Co-Lawyers

The CPLCL section was established under IRs 12, 12 *ter* and 23(3). For administrative purposes, the CPLCLs operate as a "section" within the OoA, however they have autonomy in their decision-making and operate as an independent party to the proceedings in the same way as a defence team or the OCP. Under the IRs, there should be one Cambodian and one international CPLCL, supported by other team members as necessary. The CPLCLs act jointly in all matters unless they have delegated authority to one CPLCL for handling a particular issue.

The CPLCLs' core function is to represent the consolidated CivP group at trial and beyond, including filing a single claim for collective and moral reparations. They were ultimately responsible for the overall advocacy, strategy and representation of CivP interests before the TC and SCC, presenting all oral and written submissions on behalf of CivPs to the Chambers and coordinating the work of the CivPLs in meetings with CivPs. In turn, the CivPLs endeavoured to support the CPLCLs as agreed between them.

As at September 2024, there have been one national CPLCL, Pich Ang, and four international CPLCLs, Elisabeth Simonneau Fort (France; 2011-2014), Marie Guiraud (France; 2014-2019), Megan Hirst (Australia; 2019-2022) and Falguni Debnath (Canada; 2022-2023). No international CPLCL appears to have been appointed to succeed Ms Debnath.

ECCC Committees

Judicial Administration Committee

Under IR 19, the JAC is comprised of three NJs, one of whom is the President, and two IJs, as well as the CPs and the Director and Deputy Director of OoA in a consultative capacity. The JAC meetings are confidential and are called on the initiative of the President.

The JAC's main function is to advise and guide OoA in all activities relating to the administrative and judicial support provided to the CPs, CIJs and Chambers, including the preparation and implementation of the budget. In certain circumstances, it also chooses judges to hear disqualification motions (IR 34).

Rules and Procedure Committee

Under IR 20, the RPC is made up of five NJs, one of whom is the President, and four IJs. It receives and considers requests for amendments to the IRs and drafts proposals for discussion at Plenary Sessions. The RPC can also adopt Practice Directions relating to the functioning of the ECCC, subject to subsequent review and amendment by the Plenary. The RPC can review the administrative regulations of any other ECCC section to determine their consistency with the IRs.

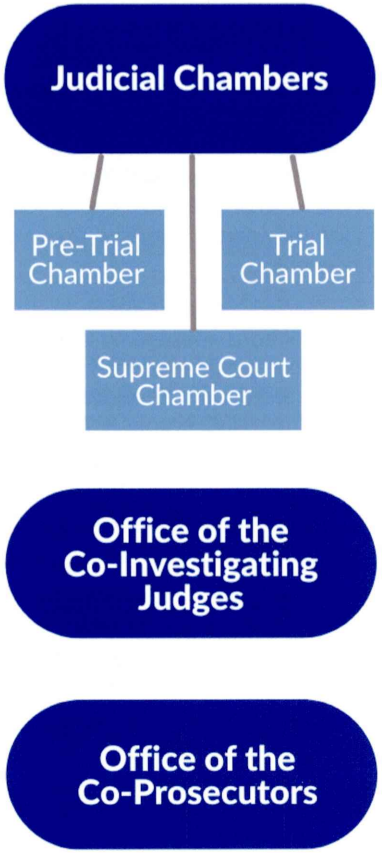
Plenary Sessions

Governed by IR 18, Plenary Sessions are confidential meetings generally convened on a 6-monthly basis. The CIJs and PTC, TC, and SCC judges and reserve judges, the CPs and their reserves, the head of DSS, the head of VSS, and the Director and Deputy Director of OoA may participate. The sessions are called and presided over by the SCC President.

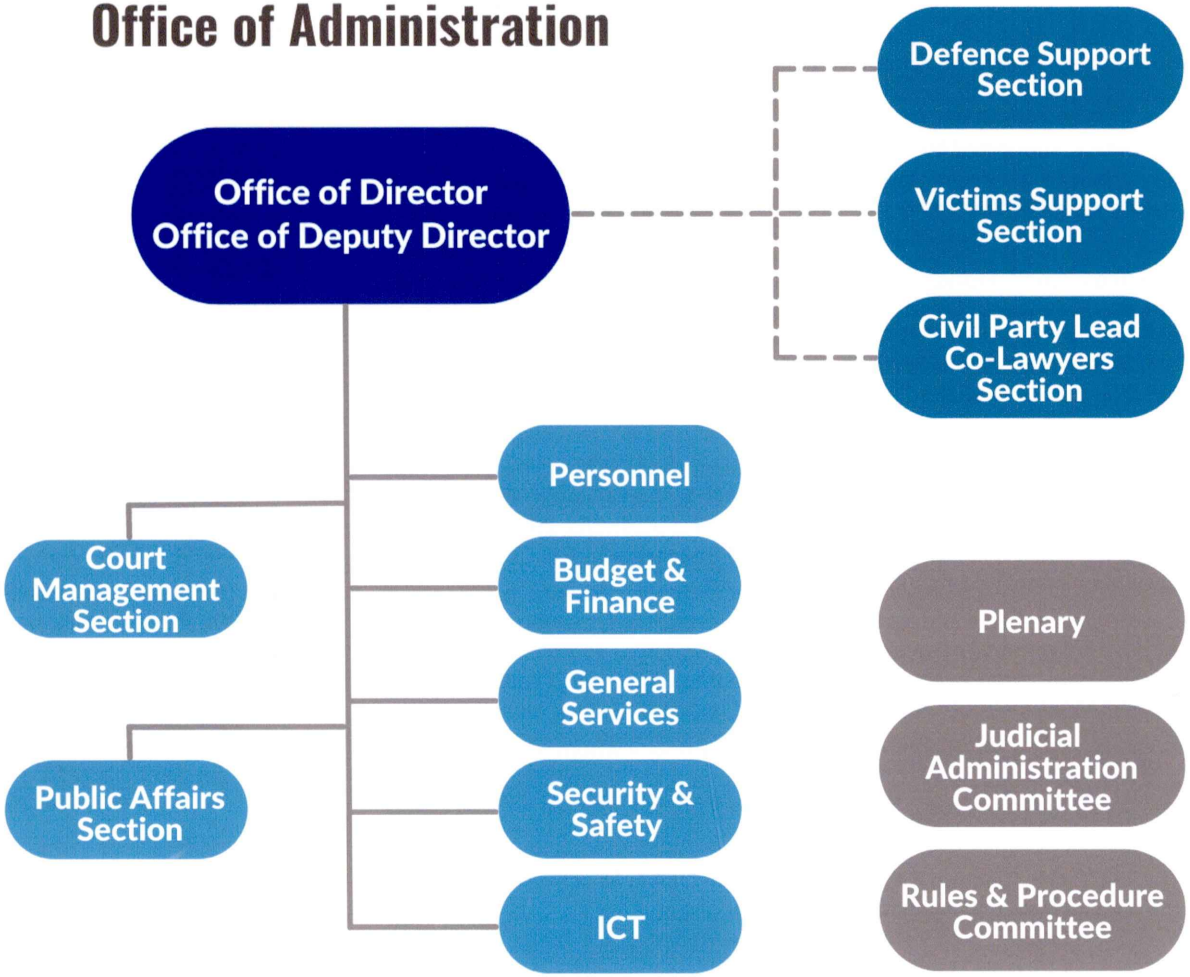
Having adopted the original IRs in 2007, the Plenary's primary function is to review and amend the IRs and any Practice Directions adopted by the RPC. In addition, the Plenary decides upon matters relating to the internal functioning of the ECCC upon proposals from the JAC, and adopts an annual report to the Supreme Council of the Magistracy and the UNSG proposed by OoA.

Whilst the CPs may vote on IRs pertaining to the administration of the ECCC (IRs 1-20), the remaining decisions may only be taken by a supermajority of the CIJs and Judges of the Chambers.

Chambers & Judicial Offices



Office of Administration



Residual Functions

The ECCC transitioned into its residual phase on 1 January 2023 following delivery of the Case 002/02 AJ in December 2022. According to the **Addendum to the ECCC Agreement**, the Court should now be in the process of carrying out residual functions for an initial period of three years. These functions fall into two main categories:

1. **Judicial functions**
   - reviewing applications and conducting proceedings for revision of final judgments;
   - providing for the protection of victims and witnesses;
   - sanctioning or referring to appropriate authorities any wilful interference with the administration of justice or provision of false testimony;
   - supervising the enforcement of sentences; and
   - monitoring the treatment of convicted prisoners.

2. **Communicating with the public about the ECCC**
   - maintaining, preserving and managing the ECCC's archives, including the declassification of documents and materials;
   - responding to requests for access to documents;
   - disseminating information to the public regarding the ECCC; and
   - monitoring the enforcement of reparations awarded to CivPs.

Ensuring that the residual functions are explained to primary stakeholders through appropriate outreach is as important as effectively and efficiently carrying out these functions. To achieve this, the residual phase must continue to pursue the ECCC Agreement's aims, including justice and national reconciliation, by implementing meaningful legacy projects in Cambodia and internationally that contribute to the victims' healing process and highlight the work and accomplishments of the Court.

In the residual phase, ECCC staffing has rightly been heavily reduced, with the Judges, CPs, Defence Counsel and CPLCLs remunerated on a *pro rata* basis. Whilst individual organs and sections maintain their statutory roles and independence, collaboration between all ECCC staff, after obtaining the informed approval of heads of organs and sections, is essential to effective functioning. Similarly, flexibility for all sections to engage consultants on *ad hoc* bases to complete judicial and/or legacy mandates is needed to promote effectiveness and long-term efficiency. In practice, however, it is apparent that only the OoA has maintained a working mandate, with OCP having been excluded even from office space at the new ECCC building.

The launching of the ECCC Mobile Bus © ECCC website

As at September 2024, it is clear that resources have been well utilised on outreach for Cambodian school and university students, as well as guided visits for international students. The ECCC's new Resource Centre is now open and includes: (1) a library and research hub, (2) a multi-purpose venue for organising workshops and moot courts, (3) a consultation and exhibition venue, and (4) a remembrance and reflection space. A new Mobile Bus, an extension of this Resource Centre, should be used to ensure that educational materials about the ECCC are brought to Cambodia's remotest areas. Some of the original S-21 documents used by the ECCC during the investigations and trials have correctly been returned to the Tuol Sleng museum. Declassified copies, such as prisoner lists, must now be made available and easily accessible online by OoA.

Maintaining the ECCC archives and making them "as broadly accessible as possible" is arguably the most important residual function. The ECCC cur-

rently claims to be working towards making the public section of its archives available online. However, as at September 2024, the archives seem to be only accessible to those physically present at the ECCC Resource Centre in Phnom Penh. This limitation should be remedied as soon as possible.

Before the ECCC moved to its residual phase, the ECCC's Co-Rapporteurs on Residual Functions related to Victims made recommendations on appropriate initiatives regarding victims, and a three-day Victims Workshop was held in Phnom Penh. Despite this initial focus on victims and CivPs, a disappointingly small number of victim-oriented projects are now being implemented. This may be in part explained by the lack of active input from any International CPLCL, a post which may no longer be filled, despite express provision for it in the Addendum.

Similarly, a number of worthwhile projects curated by the OCP appear to have been abandoned in favour of those preferred by the OoA. Among these are the OCP's S-21 Prisoner List Project, which was analysing S-21 documents to create a comprehensive and accurate record of individuals imprisoned there and their fate, where known. Many Cambodians are still not aware whether their family and friends perished in S-21 and an opportunity to correct this injustice in the service of Khmer Rouge victims has been lost.

While some mandated residual function activities seem to be ongoing, overall the approach to the residual phase of the ECCC requires a significant amount of additional programmes and inclusion of primary actors.

Judicial Process

The judicial process of the ECCC comprised three main stages: (i) the **Pre-Trial** phase, including the **Preliminary Investigation** and **Judicial Investigation**, (ii) the **Trial** phase, and (iii) the **Appeal** phase.

Pre-Trial Phase

- ### Preliminary Investigation

The prosecution of ECCC crimes could only be initiated by the CPs[*]. The CPs processed complaints (IR 49) and conducted confidential preliminary investigations (IR 50) to determine whether evidence indicated that crimes within the jurisdiction of the ECCC had been committed, and to identify suspects (those they believed, in the exercise of their discretion, were "senior leaders" or one of those "most responsible" for crimes committed during the DK regime) and potential witnesses. Investigations could be carried out by judicial police or investigators at the CPs' request. In practice, OCP staff, including lawyers and investigators, investigated.

Under IR 53(1), if the CPs had reason to believe that crimes within the jurisdiction of the ECCC had been committed, they opened a judicial investigation by sending an **introductory submission** to the CIJs, either against one or more named persons or against unknown persons. This submission contained, *inter alia*, a summary of facts to be investigated, the names of any suspects, and the type(s) of offence alleged. The submission was accompanied by the case file and the available inculpatory and exculpatory evidence.

[*] In accordance with IR 1(2), all references in this section to the CPs and CIJs includes both acting jointly and each of them acting individually, whether directly or through delegation.

From this point on and throughout all stages of proceedings, CPs had a continuing duty to disclose any material that in their actual knowledge could suggest the innocence or mitigate the guilt of the suspect/charged person/accused, or affect the credibility of the inculpatory evidence.

At any time during the judicial investigation, the CPs could file a **supplementary submission** requesting the CIJs to investigate new facts. It was judicially confirmed that one CP could issue an introductory or supplementary submission alone, where the disagreement procedure in IR 71 had been followed.

- ### Judicial Investigation

Under IR 55(2), the CIJs were obliged to confidentially investigate all facts set out in the introductory and supplementary submissions. If, during an investigation, new facts came to the CIJs' knowledge, they informed the CPs and could only investigate them when they had received a supplementary submission. To expedite the judicial process, the CIJs had the option of reducing the scope of the judicial investigation under IR 66 *bis* by excluding certain facts in the CPs' submissions, so long as the remaining facts were representative of the scope of the introductory and supplementary submissions. It was judicially confirmed that one CIJ could act alone in carrying out any investigative act, provided the disagreement mechanism in IR 72 had been followed.

The CIJs had a wide range of investigative powers under IR 55(5), including: i) questioning suspects and charged persons, ii) interviewing victims, witnesses and experts, iii) seising exhibits, iv) conducting on-site investigations; v) seeking information and assistance from any State, the UN or any other intergovernmental or non-governmental organisation, and vi) issuing sum-

monses, arrest warrants and detention orders (*see also* IRs 41-45). The CIJs could also order measures to protect victims and witnesses whose appearance before them could endanger their life or health or that of their family members or close relatives (IRs 29, 55(5)(b)).

In all the Cases, evidence was collected by ECCC lawyers and investigators acting pursuant to rogatory letters (IRs 55(9), 62). The CPs, charged persons and CivPs all had the right to participate in the investigation by making requests for investigative action under IR 55(10). Aside from conducting very limited preliminary enquiries that were strictly necessary for the effective exercise of those rights to request investigative action, the parties were not permitted to conduct their own investigations.

During the investigation, under IR 55(4), the CIJs could charge ("mettre en examen" or "ពិនិត្យឡងវិញ") suspects named in the CPs' submissions and any other person against whom there was clear and consistent evidence indicating that he or she may be criminally responsible for the commission of a crime referred to in an introductory or supplementary submission.

The CIJs usually held an initial appearance under IR 57, at which they informed the charged person of the charges, recorded his or her identity and informed him or her of the right to a lawyer and the right to remain silent. If in custody, the charged person also had the right to raise issues relating to any provisional detention. The charged person gained access to the case file at this stage.

During the initial appearance, or at any other time during the investigation, the CIJs could interview the charged person with his or her consent (IRs 57, 58). Where this occurred, the charged person had the right to consult with a lawyer beforehand, unless he or she waived that right in writing or in case of emergency. The CPs, and in certain situations, other parties, had the right to be present and to request the CIJs to ask specified questions of the charged person.

After an adversarial hearing, the CIJs could order the provisional detention of a charged person under IR 63 on grounds specified in the IRs, such as preserving the charged person's security, evidence or public order, or to prevent them exerting pressure on witnesses or victims. Those in provisional detention had to be personally brought before the CIJs at least every four months, and the CIJs were required to offer them the opportunity to discuss their treatment and conditions.

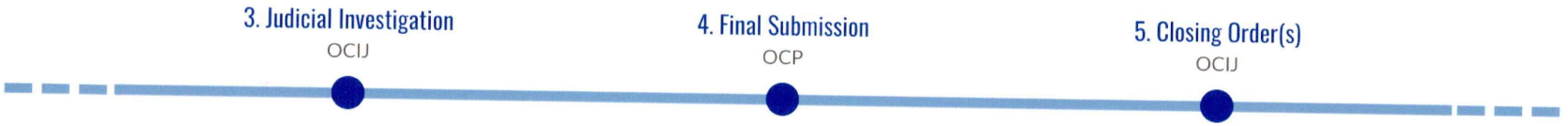
Where the CIJs considered that an investigation had been concluded, they issued a **notice of conclusion** under IR 66(1), opening a 15-day window for the parties to file requests for further investigative action. Denial of requests could be appealed to the PTC by all parties (IR 66(2), (3)). All CivP applications also had to be filed by the end of this 15-day period (IR 23 *bis* (2)); denial of the applications could be appealed to the PTC but did not halt the proceedings.

- **Final Submission**

Once all investigative requests had been decided upon and any related appeals processes completed, the CIJs forwarded the case file to the CPs under IR 66(4). Where the CPs considered the investigation had been concluded, they issued a written **final submission**. A final submission contained the CPs' views on the facts investigated and their legal characterisation, and requested the CIJs to either indict the charged person(s) and send him or her to trial, or to dismiss case. Separate final submissions from the NCP and ICP were permitted under the ECCC legal framework. Pursuant to ECCC practice, the charged persons were entitled to respond. The CIJs were not bound by the CPs' final submissions or charged persons' responses.

- **Closing Order**

Under IR 67, the CIJs were then required to issue (a) **closing order(s)** with respect to all facts of which they were seised by the CPs. A closing order either



indicts a charged person and sends him or her to trial where there is sufficient evidence, or dismisses the case. It may send the case to trial for certain acts or against certain persons, and dismiss the case for others. Whilst it was judicially determined that an indictment could not be issued with respect to facts that had not been charged under IR 55(4), this did not remove the CIJs' obligation to reach findings on every fact in the CPs' introductory and supplementary submissions.

An indictment was required to set out the identity of the accused, a description of the material facts and their legal characterisation by the CIJs, including the relevant criminal provisions and the nature of the accused's criminal responsibility (IR 67(2)). The case had to be dismissed where the acts in question were not crimes within the jurisdiction of the ECCC, the perpetrators had not been identified or there was insufficient evidence of the charges against the charge person(s) (IR 67(3)). Under IR 79(1), an indictment issued by the CIJ(s) (or the PTC after appeals) automatically seised the TC.

- **Pre-Trial Appeals to the PTC**

Throughout the investigation and upon issuance of (a) closing order(s), all parties could raise appeals to the PTC against decisions and orders of the CIJs, including closing orders, but their respective rights to do so varied. The CPs could appeal closing orders and all other decisions of the CIJs (IR 74(2)). The charged person or accused could only appeal the orders and decisions listed at IR 74(3), which included those "confirming the jurisdiction of the ECCC", relating to provisional detention and refusing requests for investigative action. The CivPs could appeal the decisions and orders in IR 74(4), which included orders declaring a civil party application inadmissible, and dismissal orders where the CPs also appealed. The PTC adopted a liberal interpretation of these rules in light of IR 21, to ensure that all parties' fundamental fair trial rights were protected.

In addition, where at any time during the judicial investigation, the parties or CIJs considered that any part of the proceedings was null and void, they could initiate the IR 76 annulment procedure to bring the matter before the PTC.

Trial Phase

Under IR 79(1), the TC was seised by an indictment from the CIJ(s) or the PTC. Under IR 89 *ter*, where the interests of justice so required, the TC could sever the proceedings into separate trials dealing with part of the indictment, as it did in Case 002. The CPs were required to prove the accused's guilt beyond reasonable doubt (IR 87(1)) based on the evidence before the TC. All evidence the TC determined was conducive to finding the truth was admissible unless prohibited by IRs.

With limited exceptions, all hearings were conducted in public (IR 79(6)) in the presence of the accused and his counsel unless the accused's absence was permitted by the TC (IR 81). Periodically through the trials, the TC scheduled trial management meetings to confer with the parties in order to ensure the trial was being conducted fairly and expeditiously (IR 79(7)).

The trials began with an initial hearing (IR 80 *bis*), where the TC considered preliminary issues, such as the parties' IR 89 preliminary objections and their witness and expert lists. The Court then moved to the substantive hearing, at the commencement of which the Greffier read the counts against the accused (IR 89 *bis* (1)) and thereafter the parties could make their opening statements. The accused was then questioned, after the President informed him or her of their rights.

The TC generally broke the trials down into segments, hearing evidence about a particular crime site, event, or the acts of the accused together. During the hearings, the TC called witnesses, experts and CivPs, who were examined by the Chamber, CPs, CPLCLs, and Defence Counsel, to ascertain the truth about the facts set out in the indictment. Under IR 29, the TC could order protective measures, such as use of a pseudonym, voice distortion,

or conducting a hearing *in camera*, where the interests of a witness's, CivP's or their family's security warranted. The TC also dedicated time to document hearings, where the TC considered documentary and/or audio-visual evidence presented by the parties, as well as to hearing victim impact statements from selected CivPs. The TC could admit additional documentary evidence it found conducive to finding the truth on its own initiative.

After examining all the evidence, the TC invited closing briefs and closing statements from the parties, final remarks from the accused personally (IR 94), and the CPLCL's final claim for reparations, before retiring for confidential deliberations (IR 96).

The TC then issued a written **trial judgment** in respect of all the counts in the indictment (IRs 98, 101), determining whether the evidence proved the accused's guilt. Conviction required a supermajority of four out of the five TC judges (IR 98(4)). If the accused was found guilty, the TC also decided on the sentence (IR 98(5)) and could award collective reparations to victims (IR 101(5)). The judgment was announced during a public hearing (IR 102). In Case 002/02, the written judgment was issued some time after the public pronouncement.

During the trial, parties could raise appeals under IRs 104 and 105 on a narrow range of issues that would have an immediate impact on the trial proceedings, including decisions having the effect of terminating proceedings, and those relating to provisional detention, protective measures and interference with the administration of justice. Other decisions could be appealed only at the same time as an appeal against the judgment. Generally, an immediate appeal did not stay the proceedings before the TC.

Appeal Phase

The CPs, the Defence, and CivPs could appeal a trial judgment or decision to the SCC. The CivPs' right of appeal was, however, more limited. Represented by CPLCLs, they could appeal the TC's decision on reparations, and could appeal the verdict only if the CPs appealed. CivPs were not permitted to appeal the sentence (IR 105(c)).

The party appealing had to allege an error of law which invalidated the judgment or decision in whole or in part, an error of fact which had occasioned an actual miscarriage of justice, or a discernible error by the TC in the exercise of its discretion which resulted in prejudice to the appellant (IR 104). A procedural error made by the TC would only overturn the judgment where it resulted in a "grossly unfair outcome in judicial proceedings".

As part of the appeals process, the SCC judges could call or admit new evidence to determine an issue, including calling new witnesses (IR 104(1)). In addition to receiving written appeal briefs and responses from the parties, the SCC conducted a public appeal hearing under IR 109, where the parties presented their submissions and the accused had an opportunity to address the SCC.

Following deliberations, the SCC judges issued an **appeal judgment** under IR 111. A decision required a supermajority of five out of the seven SCC judges, and the appeal judgment is final. A convicted person, or after his death relatives or another designated individual, may request revision of a final judgment only in certain very limited circumstances set out in IR 112. During the residual phase, only the convicted person during his lifetime and the CPs have the right to apply for revision (Addendum, article 2(3)).

- **Enforcement of Sentences**

Unlike the ICTY, ICTR and SCSL, under IR 113, once the Chambers have passed a final sentence of imprisonment, it is the CPs, not OoA, in cooperation with the Cambodian authorities, who are responsible for its enforcement. ECCC convicts were transferred from the ECCC detention facility to serve their sentences in a national prison facility that provides conditions of confinement consistent with international standards for the treatment of prisoners.

