

**The recent milestone judgement in ECCC Case 002/02:
Looking at the implications for international criminal
accountability, in Cambodia and beyond**

Friday, 31st May 2019, 1.15 pm

**Opening remarks by Mr. Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel**

Excellencies,

Ladies and Gentlemen,

On the 7th of January 1979, a little more than 40 years ago, the Khmer Rouge regime ended. During the 3 years, 8 months and 20 days that the regime was in power, at least 1.7 million people are believed to have died from starvation, torture, execution and forced labour. The core mission of the Extraordinary Chambers in the Courts of Cambodia, since its inception, has been the fight against impunity for those believed to be most responsible for these grave violations of national and international law, including the senior leaders of Democratic Kampuchea.

As you know, the ECCC is a special Cambodian court which receives international assistance through the United Nations. In the 14 years since it was established upon the request of the Cambodian government, the Court has made significant progress towards fulfilling its mandate.

As was already mentioned, a number of important judgments and convictions have been issued by the ECCC. In 2012, for example, the Supreme Court Chamber affirmed the conviction of KAING Guek Eav, the Secretary of the S-21 Security Centre, to life imprisonment for crimes against humanity and grave breaches of the 1949 Geneva Conventions.

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Last November, the Trial Chamber delivered its judgment on case No. 002/02. This was the culmination of many years of effort. Substantive hearings were held between 2014 and 2017. During the trial, the Trial Chamber heard the testimony of 185 individuals, including 114 witnesses, 63 Civil Parties and 8 experts. More than 10,800 documents, totalling over 304,000 pages, were analysed and considered by the Chamber. The resulting judgment is a landmark for many reasons, including its length: it is the longest judgement to be issued by the ECCC to date, totalling 4,101 pages in Khmer, 2,387 pages in English and 2,828 pages in French.

In light of the complexity of the case and the facts underlying it, it would be impossible to give a complete account of the Chamber's findings in the time at our disposal. Allow me to try, nonetheless, to spend a few minutes to give you some basic coordinates – a roadmap of the judgment, if you will, to inform our discussion today.

Case 002/02 arose from case 002, which was split in two parts. The overarching case concerned the responsibility of NUON Chea and KHIEU Samphân for crimes committed in Democratic Kampuchea between 17 April 1975 and 6 January 1979.

In case 002/01, the focus was on crimes against humanity alleged to have been committed during the evacuation of Phnom Penh on 17 April 1975 and during subsequent movements of population in other regions of Cambodia, as well as in relation to the alleged execution of former Khmer Republic officials at Tuol Po Chrey. In November 2016, the Supreme Court Chamber delivered its final judgment on this case. It affirmed NUON Chea's and KHIEU Samphân's convictions to life imprisonment for the crimes against humanity of murder, persecution on political grounds and other inhumane acts.

Case 002/02, for its part, focused on genocide, crimes against humanity, and grave breaches of the Geneva Conventions of 1949 alleged to have been committed at a number of cooperatives, worksites, security centres and execution sites. The case related to the targeting of specific groups, namely the Cham, a "distinct ethnic, cultural and religious" minority, the Vietnamese, Buddhists and former Khmer Republic officials, also within the context of the armed conflict with Vietnam. Importantly, the case also addressed the regulation of marriage in the whole of Democratic Kampuchea during the regime.

The Chamber made certain key findings. First, it affirmed that during the relevant time there was a widespread and systematic attack against the civilian population of Cambodia, that was carried out on political, national, ethnical, racial and religious grounds. Millions of civilians were victimised throughout Cambodia and a large number of refugees fled to neighbouring countries. As you know, this finding is especially relevant because it triggered the applicability of the crimes against humanity framework.

Second, the Chamber found that between May 1975 and January 1979, an ongoing international armed conflict existed between Vietnam and Democratic Kampuchea. This is relevant because it triggered the applicability the Geneva Conventions of 1949, including its “grave breaches” regime.