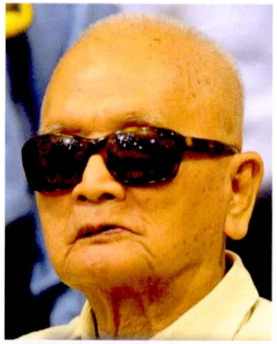
PART II: CASES

Convicted, Accused, Charged Persons and Suspects

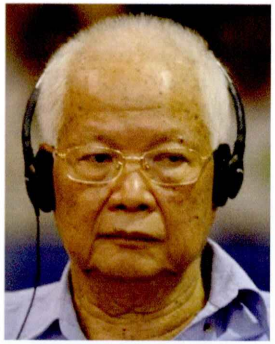
Case 001

Kaing Guek Eav
alias Duch

Case 002



Nuon Chea
alias Brother No. 2



Khieu Samphan
alias Hem

Ieng Sary
alias Van

Ieng Thirith
alias Phea

Case 003

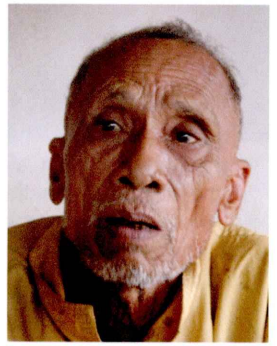
Meas Muth
alias Khe Muth

Sou Met
alias Ta Met

Case 004

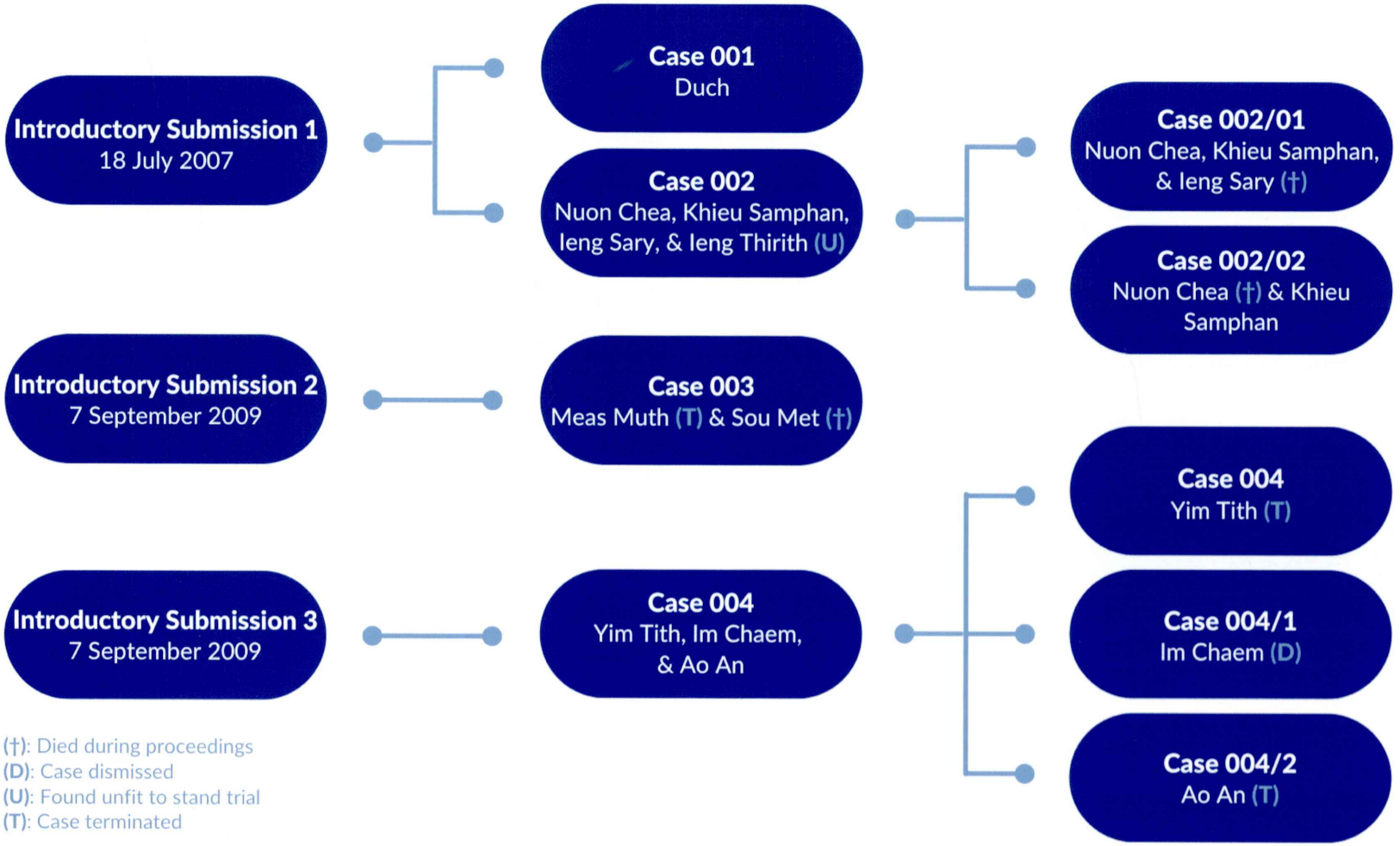
Yim Tith
alias Ta Tith

Im Chaem
alias Yeay Chaem



Ao An
alias Ta An

Introductory Submissions



(†): Died during proceedings
(D): Case dismissed
(U): Found unfit to stand trial
(T): Case terminated

Case 001

Kaing Guek Eav *alias* Duch

Investigation: The CPs opened a Preliminary Investigation on 10 July 2006. They filed an Introductory Submission on 18 July 2007, requesting the CIJs to open a judicial investigation into crimes for which Duch, Nuon Chea, Khieu Samphan, Ieng Sary, and Ieng Thirith were allegedly responsible. On 30 July 2007, the CIJs issued an arrest warrant for Duch who was then transferred to the ECCC Detention Centre. To expedite his case, the CIJs ordered the severance of the judicial investigation on 19 September 2007, creating Case 001 regarding Duch's alleged criminal responsibility for crimes arising out of the operations in **S-21 SC** (also known as Tuol Sleng), including the **Choeung Ek ES** and the **Prey Sar (S-24)** reeducation camp.

On 8 August 2008, the CIJs issued a Closing Order indicting Duch and sending him for trial for CAH and Grave Breaches. Duch was not charged as a senior leader of the DK, but as one of those most responsible for the crimes committed between 1975 and 1979, due to his effective hierarchical authority and his position as Deputy Chairman, and then Chairman, of S-21 SC. The Indictment alleged that Duch was responsible for the systematic imprisonment, torture, and killing of thousands of prisoners, including men, women, and children, many of whom were CPK cadres. Detainees were sent from throughout the country, from every zone, autonomous sector, RAK division, and ministry, as well as from DK's territorial waters. A large number of foreigners were also imprisoned in S-21, including Vietnamese, Thais, Americans, Britons, and Australians.

444 decisions	**278** party filings
88 TC & SCC hearing days	**90** civil parties
55 in-court testimonies	**~1,000** admitted evidence [*]
36,493 court attendees	

Only the CPs appealed the Indictment, on 5 September 2008, requesting that Duch also be indicted for i) homicide and torture under Cambodia's 1956 Penal Code ("domestic crimes") and ii) JCE as a mode of responsibility. On 5 December 2008, the PTC partially granted the CPs' first ground of appeal and denied the second ground, amending and confirming the Indictment and sending Duch to trial for CAH (murder, extermination, enslavement, imprisonment, torture, rape, persecution on political grounds, and OIA), Grave Breaches (wilful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian of the rights of fair and regular trial, and unlawful confinement of a civilian), and premeditated murder and torture as domestic crimes.

Trial: The trial commenced on 17 February 2009 with an initial hearing. Evidential hearings ran from 30 March to 17 September 2009, after 72 days of trial. The TC heard 55 individuals: 24 witnesses (17 fact and 7 character), 9 experts, and 22 CivPs, and admitted approximately 1,000 pieces of evidence.

[*] Evidence from the case file subjected to examination at trial and upon which the TC reached its decisions. This is applicable to Case 001 and Case 002.

10 July 2006
Preliminary Investigation opens

18 July 2007
Judicial Investigation opens

5 December 2008
Indictment confirmed

17 February 2009
Trial commences

26 July 2010
Trial Judgment issued

3 February 2012
Appeal Judgment issued

All Parties submitted closing briefs on 10 and 11 November 2009.

Closing statements were presented from 23 to 27 November 2009. On 25 November, Duch acknowledged his "moral and legal" responsibility for the crimes committed at S-21 SC, but requested the Judges to acquit him on all charges. In the alternative, the Defence requested the TJ to consider superior orders and duress in mitigation of sentence.

The TC issued its TJ on 26 July 2010. It found that for more than three years, Duch managed and refined a system at S-21 that resulted in no less than 12,272 deaths, either from execution or the conditions there. The majority of prisoners were also systematically tortured. The Judges found that Duch was an intelligent and educated man, whose acceptance of appointment as Deputy Chairman and then Chairman of S-21 reflected his sense of duty to the CPK, and that he was fully aware of the nature and the extreme gravity of his crimes at the time. Consequently, Duch was found guilty of all the charged CAH (subsumed under persecution on political grounds, with rape being characterised as torture) and Grave Breaches. Noting the shocking and heinous nature of his crimes, but finding significant mitigating factors (co-operation with the Chamber, admission of responsibility, expressions of remorse (though undermined by his request for acquittal during closing statements), the coercive DK environment and his potential for rehabilitation), the TC sentenced him to 35 years' imprisonment. In response to the CPs' applications prior to trial, the TC confirmed that JCE was a live issue in Case 001 despite its exclusion from the Indictment. In the TJ, it held that JCE I and II (its basic and systematic forms) were applicable at the ECCC and convicted Duch for the crimes as a result of his participation in a JCE.

The TC found 66 CivPs suffered harm attributable to Duch's crimes. Of the CivPs' reparation claims, the TC publicised all Duch's statements of apology and acknowledgements of responsibility on the ECCC website and listed Civil Parties and their lost relatives in the TJ. It rejected claims that either imposed obligations on third parties, i.e. i) monetary awards or the establishment of a trust fund for victims, ii) a state apology and the establishment of a national commemoration day, and iii) access to free medical care and educational measures, or lacked specificity, i.e. i) the production of documentaries and the dissemination in the broadcast media of portions of the TJ, ii) the construction of memorials, and iii) the preservation of archives, sites, and artistic pieces.

The TC failed to reach a supermajority decision on the ECCC's right to prosecute domestic crimes, so did not determine Duch's guilt on those charges. The IJs found no such right existed because the 10-year statute of limitations under the 1956 Penal Code expired before its extension in 2001 by article 3 of the ECCC Law, violating the principle of retroactivity. To the contrary, the NJs found that the applicable statute of limitations had been suspended until 1993, as the Cambodian judicial system was incapacitated by the DK regime and ensuing civil war.

Duch during the Khmer Rouge regime

Appeal: On 13 October 2010, the CPs appealed the TJ on three grounds, alleging that the TC erred in i) imposing a manifestly inadequate sentence, ii) failing to convict Duch for all the crimes for which he was found responsible when it characterised rape as torture and subsumed all the CAH under persecution on political grounds, and iii) failing to convict Duch for the enslavement of all the S-21 detainees. On 18 November 2010, Duch appealed, claiming that the TC erred i) in finding that he fell within the ECCC's perso-

nal jurisdiction, and ii) in determining his sentence. Several CivP groups appealed the TC's rejection of some CivP applications and reparations projects.

The appeal hearing was held from 28 to 30 March 2011, and the AJ was issued on 3 February 2012. The SCC dismissed Duch's Appeal in its entirety, as well as the CPs' third ground. For the CPs' remaining grounds, the SCC added separate CAH convictions for extermination (encompassing murder), enslavement, imprisonment, torture, and OIA. The SCC did not recognise that rape existed as a separate CAH in 1975 and confirmed its characterisation as torture. Finally, Duch's 35-year sentence was replaced with life imprisonment. The SCC also admitted 10 additional CivPs. It declined to implement any further reparations projects.

On 6 June 2013, Duch was transferred to Kandal Prison to continue serving his sentence. He died in the Khmer-Soviet Friendship Hospital on 2 September 2020.

S-21 Survivors Chum Mey and Bou Meng hold up the Duch Appeal Judgment
© ECCC website

Unique Aspects

Illegal Detention Outside the ECCC: The SCC found that Duch was not entitled to a reduced sentence for his illegal detention by the Cambodian Military Court from 1999 to 2007 because the infringement was not attributable to the ECCC. However, he was credited for the time detained there.

Personal Jurisdiction: After the TC rejected Duch's assertion that he did not fall within the ECCC's personal jurisdiction, the SCC confirmed that the only jurisdictional question is whether an accused was a Khmer Rouge official. Whether they were "senior" and/or "most responsible" within the meaning of the ECCC legal framework is exclusively a policy decision within the sole discretion of the CPs and CIJs, to concentrate the ECCC's scarce resources on the most serious cases.

Superior Orders and Duress: The TC rejected Duch's claims that his criminal responsibility was negated, or alternatively his sentence should be reduced, because he had acted under superior orders and duress. It found that article 29(4) new of the ECCC Law precluded reliance on superior orders, and that duress could not be invoked when the perceived threat resulted from the implementation of a policy of terror in which Duch willingly and actively participated. The SCC upheld these findings.

Case 002

Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith

Case 002 figures

1,535 decisions

7,425 party filings

Investigation: Severance of the case in the July 2007 Introductory Submission created Case 002 against Nuon Chea, Khieu Samphan, Ieng Thirith and Ieng Sary. The CIJs issued an arrest warrant for Nuon Chea on 17 September 2007; he attended an initial appearance on 19 September and was provisionally detained. After their arrests and initial appearances on 12 November 2007, Ieng Sary and Ieng Thirith were also placed in provisional detention. Khieu Samphan's arrest was ordered on 14 November 2007; he was provisionally detained five days later.

Between 26 March 2008 and 5 November 2009, the CPs filed five supplementary submissions to expand and clarify the scope of the investigation, including adding allegations of sexual and gender-based violence and genocide of the Cham.

On 15 September 2010, the CIJs issued a Closing Order against all four detainees. The CIJs found sufficient evidence that they were responsible, through participation in a JCE, for i) CAH, ii) genocide of the Vietnamese and the Cham, iii) Grave Breaches and iv) violations of the 1956 Penal Code ("domestic crimes") in connection with these crime sites and events:

- 11 security centres: in *Phnom Penh*: **S-21 SC**; *Sector 25 (SWZ)*: **Sang SC**; *Sector 13 (SWZ)*: **Kraing Ta Chan SC**; *Sector 37 (WZ)*: **Koh Kyang SC**; *Sector 31 (WZ)*: **Prey Damrei Srot SC**; *Sector 3 (SWZ)*: **Wat Kirirum SC**; *Sector 106 (NZ)*: **North Zone SC**; *Sector 102 (formerly NEZ)*: **Au Kanseng SC**; *Sector 105 (formerly NEZ)*: **Phnom Kraol SC**; *Sector 23 (EZ)*: **Wat Tlork SC**; *Sector 505 (formerly NEZ)*: **Kok Kduoch SC**;
- 4 execution sites: in *Sector 31 (WZ)*: **Prey Trapeang Ampil ES**, **Prey Trapeang Pring ES**; *Sector 7 (NWZ)*: **Tuol Po Chrey ES**; *Sector 20 (EZ)*: **Steung Tauch ES**;
- several worksites and cooperatives: in *Phnom Penh*: **Prey Sar WS (S-24)**; *Sector 13 (SWZ)*: **Tram Kok Cooperatives**; *Sector 5 (NWZ)*: **Trapeang Thma Dam WS**; *Sectors 42 and 43 (CZ)*: **1st January Dam WS**; *Sector 35 (SWZ)*: **Srae Ambel WS**; *Sector 31 (WZ)*: **Kampong Chhnang Airport Construction Site**;
- treatment of targeted groups: **Buddhists**, **Cham**, **Vietnamese**, and **former officials of the Khmer Republic** including civil servants and former military personnel and their families;
- population movements: **Population Movement (Phase 1)** (from Phnom Penh in April 1975); **Population Movement (Phase 2)** (from the CZ (Old North Zone), SWZ, WZ and EZ between September 1975

10 July 2006
Preliminary Investigation opens

18 July 2007
Judicial Investigation opens

13 January 2011
Indictment confirmed

21 November 2011
Case 002/01
Trial commences

7 August 2014
Case 002/01
Trial Judgment issued

and 1977); **Population Movement (Phase 3)** (from the EZ in late 1977 and throughout 1978), and

- **forced marriages** and **forced consummations**: nationwide.

The CO alleged that these crimes were committed pursuant to a common criminal purpose (JCE) that commenced before 17 April 1975 and continued until at least 6 January 1979. It was shared by members of the CPK Standing Committee - including Nuon Chea and Ieng Sary (Deputy Prime Minister for Foreign Affairs), the Central Committee - including Khieu Samphan, heads of CPK ministries - including Ieng Thirith (Minister of Social Affairs), zone and autonomous sector secretaries, and Party Centre military division secretaries. The participants intended to implement rapid socialist revolution through a "great leap forward" and to defend the Party against internal and external enemies, by whatever means necessary. To achieve this, they designed and implemented five policies, which increased in scale and intensity throughout the regime and created a system Cambodians described as a "prison without walls":

1. Repeated population movement from towns and cities to rural areas, and between rural areas;
2. Establishment and operation of cooperatives and worksites;
3. Reeducation of "bad elements" and killing of "enemies" both inside and outside Party ranks;
4. Targeting of specific groups; and
5. Regulation of marriage.

The CIJs admitted 2,123 CivPs, but 94 appeals were filed on behalf of 1,747 rejected applicants. In June 2011, the PTC, by supermajority, admitted a further 1,728 CivPs, finding the CIJs should have recognised all victims of crimes committed pursuant to the five policies nationwide. Judge Marchi-Uhel dissented, admitting only those who established injury as a *direct* consequence of the indictment crimes. She also extended the presumption of psychological harm to witnesses of all crimes, not only those that are "exceedingly violent and shocking in nature". In July 2011, the PTC reconsidered some CivP applications and, by majority, granted 12 more applications.

On 13 January 2011, the PTC confirmed the CO in its Decisions on appeals by Ieng Thirith and Nuon Chea, Khieu Samphan, and Ieng Sary, thereby seising the TC. The written reasons followed on 21 January 2011 (Khieu Samphan), 15 February 2011 (Ieng Thirith, Nuon Chea) and 11 April 2011 (Ieng Sary). While predominantly upholding the Indictment, the PTC made two significant amendments: i) requiring an armed conflict nexus for CAH, and ii) striking out rape as a standalone CAH and recharacterising it as OIA (sexual violence).

Trial: In response to Preliminary Objections from all four Accused and the CPs, the TC – for different reasons than in Case 001 - decided it was improperly seised of domestic crimes. The TC also removed the armed conflict nexus requirement for CAH, confirmed that JCE III was not customary international law by 1975, and decided there is no statute of limitations for prosecuting Grave Breaches. It rejected Ieng Sary's contention that his ECCC prosecution violated the *ne bis in idem* principle and the terms of his 1996 Royal Pardon and Amnesty.

Case 002/01

Due to the extensive Indictment, on 22 September 2011, the TC decided, pursuant to IR 89*ter*, to sever Case 002 into smaller trials, creating Case 002/01 comprising **Population Movement Phases 1 and 2**. Though the CPs' first request was unsuccessful, in October 2012, the TC agreed to expand the scope to include executions of former Khmer Republic officials at **Tuol Po Chrey ES** after the KR takeover in April 1975. In February 2013, the SCC annulled the first severance order and recommended the establishment of a second trial panel. In response, in April 2013, the TC again severed Case 002, and again included **Population Movements Phases 1 and 2** and **Tuol Po Chrey ES** in Case 002/01. Further appeals by the CPs and Nuon Chea were unsuccessful and no second panel was ever convened.

On 17 November 2011, a few days before the Case 002/01 trial began, Ieng Thirith was found unfit to stand trial due a progressive, dementing illness thought to be Alzheimer's disease. The TC Judges ordered a stay of proceedings and unconditional release but the SCC set this aside, directing the TC to impose additional treatment in consultation with medical experts. After the TC simply reaffirmed its previous conclusion, in September 2012, the SCC placed conditions on Ieng Thirith's release and she left ECCC detention into the custody of a guardian appointed by the Phnom Penh municipal court. In December 2012, the SCC imposed ECCC judicial supervision, including medical evaluation every 6 months. Ieng Thirith died on 22 August 2015.

The trial of the remaining three Accused commenced on 21 November 2011, with opening statements; on 22 and 23 November, Nuon Chea, Ieng Sary and Khieu Samphan made their own statements. The TC heard 92 individuals: 58 witnesses (53 fact, 5 character), 3 experts, and 31 CivPs. The TC admitted 1,124 statements and transcripts of witnesses and CivPs who did not appear. Nuon Chea answered questions from Judges and Parties, and made several statements about his CPK roles and functions. After answering biographical questions and commenting on certain Indictment paragraphs, Khieu Samphan largely remained silent, but did answer some CivPs' questions. Ieng Sary spoke to confirm biographical details.

When Ieng Sary died on 14 March 2013, proceedings against him terminated.

The trial concluded on 23 July 2013, after 214 hearing days. The Parties submitted their closing briefs in September 2013, and the closing statements took place from 16 to 31 October 2013. On the last day, Khieu Samphan and Nuon Chea gave their final statements.

Case 002/01 figures

5,824 admitted evidence	**3,867** civil parties
244 TC & SCC hearing days	**95** in-court testimonies
117,222 court attendees	

The TJ was pronounced on 7 August 2014, finding Nuon Chea and Khieu Samphan guilty, mainly due to their participation in a JCE, of the CAH of extermination, political persecution of New People and former Khmer Republic officials and OIA (forced transfer, attacks against human dignity, and enforced disappearances). It found that i) at a minimum, between 2,330,000 and 2,430,000 people were victims of crimes committed during **Population Movements Phases 1 and 2**, which were conducted in "severe, unrelenting and inhumane" conditions and accompanied by ill-treatment of New People and Khmer Republic officials, and ii) a minimum of 250 former Khmer Republic soldiers and civilian officials were murdered at **Tuol Po Chrey ES** on 25 or 26 April 1975, following transfer from Pursat under the pretence of reeducation and integration into the KR army. The TC found a pattern of conduct existing before 17 April 1975, whereby the KR 'liberated' Cambodian towns, and then arrested, executed, disappeared and otherwise ill-treated Khmer Republic officials.

Nuon Chea: The TC found that Nuon Chea alias "Brother Number Two" was one of the CPK's founding fathers. He had served as **CPK Deputy Secretary** since 1960 and was a **full rights member of the CPK Central and Standing Committees**, attending all Standing Committee meetings for which records survive. He held various formal roles in the DK government and was heavily involved in its administration. From 9 October 1975, he was responsible for "**Party Affairs, Social Action, Culture, Propaganda and Education**", educating peasants and CPK members, including in anger and vigilance against enemies. He also controlled propaganda, authoring the CPK magazines *Revolutionary Flag* and *Revolutionary Youth*. From 30 March 1976, he was **Chairman of the People's Representative Assembly**, which met rarely and did not pass

any laws. From September 1976 to September 1977, Nuon Chea was **Acting Prime Minister** during Pol Pot's absence on medical grounds.

The TC held that, sharing with Pol Pot the ultimate decision-making power of the Party, Nuon Chea played a key role in formulating and controlling the JCE. He was the main policymaker with oversight of all Party activities extending well beyond his formal responsibilities. He initiated and approved the Party line based on the Marxist-Leninist notion of communist revolution through armed struggle, relying on peasants to impose a dictatorship of the proletariat. He created and implemented educational, economic, military, agricultural and security policies, including the discipline and purging of cadres, stratification of the population into "classes" according to their alleged threat, and strict control of information under the principle of secrecy.

Nuon Chea was a key Party Centre member to whom civilian and military CPK cadres reported and from whom they received instructions. Although the TC found Nuon Chea was not in the Military Committee of the Central Committee, he was extensively involved in military matters, creating DK military policy and ensuring its implementation, especially in the war against Vietnam. He systematically procured arms, travelling to China and North Korea at least once.

The People's Revolutionary Tribunal in Phnom Penh in 1979 © ECCC website

With regard to the **Population Movement Phase 1**, the TC relied on Nuon Chea's admission that he participated in the decision to evacuate Phnom Penh, attending meetings in 1974 and 1975 to discuss the 'liberation' and evacuation of the city and later preventing its citizens from returning. He witnessed the people leaving Phnom Penh in difficult conditions and saw dead bodies in the city's houses. Regarding **Tuol Po Chrey ES**, Nuon Chea promoted the consistent targeting of Khmer Republic officials upon the 'liberation' of towns and cities. Similarly, for **Population Movement Phase 2**, he approved of and advocated movements between rural areas as well as the dire living conditions throughout the country and hatred against New People.

Khieu Samphan: The TC found that, after a career in the Cambodian National Assembly, Khieu Samphan fled Phnom Penh in 1967 when King Norodom Sihanouk publicly accused him of fomenting a peasant uprising in Samlaut, Battambang Province. He took refuge in Takeo Province under Standing Committee member Ta Mok's protection and formally joined the CPK in 1969, becoming a **candidate member of the Central Committee** in 1971. In March 1970, after Sihanouk was ousted in the Khmer Republic coup, he named Khieu Samphan **Deputy Chairman of the FUNK** political movement and **Deputy Prime Minister** and **Minister of National Defence** in the GRUNK government-in-exile. He became **Commander-in-Chief of CPNLAF**, though in reality, Pol Pot led the CPNLAF forces. Khieu Samphan has admitted he played an important, if not indispensable, role as liaison between the CPK and Sihanouk. Highly respected, he won support and legitimacy for the CPK between 1970 and 1975, preparing FUNK propaganda, conducting political training, and calling for violent struggle against the Khmer Republic.

After April 1975, Sihanouk's GRUNK formally took power; Khieu Samphan retained his government roles and continued to exercise diplomatic functions. In August 1975, Khieu Samphan travelled to China and North Korea to negotiate Sihanouk's return and, in early 1976, accompanied him on a tour of the Cambodian countryside, during which they visited worksites and witnessed thousands of forced labourers. In October 1975, Khieu Samphan was appointed one of two **members of Office 870**, which oversaw the implementation of Standing Committee decisions. In March 1976, he was appointed a **member of the Purchasing Committee** and **chairman of the Banking Com-**

mittee. In April 1976, when Sihanouk and the GRUNK resigned to make way for a government established by the DK Constitution, Khieu Samphan was appointed **President of the State Presidium** (head of state) and became a **full-rights member of the CPK Central Committee**. He was also a *de facto* **Standing Committee member** and actively participated in meetings, placing him in a small group of powerful and fully-informed Party Centre members. He led study sessions for other CPK/DK senior leaders, military commanders and Zone and Sector-level officials, which included identification and elimination of enemies, establishment of cooperatives and worksites, and completion of work quotas.

The TC found that, constitutionally, as head of state, Khieu Samphan had no formal executive power but continued to protect the regime through, *inter alia*, his performance of diplomatic and ceremonial functions, and by publicly lauding the CPK's policies and successes.

Regarding **Population Movement Phase 1** and **Tuol Po Chrey ES**, the TC held that Khieu Samphan lived and worked in close proximity to other senior leaders while they created and implemented policies to evacuate towns and cities, including Phnom Penh, and to target Khmer Republic officials. With regard to **Population Movement Phase 2**, the TC found that he knew that living conditions throughout the country were dire, characterised by food shortages and disease. Party leaders, including Khieu Samphan, nevertheless planned forced population movements without providing for the consent or health of the transferees.

The TC sentenced both Accused to life imprisonment, considering the gravity of the crimes to be illustrated by the vast number of victims, as well as the broad geographic and temporal scope of victimisation and the devastating, enduring impact on the victims and their relatives.

After the Case 002/01 trial, the consolidated group consisted of 3,867 CivPs. The TC granted 11 of the 13 CivP requests for collective and moral reparations, covering remembrance of victims, psychological assistance and education. These were i) national remembrance day (20 May); ii) a memorial in Phnom Penh to honour victims of forced evacuations; iii & iv) testimonial therapy and self-help groups; v & vi) exhibitions and education projects; vii) inclusion of forced population movement and the Tuol Po Chrey executions in the Cambodian school curriculum; viii) construction of a peace learning centre; ix) a booklet on facts adjudicated in Case 002/01 and CivP participation; and x & xi) full and summary versions of the Case 002/01 verdict.

Appeal: In November 2014, the CPs appealed the TC's decision to exclude JCE III as a mode of responsibility. Nuon Chea and Khieu Samphan filed their appeal briefs in December 2014, listing 223 and 148 grounds respectively, claiming that errors of fact and law should lead to their acquittal. In January 2015, Nuon Chea and Khieu Samphan responded to the CPs' appeal. The CPs filed their response to the Accused's appeals in April 2015, and the CPLCLs filed theirs on 25 May. At Nuon Chea's request, the SCC decided to call three witnesses to testify in July 2015.

The appeal hearing opened on 17 November 2015. However, a lack of legal representation for Nuon Chea meant it was postponed until February 2016. The Chamber imposed sanctions against Nuon Chea's national Co-Lawyer for misconduct and instructed DSS to appoint standby counsel.

The SCC Judges rendered their AJ on 23 November 2016 upholding most convictions but overturning those for extermination as a CAH during **Population Movement Phases 1 and 2** and persecution on political grounds (New People) during **Population Movement Phase 2**. The SCC reversed all the **Tuol Po Chrey ES** convictions, finding that no policy targeting Khmer Republic officials could be established by April 1975. The SCC found the CPs' appeal inadmissible but, as explained in the *Jurisprudence* section, held separately that JCE III was not recognised in 1975. The SCC confirmed the life sentences.

Case 002/02

On 25 November 2013, the SCC ordered that, to ensure the charges in Cases 002/01 and 002/02 would be reasonably representative of the Case 002 CO, Case 002/02 must comprise at least the S-21 SC, a worksite, a cooperative and genocide. On 4 April 2014, the TC ordered that Case 002/02 would comprise: **S-21 SC**; **1st January Dam WS**; **Tram Kak Cooperatives**; genocide (**Vietnamese** and **Cham** peoples); **Kraing Ta Chan SC**; **Kampong Chhnang Airport Construction Site**; **Au Kanseng SC**; **Phnom Kraol SC**; **Trapeang Thma Dam WS**; and **forced marriage** and **rape** within forced marriage nationwide. The TC clarified that the evidence admitted in Case 002/01 was part of Case 002/02, but that Parties would have the opportunity to test and challenge it

afresh. Case 002/01 legal and factual findings did not bind the TC and would be established anew. In February 2017, the TC granted the CPs' request and terminated proceedings for all remaining facts not covered in Cases 002/01 or 002/02.

The Case 002/02 trial commenced on 17 October 2014, when Nuon Chea made a new opening statement. However, the Khieu Samphan Defence absented themselves for the remainder of 2014, necessitating an adjournment of proceedings and the appointment of standby counsel. Hearings on evidence commenced on 8 January 2015 and concluded on 11 January 2017 after 274 hearing days. 185 individuals testified, including 114 witnesses, 63 CivPs and 8 experts. In May 2017, Parties submitted closing briefs and the CPLCLs submitted their request for reparations; closing statements were heard in June 2017. Nuon Chea reserved his right to remain silent with limited exceptions, and only Khieu Samphan made a final statement.

The TC pronounced its verdict and sentence on 16 November 2018, providing an oral summary of its findings and the Disposition. Three days later, Khieu Samphan appealed, asking the SCC to annul the TC's verdict for not providing written reasons and to declare any future written judgment invalid. The SCC held the appeal inadmissible, finding no "compelling circumstances that would bar the Chamber from issuing a fully reasoned, final written judgement on the merits."

The 3883-page written Judgment in its Khmer version (2268 pages in English) was issued on 29 March 2019. Finding that the crimes falling within the scope of Case 002/02 formed part of consistent patterns of conduct carried out throughout Cambodia since well before 17 April 1975, the TC convicted both Accused, again mainly due to their participation in a JCE, of i) CAH (murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious, and racial grounds, and OIA through attacks against human dignity, enforced disappearances, forced transfer, forced marriage and rape of the female victims of forced marriage), ii) Grave Breaches (wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial, and unlawful confinement of a civilian), and iii) genocide of the Vietnamese ethnic, national and racial group. The TC additionally convicted Nuon Chea of genocide of the Cham ethnic and religious group under the doctrine of superior responsibility.

The TC found that all the alleged criminal policies existed and Nuon Chea and Khieu Samphan shared the common criminal purpose: the commission of widespread CAH, war crimes and genocide was the only reasonable expectation of a nationwide system of cooperatives, worksites, regulated marriages and security centres, cloaked in the propaganda of secrecy, vigilance and anger against enemies, and led by a new ruling class with very little formal education.

Case 002/02 figures

10,804 admitted evidence

3,865 civil parties

297 TC & SCC hearing days

185 in-court testimonies

85,064 court attendees

Nuon Chea: Making similar findings on Nuon Chea's roles and responsibilities (see above), the TC found that he was instrumental in developing the policy to establish and operate cooperatives, worksites and security centres. He visited the **1st January Dam WS** more than once, personally witnessing the workers' plight. Nuon Chea ordered and executed a large number of purges, including the major purges of the **NWZ**, **CZ** and **EZ**. He was personally involved in the oversight of **S-21 SC**, even before he became Duch's direct supervisor in August 1977, receiving confessions and ordering the interrogation of specific prisoners, as well as the exhumation and photographing of executed prisoners' bodies. The Standing Committee, including Nuon Chea, issued orders to kill prisoners elsewhere, including 100+ Jarai prisoners at **Au Kanseng SC**.

The TC found that Nuon Chea was instrumental in formulating and disseminating the policies to target the **Vietnamese**, **Buddhists**, **Khmer Republic officials** and **Cham**. For example, he ordered Duch to interrogate Vietnamese prisoners, record their confessions and broadcast them on the radio, which he then used in DK publications and propaganda. Whilst the TC was not satisfied that Nuon Chea knew that the killings of **Cham** were committed with the intent to destroy the group as such, he knew of their commission, yet failed to act.

The TC rejected Nuon Chea's arguments that the crimes were justified by a constant state of emergency fuelled by Vietnam's existential threat to DK's

national security and sovereignty through infiltration of CPK ranks and attempted *coups d'état* from 1976 to 1978. The TC analysed the alleged *coups* and found no reliable evidence they had taken place: the Defence's "incoherent" version of events relied heavily on unsound torture-tainted evidence and there was no indication that Vietnam supported internal factions in the EZ and NWZ. Even *had* the *coups* occurred, they could not have justified the imprisonment without due process, torture, and unlawful killing of alleged Vietnamese enemies and Cambodian traitors.

Khieu Samphan: After similar findings regarding his roles and responsibilities (see above), the TC again rejected Khieu Samphan's argument that he knew, saw and heard nothing and had not been part of high-level decision making. Before April 1975, criminal policies - including forced collectivisation, execution of political opponents, CPK purges and regulation of marriage - were planned and implemented in "liberated" areas and evident to him as a prominent CPK leader. Throughout DK, Khieu Samphan lived and worked with other senior leaders, attended Standing Committee meetings where crucial decisions were made, and travelled Cambodia witnessing the dire conditions. He received CPK circulars, policy documents and *Revolutionary Flag* magazines, where the implementation of the policies was discussed. He acknowledged witnessing the arrests of Central and Standing Committee members and publicly stated that the Party had defeated "Yuon agents", acknowledging that some were executed extrajudicially.

The TC found Khieu Samphan incited the CPK's policies and protected the regime from scrutiny, as discussed above. As a member of Office 870 and overseer of DK trade and commerce, he enabled the functioning of the DK administration to the detriment of its population: as workers suffered with mandatory rice requisitions and inadequate food, he ensured that cooperatives handed over communally harvested rice for export. In public statements, he singled the **Vietnamese** out for discriminatory treatment, urging the DK population to "hate the Yuons more and more each day" and calling for them to be "destroyed forever". He also incited the elimination of members of the **Khmer Republic** administration. He instructed all ministries to arrange **marriages** and promoted the policy to rapidly increase the population. The TC found that, although Khieu Samphan knew of crimes against the **Cham** as part of the policy to establish an atheistic and homogenous Khmer society, there was insufficient evidence he intended to destroy the group as such and acquitted him of their genocide.

The TC granted the 3,865 CivPs' consolidated requests for reparations in part. Projects aimed at guaranteeing non-repetition included i) KR history education through teacher and university lecturer training and app learning; ii) The Turtle Project, a cross media project, promoting historical awareness and civil courage; iii) a community media project: The Cham People and the Khmer Rouge; iv) Phka Sla Krom Angkar, a dance project documenting forced marriage; and v) Voices from Ethnic Minorities: promoting public awareness of the treatment of ethnic Vietnamese and Cham. Projects serving rehabilitation included improving health and mental wellbeing and reducing poverty and social exclusion of CivPs. Projects aimed at providing satisfaction included i) The Unheard Stories of Civil Parties, a book containing the accounts of 30 CivPs who did not give statements before the ECCC; ii) memory sketches of Kraing Ta Chan; and iii) access to the judicial records and CivP materials at the ECCC Legal Documentation Centre.

Given the gravity of the crimes, their scale and brutality, as well as the number and vulnerability of the victims, the TC sentenced Nuon Chea and Khieu Samphan to life imprisonment. The Judges merged the Case 002/01 and Case 002/02 sentences into a single life term.

Nuon Chea died shortly after, on 4 August 2019, and the SCC terminated proceedings against him later that month. The SCC confirmed this did not vacate the TJ; though his death prevented appellate review, the presumption of innocence did not equate to *post mortem* acquittal. CivP reparations were unaffected.

Appeal: The CPs appealed against the exclusion of the male victims of forced sexual intercourse from the conviction. Khieu Samphan's appeal ran to 256 grounds alleging errors of both fact and law, to which both the CPs and CPLCLs responded. After a delay due to Covid restrictions, the SCC scheduled the appeal hearings for 16 to 19 August 2021, which took place semi-virtually.

On 22 September 2022, the SCC pronounced its AJ, with the full written reasons following on 23 December 2022. The SCC upheld the TJ in its entirety with minor exceptions relating to the CAH of murder at **Phnom Kraol SC** and persecution of New People at the **1st January Dam WS**. As set out in

the *Jurisprudence* section, the SCC reversed Khieu Samphan's conviction for aiding and abetting the CAH of murder with *dolus eventualis* and entered a conviction for commission through a JCE. The SCC granted the CPs' Appeal, convicting Khieu Samphan of the CAH of OIA categorised as forced sexual intercourse with regard to male forced marriage victims. The SCC affirmed his life sentence.

At the CPs' instigation, Khieu Samphan was transferred to Kandal provincial prison on 30 January 2023 under conditions of detention appropriate for someone of his advanced age, limited mobility and state of health. He will be monitored by the ICRC.

Unique Aspects

Ne bis in idem: The OCIJ, PTC and TC all held that the ECCC's jurisdiction to prosecute Ieng Sary was not barred by the *ne bis in idem* principle after his trial and conviction *in absentia* for genocide by the People's Revolutionary Tribunal (PRT) in August 1979. They concluded there exists a sufficiently uniform international procedural rule that the principle is inapplicable where fundamental defects exist in national proceedings. The 1979 trial was not conducted by an impartial and independent tribunal established by law and applying due process: biased judges predetermined guilt and defence counsel acted against the accused's interests.

Royal Pardon and Amnesty: In September 1996, Sihanouk issued a Royal Decree pardoning Ieng Sary's death sentence and confiscation of property pronounced by the PRT in 1979 and granting him amnesty under a 1994 Law on the Outlawing of the Democratic Kampuchea Group. Under the ECCC Agreement and ECCC Law, its effect was left for judicial determination. The PTC and TC held that Ieng Sary's pardon was confined to the 1979 sentence and the amnesty from future prosecution was limited to the 1994 Law, which did not cover offences within the ECCC's jurisdiction. The TC also considered that interpreting the Decree as an amnesty for genocide, torture and Grave Breaches would be inconsistent with Cambodia's treaty obligations to prosecute those crimes, and its ICCPR obligations to provide effective remedy to victims. There is no indication the King intended to disrespect those international obligations.

Communication Restrictions in Detention: Having previously denied all contact between Ieng Sary and Ieng Thirith, in March 2008, the CIJs authorised weekly meetings between the married couple. On appeal, the PTC set aside that decision, finding it amounted to *de facto* segregation of charged persons and violated IR 21(2); CIJs can limit contact between detainees only as a necessary and proportional measure to protect the interests of the investigation, a test not met here, not least since the couple could have discussed the case for the preceding 30 years. Despite that decision, the CIJs refused the other detainees the right to communicate. On appeal by Nuon Chea, the PTC again set aside the order, finding the CIJs did not identify any evidence of a concrete risk the detainees would collude to exert pressure on witnesses or victims.

Disqualification Motions: Throughout Case 002, there were numerous motions for the disqualification of CIJs, and TC and SCC Judges on allegations of bias and interference with the administration of justice. All were dismissed, with panels finding presumptions that judges are both impartial and free from personal beliefs due to their oath of office and legal qualifications.

Case 004/1

Im Chaem

Preliminary Investigation: Case 004 arose out of the same preliminary investigation opened on 10 July 2006. However, the NCP and ICP disagreed on whether to forward a new introductory submission, naming Im Chaem, Ao An and Yim Tith as suspects, to the CIJs. On 20 November 2008, the ICP referred the disagreement to the PTC, who in the absence of a supermajority blocking execution of the ICP's decision to issue the introductory submission, settled the matter on 18 August 2009 using the default decision that the "prosecution shall proceed".

Judicial Investigation: The Acting ICP thus filed an Introductory Submission on 7 September 2009, opening a judicial investigation into crimes in the SWZ, NWZ and Central (old North) Zone for which Im Chaem, Ao An and Yim Tith were allegedly responsible. All three suspects were alleged to be SWZ cadres and trusted aides of SWZ Secretary and CPK Standing Committee member Ta Mok who, in 1977 and 1978, led other SWZ cadres to the NWZ and CZ to purge and replace existing cadres. On 18 July 2011, 24 April 2014, 4 August 2015, and 20 November 2015, the ICP filed supplementary submissions to expand and clarify the scope of the Case 004 investigation, including adding allegations of sexual and gender-based violence and genocide of the Khmer Krom in the NWZ and SWZ.

On 24 February 2012, the Reserve ICIJ informed Im Chaem that she was a suspect in an ongoing ECCC investigation. On 29 July 2014, the ICIJ summonsed Im Chaem and her lawyers for an initial appearance on 8 August 2014 to charge her under IR 55(4). Im Chaem challenged the summons' validity because the ICIJ issued it alone, sought its annulment, and petitioned the PTC for a stay of its execution. The PTC unanimously confirmed the summons was valid; one CP or CIJ can act alone when a disagreement has been registered and the period for PTC referral has elapsed. Despite the decision, Im Chaem still refused to appear. The ICIJ issued an arrest warrant on 14 August 2014, but the Judicial Police failed to execute it.

~8,900 pieces of evidence	2 OCIJ & PTC hearing days
1,842 civil party applicants	0 civil parties admitted
1,340 WRIs	447 party filings
755 decisions	27 supermajority decisions of 34 PTC rulings

On 3 March 2015, without Im Chaem's arrest or voluntary appearance, the ICIJ decided to charge her *in absentia* with CAH and violations of the 1956 Penal Code ("domestic crimes") allegedly committed at two crime sites, **Phnom Trayoung SC** and **Spean Sreng Canal WS** during her tenure as Preah Net Preah District Secretary in Sector 5 (NWZ). The ICIJ notified her lawyers of the charges, including notice of her fair trial rights, and gave them access to the Case File. Im Chaem appealed the ICIJ's decision and on 1 March 2016, the PTC Judges issued their Considerations. As they failed to reach a supermajority, the ICIJ's decision stood i.e. remained in effect. Though these charges represented fewer crimes than alleged in the ICP's submissions, no further charges were ever brought against Im Chaem by the CIJs.

10 July 2006
Preliminary Investigation opens

7 September 2009
Judicial Investigation opens

22 February 2017
CIJs' Dismissal Order issued

28 June 2018
PTC's Considerations issued
Case dismissed

On 18 December 2015, the CIJs notified the parties of the conclusion of the judicial investigation against Im Chaem, and on 5 February 2016, the CIJs ordered the severance of her case from Case 004, **creating Case 004/1**. On 27 October 2016, the NCP filed her Final Submission requesting dismissal of the case for want of personal jurisdiction, while the ICP filed his Final Submission requesting the indictment of Im Chaem for CAH and Grave Breaches based on all the facts before the CIJs.

Closing Order: On 22 February 2017, the CIJs issued a joint Closing Order (Disposition) dismissing Case 004/1 because they found the ECCC had no personal jurisdiction over Im Chaem. As a result, the CIJs held that the 1842 existing CivP applicants in Case 004 had no claim against her.

On 10 July 2017, the CIJs published the Closing Order (Reasons). They found that the evidence established Im Chaem's responsibility for CAH and domestic crimes at the two sites originally charged under IR 55(4), **Phnom Trayoung SC** and **Spean Sreng Canal WS**. Despite their authority and obligation to charge and indict for all crimes established by the evidence, the CIJs conducted only a "brief overview" of other crime sites and events of which they had been seised by the ICP but which had not previously been charged under IR 55(4), establishing that CAH and domestic crimes had been committed there. These uncharged sites included, in Sector 5 (NWZ): a) *Preah Net Preah District*: i) the **Wat Preah Net Preah** complex and related sites; and ii) **Phum Chakrey SC** and **Prey Taruth ES**; b) *Sisophon District*: **Wat Chamkar Khnol SC** and **ESs**; and c) *Phnom Srok District*: **Trapeang Thma Dam WS**, and in Sector 13 (SWZ): *Koh Andet District*: **Wat Ang Srei Muny SC** and **Prey Sokhon ES**. Although the CIJs found that Im Chaem could not be indicted for these facts because she had not been previously charged, they did look at them for purposes of personal jurisdiction, but concluded that, even after considering both charged and uncharged crimes, Im Chaem still fell outside the ECCC's personal jurisdiction.

As to Im Chaem's roles, the CIJs found that, from 1970 or 1972 to around March 1977, in Sector 13 (SWZ), she was **Secretary of the Sector Women's Association**, but was neither Koh Andet District Secretary nor a Sector Committee member. They also found that, in mid-1977, pursuant to a plan shared with Ta Mok and other SWZ cadres, Im Chaem led the second wave of relocations of SWZ cadres to the NWZ, where they arrested and killed local cadres of all levels, enslaved thousands in worksites, and detained and killed people perceived as enemies. From her arrival in the NWZ until January 1979, she was **Preah Net Preah District Secretary**, running worksites and security centres, and ordering arrests and executions. Im Chaem became a **Sector 5 Committee member** in early-mid 1978.

The CIJs concluded the ECCC did not have personal jurisdiction over her because, *inter alia*: i) although she was a "rising star" in the DK hierarchy and a member of a zone-wide JCE, and her role leading cadres to the NWZ suggested she was a key player, her function in the NWZ was limited to district secretary, a DK rank shared by over a hundred others, with possible oversight of worksites in other Sector 5 districts; ii) while she later became a Sector 5 Committee member, she was not involved in the administration of the sector as a whole, and her prior official position on the Sector 13 Committee was not indicative of her position at the time of the NWZ purges, the main focus of the investigation; iii) her personal access to high-ranking CPK officials was inconsequential; and iv) set against victim numbers in DK as a whole, the numbers at the charged crime sites (including 2000 to 10,800 murders) were low and unclear; and figures for the uncharged sites (including 1500 to 8300 murders in the NWZ) were more blurred.

The Gallery during the PTC Hearing on 11 December 2017 © ECCC website

Closing Order Appeal: The ICP filed his appeal against the CO on 9 August 2017. His six grounds covered alleged errors in the CIJs' i) failure to consider all facts of which they were seised and its resultant impact on the personal jurisdiction assessment; ii) analysis and application of the legal elements of extermination and OIA through enforced disappearances; and iii) finding that, in the SWZ, Im Chaem was neither Koh Andet District Secretary nor a Sector 13 Committee member.

The PTC held two days of hearings on 11 and 12 December 2017 and rendered its Considerations on 28 June 2018. The Judges unanimously found, *inter alia*, various procedural errors in the CIJs' assessment of the reliability and probative value of evidence and undue delay in concluding the judicial investigation. Despite differing opinions on the merits of the CIJs' CO dismissing Case 004/1, as the PTC failed to reach a supermajority overturning it, they declared the CO would stand.

The NJs upheld the CIJs' CO, affirming that the ECCC had no personal jurisdiction over Im Chaem. To the contrary, the IJs confirmed that, whilst the CIJs correctly held that an individual cannot be indicted for uncharged crimes, they erred in failing to rule upon *all* facts of which they were seised and could have charged Im Chaem with additional crimes at any point until issuance of the CO. Moreover, they misstated the law on extermination and OIA through enforced disappearances and took an erroneously restrictive view of victim numbers. As a result, the CIJs failed to make proper legal determinations on all allegations of crimes committed in Sector 13 (SWZ) and Sector 5 (NWZ).

The IJs found sufficient evidence to establish Im Chaem's responsibility for crimes committed at multiple locations throughout Sector 5 and Sector 13 during the whole DK period, including a range of additional CAH at **Phnom Trayoung SC** and at all the uncharged sites the CIJs had "briefly reviewed" (listed above). In addition, in at least all of Sector 5, they found Im Chaem responsible for persecution of the **Vietnamese** and **Khmer Republic Officials** and for crimes against KR cadres and civilians during the **purge of the NWZ**, including victims sent to S-21. In their view, the victims overlooked by the CIJs ran into the many tens of thousands.

The IJs also found multiple errors in the CIJs' assessment of Im Chaem's DK roles. They considered her *de jure* and *de facto* roles and responsibilities clearly exceeded those of the average district secretary, calling her "vital" to the implementation of CPK policies and citing in particular her leading role in the NWZ purge. Contrary to the CIJs' findings, the IJs found that she had been **Koh Andet District Secretary** and a **Sector 13 Committee member** in the SWZ and her close relationship with Ta Mok and direct access to the upper echelons of *Angkar*, including Pol Pot, were indicative of her stature and unofficial powers and privileges.