The Trial Chamber also found that, during the Democratic Kampuchea period, a policy existed to establish and operate cooperatives and worksites, which were viewed as the primary instrument for waging class struggle. These cooperatives and worksites were intended to create a labour and production force of strictly controlled people. The Trial Chamber further found that there was a policy to establish and operate security centres and execution sites to identify, arrest, isolate and “smash” those considered the most serious types of enemies. This included the notorious S-21 Security Centre and the execution site of Choeung Ek, among others.

In relation to cooperatives, worksites, security centres and execution sites, the Chamber found that the crimes against humanity of murder, enslavement, persecution on political grounds, and other inhumane acts – including attacks against human dignity and enforced disappearances – were committed. In the security centres and execution sites, the crimes against humanity of extermination, imprisonment, and torture were also committed.

Furthermore, several grave breaches of the Geneva Conventions were perpetrated against Vietnamese people at S-21 Security Centre, including wilful killing, torture, inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilful deprivation of the rights of a fair and regular trial, and unlawful confinement.

The Chamber also found that a policy existed to target several groups, in order to establish an atheistic and homogenous society without class divisions by abolishing all ethnic, national, religious, racial, class and cultural differences. The targeted groups included Cham, Vietnamese, and Buddhist people, as well as former Khmer Republic officials and their families. In particular:

- The crime of genocide and the crimes against humanity of murder, extermination, imprisonment, torture, persecution on political and religious grounds, and forced transfer were committed with respect to the Cham.

- The crime of genocide and the crimes against humanity of murder, extermination, deportation and persecution on racial grounds were committed regarding the Vietnamese.
- The crime against humanity of persecution on religious grounds was committed with respect to Buddhists.
- The crimes against humanity of murder and of persecution on political grounds were committed with respect to former Khmer Republic officials.

The Chamber also found that there was a nationwide policy in Democratic Kampuchea to regulate family-building and marriage, which was implemented at all administrative and military levels. This policy – which sought to replace the role of parents with the role of the Party in the selection of a suitable spouse – involved forcing couples to marry and forcing them to have children, for the purpose of increasing the country's population. In this regard, the Trial Chamber qualified this policy as the crime against humanity of "other inhumane acts" through conduct characterised as forced marriage and as rape in the context of forced marriage.

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In relation to all of these crimes, the Trial Chamber found that a joint criminal enterprise existed, meaning that a common criminal purpose was shared by a plurality of persons. This plurality of persons included the senior leadership of the party – consisting of, among others, POL Pot, NUON Chea, and KHIEU Samphan. In the furtherance of the common purpose, senior leaders such as the accused had personally overseen the implementation of the various policies and used direct perpetrators to commit the crimes.

By virtue of this joint criminal enterprise – as well as other modes of participation in the crime, such as superior responsibility and aiding and abetting – both NUON Chea and KHIEU Samphan were found guilty of a number of crimes against humanity, grave breaches of the Geneva Conventions, and of genocide by killing members of the Vietnamese group. NUON Chea was also found guilty of genocide by killing members of the Cham minority group.

Case 002/02 was also a remarkable example of victim participation in proceedings concerning international and domestic crimes. A total of 3,865 Civil Parties were admitted in the case. The Trial Chamber found that, as a consequence of the crimes of which the accused were convicted, the Civil Parties and a very large number of additional victims had suffered immeasurable harm, including physical suffering, economic loss, loss of dignity, psychological trauma and grief arising from the loss of family members or close relations.

Noting that the accused were indigent, and that they would thus not be able to bear the costs of a reparations award, the Chamber adopted specific collective reparation measures available under the internal rules of the ECCC. Several projects were approved which would receive external funding. These projects are aimed at fostering education on Khmer Rouge history and on the Civil Parties' experiences, at the documentation and commemoration of the victims' suffering with a view to prevent the recurrence of crimes, as well as at the mental and physical care for Civil Parties.

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This landmark decision is, of course, subject to appeal. However, it is an important contribution to international criminal law jurisprudence, especially in relation to genocide, the participation of civil society in the proceedings, and the question of forced marriage as a form of crime against humanity. In our discussion today, we will focus on some of these aspects, as well as on the method for evaluating the impact and legacy of international and hybrid tribunals.