Considering the true gravity of the crimes and full extent of Im Chaem's responsibility, the IJs found she fell within the ECCC's personal jurisdiction.

The PTC's Considerations concluded Case 004/1.

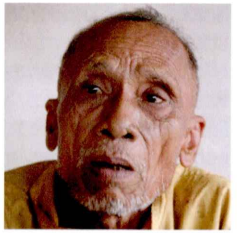
Unique Aspects

Cambodian national courts' jurisdiction over KR-era crimes: In their CO, the CIJs found the ECCC Law on personal jurisdiction has the effect of stripping ordinary Cambodian courts of jurisdiction over all KR-era crimes. The PTC disagreed, finding the ECCC cannot determine the activities of other Cambodian courts and nothing in the ECCC's applicable law precludes national jurisdiction over cases of which the ECCC is not seised. Ordinary Cambodian courts inherently have full jurisdiction over criminal justice matters.

"*In absentia* charging": When Im Chaem refused to appear for an IR 57 initial appearance despite the valid summons and arrest warrant, the ICIJ charged her "*in absentia*". On appeal, the PTC split. The NJs found the ICIJ was not entitled to charge Im Chaem without her physical presence at an initial appearance. The IJs clarified that Im Chaem was not, strictly speaking, charged *in absentia*: the ICIJ charged her under IR 55(4) - an *ex parte* decision based on clear and consistent evidence of criminal responsibility - and informed her of those charges through her lawyers. With reference to ECCC, Cambodian and international law, they found no error in the ICIJ's actions. He took all reasonable steps to secure Im Chaem's appearance and to inform her of the charges; Im Chaem's absence was of her own creation, and granting her Charged Person status enhanced protection of her fair trial rights.

Case 004/2

Ao An



Judicial Investigation: On 24 February 2012, the Reserve ICIJ informed Ao An that he was a suspect in the ongoing Case 004 investigation. On 27 March 2015, Ao An appeared in person at an initial appearance, where he was charged with CAH and violations of the 1956 Penal Code ("domestic crimes") allegedly committed from late 1976 in the CZ. As a charged person, he was granted access to the Case File. On 14 March 2016, Ao An was further charged with, *inter alia*, genocide of the Cham in the CZ.

On 16 December 2016, the CIJs notified the parties that the investigation against Ao An was concluded and severed the case, **creating Case File 004/2**. The ICIJ also reduced the scope of the investigation pursuant to IR *66bis* to focus on Sector 41 (CZ) where Ao An was Sector Secretary. The CIJs concluded the investigation a second time on 29 March 2017 after undertaking further investigative action in response to the parties' requests.

The NCP and ICP filed separate Final Submissions. On 18 August 2017, the NCP requested dismissal of Case 004/2 for want of personal jurisdiction over Ao An. On 21 August 2017, the ICP sought Ao An's indictment for genocide and CAH.

Closing Orders: On 18 September 2017, the CIJs informed the parties they considered separate and opposing COs permissible under ECCC law, and on 16 August 2018, they issued two conflicting COs. The NCIJ issued a Dismissal Order, finding the ECCC had no personal jurisdiction because Ao An participated in crimes in a manner that was "non-autonomous, inactive, non-creative, and indirect". The ICIJ issued an Indictment, committing Ao An to trial for genocide, CAH (murder, extermination, imprisonment, enslavement, torture, OIA and persecution on political and religious grounds) and domestic crimes. In establishing personal jurisdiction, he found that Ao An's position and conduct clearly marked him out as a major player in the DK structure and a willing and driven participant in the criminal implementation of its inhumane policies. In view of Ao An's defining role in orchestrating mass killings of the Cham in the CZ, the genocide charge alone conferred personal jurisdiction.

~10,100 pieces of evidence	4 OCIJ & PTC hearing days
1,920 civil party applicants	446 civil parties admitted by PTC IJS
1,462 WRIs	592 party filings
913 decisions	42 supermajority decisions of 55 PTC rulings

The ICIJ found that between late 1976 and February 1977, SWZ Secretary and CPK Standing Committee member Ta Mok ordered Ao An and a group of SWZ cadres to move to the CZ to purge and replace local cadres. Upon arrival, Ao An was appointed **Sector 41 Secretary** and thus became a **CZ Committee member**. From late 1977, he was **Deputy Secretary of the CZ**, likely serving as **Acting CZ Secretary** when Zone Secretary, Ke Pauk, was absent.

The ICIJ further found that in those roles and pursuant to a plan shared with

Ke Pauk and other senior CPK cadres, Ao An implemented the CPK's criminal policies in the CZ, particularly Sector 41 where he exercised complete civilian and military authority. He led the purge, established and operated security centres, execution sites and worksites, ordered arrests and executions of 'enemies' including the Cham and EZ evacuees, and implemented CPK policy on forced marriage and forced consummation, personally presiding over 33 couples' weddings. Exercising zone-level authority, Ao An attended meetings with senior CPK leaders including Pol Pot and Son Sen, supervised construction projects throughout the zone and played a key role in the transfer of Cham and EZ cadres and civilians to the CZ for killing.

The Indictment found Ao An responsible for: i) killing at least 17,115 **Cham** of Kampong Cham province in the CZ; ii) imprisoning thousands and killing at least 12,944 people at security centres and execution sites: **Met Sop SC**, **Tuol Beng SC**, **Wat Angkuonh Dei SC**, **Wat Au Trakuon SC**, **Wat Batheay SC**, **Wat Ta Meak SC**, **Wat Phnom Pros ES**, and **Kok Pring ES**; iii) enslaving thousands in inhumane conditions at **Anlong Chrey Dam WS**; and iv) **forced marriage** and **rapes** in Kampong Siem and Prey Chhor Districts.

Civil Party Applications: The ICIJ admitted 434 of the 1920 CivP applicants, while the NCIJ rejected them all. On appeal, the PTC issued Considerations on 30 June 2020. The NJs considered that all CivP applications should be rejected and the IJs found that 12 additional CivP applicants should have been admitted.

Closing Order Appeals: There followed several cross appeals against the two COs. On 14 December 2018, the NCP appealed the Indictment, challenging the ECCC's personal jurisdiction over Ao An and claiming that justice had already been served through Cases 001 and 002. On 19 December 2018, Ao An challenged the Indictment on several grounds concerning i) the legality of the CIJs' issuance of conflicting COs, ii) alleged errors of fact and law in the ICIJ's assessment of the gravity of the crimes and Ao An's roles and responsibility, and iii) alleged unfairness in the proceedings. On 20 December 2018, the ICP requested that the Dismissal Order be reversed for legal and factual errors he asserted undermined the NCIJ's exercise of discretion on personal jurisdiction, and that the case proceed to trial based on the Indictment.

Appeal hearings were held from 19 to 21 June 2019 and the PTC publicly issued its Considerations on 19 December 2019. It unanimously found the CIJs' simultaneous issuance of two conflicting COs violated the ECCC's legal framework and was illegal. Looking at the disagreement settlement mechanism in articles 5 and 7 of the ECCC Agreement and article 23 *new* of the ECCC Law, the PTC found it existed to avoid procedural stalemates where equal and independent CPs and CIJs disagree. The CIJs had no obligation to seise the PTC if they could agree on a course of action coherent with the "fundamental and determinative" default position in the ECCC legal framework that the "investigation shall proceed". However, where, as here, the difference was so irreconcilable that one CIJ wished to halt the implementation of the other's decision, that CIJ was *required* to bring the disagreement before the PTC for conclusive resolution, using the default position if the PTC could not reach a supermajority.

The PTC Judges during the Hearing on 19 June 2019 © ECCC Facebook

The PTC Judges then considered the validity of each CO. The NJs upheld the Dismissal Order and annulled the Indictment, based primarily on their conclusion that the ECCC Agreement and ECCC Law had limited personal jurisdiction to the five accused in Cases 001 and 002.

By contrast, the IJs upheld the Indictment and annulled the Dismissal Order. From a procedural perspective, they found the Indictment valid and Dismissal Order void: issuing the Indictment was consistent with the principle of continuation of proceedings reflected in the default position that "the investigation shall proceed", whereas proposing to issue a Dismissal Order was simply a recharacterisation of the NCIJ's disagreement with the issuance of Indictment, which he should have referred to the PTC. His failure to do so

rendered the Dismissal Order void. The IJs also found the Indictment valid in substance, dismissing both the NCP's appeal and every substantive ground of Ao An's appeal. Finding the TC was seised of the valid Indictment under IR 77(13)(b)[*], the IJs directed that the PTC Greffier forward the Considerations, Indictment and Case File 004/2 to the TC.

Subsequent litigation: A procedural stalemate ensued. The ICP began preparations for trial on the basis that, pursuant to IRs 77(13)(b) and 79(1) and in line with the default position, the Indictment seised the TC when the PTC failed to overturn it by a supermajority. In her view, transferring the case file was a purely administrative act that flowed from this legal position. By contrast, Ao An relied on the PTC's unanimous decision that the issuance of two COs was illegal to assert that Case 004/2 had been dismissed and the PTC IJs were not permitted to forward the case file to the TC. During the early months of 2020, the ICP and Ao An took these opposing positions to the PTC, TC and OoA, with the ICP requesting primarily that Case 004/2 proceed to trial and the case file be transferred to the TC, and Ao An requesting dismissal of the case.

The PTC NJs and IJs disagreed on whether to forward the Considerations and case file to the TC and sent conflicting instructions to OoA on 28 and 29 January 2020. These positions persisted. On 12 March 2020, the PTC IJs reconfirmed that i) the TC was already seised of Case 004/2 by operation of law, ii) they had sent valid administrative requests to OoA, and iii) both the OoA and TC must act accordingly. Four days later, the PTC President, one of the NJs, stated that no further administrative actions would be undertaken by the PTC. OoA refused to forward the case file.

Over the same period, the TC repeatedly confirmed that it was aware of the public PTC Considerations but refused to act without their "formal" notification and without transfer of the case file. On 3 April 2020, the TC issued a press release, reconfirming that it would not act. The IJs acknowledged the TC had inherent authority to address issues raised by the Case 004/2 parties. However, the NJs declared that "there will not be trial of Ao An now or in the future". On 9 April 2020, the documents the ICP had filed to the TC in hard copy were returned marked "Return to sender".

On 4 May 2020, the ICP filed an immediate appeal of the TC's effective termination of Case 004/2 to the SCC arguing, *inter alia*, that the TC i) failed to give effect to the default position by which the Indictment seised it on 19 December 2019; and ii) arbitrarily imposed additional administrative preconditions on its consideration of the case.

The SCC issued its Decision on 10 August 2020. Admitting the ICP's appeal to provide legal certainty and finality to Case 004/2, the SCC concluded the TC was never seised because the case file had not been transferred. It held that the PTC's finding that the simultaneous issuance of two COs was illegal rendered the COs themselves null and void, and in the absence of an enforceable indictment, the SCC terminated Case 004/2.

On 14 August 2020, the CIJs sealed and archived the case.

Unique Aspects

Defence participation in the judicial investigation: In Cases 003 and 004, the suspects were granted access to the case files only upon being formally charged by the ICIJ under IR 55(4). Before being charged, Ao An appealed the ICIJ's decision to withhold access and the PTC issued Considerations. The NJs ruled the appeal inadmissible, finding that Ao An was still only a suspect with no standing before the PTC. By contrast, the IJs ruled that anyone against whom criminal action had been initiated by an Introductory Submission must have access to the case file to uphold their rights to equal treatment and to have adequate time and facilities to prepare their defence. Since the PTC failed to reach a supermajority, the ICIJ's decision stood and Ao An was given access only when he was formally charged in March 2015.

Forced pregnancy and forced impregnation: In a decision discussed further in the *Jurisprudence* section of this Retrospective, the ICIJ denied requests to investigate forced pregnancies and forced impregnation with a view to characterising the conduct as the CAH of OIA.

[*] IR 77(13)(b) states that where the PTC fails to reach a supermajority on appeals, "the default decision [...] shall be as follows ... [a]s regards appeals against indictments issued by the CIJs, [...] the TC be seised on the basis of the CO of the CIJs".

Case 003

Meas Muth and Sou Met

Preliminary Investigation: Like Case 004, Case 003 arose out of the preliminary investigation opened on 10 July 2006. The NCP and ICP similarly disagreed on whether to forward a new introductory submission, naming Meas Muth and Sou Met as suspects, to the CIJs; the ICP referred the disagreement to the PTC on 20 November 2008. Also as with Case 004, the PTC settled the disagreement on 18 August 2009 using the default decision.

Judicial Investigation: Thereafter, on 7 September 2009, the Acting ICP forwarded an Introductory Submission to the CIJs, opening a judicial investigation into the suspects' responsibility for crimes committed by and against **Division 164** (formerly Division 3, the largest RAK Centre Division incorporating the DK Navy) and **Division 502** (the DK Air Force), and during the **RAK purges**.

On 29 April 2011, the NCIJ and ICIJ Blunk, who took over from ICIJ Lemonde in December 2010, notified the CPs that they considered the Case 003 investigation concluded. The ICP filed multiple requests for further investigative action, asserting that the judicial investigation was manifestly incomplete. The CIJs' repeated refusal to admit the requests resulted in various appeals to the PTC over the following months. ICIJ Blunk resigned with effect from 31 October 2011, and on 2 December 2011, Reserve ICIJ Kasper-Ansermet ordered the resumption of the investigation and admitted the ICP's investigative requests, concluding that the investigation conducted so far was "defective and prejudicial to all parties". On 24 February 2012, he notified Meas Muth and Sou Met that they were suspects in an ongoing investigation. In March 2012, the Reserve ICIJ resigned with effect from 4 May 2012 and ICIJ Harmon took office on 26 October 2012.

On 22 October 2013, the CIJs notified the parties that Sou Met had died and proceedings against him were terminated on 2 June 2015.

On 31 October 2014, the ICP filed a Supplementary Submission, i) providing clarifications relating to the purge of Division 164, crimes committed in the waters and on the islands claimed by DK, and the late 1978 purge of Division 117 and Sector 505 cadres in Kratie, and ii) seising the CIJs with facts relating to forced marriages and rapes in Kampong Som Autonomous Sector where Division 164 was based under Meas Muth's command.

On 26 November 2014, the ICIJ summonsed Meas Muth for an initial appearance on 8 December 2014 to charge him under IR 55(4), but Meas Muth refused to acknowledge service. On 3 December 2014, the PTC rejected Meas Muth's earlier challenge to the validity of a summons signed by only one CIJ. Meas Muth failed to appear on 8 December 2014; thereafter the ICIJ issued an arrest warrant and ordered the judicial police to bring Meas Muth to the

~7,000 pieces of evidence	4 OCIJ & PTC hearing days
646 civil party applicants	27 civil parties admitted by PTC IJS
916 WRIs	432 party filings
562 decisions	53 supermajority decisions of 68 PTC rulings

10 July 2006
Preliminary Investigation opens

7 September 2009
Judicial Investigation opens

28 November 2018
Conflicting COs issued

7 April 2021
PTC's Considerations issued

17 December 2021
SCC dismissed Case

ECCC. Following a failure to execute the warrant and without his voluntary appearance, on 3 March 2015, the ICIJ decided to charge Meas Muth *in absentia* with CAH, Grave Breaches and crimes under the 1956 Penal Code ("domestic crimes"). Meas Muth unsuccessfully appealed this decision. On 4 June 2015, the ICIJ issued a second arrest warrant, which was similarly not executed.

On 14 December 2015, at a hearing in Battambang attended by Meas Muth, ICIJ Bohlander, who took over from ICIJ Harmon on 31 July 2015, rescinded some previous charges, and charged Meas Muth with genocide of the Vietnamese, and additional counts of CAH, Grave Breaches and domestic crimes.

On 10 January 2017, the ICIJ notified the parties that, under IR 66*bis*, he was excluding facts from the investigation that were most closely connected to Sou Met and considered the investigation concluded. The parties filed several investigative requests. After conducting some of the requested investigations, the ICIJ issued his second and final notification concluding the investigation on 24 May 2017.

On 14 November 2017, the NCP filed her Final Submission, requesting dismissal of the case for want of personal jurisdiction, and the ICP submitted his Final Submission, requesting that Meas Muth be indicted for genocide, CAH and Grave Breaches.

Closing Orders: On 28 November 2018, the CIJs again issued two separate COs. The NCIJ issued a Dismissal Order, finding the ECCC had no personal jurisdiction over Meas Muth who, he concluded, "did not exercise much power". The ICIJ issued an Indictment, sending Meas Muth to trial for genocide of the Vietnamese, CAH (murder, extermination, imprisonment, enslavement, torture, OIA and persecution on political and racial grounds), Grave Breaches and domestic crimes. Putting Meas Muth "solidly within the bracket of personal jurisdiction", the ICIJ highlighted the genocide charge and specified that Meas Muth was very close to the senior leadership level, with the nature and impact of his actions clearly surpassing those of Ao An, Im Chaem and Duch.

The ICIJ found that Meas Muth was the son-in-law of CPK Standing Committee member Ta Mok and held multiple military and civilian positions as: i) **Commander of Division 164** (formerly Division 3) responsible, *inter alia*, for DK territorial waters, ii) **Secretary of Kampong Som Autonomous Sector**, including Kampong Som Port, iii) **reserve member of the RAK General Staff Committee** and one of Son Sen's deputies, and iv) from late 1978, **reserve member of the CPK Central Committee**. From April 1975 to January 1979, pursuant to a plan shared with Sou Met, Ta Mok, Son Sen and other senior RAK staff, Meas Muth implemented the CPK's criminal policies in his areas of authority. In Kampong Som, he established, managed and inspected worksites and security centres, and promoted and implemented CPK policy on forced marriage and forced consummation. He planned and implemented RAK purges and was directly involved in the arrests and transfers of members of Divisions 164 and 117 to S-21 SC. He also issued open-ended orders for the identification, arrest and killings of targeted groups like the Vietnamese and Thai, intending to eradicate the Vietnamese whom he considered the hereditary enemies of the Khmer. The ICIJ also emphasised the grisly disposal of bodies ordered by Meas Muth, which surpassed the 'normal' high level of cruelty of the DK regime.

The Indictment found Meas Muth responsible for, *inter alia*, i) killing at least 1,200 **Thai** and 3,276 **Vietnamese** captured in the waters and on the islands claimed by DK, ii) enslavement in inhumane conditions of over 15,000 demobilised Division 164 cadres and civilians at worksites at **Stung Hav** and in the **Ream area** (including **Bet Trang** and **Kang Keng Airport WSs**) in Kampong Som Sector, iii) imprisonment in inhumane conditions and killings at **Wat Enta Nhien** and **Toek Sap SCs**, iv) killings of Thai, Vietnamese and civilians at the **Durian Plantation ES**, v) forced marriage and rapes throughout Kampong Som, vi) torture and killings of Thais and Vietnamese sent to **S-21 SC**, and vii) 2,152 killings during the **RAK purges** – at **S-21 SC** and *in situ* – of military cadres from **Divisions 164**, **117**, **502** and **310**.

Of the 646 CivP applications in Case 003, the ICIJ admitted 22 and the NCIJ dismissed them all.

Closing Order Appeals: There followed several cross appeals against the two COs. On 5 April 2019, the NCP appealed the Indictment, again challenging the ECCC's personal jurisdiction over Meas Muth and claiming that justice had already been brought to the victims through Cases 001 and 002. On 8 April 2019, the ICP and Meas Muth filed their appeals. The ICP requested the Dismissal Order be reversed for legal and factual errors he asserted un-

dermined the NCIJ's exercise of discretion on personal jurisdiction and that the case proceed to trial based on the Indictment. Meas Muth's appeal did not challenge the substance of the Indictment, instead arguing for the dismissal of Case 003 unless, by a supermajority, the PTC upheld the Indictment and overturned the Dismissal Order.

Appeal hearings were held from 27 to 29 November 2019. On 7 April 2021, the PTC rendered its Considerations, holding unanimously, for the same reasons as in Case 004/2, that the issuance of conflicting COs was illegal. All five PTC Judges then individually confirmed the validity of the Indictment. The NJs stated that both the Dismissal Order and the Indictment "stand valid" but concluded that Case File 003 should be held at the ECCC archives. The IJs found the Dismissal Order contained grave errors of law and fact and was null and void on substantive and procedural grounds (see further below: *Unique Aspects*). They rejected the NCP's appeal and upheld the Indictment.

Visitors awaiting the PTC Hearings in Case 003 © ECCC website

When reviewing the personal jurisdiction assessments, the IJs concluded that the Indictment in fact underrepresented both the gravity of Meas Muth's crimes and his roles and responsibilities. As to gravity, the IJs found using the appropriate method for calculating victim numbers would likely have made the numbers significantly higher. As to Meas Muth's roles, the IJs highlighted his positions on the **Central Committee** *throughout* the DK regime, not only in 1978, evolving from assistant in 1975 to reserve member in 1978. They also found that he was a senior leader of the RAK: as **Division 164 commander**, **DK Navy Commander** and *full* **General Staff committee member** throughout the regime, he reported directly to the Party Centre and personally led multiple purges, and in 1978, Meas Muth was promoted to Son Sen's **Deputy of the General Staff**, moving to Phnom Penh and exercising control over all three branches of the DK military forces.

In the context of deciding upon the validity of the two Case 003 COs, the IJs considered and disagreed with both the SCC's conclusion in Case 004/2 that the TC was never administratively seised of Case 004/2 and its termination of the case. In the IJs' view, contrary to the SCC's findings, i) the TC was seised of the case by the PTC's Considerations. The SCC erred in law by equating the administrative formality of transferring the case file with a jurisdictional bar precluding TC action; the TC could have ordered the transfer; ii) the PTC's unanimous holding that the CIJs' *issuance* of two COs was illegal did not render the COs themselves null and void. That unreasoned SCC conclusion was incorrect as a matter of law, and all five PTC Judges correctly opined on the separate validity of the COs, with each one of them finding at least one valid; iii) the SCC has no authority to terminate cases in the pre-trial stage without a valid CO and without sight of the case file; and iv) arbitrarily ending a case brings no clarity or finality to victims or parties.

On 10 June 2021, the PTC Judges issued their Considerations on the CivP appeals, in which they confirmed that all five of them found the Indictment valid. The NJs found that, in light of their holding that both COs stand valid and Case File 003 should be held at the ECCC archives, *all* CivP applications should be rejected. The IJs found an additional 5 CivP applicants should have been admitted.

Subsequent litigation: Following the PTC's Considerations, the ICP requested the CIJs to forward Case 003 to the TC because the PTC had unanimously upheld the Indictment, or alternatively pursuant to the default position, since at the very least no PTC supermajority overturned it. On 20 May 2021, the CIJs issued their Decision, rejecting the argument that all five PTC Judges found the Indictment valid and refusing to apply the default position. Absent express PTC instructions, the CIJs would not forward the case, promising to terminate it if no other judicial body was willing to progress the case either to trial or to a termination.

On 17 June 2021, Meas Muth requested the PTC to terminate, seal and archive Case 003. On 21 June 2021, the ICP requested the PTC to conclude the pre-trial stage of the proceedings by forwarding the case to the TC. On 8 September 2021, the PTC issued a consolidated decision, declaring both requests inadmissible. The Chamber held unanimously that it had fulfilled its duties in accordance with the ECCC's legal framework and the CIJs were responsible for processing the case in accordance with IRs 77(13) and (14).

On 4 October 2021, Meas Muth requested the SCC to terminate Case 003. On 8 October 2021, the ICP appealed the PTC's failure to forward the case to trial as required by the ECCC's legal framework. On 17 December 2021, the SCC terminated Case 003, a final decision not subject to appeal. With one dissent from Judge Clark, it held that the PTC joint disposition did not unanimously find the Indictment valid, even though every PTC Judge individually made that finding. Following its Case 004/2 reasoning, the SCC concluded that the absence of a definitive and enforceable indictment and of the case file's transmission to the TC justified terminating the case before any determination could be made regarding Meas Muth's guilt. Consequently, on 20 December 2021, the CIJs sealed and archived Case File 003.

Unique Aspects

NCIJ's withdrawal from the judicial investigation: The NCIJ and ICIJ Blunk issued their Notice concluding the investigation on 29 April 2011 and, unlike every other case, the NCIJ did not join the ICIJ in closing the full investigation in 2017. He based his Dismissal Order only on evidence collected prior to 29 April 2011 and failed to consider the ICP's 31 October 2014 Supplementary Submission. The PTC IJs found the NCIJ committed serious errors of law in i) maintaining the investigation was complete on 29 April 2011, despite not issuing a CO at the time and despite the Reserve ICIJ resuming the investigation in December 2011, and ii) disregarding in his Dismissal Order a range of factual allegations of which he was seised, as well as the entire post-29 April 2011 evidence in the case file under his custody, including several hundred Case 003-specific WRIs and documents. The IJs found the "unfinished" Dismissal Order invalid under IR 67.

Armed forces as a 'civilian population': As discussed in the *Jurisprudence* section, ICIJ Bohlander issued a Notification holding that, under customary international law between 1975 and 1979, an attack by a state or organisation against its *own* armed forces amounts to an attack against a 'civilian population' for the purposes of CAH, unless the attacked forces were allied with or provided militarily relevant support to an opposing side to an armed conflict.

31 December 1977

Telegramme Number 00
Band 354

Respectfully presented to Committee M-870

We have received the guiding view and the declaration of the Party about the aggression of the Yuon who have come to swallow the territory of our Motherland.

We who have the duty to defend the maritime spearhead would like to:

1. Be in total unity within the Party;

2. Vow determination to fashion forces who are a tool absolutely to defend the Party, to defend the state power of the collective worker and peasants, and to defend the socialist Kampuchean motherland by sweeping cleanly away and without half-measures the uncover elements of the enemy, whether the Yuon or other enemies. ...

...
Mut

cc:

Uncle
Uncle Nuon
Brother Van
Brother Von
Brother Khiev
Office
Documentation[1]

Telegram sent by Meas Muth to Office 870 about the aggression of enemy on Kampuchea territory

Case 004

Yim Tith

Judicial Investigation: On 24 February 2012, the Reserve ICIJ notified Yim Tith that he was a suspect in the Case 004 investigation. On 9 December 2015, the ICIJ charged him in person with genocide of the Khmer Krom, CAH, Grave Breaches, and violations of the 1956 Penal Code ("domestic crimes"). Following the creation of Cases 004/1 (Im Chaem, 5 February 2016) and 004/2 (Ao An, 16 December 2016), Case 004 focused solely on the case against Yim Tith. On 29 March 2017, he was charged with additional modes of responsibility beyond those listed in the first charging order in respect of the same crimes.

On 13 June 2017, the ICIJ notified the parties that, under IR 66*bis*, he was excluding facts pertaining to 15 crime sites and events from the investigation. On the same day, the CIJs notified the parties that they considered the investigation to be concluded. The parties filed several investigative requests. After conducting some of the requested investigative actions, on 5 September 2017, the CIJs issued their second and final notification concluding their investigation.

On 31 May 2018, the NCP filed a Final Submission requesting the dismissal of all allegations against Yim Tith for want of personal jurisdiction. On 4 June 2018, the ICP filed his Final Submission requesting Yim Tith's indictment for genocide and CAH.

Closing Orders: On 28 June 2019, the CIJs again issued separate COs, as well as an additional order terminating the remainder of Case 004 to the extent any of the ICP's allegations had not been dealt with in the Case 004/1, 004/2 or 004 COs. The NCIJ issued a Dismissal Order, finding that the ECCC had no personal jurisdiction over Yim Tith who "did not hold any important position in the Party". The ICIJ indicted Yim Tith for genocide of the Khmer Krom, CAH (murder, extermination, enslavement, imprisonment, torture, deportation, OIA and persecution on political and racial grounds), Grave Breaches and domestic crimes with regard to crime sites and events spanning two DK Zones: the NWZ and SWZ. Establishing personal jurisdiction, he highlighted Yim Tith's "meteoric rise" in power, facilitated by his family ties with SWZ Secretary and CPK Standing Committee member Ta Mok, as well as the gravity of his crimes at over 20 crime sites. In the ICIJ's view, as in Cases 004/2 and 003, Yim Tith's orchestration of, and participation in, a genocide was sufficient to find personal jurisdiction.

The ICIJ found that Yim Tith was the brother-in-law of Ta Mok and held ever-increasing responsibility in the DK, first in the SWZ, then in the NWZ. No later than October 1975, he was appointed to the **Kirivong District Com-**

~10,200 pieces of evidence	**1** OCIJ & PTC hearing day
2,014 civil party applicants	**1,077** civil parties admitted by PTC IJS
1,671 WRIs	**639** party filings
979 decisions	**42** supermajority decisions of 57 PTC rulings

10 July 2006
Preliminary Investigation opens

7 September 2009
Judicial Investigation opens

28 June 2019
Conflicting COs issued

17 September 2021
PTC's Considerations issued

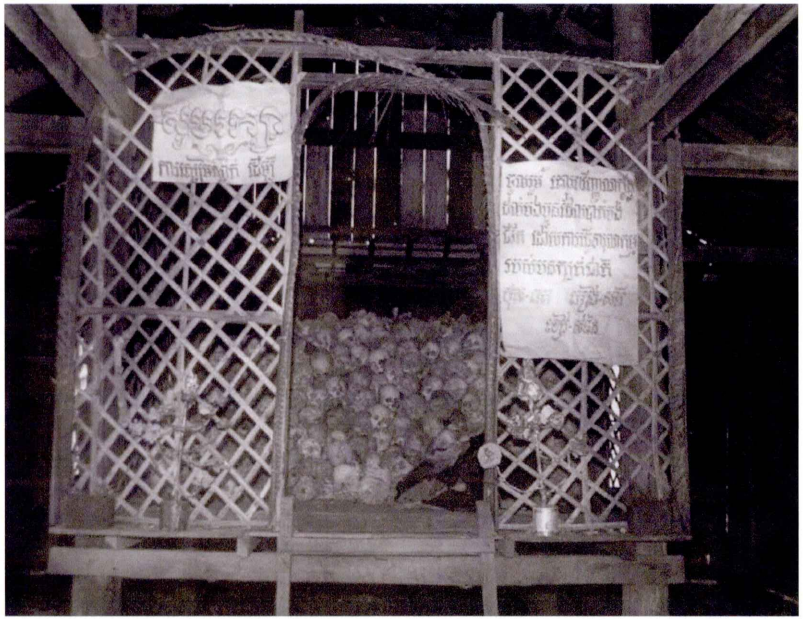
28 December 2021
SCC dismissed Case

mittee (Sector 13, SWZ), initially as Deputy Secretary and then as Secretary, though he always enjoyed additional *de facto* authority across the SWZ, mainly because of his ties with Ta Mok. Like Im Chaem and Ao An, Ta Mok then chose Yim Tith to take on responsibilities outside the SWZ. From mid-1976, Yim Tith visited the NWZ with increasing regularity, holding study sessions with Ta Mok, visiting worksites and security centres, chairing meetings and meeting daily with NWZ Secretary, Ruos Nhim. Around June 1978, he was formally appointed **Secretary of Sectors 1**, **3** and **4** of the NWZ, becoming "the second most powerful man after Ta Mok" who had replaced Ruos Nhim as NWZ Secretary. Between June and September 1978, Yim Tith was appointed **NWZ Committee member**.

The ICIJ found that Yim Tith entered into criminal plans with Ta Mok and other SWZ cadres to i) implement the CPK's criminal policies in the NWZ, ii) eliminate the Khmer Krom, whom the CPK considered to be, or be closely connected to, the Vietnamese, and iii) further a system of ill-treatment at Wat Pratheat SC (Sector 13, SWZ). Together with Ta Mok, Yim Tith played a central role in implementing the CPK's policies in the NWZ. He orchestrated the purge of the NWZ and provided specific orders to arrest, detain and kill NWZ cadres, earning him the moniker "Ta Tith the contemptible"; he oversaw cooperatives, worksites and security centres and attended forced marriage ceremonies. In his speeches, Yim Tith consistently denounced the Vietnamese and anyone linked to Vietnam, inciting his subordinates to identify Khmer Krom so they could be killed. As Kirivong District Committee member, he directly oversaw Wat Pratheat SC.

The Indictment found Yim Tith responsible for tens of thousands of crimes committed at:

- 14 security centres: in *Sector 13 (SWZ)*: **Wat Pratheat SC**, **Kraing Ta Chan SC**, **Wat Ang Serei Muny SC**; in *Sector 1 (NWZ)*: **Koas Krala SC**, **Banan SC**, **Khnang Kou SC**, **Wat Thipakdei SC**, **Tuol Mtes SC**; in *Sector 2 (NWZ)*: **Phum Veal SC**, **Svay Chrum SC**; in *Sector 3 (NWZ)*: **Wat Kirirum SC**; in *Sector 4 (NWZ)*: **Wat Samdech SC**, **Wat Po Laingka/ Kach Roteh SC**; in *Sector 7 (NWZ)*: **Prison No. 8**;
- 6 execution sites: in *Sector 13 (SWZ)*: **Preil Village ES**, **Wat Angkun ES**, **Slaeng Village Forest ES**, **Prey Sokhon ES**; in *Sector 2 (NWZ)*: **Tuol Seh Nhauv ES**, **Prey Krabau ES**; in *Sector 7 (NWZ)*: **Veal Bak Chunching ES**;
- several worksites and cooperatives: in *Sector 1 (NWZ)*: **Kang Hort Dam WS**, **Kampong Kol Sugar Factory WS**, **Thipakdei Cooperative** including **Tuol Mtes WS**; in *Sector 4 (NWZ)*: **Kampong Prieng Commune**, **Reang Kesei Commune**; and
- **forced marriage** in Samlaut District, *Sector 1 (NWZ)*.



Remains of human skeletons in the original memorial at Kraing Ta Chan security centre
© ECCC website
Signs read: Please be quiet in order to pay respect to the souls of those who lost their lives due to torture committed by traitorous cliques: Pol Pot, Ieng Sary, and Khieu Samphan

Civil Party Applications: The ICIJ admitted 1063 of the 2014 Case 004 CivP applicants, while the NCIJ rejected them all. On appeal, the PTC issued Considerations on 29 September 2021. The NJs considered that all CivP applications should be rejected while the IJs found that 14 additional CivP applicants should have been admitted.

Closing Order Appeals: There followed five cross appeals against the COs. On 13 September 2019, the NCP appealed the Indictment, primarily challenging the ECCC's personal jurisdiction over Yim Tith. On 2 December 2019, Yim Tith appealed the two COs, asking the PTC to dismiss both COs for error of law in their simultaneous issuance and either return the case file to the CIJs or issue its own single CO. The same day, Yim Tith appealed the Indictment alleging i) violations of his fair trial rights, ii) procedural defects in the Indictment, and iii) errors undermining the ICIJ's exercise of discretion on personal jurisdiction. On 1 and 2 December 2019 respectively, the CivPs and ICP appealed the Dismissal Order. The ICP requested that it be reversed for legal and factual errors she asserted undermined the NCIJ's exercise of discretion on personal jurisdiction, and that the case proceed to trial based on the Indictment. The CivPs argued the NCIJ's own findings were sufficient to establish personal jurisdiction and similarly requested that the case be sent to trial.

On 18 March 2021, the PTC decided to determine the appeals on the parties' written submissions only, and on 17 September 2021, issued its Considerations. As in Cases 004/2 and 003, the Judges found unanimously that the simultaneous issuance of two conflicting COs was illegal. They then considered the validity of each CO but failed to reach a supermajority to reverse or uphold either the Indictment or the Dismissal Order.

The NJs found the dismissal of Case 004 against Yim Tith "just", closing the case and sending it to the ECCC archives. In their view, the ECCC's personal jurisdiction is limited to the five defendants in Cases 001 and 002 and the ICP initiated the Case 004 preliminary investigation unilaterally and in secret, rendering the entire case file illegal. The ICP notes that this last finding was contradicted by the available procedural evidence and any defect had been cured by the progression of proceedings for another 13 years.

The IJs rejected Yim Tith's argument that both COs were voided by the PTC's conclusion that the issuance of two COs was illegal and, for the same reasons as in Case 004/2, the IJs found the Dismissal Order to be *ultra vires* and void and the Indictment to be procedurally valid. Dismissing the NCP's appeal and every ground of Yim Tith's appeal, the IJs also found the Indictment substantively valid. Since the Indictment had not been overturned by a supermajority, they held that Case 004 should be sent to the TC pursuant to IR 77(13)(b). They also reiterated the Cambodian domestic authorities' obligation under international law to prosecute those charged with genocide, like Meas Muth and Yim Tith, where the ECCC fails to exercise jurisdiction.

Subsequent litigation: As the PTC's Considerations mirrored those issued in Case 004/2 (and to a large extent, Case 003), procedural stalemate was inevitable. On 18 October 2021, Yim Tith filed a request to the CIJs to immediately terminate, seal and archive Case 004. On 20 October 2021, the ICP brought the case directly to the SCC, appealing the PTC's failure to forward Case 004 to the TC for trial.

On 28 December 2021, the SCC dismissed the ICP's appeal for similar reasons as in Case 003. The SCC concluded, with Judge Clark again dissenting, that the absence of a definitive and enforceable indictment following the PTC's decision that the issuance of two COs was illegal justified terminating the case before any determination could be made regarding Yim Tith's guilt. The SCC decision is final and cannot be appealed. The next day, the CIJs sealed and archived the case.

Unique Aspects

Sexual violence outside forced marriage: As discussed further in the *Jurisprudence* section, the ICP's Introductory Submission and Supplementary Submission seised the CIJs with facts relating to sexual violence at Prison No. 8 (Sector 7, NWZ) and in Bakan District (Sector 2, NWZ), allegedly perpetrated against EZ evacuees and Khmer Krom women. During the judicial investigation, both the ICIJ and NCIJ made findings that these women had been raped before being killed, but neither found Yim Tith criminally responsible for the crimes.

Sources and Nature of the Evidence

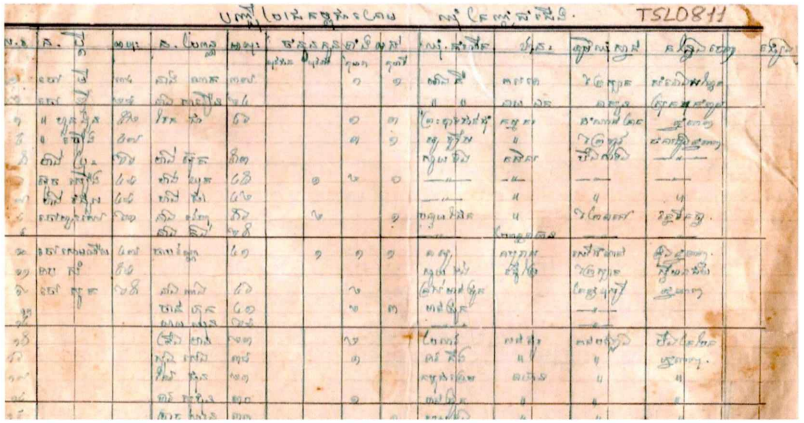
The OCP, CIJs, TC and SCC gathered and relied on various types of documentary evidence created before, during and after the DK regime, as well as thousands of statements and testimonies.

Fortunately, a large amount of **documentary evidence** from various sources was made available to the ECCC. In 1979 and the early 1980s, an extensive body of evidence created by the CPK itself was recovered from various locations in Cambodia, including the S-21 SC and the Phnom Penh home of a high-ranking CPK cadre. It was preserved by various private institutions and RGC entities, including DC-Cam, the Tuol Sleng Museum (at the former S-21 site), the RGC Ministry of Interior and the Cambodian National Archive. DC-Cam's invaluable contribution was essential to the work of the ECCC. It played a particularly important role in providing evidence to the Court, making available an immense volume of documents, obtained through meticulous research, including CPK documents and foreign contemporaneous material such as media reports, UN documents and foreign telegrams, together with interviews of many victims and CPK cadres. The Court also obtained some contemporaneous evidence from scholars including Christopher Goscha, Sydney Schanberg and Walter Heynowski. However, despite numerous requests from ECCC Judges, Thailand and Vietnam did not make their DK-related archival material available to the Court.

As the TC noted in Case 002/02, the contemporaneous documents, in particular the CPK documents, were "some of the most important sources of evidence", given the passage of time since the DK era. The most compelling CPK evidence included: i) minutes of Standing Committee, Central Committee and RAK General Staff meetings, ii) the Accused's speeches and statements, iii) CPK directives, iv) written communications between and among the various CPK levels of authority, v) commerce archives, vi) S-21 SC and Kraing Ta Chan SC records, including prisoner lists, "confessions", lists of executions and biographies of victims, and vii) CPK publications such as propaganda magazines, radio broadcasts, and propaganda films and photos.

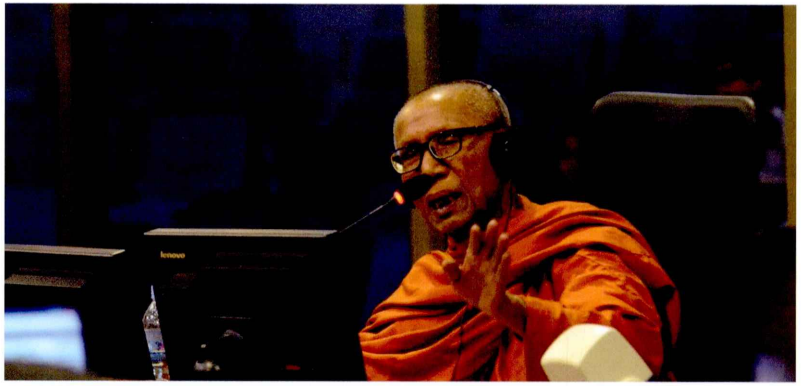
This evidence was crucial for establishing the CPK's criminal policies, its hierarchical structure, and the Charged Persons'/Accused's criminal responsibility. As such, it was critical for all the CPs' Introductory and Supplementary Submissions and provided a significant evidentiary basis for indicting and/or convicting the DK senior leaders, Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith, and two high-ranking cadres, Duch and Meas Muth. For example, in Case 002/02, of the some 10,804 documents admitted, some 3700 were contemporaneous CPK materials.

The ECCC Judges allowed the use of S-21 "confessions" obtained under torture on a limited basis, according to their interpretation of article 15 of the CAT. These "confessions" were considered only for the fact that they were made, not for the truth of their contents except in relation to basic identifying information such as the prisoner's identity and date of arrest. Annotations by torturers or CPK cadres were used as evidence since they were not part of the prisoners' statements. Notebooks and prisoner logbooks from security centres could also be relied on, so long as they were not invoked to establish the truth of statements made by those subjected to torture.



S-21 Prisoner List Containing Names of Prisoners Categorised as the Kampuchea Krom People © ECCC Website

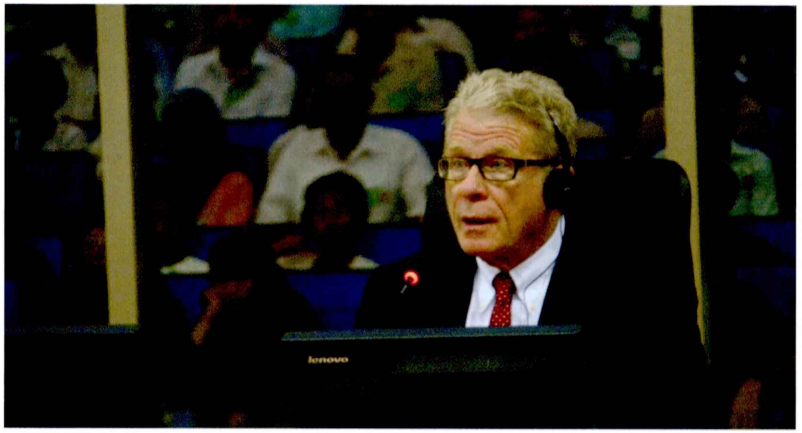
Testimonial evidence, including that from experts and the victims of, witnesses to and participants in the charged crimes, including CivPs, suspects, accused and convicted persons, was also of critical importance in all the ECCC investigations and trials. As some of the key victims and witnesses to crimes, as well as to matters relevant to the guilt of the Accused, CivPs gave statements to the CIJs and testified in Court proceedings. Like the Accused, they did not testify under oath, a factor considered when assessing the credibility of their testimony.



Monk Em Phoeung giving testimony as a witness on 16 February 2015 © ECCC website

Obtaining and assessing this evidence posed numerous challenges, however. For example, the ECCC's weak enforcement powers vis-à-vis non-cooperative witnesses became apparent when high-ranking Cambodian officials, including the former King Norodom Sihanouk, refused to respond to or comply with Court summonses to give evidence. In addition, across all the cases, former CPK cadres and perpetrators were often reluctant to be interviewed or testify, and/or tried to minimise their involvement in crimes, despite assurances of non-prosecution. Nuon Chea, Khieu Samphan and Ieng Sary denied accusations and largely refused to testify at trial. Nonetheless, Khieu Samphan did provide some evidence on the CPK and its Standing and Central Committees during the Case 002 investigation. At the beginning of the Case 002/01 trial, Nuon Chea discussed pre-April 1975 meetings that decided the evacuation of Phnom Penh. Those admissions and other statements from the Accused in books, interviews and films between 1979 and the ECCC trials were used as evidence against them.

Duch stands out as the exception to this reluctance to give evidence, providing extensive evidence to the CIJs and TC in his own trial and two others. His admissions were prominent among the evidence used to convict him in his trial. In the two Case 002 trials, as well as during the Case 003 and 004 investigations, his evidence was relied upon heavily to authenticate S-21 documents, including Nuon Chea's and Son Sen's annotations on S-21 confessions, and to establish the detention conditions, torture and executions, as well as the CPK's power structure for S-21 SC.



Professor David Chandler giving testimony as an expert on 18 July 2012 © ECCC website

PART III: ACCOMPLISHMENTS

Accountability

The ECCC founding documents make clear the Court's mandate: to bring to trial senior leaders of DK and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979 (ECCC Law, article 1; ECCC Agreement, article 1).

Despite the challenges presented, including years of negotiation over the terms of its creation and great difficulty arriving at agreed IRs, the ECCC has delivered justice beyond what might have been foreseen. Duch was convicted of CAH and Grave Breaches and ultimately sentenced to life imprisonment. Nuon Chea survived to see the completion of his first trial and appeal, and the TC judgment against him in the second trial, resulting in convictions for genocide, CAH and Grave Breaches and two life sentences. Khieu Samphan's two trials and appeals are now completed. Like Nuon Chea, he has also been convicted of genocide, CAH and Grave Breaches. The SCC imposed a second life sentence in its Case 002/02 AJ, to run concurrently with the life sentence Khieu Samphan received in Case 002/01. He will spend the remainder of his life in prison.

These convictions establish a judicial accounting of the crimes these men knowingly and willingly participated in, furthering the criminal policies of the KR, including: i) controlling the people of Cambodia through forced relocation to, and enslavement in, cooperatives and worksites, where many died due to the harsh conditions imposed on them, including forced labour and insufficient food and medical care; ii) identifying and capturing those perceived as enemies of the KR, including ex-Khmer Republic officials, Cham, and Vietnamese and condemning them to torture and death in security centres and execution sites, and iii) forced marriage and forced consummation of those marriages. The trials brought into stark reality the death and destruction these men – with many others – inflicted on their fellow Cambodians, Vietnamese prisoners of war and civilians, Thais and other foreign nationals, sparing neither the young nor old, men, women or children.

These judicial determinations are a major achievement of the Court, meeting a fundamental human need: to hold those accountable who bear some of the greatest responsibility for inflicting the most grievous harm, a need that must be met for the victims, the perpetrator groups and the society to move on from these horrific crimes. This quest for accountability has been lifted from the individual to the group, from the group to the State, and now, to international and internationalised criminal courts – either by agreement between States, between States and the UN, or by the UN alone.

There is another aspect of this fundamental human need that is also reflected in the ECCC's founding documents and has been implemented by the Court – that the determination of accountability be done justly, fairly and with due process of law (ECCC Agreement, article 12(2); ECCC Law, article 33 *new*). Ultimately, true reconciliation, true sustainable peace, can only come when those responsible for international crimes are held accountable for their conduct through fair, impartial and independent processes that respect the rights of those suspected and accused as well as the rights of those victimised. Ensuring this type of judicial process – demonstrably lacking in the 1979 People's Revolutionary Tribunal proceedings against Pol Pot and Ieng Sary – is essential for the judicial outcome to be accepted as credible by the victims and survivors, those accused of causing the harm or supporting those who did so, and society at large. Even if they disagree with the outcome, if it has been fairly arrived at, justice will be seen to have been served.

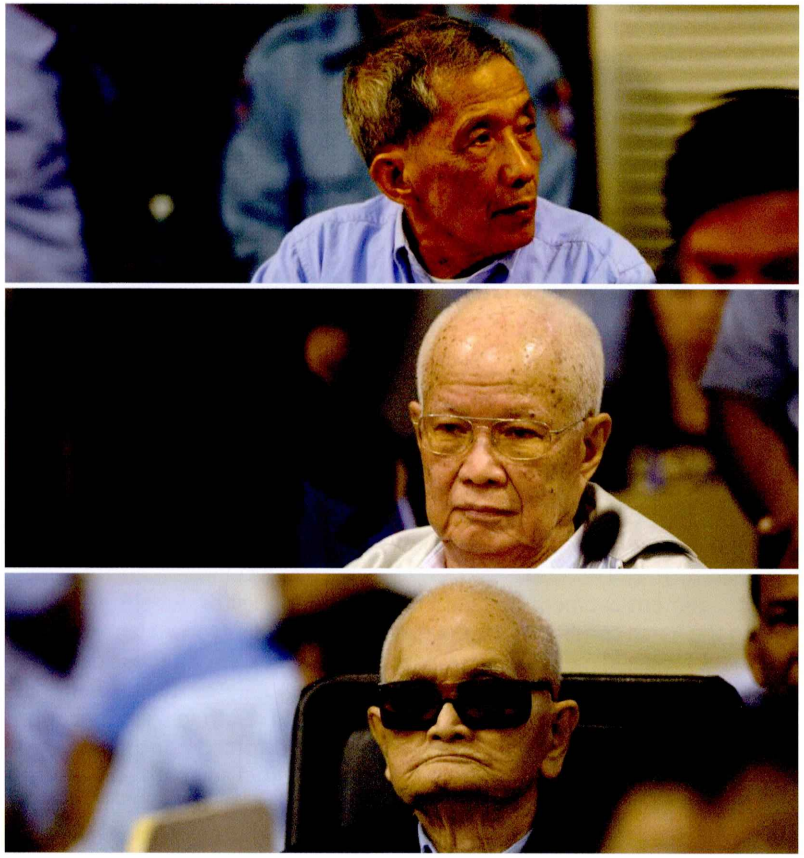
A determination of accountability through the trial process was met in respect of the cases involving Duch, Nuon Chea and Khieu Samphan. Critics' assertions that the cost of the ECCC exceeds its value in achieving the convictions of only these three men do not lessen the impact of the justice achieved in Cases 001, 002/01 and 002/02. The strength of this criticism is diminished further when we consider the number of crimes adjudicated in these cases: over two million forced evacuations from Phnom Penh in April 1975 and hundreds of thousands more crimes in the other sites and events under consideration. Even more so when we consider the true cost of adjudicating each of those crimes in domestic courts, especially if we take into

account in the domestic setting the same types of expenditure borne by the ECCC – including staff salaries, building or renovating a court and associated offices, equipping them and providing logistical support, including for travel to other countries for investigation.

Nor are the achievements in determining the accountability of Duch, Nuon Chea and Khieu Samphan in fair and impartial proceedings, with full participation of all parties, lessened by the fact that the ECCC did not bring to trial Im Chaem, Ao An, Meas Muth and Yim Tith. Whether the disposition of these other cases reflected a fair and just process is, however, controversial.

Ao An, Meas Muth and Yim Tith faced indictment; however, their cases were terminated for highly disputed reasons, with no consensus among the Judges. In her Dissent from the SCC Decision dismissing Case 004, Judge Clark rightly quoted the observation that "the only thing necessary for the triumph of evil is that good men should do nothing". The ICPs and some of the ICIJs and IJs sought to fulfil the court's mandate and ensure the trial of these three Accused on the basis of these indictments. However, these three cases highlighted issues discussed in more detail in the *Structural Challenges* section, including, among others, the effect of conflicting COs and the obligation of the Judges to apply the default procedure requiring a case to move forward absent a supermajority blocking its progression. Im Chaem's case was dismissed based on the CIJs' unanimous finding the ECCC lacked personal jurisdiction over her. However, the PTC divided over the merits of this dismissal. Whilst the NJs upheld the dismissal, the IJs found serious legal and factual errors in the CIJs' assessment of Im Chaem's DK roles and the gravity of her crimes, concluding the Court *did* have jurisdiction in the case. Despite these sharply differing legal opinions, the dismissal stood, as the PTC failed to achieve a supermajority to overturn it.

Another aspect of accountability and true reconciliation is providing for reparations to victims, an important form of acknowledgement of the harm done to them. The ECCC awards collective and moral – as opposed to monetary – reparations. In addition to creating a judicially determined history of the crimes perpetrated by members of the KR, the Court has endorsed a wide range of reparations projects including: i) a national remembrance day, ii) a memorial to honour the victims of forced evacuations, iii) construction of a peace learning centre, iv) educational projects on KR history, v) programmes enhancing awareness of the treatment of ethnic Vietnamese and Cham in Cambodia during the DK regime, and vi) projects promoting healing and reconciliation for survivors, and improving health and mental wellbeing of some CivPs and other vulnerable older people in Cambodia. These projects can be expected to have a lasting impact on KR victims and their families.



Duch, Khieu Samphan, and Nuon Chea on the day of their trial verdicts in Case 001 and Case 002/01 © ECCC Website

Jurisprudence

The ECCC's jurisprudential record, though not without controversy, must holistically be regarded as a success. The Chambers have issued groundbreaking decisions concerning both individual criminal liability and crimes, which carefully balance victims' and defence rights and make important contributions to the development of international criminal law. Whilst a comprehensive review is not possible in the context of this Retrospective, this section discusses and analyses the most notable of those decisions.

Individual Criminal Responsibility

- ### Joint Criminal Enterprise (JCE)

All three ECCC Chambers – PTC, TC and SCC – concluded it was settled law that **JCE I** (the "basic" form, where all participants act pursuant to a common criminal purpose or plan, and share the intent for a crime within the ECCC's jurisdiction) and **JCE II** (the "systemic" form characterised by the existence of an organised system of ill-treatment, such as a prison or concentration camp) were recognised modes of individual criminal liability between 1975 and 1979 and forms of "commission" under article 29 *new* of the ECCC Law.

In a departure from the jurisprudence of the other *ad hoc* tribunals, however, the ECCC Chambers agreed that **JCE III** (the "extended" form attributing responsibility for a crime *not* encompassed by the common plan, where it was foreseeable that the crime might be perpetrated and the accused willingly took that risk (a type of intent known in civil law jurisdictions as *dolus eventualis*)) was *not* recognised as a form of responsibility under customary international law, Cambodian law, or as a general principle of domestic law between 1975 and 1979. After extensive analysis, the ECCC Judges agreed that pre-1975 legal instruments and jurisprudence do not provide sufficient evidence of consistent prior practice to establish JCE III. They concluded that neither the Nuremberg Charter nor Control Council Law No. 10 specifically support its existence, nor does the examined case law. In particular, they found the Essen Lynching and Borkum Island Cases – cited by the ICTY's Appeals Chamber in the *Tadić* case for this purpose – do not provide sufficient reasoning to determine the mode of liability relied on. The Chambers found that general domestic law lacking an international element cannot be a basis for establishing a rule of customary international law, and concluded that applying JCE III at the ECCC would have violated the principle of legality, which requires that the conduct be recognised as criminal *at the time of commission*.

Whilst this reflects the substance of the SCC's findings, it is noteworthy that the SCC Judges – unlike the PTC, TC and CIJs – preferred not to rely on the JCE categories or terminology articulated by the ICTY because they were not used in the post-World War II jurisprudence. Rather, they focused on the circumstances in which the law provided for criminal liability where an accused acted in concert with others based on a common purpose and contributed to its implementation, even when that contribution did not amount to committing a charged crime.

Based on this focus, the SCC endorsed in its Case 002/01 AJ a uniquely wide definition of what a common plan encompasses, together with a standard of intent for JCE less than direct intent. It found that when a common purpose has a non-criminal ultimate goal, crimes that are not directly intended, desired or certain, including those merely "contemplated", "foreseen" or "treated with indifference", may fall within that purpose when it comes to achieving the ultimate goal. The SCC reflected that this bears resemblance to *dolus eventualis*. As to the mental element, the Judges found that the accused must share the intent to implement the common purpose and intend the charged crime. Where a lower *dolus eventualis* intent suffices for that crime, such as murder, it also suffices for JCE responsibility. Of course, in relation to specific intent crimes, the requisite specific intent to commit the crime is still required.

In the subsequent Case 002/02 TJ, the TC distanced itself from the SCC's broad formulation of JCE and reemphasised the distinction between JCE I and JCE III. Endorsing findings by the ICTY and ICTR trial and appeals chambers, it held that JCE III's *dolus eventualis* intent cannot be transposed into JCE I, and JCE I liability thus arises only with direct intent. The TC therefore

refused to find Nuon Chea and Khieu Samphan guilty of murder committed with *dolus eventualis* at the worksites and security centres on the basis of their participation in the JCE. Rather, it found them responsible for aiding and abetting those crimes.

However, in its Case 002/02 AJ, the SCC reaffirmed its Case 002/01 position and determined that the TC erred in this analysis. In its view, the TC had ignored situations where the probable commission of a crime was agreed upon or accepted by all JCE participants in furtherance of the common purpose and thus fell within, not outside, its scope. Moreover, "it would be nonsensical to require a higher *mens rea* for the form of participation than for the underlying crime." Accordingly, the SCC recharacterised Khieu Samphan's liability from aiding and abetting murder with *dolus eventualis* to commission via JCE.

Crimes

- **Military personnel as a "civilian population"**

Following a Call for Submissions in Cases 003 and 004, ICIJ Bohlander interpreted an attack directed against "any civilian population" in the context of CAH to include an attack by a state or organisation against its *own* armed forces, unless the attacked forces are allied with, or provide militarily relevant support to, an opposing side to an armed conflict. This interpretation – relevant to criminal liability for the KR's internal military purges – is contrary to the definition of "civilian" previously endorsed in the Case 001 and 002/01 TJs, and in the Case 002/01 AJ, which, relying on IHL, excluded members of armed organisations, even if no longer engaged in fighting (*hors de combat*).

The ICIJ's reasoning emphasised the importance of *context*. He found that excluding military personnel from protection simply because of their employment status – one conferred by the state or organisation committing the abuses, after all – would i) mechanically and illogically apply a legal definition applicable to one specific situation and one branch of law (IHL, and by extension, war crimes) to another (IHRL, and by its extension, CAH), ii) frustrate the purpose of the law prohibiting CAH, iii) lead to absurd results, and iv) contradict all relevant pre-1975 law and jurisprudence.

Noting that an individual's status in one situation or legal relationship is not necessarily the same as in another and that the IHL definition of "attack" was not applicable to CAH, the ICIJ concluded that the IHL definition of "civilian" should not be mechanically transferred. He found this approach particularly pertinent where IHL is entirely inapplicable, such as in peacetime or for CAH merely committed during, but not contextually connected to, an ongoing conflict.

Drawing on the UN War Crimes Commission's work, the ICIJ concluded that the purpose of CAH is "protection against human rights violations perpetrated on a large scale against individuals including a state's own nationals, who were not otherwise protected by the existing laws and customs of war." Excluding a state or organisation's own military personnel from protection would defeat that purpose. As the then ICP noted, excluding armed forces from the protective scope of CAH would permit a government or organisation to commit mass atrocities with impunity simply by conscripting its subjects.

The ICIJ also found that extensive pre-1975 jurisprudence did not interpret the notion of a "civilian population" by reference to IHL and that the IHL definition of "civilian" was first used for CAH in 1990s ICTY jurisprudence, *after* the ECCC's temporal jurisdiction.

Unfortunately, the TC rejected the ICIJ's position in the Case 002/02 TJ. In doing so, it mischaracterised his findings and overlooked the wealth of support for his definition.

- **Sexual and gender-based violence**

Whilst the ECCC has a mixed record in prosecuting sexual and gender-based violence, an overall assessment establishes such prosecutions as among the ECCC's strongest accomplishments.

Sexual violence outside the context of forced marriages

With one exception, sexual violence committed outside the context of forced marriages has not been successfully prosecuted at the ECCC.
In Case 001, the CIJs charged Duch with rape as a CAH, finding that "at least one coercive sexual penetration [was] committed at S-21 when an interro-

gator inserted a stick into a female prisoner's genitals." The TC found the incident fulfilled the legal definitions of both rape and torture, but ultimately recharacterised it as torture, considering it comprised "an egregious component of the prolonged and brutal torture inflicted upon the victim prior to her execution".

In its Case 001 AJ, the SCC endorsed an earlier PTC finding in Case 002 that rape as a distinct CAH had not crystallised by 1975 and the ECCC thus enjoyed no subject matter jurisdiction over the crime. The Judges found that although rape had long been prohibited as a war crime – listing the 1863 Lieber Code, the 1899 and 1907 Hague Conventions, GC IV, AP I and AP II among its pre-1979 codifications – international legal instruments did not generally prohibit rape *as a CAH*. Whilst Control Council Law No. 10 did include rape as a distinct CAH, the Judges found no evidence of convictions pursuant to this law. And although the IMT prosecutors read evidence of rape into the record at Nuremberg, nowhere in the IMT Judgment was it even mentioned. As a result, rape as a CAH was not included in the 1950 Nuremberg Principles. The SCC did not consider jurisprudence from the ICTY, ICTR and SCSL to be persuasive in light of their later temporal jurisdictions, concluding instead that it showed rape as a CAH remained an emerging notion in the 1990s. Neither the PTC nor the SCC was willing to derive a general principle of law from municipal criminalisation of rape, including in the 1956 Penal Code, since no domestic law contained the *chapeau* elements of a CAH.

The SCC *did* uphold the TC's determination that an act of rape such as occurred at S-21 SC could constitute the CAH of torture. It held that torture, as defined in the 1975 UN General Assembly Declaration on Torture (rather than the 1984 CAT), existed as a CAH from 1975 to 1979 and that its definition covered acts of rape. In doing so, the SCC confirmed that "sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental".

In Case 002, the CIJs were again seised of sexual violence outside the context of forced marriage. In their Closing Order, despite finding that rapes occurred at Kraing Ta Chan SC, the North Zone SC, Prey Damrei Srot SC, S-21 SC (extending beyond the one case for which Duch was convicted) and Sang SC, as well as in the Tram Kok Cooperatives, the CIJs concluded that this sexual violence could not be linked to the Accused via any applicable mode of responsibility and did not indict for these crimes. They found that "intimate relationships outside of marriage were considered to be against the collectivist approach of the CPK" and that official CPK policy was to prevent rape and punish the perpetrators; even though this policy was unsuccessful in preventing its occurrence, rape was not used by the CPK leaders to implement the common purpose. Although the PTC had already ruled that JCE III was not available to the CIJs to deal with foreseeable crimes, the CIJs' analysis overlooked other possible modes of responsibility available in the absence of direct intent, such as aiding and abetting and command responsibility. No party appealed this dismissal to the PTC.

The CPLCLs did however try to bring these rapes back within the scope of Case 002/02 at the trial stage. The TC correctly refused these attempts twice on 24 April 2015 and 30 August 2016 since it had no legal power to reintroduce factual allegations dismissed by the CIJs at the end of the investigation. The CPLCLs filed an appeal against the second of these decisions shortly before the end of the Case 002/02 trial. The SCC found it inadmissible for being untimely and did not consider the merits.

In Case 004, the ICP's Introductory and Supplementary Submissions seised the CIJs of facts relating to sexual violence at Prison No. 8 (Sector 7, NWZ) and in Bakan District (Sector 2, NWZ), allegedly perpetrated primarily against EZ evacuees and Khmer Krom women who were raped before their executions. During the investigation, the ICIJ found clear and consistent evidence that rape as an OIA had been committed against the women in Bakan District, but that there was insufficient evidence of Yim Tith's criminal responsibility. Though never expressly articulated, this is presumably why the ICIJ never charged Yim Tith with these crimes during the investigation. As in Case 002, that decision appears to overlook applicable modes of responsibility.

At the end of the Case 004 investigation, the NCIJ, in his Dismissal Order, found that EZ and Khmer Krom women were generally raped before being killed and that the perpetrators were not punished. However, he also failed to link these crimes to Yim Tith. The ICIJ's Indictment contains no findings regarding this sexual violence, despite a legal obligation to make findings in respect of *all* allegations of which he was seised. This is an unsatisfactory conclusion to an investigation into egregious sexual crimes that deprives the CPs and victims of a reasoned decision on these allegations.

Forced marriages and forced consummations

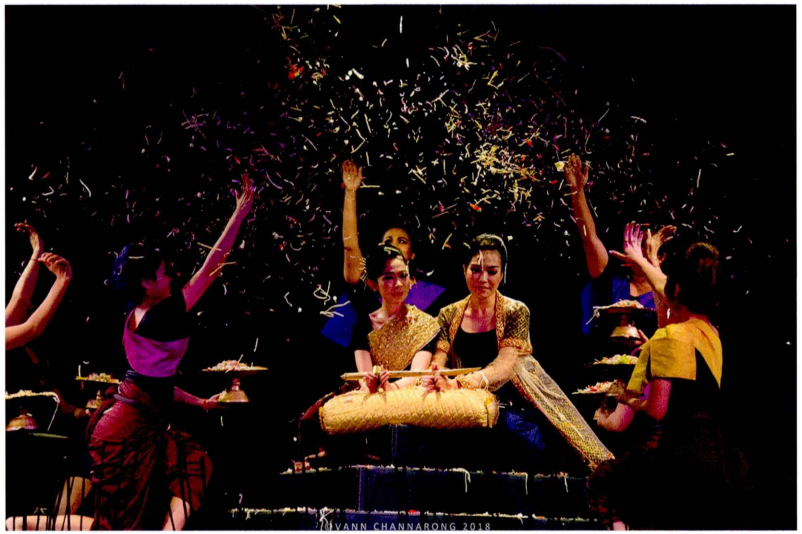
Regulation of marriage was intrinsic to CPK ideology, serving multiple purposes: controlling sentimental or sexual interactions outside marriage (which were considered potentially dangerous to the revolution and a distraction from devotion to *Angkar*), and, particularly as the regime aged, increasing the DK population. The CPK leaders strove to achieve this second goal by matching couples based on their biographies, and forcing them to marry and consummate the union. The Party dictated whether, when and whom couples would marry, with only favoured individuals, such as disabled soldiers, cadres and combatants, given the option of choosing a spouse. Habitually up to 70 or 80, sometimes over 100, couples were married during mass ceremonies, defying traditions and culture; often the couples first met at these ceremonies, without their families present. In their vows, couples had to pledge loyalty to, and to produce children for, *Angkar*. Afterwards, they were taken to accommodation where they were expected to consummate the marriage, usually monitored by armed militia.

The couples were threatened directly or implicitly with reeducation, beatings or even death if they failed to consent to the marriage or consummation; divorce was prohibited. Both male and female victims of these marriages and forced sexual intercourse suffered long-lasting physical and mental trauma as a result.

- *Forced marriage*

Forced marriage was prosecuted to a successful conviction as the CAH of OIA in Case 002/02 and was included in the Indictments in Cases 003, 004 and 004/2. The CIJs and Chambers consistently rejected challenges to the legality of the prosecutions. The fact that these crimes were usually only brought within the scope of the ECCC cases later, through the CPs' supplementary submissions, does not overshadow this considerable achievement.

The Case 002/02 convictions of KR leaders built on the SCSL's previous forced marriage convictions, stressing the distinctions between traditional arranged marriages - based on mutual trust and delegated consent between parents and children - and forced marriages, where real consent was impossible due to the violent and coercive DK environment. They were also groundbreaking achievements for international criminal justice in several ways, most notably in addressing forced marriage as state policy for the first time and in recognising both women and men as victims. Whilst the forced marriages and forced consummations were part and parcel of the same CPK policy, the Judges indicted and ultimately convicted for forced marriage and rape as separate OIAs, recognising the distinct harms caused by each. By focusing on the violation of the fundamental right to consensually marry and the specific trauma non-consensual marriages caused the victims, the ECCC Judges have strengthened the SCSL's message that forced marriage is not predominantly a sexual crime.



The Phka Sla Krom Angkar reparations project © Bophana

- *Forced sexual intercourse (forced consummations)*

In the Case 002 Indictment, the CIJs applied the broad definition of rape adopted by the ICTR's TC in *Akayesu*, finding that "by imposing the consummation of forced marriages, the perpetrators committed a physical invasion of a sexual nature against a victim in coercive circumstances in which the consent of the victim was absent," and indicting the four Accused for the

CAH of rape of both women and men. Additionally, they confirmed that the facts could be categorised as the CAH of OIA in the form of sexual violence.

In response to appeals from Ieng Sary and Ieng Thirith against this Indictment, the PTC found that rape was not an enumerated CAH between 1975 and 1979. As discussed above, the SCC confirmed this finding a year later in the Case 001 AJ. The PTC did, however, uphold the CIJs' finding that the same facts could be categorised as OIA. The Indictments in Cases 003 and 004/2 followed suit, indicting Meas Muth and Ao An for OIA through the rape of women and men.

As noted above, in the Case 002/02 TJ, the TC found Nuon Chea and Khieu Samphan guilty of the CAH of OIA through conduct characterised, separately, as forced marriage and rape. However, the Judges found that the CAH of OIA committed through conduct characterised as rape applied *only* to women. The TC held that the men who were forced to consummate their forced marriages were not victims of rape because, it said, the definition of rape that existed during the DK regime required the victim to be penetrated and could not apply to males. The TC then considered whether they were subjected to sexual violence that amounted to OIA. It found they were not: whilst the Judges acknowledged the men were subjected to sexual violence that was contrary to human dignity, they said they lacked clear evidence to establish the seriousness of the men's mental and physical suffering.

The CPs appealed the Case 002/02 TJ on this sole ground, requesting the SCC to recognise the harm caused to both male and female victims forced by the KR to engage in non-consensual sexual intercourse. The CPs argued that there is no legal presumption that men suffer less harm or indignity than women from forced sexual intercourse, and that, in making serious legal and factual errors, the TC appeared to have been influenced by false stereotypes that have created a perception that men are – and can *only* be – perpetrators, rather than victims, of sexual crimes. These stereotypes include the beliefs that men view all sexual opportunities with women as positive and do not experience any emotional harm from heterosexual intercourse, even if non-consensual. Not only are these preconceived notions legally and factually invalid, they were also directly disproven by the evidence on the record, including from a transgender victim who was forced, as a perceived man, to marry and engage in sexual intercourse with a woman against her will.

In its Case 002/02 AJ, the SCC granted the CPs' appeal and recognised men as victims of forced sexual intercourse, placing them on an equal footing with female victims. It found the TC erred by overlooking highly relevant evidence concerning the experiences of male victims, by failing to correctly apply the legal test for OIA, and by focusing on the elements of rape rather than the nature of the charged conduct: acts of forced sexual intercourse between male *and* female victims who had been forcibly married. The SCC concluded that such acts violated basic rights of physical integrity and human dignity and were of comparable gravity to the enumerated CAH. It found the evidence demonstrated that male victims experienced serious suffering and egregious humiliation and degradation commensurate to that of female victims. Additionally, it found that men suffered the distinct indignity of being forced to victimise their wives through non-consensual penetration.

- *Forced pregnancy and forced impregnation*

As discussed, one of the primary purposes of the organised marriages and the repetition of forced sexual intercourse was to increase the DK population – to produce children who could serve the revolution and maximise productivity. In Case 002, the CIJs rejected the CivPLs' request that they investigate this conduct as forced pregnancy and the Case 002 Accused never faced forced pregnancy charges.

In Case 004, CivPLs again requested the CIJs to investigate forced pregnancy as a CAH of OIA (as defined in the Rome Statute, which requires that "[t]he perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law"). The ICP supported the request but argued that the Rome Statute definition was inapplicable at the ECCC, submitting that the conduct should be investigated as forced *impregnation* i.e. forcing or coercing women and girls to become pregnant against their will. The ICP argued that this conduct rises to the requisite level of gravity, violating inalienable rights values such as human dignity, autonomy, equality and reproductive choice, with serious social, economic, lifestyle and health consequences, and causing serious mental harm.

ICIJ Bohlander denied the CivPLs' request and rejected the ICP's submissions, finding i) insufficient evidence that either forced pregnancy or forced impregnation constituted an OIA from 1975 to 1979, ii) a lack of evidence of the conduct, and iii) that the request would cause unacceptable delay to the investigation and undue burden on the defence.

Mobile Exhibition on "Forced Marriage During the Khmer Rouge Regime" © Youtube

The ICIJ correctly held that OIA were a CAH in customary international law by 1975, criminalised acts of a similar *nature and gravity* to the enumerated CAH, and that there was no need for the underlying act, i.e. forced pregnancy etc., to be criminalised in national or international law; he agreed the Rome Statute definition was inapplicable. However, in his reasoning there must have existed "a widely accepted definition and a customarily accepted [human rights] standard relevant to forced pregnancy in 1975 to 1979". Examining the 1863 Lieber Code, GC IV, and the 1977 APs, the ICIJ considered that in 1975 women were at most expressly protected from rape, forced prostitution and other forms of indecent assault. He found no settled definition of forced pregnancy in Cambodian or international law by 1975 and no relevant "clear human rights" standard. The same applied, he found, to forced impregnation.

In the former ICP's view, the ICIJ erroneously applied the legal requirements for establishing an OIA, upheld by the SCC in Cases 002/01 and 002/02. *Gravity* is the keystone of OIA, a residual category intended to fill voids where imaginative perpetrators would enjoy impunity. There is *no* requirement, contrary to the ICIJ's findings, for the specific underlying conduct to be expressly prohibited in IHRL *nor* does it need to conform to a legal definition.

Finally, turning to the ICIJ's assertion regarding a lack of evidence, it is to be noted that, had questions relevant to this crime been asked by investigators, relevant evidence could have been elicited. Forced pregnancy was, regrettably, never truly investigated at the ECCC.

Capacity-Building

Capacity building, also known as capacity development, occurred both externally and internally at the ECCC, and contributed to the Court's work and legacy in Cambodia and beyond. Through a multifaceted approach, the ECCC implemented structures and provided jurisprudential and educational tools to reinforce the vital role a rule of law-based legal system and society play in delivering justice fairly and impartially.

The Court's legal and procedural judicial record is one of two core legacies of its capacity building. It memorialises the functioning of a judicial system premised on fair trial rights for all parties, including CivPs and especially charged and accused persons, decision making by independent and impartial Cambodian and international judges based on law and facts, and their issuance of reasoned written orders, decisions and judgments in the Khmer language. The Court's work is – and after the ECCC's closure, must always remain – accessible and available to inform and refine the judicial mechanisms in Cambodia, and educate the Cambodian public about fundamental rights and duties in legal proceedings.

The other core capacity development legacy of the ECCC is the increased knowledge of substantive and procedural international law and case management, as well as improved technical skills, that the many national judges, lawyers and administrators gained while at the Court. They expanded their professional capacity through their ongoing judicial and administrative work and through the professional development courses and seminars made available to them.

To give a few examples, in the early years of the Court, Cambodian staff travelled to the ICTY and ICC to interview lawyers, investigators and analysts about investigative processes and effective case management. At the ECCC itself, both national and international staff honed their skills through their direct work on the ECCC's cases and also through legal seminars (focusing on IHRL, international criminal law and IHL), English and Khmer language classes, IT courses and investigation skills workshops. The Court hosted training sessions on gender sensitivity in transitional justice, and cooperated with BAKC to present courses to assist Cambodian lawyers in effectively representing their clients at the ECCC.

VSS Organises Workshop on Gender Sensitivity in Transitional Justice © ECCC website

National staff take this knowledge and skills with them to use to the benefit of the Cambodian legal and administrative systems into which they reintegrate.

Another significant capacity building accomplishment of the ECCC has been its use of Cambodian and international interns. Throughout the life of the Court, all ECCC organs have relied heavily on them to fulfil their respective mandates, making these law students and young professionals an intrinsic part of their teams. Interns performed many of the same tasks as the ECCC's lawyers, analysts and public affairs professionals. This hands-on experience developed their skills, made a significant contribution to the judicial process at the ECCC, and for the national interns, is part of the knowledge and skill base they bring to their work in the Cambodian system.

For the Cambodian public, education and outreach programmes at the ECCC premises and throughout Cambodia informed attendees about the ECCC's work, and facilitated dialogue on Khmer Rouge history and what it means to deliver fair and impartial justice. For example, the ECCC organised educational visits and lectures attended by thousands of Cambodian students and teachers from schools such as the Royal University of Phnom Penh, Battambang University, and Ek Phnom High School. Likewise, the ECCC worked with outside funders, primarily NGOs, to ensure Cambodians could attend Court sessions, thus familiarising them with a judicial system based on fair trial and the rule of law. Throughout Cambodia, educational materials were distributed and presentations were delivered on the ECCC's work.

700 Students from Tboung Khmum and Prey Veng Province at the ECCC on 26 April 2018 © ECCC website

Capacity building at the ECCC did face some challenges which limited its scope. For example, as with all international or hybrid courts, funding restrictions meant that there were no posts created for external professional capacity building *per se*; ECCC staff could only devote time to these activities as their judicial or administrative mandates allowed. OoA has also shifted its internal budgetary priorities away from outreach and external capacity building in recent years and considerably downsized its Public Affairs Section.

Moreover, many Cambodian legal staff at the ECCC were required to maintain their full-time Cambodian government positions, thus reducing their involvement in, and exposure to, the ECCC's work, which in turn limited the knowledge and skills they could take away from those experiences.

However, these limitations do not detract from the overall success of the ECCC's capacity building legacy, which should rightly be acknowledged as a considerable accomplishment.

300 Training Teachers in Phnom Penh visited the ECCC © ECCC website

PART IV: CHALLENGES

Structural Challenges

A. Co-Prosecutors and Co-Investigating Judges

The ECCC's legal framework, which created two independent and equal CIJs and CPs, one international and one Cambodian, presented challenges centred around the consequences of irreconcilable disagreements between them. Unfortunately, the ECCC did not successfully overcome these challenges, as discussed below.

• Equal and Independent Co-Prosecutors

It was foreseeable that fundamental disagreements might arise between the two equal and independent CPs, as was the corollary that one CP might decide to act alone, for example, to launch a judicial investigation under IR 53. Indeed, articles 6 and 7 of the ECCC Agreement, article 20 of the ECCC Law and IR 71 foresee these eventualities. They put in place a disagreement resolution mechanism that allows – but does not *require* – the CPs to refer their disagreement to the PTC. In the event the disagreement is not referred, or where the PTC fails to reach a supermajority resolving the disagreement, the legal framework provides a "default position": in such instances the prosecution "shall proceed". Moreover, IR 1(2) clearly states that reference in the IRs to CPs includes each acting individually, and on many occasions the PTC provided unanimous judicial confirmation that the CPs (and CIJs) can act alone to advance proceedings.

Yet, despite this, avoidable ambiguities in the ECCC's foundational documents allowed those wishing to block the progress of proceedings to find provisions supporting a requirement that the CPs must undertake all acts together. For example, article 16 of the ECCC Law states that indictments shall be the responsibility of the two prosecutors, who shall work together to prepare them. Some IRs similarly appear to require joint action if applied out of context and without reference to IR 1(2). For example, IRs 49(1) and 50(2) mandate that prosecutions and preliminary investigations may only be initiated and carried out at the request of the CPs. Under IR 53, it is the CPs who open a judicial investigation.

Initially, no disagreements between the CPs directly impacted the progress of ECCC proceedings, and the PTC Judges properly applied the default position in 2009 to forward the ICP's Case 003 and 004 Introductory Submissions to the CIJs for investigation. However, despite the PTC's earlier unanimous action, at the end of the Case 004 investigation, the three PTC NJs used these ambiguities to rule that the entire case file was illegal because the ICP had allegedly acted unilaterally in conducting the preliminary investigation 13 to 15 years prior. This finding was contradicted both by the PTC's own jurisprudence and by the available procedural evidence. Even if correct, the Judges also ignored that any error had been cured by the progress of proceedings. This reliance on these superficial ambiguities threw an unnecessary pall over the conclusion of proceedings that could have been avoided had the foundational documents and IRs stated, in unequivocal terms, the authority of one CP to act unilaterally, subject to judicial review on substantive legal issues.

• Equal and Independent Co-Investigating Judges

Judicial consideration of the consequences of having two equal and independent CIJs and a similarly permissive disagreement resolution mechanism – set out in articles 5 and 7 of the ECCC Agreement, article 23 of the ECCC Law and IR 72 – presented challenges that were ultimately fatal to the prosecution of Cases 003, 004/2 and 004.

An analysis of national and international inquisitorial systems highlights the uniqueness of this structure, which exists in no civil law country that continues to use investigating judges. As in the regular Cambodian system, investigating judges usually work alone. Where provision is made for multiple equal and independent judges to investigate complex cases, there is always a mandatory mechanism to resolve disagreements and avoid procedural stalemates, usually either by the vote of a majority or of the presiding judge. At the international level, the Special Criminal Court in the Central African Republic (another hybrid tribunal based on the civil law system) does use a system of two equal and independent CIJs. Yet, that Court applies a clearly articulated *mandatory* disagreement mechanism where they cannot agree,

in sharp contrast to the ECCC's *permissive* system. The tribunal empanels a three-judge Chambre d'Accusation Spéciale (two IJs and one NJs), who decide the dispute by a majority vote within five days.

Like for the CPs, the ECCC legal framework provides a default mechanism intended to avoid stagnation in the judicial process arising out of disagreements between CIJs. It provides that the investigation – judicially interpreted to mean "case" after closing orders are issued – "shall proceed", where the CIJs do not refer the matter to the PTC or where, after referral, a PTC supermajority does not overturn the action progressing the investigation. What permitted the investigations in Cases 003, 004/1, 004/2 and 004 to reach completion, with three of the four suspects indicted by the ICIJ, was this ability, reflected in IR 1(2) and confirmed many times by the PTC, for one CIJ to act alone to progress the investigations. Where an indictment is issued, and there is no PTC supermajority overturning it, IR 77(13)(b) implements the default position by mandating that the TC *shall* be seised of the case, i.e. the case *shall* go forward to trial.

The system broke down primarily because the PTC Judges failed to accept that the foreseeable consequence of having two independent, equal CIJs and a *permissive* disagreement mechanism was that these CIJs could issue contradictory closing orders based on irreconcilable legal and factual conclusions. In Cases 004/2, 003 and then 004, the CIJs took the ECCC framework at its word and chose not to refer their disagreements to the PTC. In the interests of transparency, and exercising their independence, they instead issued two conflicting closing orders in each case. However, in the context of the parties' appeals against those closing orders, the PTC Judges determined that the issuance of two conflicting orders was illegal, thus failing to appreciate, accept and implement the realities of the ECCC legal framework.

This failure was then compounded, first at the PTC level and then at the SCC. Despite the PTC Judges not having overturned the Indictments in those cases by a supermajority, the PTC NJs refused to apply the default position and send the cases to trial. This created an unacceptable judicial limbo in violation of the clear intent of the foundational documents, and the clear language of IR 77(13)(b), that indictments seise the TC where they are not overturned by a PTC supermajority. Then, the lack of clear authority and responsibility of the SCC to issue binding orders to rectify such failure and to itself abide by the default position, or its unwillingness to do so, led to the SCC terminating all three cases.

These challenges concerning the CPs and CIJs could have been overcome by more clear and consistent language in the foundational documents and IRs expressly articulating:

i. the authority of each CP or CIJ to act alone;
ii. a mandatory disagreement resolution mechanism to deal with irreconcilable disagreements;
iii. the binding nature of the ECCC default position at all stages of proceedings, including the judicial and administrative duty to take all necessary steps to implement that position, such as forwarding the case file to the TC for trial; and
iv. the SCC's authority and obligation to correct errors of the lower chambers and to order corrective action binding on all judges, including ordering cases to proceed to trial in compliance with the default position.

In addition, these challenges highlight the need for any future "hybrid", "internationalised" tribunal to have a majority of IJs in chambers, which should then use simple majority voting. This revised model would be best served by neither the UN nor the State having the authority to reject the judges selected by the other. The ECCC experience has shown that the supermajority model is insufficient to shield judicial proceedings from direct and indirect external pressure.

B. Office of Administration

The functioning of OoA has been marked by both successes and failures in the conduct of its mandate. Challenges relating to OoA processes and support have revolved primarily around: i) the lack of a clearly defined scope of OoA authority and OoA's exercise of that authority, ii) structural issues related to DSS and CPLCL sections being placed within OoA, and iii) the lack of a clear definition of the autonomous functions of the DSS and CPLCL legal staff, and of the scope of OoA's required support for those functions. The lack of effective recourse for disagreements with OoA actions has added to these challenges.

Inconsistent and ambiguous language in the foundational documents and IRs has foreshadowed challenges regarding the scope of OoA's authority and the *de facto* independence of the other ECCC organs and sections. Article 8 of the ECCC Agreement and IR 9 task OoA with "servicing" and "supporting" the Chambers, CIJs and CPs. By contrast, article 30 of the ECCC Law mandates OoA *supervision* over the staff of those sections. This lack of clarity has manifested in specific areas, some of which are discussed below.

- **Budget and Resources**

Article 31 *new* of the ECCC Law, giving OoA, through the Deputy Director, a nebulous authority to administer the resources provided through the UN Trust Fund, has led to an exclusive, as opposed to inclusive, UNAKRT budgeting process that undermines the independence of the CPs, and that of other parties. That process prevents the parties from advocating for and defending at higher levels (such as UN Headquarters budgeting committees in New York) the funding they determine necessary to accomplish their mandates. It also excludes them from providing their positions on budgeting questions from UN Headquarters that may impact their independent functioning.

An inclusive budget process model would allow the meaningful participation of each ECCC organ and section with autonomous substantive authority and ensure that their assessments of their budgetary needs are presented externally, either by the heads of these organs or sections directly, or by OoA. Of course, OoA could and should present its views to the Court principals and heads of sections regarding the viability of their identified budgetary needs; but the final submission of those needs, as assessed by the principals, DSS (with input from defence counsel as the representatives of parties to proceedings) and CPLCLs, should not be administratively neutralised.

The same lack of independence exists regarding other resource needs. The CPs or other parties must rely on OoA and may request resources but have no effective recourse if the request is denied, as has too frequently been the case. And this pertains to very basic resources such as adequate, functioning equipment necessary for sections to carry out their mandates, and proactive support for time sensitive activities such as death in custody investigations.

OoA's apparent interpretation of its mandate to *manage* incoming funds to the ECCC as its *ownership* of those funds, which it can distribute between the organs and sections as it unilaterally decides, has brought the need for oversight of this organ into sharp relief. This misunderstanding arose very clearly in the context of funding residual function activities during the transition period to a residual functioning court. Quite rightly, OoA recognised that some such activities could properly commence during this transition period. However, OoA exercised its apparent view that it owns the Court's funds to obligate these Court funds to activities it characterised as "ECCC projects", which are in fact projects OoA has unilaterally identified, and whose implementation it oversees. At the same time, OoA denied access to these ECCC funds for at least one residual function activity identified and overseen by OCP. This is despite OCP being an independent organ of the ECCC just like OoA, thus rendering its activity an ECCC project in the same sense OoA projects are.

- **Public Affairs**

IR 9(4) designates OoA to serve as the ECCC official channel for both internal and external communication, unless it would prejudice the authority of the Judges or CPs to provide information related to their functions. Giving this authority to OoA, without defining the scope of the qualification, undermines the Judges' and CPs' independence. It also ignores any mention of DSS or the CPLCLs. This all brings into question the authority of the judges or parties to individually or jointly issue timely public communications providing their unique perspective, and makes exercise of that authority dependent on OoA approval. The independent organs of the Court and other parties should have the unqualified authority to communicate with the public, always within ethical limitations, of course.

- **DSS and CPLCL Section**

Whilst OCP is an independent office, the ECCC's structural framework appears to place the other parties to proceedings, through DSS and the CPLCL section, within OoA, or at least under its oversight in some respects. DSS supports the defence function, and the CPLCLs represent the interests of the CivPs at trial and beyond, with the mandated independence that entails. Yet, placing DSS and the CPLCL section within OoA has created significant challenges to the substantive functioning of those sections, and, in the case of DSS, the independent functioning of the defence, and gives rise to questions

about the proper placement of parties within the ECCC structure.

The challenges faced by these sections go beyond structure, however. The IRs clearly state that the DSS and CPLCL sections are autonomous with regard to all *substantive* matters pertaining to defence (IR 11) and CivP matters (IR 12) – without clarifying the scope of the autonomy or those substantive matters. In turn, OoA is obligated to provide necessary *administrative* support to these sections, and to all CivPLs, again without definition.

This failure to clearly articulate in the IRs the nature and scope of the sections' autonomy, what constitute "substantive matters" and what "administrative support" is expected of OoA, has left a void OoA too often fills by relying on its own interpretation of these terms to deny requested support, including the duration of staff contracts and logistical support. To the extent OoA ventures into expressly defining the scope of the sections' autonomous decision making regarding substantive matters, it goes beyond its authority and as discussed below, arguably makes frequent errors that are not subject to effective review. The Chambers' reluctance to pierce the veil of OoA's assumed autonomy in administrative matters, even where substance, i.e. the *parties'* autonomous authority, is at issue, further exacerbates the problem. It is appropriate for a party, not OoA, to decide what lies within the scope of its mandate, with the Judges or other appropriate oversight mechanism as the ultimate arbiters, not OoA.

The former head of DSS has reported difficulties gaining budget approval for his section's financial resources, but the CPLCLs appear to have been particularly negatively affected by these challenges. OoA has, with increasing regularity, based its support decisions on its own interpretation of the scope of the CPLCLs' autonomous functions, even where that interpretation is inconsistent with the IRs. For example, OoA has determined that the CPLCLs do not represent CivPs, but have a coordination function only, in contradiction to the IRs which impose a duty to *represent* the interests of the CivPs at trial and beyond (IR 23 *ter* (5)). Based on its interpretation, OoA consistently denies funding to support representational activities such as meetings with CivPLs and CivPs. Such meetings are essential throughout the process to provide information to the CivPs on the status of the cases for the CivPs to inform, determine and articulate their interests at all stages. OoA also withheld resources through its interpretation of the CPLCLs' judicial mandate, which OoA has determined excludes any work not requested by a Chamber. This is not only at odds with practice for all parties at every international criminal tribunal, but it clearly reaches into "substantive matters" and prevents the CPLCLs litigating matters that directly affect their clients' interests. The detrimental impact of this overreaching ultimately led to the International CPLCL reluctantly withdrawing her representation in June 2022 because of her inability to carry out mandated duties in a manner that best serves the thousands of Case 002 CivPs.

The ability of DSS to meet Defence Counsel support requests is of course dependent on the budget submitted by OoA. But, unlike the CPLCLs, Defence Counsel have reference to a Legal Assistance Scheme which regulates in some considerable detail their resource entitlements and how DSS decisions should be made. Defence Counsel are also hired on legal services contracts that, in accordance with the Legal Assistance Scheme, give them recourse to an administrative judge to settle disputes with DSS over resource requests. By contrast, the CPLCLs and associated legal staff have no framework document regulating their resource allocations and are left with no remedy when judges do not intervene to order OoA to provide the requested support. The CPLCLs' lack of effective recourse appears to have allowed OoA to, in effect, define, limit and supervise the mandated functions of the CPLCLs and associated legal staff.

As structured within the ECCC, these challenges could have been overcome by:

i. creating the CPLCL section and DSS as independent ECCC entities, or alternatively for DSS, folding it into an independent Principal Defender entity;
ii. clearly articulating the scope of OoA's administrative authority in relation to supporting defence and CPLCL functions, including duration of contracts and logistical support, and making clear its authority does not extend to interpreting the mandated duties of these parties;
iii. establishing a transparent legal assistance scheme for CPLCLs and CivPLs, thereby reducing the scope for arbitrary OoA funding decisions;
iv. securing the services of CPLCLs and CivPLs through legal services contracts, which include a dispute resolution mechanism, thereby

providing an effective judicial and non-judicial oversight mechanism to resolve disputed OoA support decisions; and

v. ensuring decisions regarding support requests are made by the Director or Deputy Director of OoA and not delegated to a junior staff member.

An enforced payment system for all CivPLs would also be important for effective CivP representation. At the ECCC, many, if not most, of the CivPLs have not been paid for many years, nor have they received advances or reimbursements for the expenses associated with activities that are essential to CivP representation, such as those incurred in meeting their clients. This leaves them unavailable to carry out their duties effectively, including coordinating with and supporting the CPLCLs.

- **Conclusion**

The overarching issue, which pertains to all the challenges discussed, is that the ECCC has no effective mechanism for the resolution of disputes with, and complaints against, OoA – ironically, as part of an entity created to enforce accountability – making this organ effectively unaccountable for its contested actions. Unlike other international criminal tribunals, there is no president to perform this function. As an alternative, an internal, independent committee could deal with such disputes, but no such body currently effectively fulfils that function. Nor is there any clear authority outside the ECCC to whom disputes and complaints about the actions, or lack of action, by OoA can be referred for resolution. Although OoA is the *support* organ of the ECCC, this omission has created an administrative body that can wield disproportionate power over the functioning of the ECCC.

IR 19 does offer a mechanism by which such oversight could have been effectively exercised, establishing the JAC as a forum for the CPs and judges to advise and guide OoA "concerning all activities relating to the administrative and judicial support provided to the OCP, the OCIJ and the Chambers, including the preparation and implementation of the budget."

However, the JAC does not seem to have fully implemented its mandate or met on a regular basis. Also, the IR fell short of fully addressing management challenges related to the functioning of OoA by i) not giving the JAC formal dispute management functions, ii) not including as members of the Committee the head of the DSS and/or the defence Co-Lawyers, or the CPLCLs, iii) not including within the language of the IR to provide advice and guidance to OoA concerning all activities relating to administrative support for DSS and the CPLCLs, and iv) having meetings called only by the President, and not at the request of any member of the Committee.

Funding

The ECCC was created based on a voluntary funding scheme, with the UN committing to finance the international component and provide other support, and the RGC pledging to fund the national component and to furnish other services, including the ECCC premises.

The ECCC secured advance funding for its first three years and successfully relied on the voluntary funding mechanism for several years of operation. From the start, the ECCC, with UN support, took steps to expand the donor base and implement internal efficiencies. Partnerships with entities such as UN Women, Justice Rapid Response, and Cambodian NGOs provided funding and support services to advance the Court's work in relation to victims and CivPs. The ECCC Agreement itself introduced the cost-saving measure of establishing the Court based on a phased-in approach, bringing on the judges as needed. Then throughout the life of the ECCC, the IRs were amended to streamline investigation and trial procedures. For example, in 2010, the CPLCLs were created to consolidate CivP representation at the trial stage and beyond; in early 2015, IRs 66 *bis* and 89 *quater* were added to allow the CIJs and TC to reduce the scope of the investigations and trials respectively, while ensuring they remain representative of the scope of the original prosecution submissions and the indictment.

However, severe shortages for the international component began in 2012, and in 2013, serious funding shortfalls for national staff resulted in walk-outs. Thereafter, despite some contributions from the RGC and the continued support to both components from committed and generous international donors such as the members of the Principal Donors Group (comprised for many years of Japan, Australia, France, Germany, the United States, the United Kingdom, Sweden and the European Union), budgetary shortfalls persisted. A pledging conference in New York on 7 November 2013 did enlarge the donor base slightly, but it still became impossible for the Court to secure sufficient predictable funding to meet its relatively modest budgetary needs. From 2014 onwards, the ECCC thus needed to seek subventions from the UN. The UN also made exceptional loans to the RGC with no terms and conditions other than that the RGC repay them when possible.

The voluntary funding scheme has both positive and negative aspects. It is an attractive funding mechanism for donors, allowing them to contribute without requiring them to commit to long-term funding obligations. Indeed, it is unlikely the ECCC would have been created had the voluntary funding scheme not been adopted. And without the ECCC, it is a virtual certainty that no perpetrators would have been held accountable for their heinous crimes and no measure of justice would have been delivered to their direct and indirect victims.

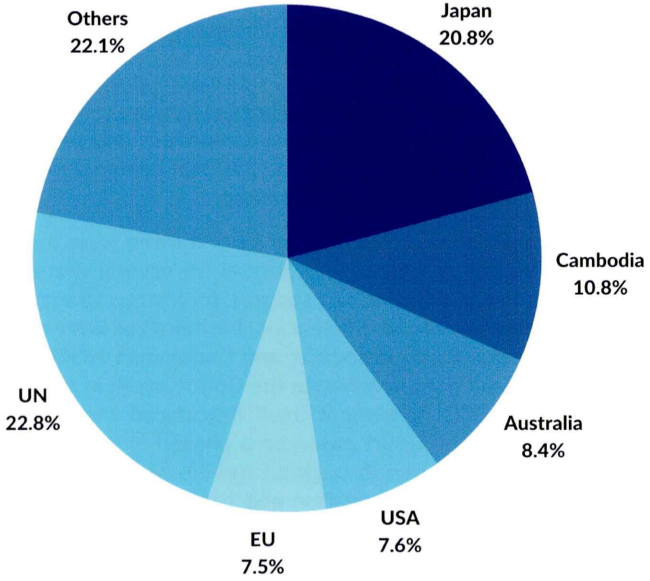
That said, the negative aspects of a voluntary contributions scheme include the inevitable shortfalls that have occurred with all the voluntary funded courts, not only the ECCC. It has simply not proven to be a sustainable funding model and is one that leaves the tribunals vulnerable to changes in global and local political and economic circumstances that impact donors' commitment. The SCSL, the STL, as well as this Court, all needed to rely on subvention grants from the UN, obligating all States to fund them in the end.

Moreover, financial shortfalls injected uncertainties into the ECCC that *could* have potentially impacted the Court's ability to carry out its judicial mandate, though this was ultimately avoided. Indeed, although it is unclear to the former ICP why the CIJs, in 2017, waited until the investigations in Cases 003, 004 and 004/2 were almost complete and the ECCC's worst funding crisis had passed, the fact that they requested written submissions regarding the impact of the ECCC budgetary situation on those investigations is perhaps indicative of the inherent insecurities of the voluntary funding scheme. At the STL, the worst-case scenario occurred in 2021, thwarting a new trial that was about to begin and effectively ending most of the tribunal's functions.

Though the judicial work of the ECCC did continue, these uncertainties undermined morale. They added to the stress experienced by staff members, who could not be sure of the length of their employment but felt it their professional responsibility to remain committed to producing the highest quality work, regardless of the limited number of posts allocated and the long hours required. Indeed, in the later years of the ECCC, staff contracts were

renewed on a three-month basis and at times monthly. High staff turnover, with the consequential loss of institutional knowledge, was the inevitable result, introducing inefficiencies into the judicial process. In addition, securing continued voluntary contributions is an understandably time-consuming enterprise that takes participants away from concentrating on the core work of their court. Finally, any tribunal going cap in hand to ask for financial contributions is an optic that allows detractors to argue that it does not dispense impartial justice, but instead does the bidding of its donors.

Voluntary funding mechanisms help bring justice and accountability for horrific crimes that impact the immediate primary and secondary victims and the entire global community. Generous donors have contributed significant funding to enable the operation of courts so created. Yet to be successful, these schemes need to be modified to include donors voluntarily and formally committing to providing funding as long as required by the courts' judicial mandates. Even with such a modification, the better, sustainable model is UN assessed funding, as recognised by the UNSG as early as 2003 and noted periodically thereafter. This is the mechanism voluntary funding inevitably transforms into: one which can accept voluntary contributions from States, but as part of the agreements creating the courts, obligates the UN to provide funding to cover budgetary shortfalls. This would inject much-needed financial stability into the work of the courts, removing the need for the time-consuming annual or biennial subvention process, while allowing voluntary contributions, and of course, requiring courts to operate efficiently.



Principal donor contributions in US$ (2006-2022)

UN (subventions/loans/ grants/Trust Fund)	96,646,417
Japan	88,267,746
Cambodia	45,516,068
Australia	35,535,093
USA	32,330,793
EU	31,672,994
Germany	17,995,353
Sweden	14,990,797
Others (individual donors/countries)	60,821,805

Passage of Time

The temporal jurisdiction of the ECCC encompassed alleged crimes committed between 27 and 31 years before the investigations commenced in mid-2006. Thus, the passage of time posed several challenges for the Court's work: its possible effect on memory and on the health and infirmity of suspects, accused, witnesses and CivPs, with consequent delays in proceedings, increased resources required for investigation and trial, and the loss of several suspects and accused before the conclusion of proceedings.

Although a shorter period than for the ongoing German Nazi trials, the most obvious challenge was the potential impact of the passage of time on the memory of participants to the proceedings. This was one of many factors the Court had to consider when assessing the credibility of that evidence, a factor that could, depending on individual capacities, result in loss of, or unclear, memory regarding incidental details and the sequence of incidents and experiences. The Court overcame this challenge by considering the internal consistency of each person's evidence in the context of other testimony and statements of those involved, internal CPK records, and other contemporaneous documents such as media reports, all memorialising the events of the DK period.

The most significant challenge posed by the passage of time, however, was its impact on proceedings due to the ill health and infirmity of suspects, accused, witnesses and CivPs, and their physical and mental capacity to participate in proceedings. Ill health deprived the ECCC of potentially relevant evidence from witnesses and CivPs who died before they could present their evidence or were too infirm to do so. The suspects' and accused's age and infirmity meant that the ECCC was unable to reach final judgment in all cases. As previously discussed, Ieng Thirith (born 1932) was found unfit to stand trial before her trial commenced, Ieng Sary (born 1925) died in 2013 during his trial, and Sou Met died during the judicial investigation. In addition, Ta Mok and Ke Pauk, senior KR cadres who could have been considered as among those most responsible, also died shortly before the ECCC began operations. However, justice beyond what might have been foreseen was delivered at the ECCC, with cases proceeding against several accused. Duch (born 1942) lived to see the conclusion of his trial and appeal. Nuon Chea (born 1926) survived to see the completion of his first trial and appeal, and the TC judgment against him in the second trial. Khieu Samphan (born 1931) has lived to see his two trials and appeals completed. In addition, Ao An (born 1933), Yim Tith (born 1936) and Meas Muth (born 1938) survived to face indictment and see their cases dismissed, and the case against Im Chaem (born 1946) was dismissed in her lifetime.

Significant delays were occasioned by the Court's need to determine the physical and mental fitness of the Accused to stand trial, with ongoing assessments by medical experts. These concerns often led to reduced weekly court sessions or shorter hearings and, at times, to adjournments, all adding to the time required for these cases. Indeed, Accused Ieng Sary, Nuon Chea and Khieu Samphan were often unable to attend in-court proceedings due to fatigue, ill health or hospitalisations. Where these Accused did not waive their right to be present, or the Judges felt their presence was required, their absence halted the proceedings. Health and age-related concerns regarding Ieng Sary, Nuon Chea, Khieu Samphan were primary factors leading to the severance of the charges against them, resulting in two trials and several additional years to the conclusion of proceedings.

These issues also added to the resources required for the Court's proceedings; for example, medical personnel to treat Accused's infirmities and assess their physical and mental fitness to participate in the proceedings, and facilities and equipment to allow for out-of-court participation by the Accused where necessary.

The ECCC met these challenges by developing a broad, multi-source evidence base on which the Judges could rely in reaching their investigative and trial decisions. The Court exhibited great flexibility to accommodate the health-related needs of suspects, accused, witnesses and CivPs alike, providing medical expertise where needed, equipping holding cells to allow Accused to participate remotely in proceedings, and rigorously analysing mental fitness issues to ensure Accused were treated fairly.

External Resources

CAMBODIAN STAKEHOLDERS

1. Cambodia Human Rights and Development Association: https://www.adhoccambodia.org
2. Documentation Center of Cambodia: https://dccam.org
3. Transcultural Psychosocial Organization: https://tpocambodia.org
4. Tuol Sleng Genocide Museum: https://tuolsleng.gov.kh/en/

BOOKS AND ARTICLES

A. Comprehensive Treatments of the ECCC

5. Alexander Hinton. *The Justice Facade: Trials of Transition in Cambodia*. Oxford, UK: Oxford University Press, 2018.
6. Cheryl S. White. *Bridging Divides in Transitional Justice: The Extraordinary Chambers in the Courts of Cambodia*. Cambridge, UK: Intersentia Ltd., 2017.
7. Craig Etcheson. *Extraordinary Justice: Law, Politics, and the Khmer Rouge Tribunals*. New York, USA: Columbia University Press, 2019.
8. John D. Ciorciari and Anne Heindel. *Hybrid Justice: The Extraordinary Chambers in the Courts of Cambodia*. Ann Arbor, USA: University of Michigan Press, 2014.
9. Nina H.B. Jørgensen. *The Elgar Companion to the Extraordinary Chambers in the Courts of Cambodia*. Cheltenham, UK: Edward Elgar Publishing, 2018.
10. Rebecca Gidley. *Illiberal Transitional Justice and the Extraordinary Chambers in the Courts of Cambodia*. Cham, Switzerland: Palgrave Macmillan, 2019.
11. Simon M. Meisenberg and Ignaz Stegmiller. *The Extraordinary Chambers in the Courts of Cambodia: Assessing their Contribution to International Criminal Law*. The Hague, The Netherlands: T.M.C. Asser Press, 2016.

B. Unique Aspects of the ECCC

(i) The ECCC as an internationalised tribunal: foundations, framework and evolution

12. David Scheffer. *The Extraordinary Chambers in the Courts of Cambodia*. In the Book "International Criminal Law: International Enforcement", Volume 3, 3rd ed., edited by M. Cherif Bassiouni. Leiden, The Netherlands: Koninklijke Brill NV, 2008.
13. Ernestine E. Meijer. *The Extraordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed by the Khmer Rouge: Jurisdiction, Organization, and Procedure of an Internationalized National Tribunal*. In the Book "Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia", edited by Cesare P.R. Romano, André Nollkaemper and Jann K. Kleffner. Oxford, UK: Oxford University Press, 2004.
14. Hanna Bertelman. *International Standards and National Ownership? Judicial Independence in Hybrid Courts: The Extraordinary Chambers in the Courts of Cambodia*, Nordic Journal of International Law 79, 3 (2010): 341-382.
15. John D. Ciorciari. *Compromising on Hybrid Justice*. In the Book "Sovereignty Sharing in Fragile States", by John D. Ciorciari. Stanford, USA: Stanford University Press, 2021.
16. John D. Ciorciari and Anne Heindel. *Experiments in International Criminal Justice: Lessons from the Khmer Rouge Tribunal*, Michigan Journal of International Law 35, 2 (2014): 369-442.
17. Tomas Hamilton and Michael Ramsden. *The Politicisation of Hybrid Courts: Observations from the Extraordinary Chambers in the Courts of Cambodia*, Interna-

tional Criminal Law Review 14, 1 (2014): 115-147.

(ii) Personal Jurisdiction

18. Randle C. DeFalco. *Cases 003 and 004 at the Khmer Rouge Tribunal: The Definition of "Most Responsible" Individuals According to International Criminal Law*, Genocide Studies and Prevention: An International Journal 8, 2 (2014): 45-65.
19. Sara Ochs. *In Need of Prosecution: The Role of Personal Jurisdiction in the Khmer Rouge Tribunal*, Stanford Journal of International Law 55, 2 (2019): 117-154.
20. Stuart Ford. *Senior Leaders and Those Most Responsible at the Extraordinary Chambers in the Courts of Cambodia*, FIU Law Review 15, 1 (2021): 31-36.

C. The ECCC in the Development of International Criminal Law

(i) Substantive International Criminal Law

a. Crimes

21. Cameron Christensen. *Forced Marriage at the Cambodian Crossroads: ECCC can Develop a New Crime Against Humanity*, Brigham Young University Law Review 2015, 6 (2015): 1825-1845.
22. Elinor Fry and Elies van Sliedregt. *Targeted Groups, Rape and Dolus Eventualis: Assessing the ECCC's Contributions to Substantive International Criminal Law*, Journal of International Criminal Justice 18, 3 (2020): 701-721.
23. Emma Palmer and Sarah Williams. *A shift in attitude? Institutional change and sexual and gender-based crimes at the Extraordinary Chambers in the Courts of Cambodia*, International Feminist Journal of Politics 19, 1 (2017): 22-38.
24. Kai Ambos. *The ECCC's Contribution to Substantive ICL: The Notion of "Civilian Population" in the Context of Crimes Against Humanity*, Journal of International Criminal Justice 18, 3 (2020): 689-700.
25. Rachel Killean, Eithne Dowds and Amanda Kramer. *Soldiers as Victims at the ECCC: Exploring the Concept of 'Civilian' in Crimes Against Humanity*, Leiden Journal of International Law 30, 3 (2017): 685-705.
26. Rosemary Grey. *Seen and unseen: sexual and gender-based crimes in the Khmer Rouge Tribunals Case 002/02 judgment*, Australian Journal of Human Rights 25, 3 (2019): 466-487.
27. Sergey Vasiliev. *ECCC Appeals: Appraising the Supreme Court Chamber's Interventions*, Journal of International Criminal Justice 18, 3 (2020): 723-745.

b. Modes of Responsibility

28. Cóman Kenny. *Jurisprudence Continues to Evolve: The ECCC's Revision of Common Purpose Liability*, Journal of International Criminal Justice 16, 3 (2018): 623-644.
29. Katrina Gustafson. *ECCC Tackles JCE: An Appraisal of Recent Decisions*, Journal of International Criminal Justice 8, 5 (2010): 1323-1332.
30. Randle C. DeFalco and Jared L. Watkins. *Joint Criminal Enterprise and the Jurisdiction of the Extraordinary Chambers in the Courts of Cambodia*, Rutgers Law Review 63, 1 (2010): 193-273.
31. Rehan Abeyratne. *Superior Responsibility and the Principle of Legality at the ECCC*, The George Washington International Law Review 44, 1 (2012): 39-78.
32. Robert Charles Clarke. *Return to Borkum Island: Extended Joint Criminal Enterprise Responsibility in the Wake of World War II*, Journal of International Criminal Justice 9, 4 (2011): 839-861.

(ii) Procedure and Evidence

33. Göran Sluiter and Marc Tiernan. *The Right to an Effective Defence During ECCC Investigations*, Journal of International Criminal Justice 18, 3 (2020): 641-664.
34. Sarah Williams. *The Severance of Case 002 at the ECCC: A Radical Trial Management Technique or a Step Too Far?*, Journal of International Criminal Justice 13, 4 (2015): 815-843.
35. Vincent de Wilde d'Estmael. *The use of the archives of the Tuol Sleng Genocide Museum and the Documentation Center of Cambodia by the Extraordinary Chambers in the Courts of Cambodia*. In the Book "Archives and Human Rights", edited by Boel, Jens, Perrine Canavaggio and Antonio González Quintana. London, UK: Routledge, 2021.
36. Yvonne McDermott. *The ECCC's Approach to Evidence and Proof*, Journal of International Criminal Justice 18, 3 (2020): 747-764.

D. Victim Participation in the ECCC

(i) Victimhood in the context of mass atrocities

37. Johanna Herman. *Uncooked Rice: Justice and Victimhood at the Extraordinary Chambers in the Courts of Cambodia and Beyond*. In the Book "The Politics of Victimhood in Post-conflict Societies", edited by Druliolle, Vincent and Roddy Brett. Cham, Switzerland: Palgrave Macmillan, 2018.
38. Julie Bernath. *'Complex Political Victims' in the Aftermath of Mass Atrocity: Reflections on the Khmer Rouge Tribunal in Cambodia*, International Journal of Transitional Justice 10, 1 (2016): 46-66.

(ii) Victim Participation in ECCC proceedings

39. Christoph Sperfeldt and Jeudy Oeung. *The Evolution of Cambodian Civil Society's Involvement with Victim Participation at the Khmer Rouge Trials*. In the Book "Civil Society and Transitional Justice in Asia and the Pacific", edited by Kent, Lia, Joanne Wallis and Claire Cronin. Acton, Australia: ANU Press, 2019.
40. Helen Jarvis. *"Justice for the deceased": victims' participation in the Extraordinary Chambers in the Courts of Cambodia*, Genocide Studies and Prevention: An International Journal 8, 2 (2014): 19-27.
41. Megan Hirst and Kinga Tibori-Szabó (eds.). *Victim Participation in International Criminal Justice: Practitioners' Guide*. The Hague, The Netherlands: T.M.C. Asser Press, 2017.
42. Phuong N. Pham, Patrick Vinck, Mychelle Balthazard, Judith Strasser and Chariya Om. *Victim Participation and the Trial of Duch at the Extraordinary Chambers in the Courts of Cambodia*, Journal of Human Rights Practice 3, 3 (2011): 264-287.
43. Rachel Killean and Luke Moffett. *Victim Legal Representation before the ICC and ECCC*, Journal of International Criminal Justice 15, 4 (2017): 713-740.
44. Silke Studzinsky. *Participation Rights of Victims as Civil Parties and the Challenges of Their Implementation Before the Extraordinary Chambers in the Courts of Cambodia*. In the Book "Victims of International Crimes: An Interdisciplinary Discourse", edited by Bonacker, Thorsten and Christoph Safferling. The Hague, The Netherlands: T.M.C. Asser Press, 2013.
45. Toni Holness and Jaya Ramji-Nogales. *Participation as Reparations: The ECCC and Healing in Cambodia*, Cambodia's Hidden Scars: Trauma Psychology in the Wake of the Khmer Rouge (Documentation Center of Cambodia), (2011).

(iii) Reparations

46. Christoph Sperfeldt. *Collective Reparations at the Extraordinary Chambers in the Courts of Cambodia*, International Criminal Law Review 12, 3 (2012): 457-490.
47. Juan-Pablo Perez-Leon-Acevedo. *Reparation Modalities at the Extraordinary Chambers in the Courts of Cambodia (ECCC)*, The Law & Practice of International

Courts and Tribunals 19, 3 (2020): 451-469.
48. Rachel Killean and Luke Moffett. *What's in a Name?: 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia*, Melbourne Journal of International Law 21, 1 (2020): 115-143.
49. Toni Shapiro-Phim. *Embodying the Pain and Cruelty of Others*, International Journal of Transitional Justice, 14, (2020): 209-219.

E. Legacy of the ECCC

(i) Justice and Accountability

50. Alexander Laban Hinton. *Man or Monster?: The Trial of a Khmer Rouge Torturer*, Durham, USA: Duke University Press, 2016.
51. Christoph Sperfeldt. *From the Margins of Internationalized Criminal Justice: Lessons Learned at the Extraordinary Chambers in the Courts of Cambodia*, Journal of International Criminal Justice 11, 5 (2013): 1111-1137.
52. Diane Orentlicher. *'Worth the Effort'? Assessing the Khmer Rouge Tribunal*, Journal of International Criminal Justice 18, 3 (2020): 615-640.
53. Paolo Lobba and Niccol Pons. *Rethinking the Legacy of the ECCC: Selectivity, Accountability, Ownership*, Journal of International Criminal Justice 18, 3 (2020): 599-614.
54. Rachel Hughes, Maria Elander, Christoph Sperfeldt, Helen Jarvis, William Smith, Lyma Nguyen and Wendy Lobwein. *Achievements and Legacies of the Khmer Rouge Trials: Reflections from Inside the Tribunal*, Australian Feminist Law Journal 44, 2 (2018): 303-324.

(ii) Outreach of the ECCC and its impact on Reconciliation and Statebuilding in Cambodia

55. Abe Toshihiro. *Perceptions of the Khmer Rouge Tribunal among Cambodians: Implications of the Proceedings of Public Forums Held by a Local NGO*, South East Asia Research 21, 1 (2013): 5-26.
56. Caitlin McCaffrie. *An Educational Legacy: Exploring the Links between Education and Resilience at the ECCC*, Leiden Journal of International Law 33, 4 (2020): 975-991.
57. Christoph Sperfeldt. *Cambodian Civil Society and the Khmer Rouge Tribunal*, International Journal of Transitional Justice 6, 1 (2012): 149-160.
58. Peter Manning. *Governing Memory: Justice, Reconciliation and Outreach at the Extraordinary Chambers in the Courts of Cambodia*, Memory Studies 5, 2 (2012): 165-181.
59. Rosemary Grey and Rachel Killean, *Communicating Justice: Cambodian Press Coverage of the ECCC's Final Judgment*, International Criminal Law Review 23 (2023): 487-521.

IMPACT STUDIES

60. Caitlin McCaffrie, Somaly Kum, Daniel Mattes and Lina Tay. *So We Can Know What Happened: The Educational Potential of the Extraordinary Chambers in the Courts of Cambodia*. Stanford, USA: WSD HANDA Center for Human Rights and International Justice at Stanford University, 2018
61. Judith Strasser, Thida Kim, Silke Studzinsky and Sopheap Taing. *A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge Regime*. Phnom Penh, Cambodia: Transcultural Psychosocial Organization Cambodia, 2015.
62. Julian Poluda. *Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-Based Violence under the Khmer Rouge Regime*. Phnom Penh, Cambodia: United Nations Trust Fund to End Violence against Women, Victims Support Section of the Extraordinary Chambers in the Courts of Cambodia, Cambodian Defenders Project, Transcultural Psychosocial Organization Cambodia, 2015.

63. Julian Poluda, Sineth Siv and Sotheary Yim. *Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-Based Violence under the Khmer Rouge Regime: Final Evaluation of the ECCC Non-Judicial Gender Project (Phase 2)*. Phnom Penh, Cambodia: United Nations Trust Fund to End Violence against Women, Victims Support Section of the Extraordinary Chambers in the Courts of Cambodia, Transcultural Psychosocial Organization Cambodia, 2019.
64. Laura McGrew and Heather Ryan. *Performance and Perception: The Impact of the Extraordinary Chambers in the Court of Cambodia*. New York, USA: Open Society Foundations, 2016.
65. Phuong Pham, Patrick Vinck, Mychelle Balthazard, Sokhom Hean and Eric Stover. *So We Will Never Forget: A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia*. Berkeley, USA: University of California, Berkeley, 2009.
66. Phuong Pham, Patrick Vinck, Mychelle Balthazard and Sokhom Hean. *After the First Trial: A Population-Based Survey on Knowledge and Perceptions of Justice and the Extraordinary Chambers in the Courts of Cambodia*. Berkeley, USA: University of California, Berkeley, 2011.
67. Terith Chy. *A Thousand Voices: Questions on Additional Prosecution Posted by the Co-Prosecutors at the Extraordinary Chambers in the Courts of Cambodia*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2009.
68. Timothy Williams, Julie Bernath, Boravin Tann and Somaly Kum. *Justice and Reconciliation for the Victims of the Khmer Rouge? Victim Participation in Cambodia's Transitional Justice Process*. Marburg: Centre for Conflict Studies; Phnom Penh, Cambodia: Centre for the Study of Humanitarian Law, 2018.

SELECTED PUBLICATIONS BY ECCC WITNESSES

69. Craig Etcheson. *The Rise and Demise of Democratic Kampuchea*. 1st ed., New York, USA: Routledge, 1984.
70. David P. Chandler. *Voices from S-21: Terror and History in Pol Pot's Secret Prison*. Berkeley, USA: University of California Press, 2000.
71. David P. Chandler. *A History of Cambodia*. 4th ed., Boulder, USA: Westview Press, 2008.
72. Elizabeth Becker. *When the War was Over: Cambodia and the Khmer Rouge revolution*. New York, USA: PublicAffairs, 1998.
73. Henri Locard and David P. Chandler. *Pol Pot's Little Red Book: The Sayings of Angkar*. Chiang Mai, Thailand: Silkworm Books, 2004.
74. Henri Locard. *Pourquoi les Khmers Rouges*. 2nd ed., Paris, France: Vendmiaire, 2016.
75. Peg LeVine. *A contextual study into the weddings and births under the Khmer Rouge: the ritual revolution*. Thesis, Monash University, 2007.
76. Philip Short. *Pol Pot: The History of a Nightmare*. London, UK: J. Murray, 2004.
77. Nakagawa Kasumi. *Gender-based Violence During the Khmer Rouge Regime: Stories of Survivors from the Democratic Kampuchea (1975-1979)*. 2nd ed., Phnom Penh, 2008.
78. Osman Ysa. *Oukoubah: Justice for the Cham Muslims under the Democratic Kampuchea Regime*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2002.
79. Vann Nath. *A Cambodian Prison Portrait: One Year in the Khmer Rouge's S-21*. Bangkok, Thailand: White Lotus, 1998.

SELECTED PUBLICATIONS BY DC-CAM

80. Gunnar Bergström and Hedda Ekerwald. *Living Hell: Democratic Kampuchea, August 1978*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2008.
81. John D. Ciorciari and Anne Heindel. *On Trial: The Khmer Rouge Accountability Process*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2009.
82. Meng-Try Ea and Sorya Sim. *Victims and Perpetrators?: Testimony of Young Khmer Rouge Comrades*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2001.
83. Meng-Try Ea. *The Chain of Terror: The Khmer Rouge Southwest Zone Security System*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2005.

84. Stephen Heder and Brian D. Tittemore. *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2004.
85. Suzannah Linton. *Reconciliation in Cambodia*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2004.
86. Terith Chy. *When the Criminal Laughs*. Phnom Penh, Cambodia: Documentation Center of Cambodia, 2014.

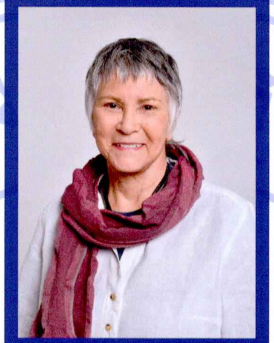
DOCUMENTARY FILMS

87. Annie Goldson and Robert Hamill (Writers), Annie Goldson and Peter Gilbert (Directors), BNO Productions and Pan Pacific Films (Producers), *Brother Number One*, 2012.
88. David Aronowitsch and Staffan Lindberg (Directors), *Facing Genocide: Khieu Samphan and Pol Pot*, 2010.
89. Lida Chan and Guillaume Suon (Directors), *Red Wedding*, 2011.
90. Rithy Panh (Writer and Director), *Bophana: A Cambodian Tragedy*, 1996.
91. Rithy Panh (Writer and Director), *S-21: The Khmer Rouge Killing Machine*, 2003.
92. Rithy Panh (Writer and Director), *Duch, le maître des forges de l'enfer*, 2011.
93. Thet Sambath and Robert Lemkin (Writers and Directors), *Enemies of the People: A Personal Journey into the Heart of the Killing Fields*, 2009.
94. Walter Heynowski and Gerhard Scheumann (Writers and Directors), *Kampuchea: Sterben und Auferstehen (Kampuchea: Death and Rebirth)*, 1980.
95. Walter Heynowski and Gerhard Scheumann (Writers and Directors), *Die Angkar*, 1981.

Partners

The Documentation Center of Cambodia (DC-Cam) was founded by Youk Chhang in 1995 as a non-profit, non-governmental organisation working in support of memory and justice for victims of the Cambodian genocide. It now has a headquarters in Phnom Penh and 19 associated offices or sites in Cambodia. https://www.dccam.org/

The Association of International Criminal Law Prosecutors (AICLP) is a non-profit professional association dedicated to strengthening the role of prosecutors and investigators in the pursuit of justice for international crimes. The AICLP advocates for prosecutorial independence and accountability in global justice systems, ensuring that those responsible for the gravest crimes are held accountable while safeguarding due process and the rule of law. https://www.iclprosecutors.org/



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June 2025