



Nuon Chea defense team

Case 002/1 to Resume with its Previous Scope; Nuon Chea Confirmed as Fit to Stand Trial By Doreen Chen, Senior Consultant, Destination Justice, and LLM, Columbia Law School¹

Hearings in the Extraordinary Chambers in the Courts of Cambodia (ECCC) were convened for only 20 minutes today to enable the Trial Chamber to relay oral findings on key issues affecting Case 002, namely the trial of the senior leaders of the Khmer Rouge. In particular, the Chamber announced a new decision on the scope of the first trial in Case 002. This had been necessitated by a Supreme Court Chamber decision annulling the initial scope which the Trial Chamber had determined for this case.² The new scope for the first trial, determined after mandatory consultation with the parties, mirrors the annulled one: that is, it will cover the first two phases of forced movement of the population, as well as the execution site Tuol Po Chrey. However, despite strenuous arguments by the Office of the Co-Prosecutors (OCP), the Trial Chamber did not add the Phnom Penh-based execution site S-21, or Tuol Sleng, to the scope of the trial.

The Chamber also announced that, following a review of testimony from court appointed medical experts, it has determined that accused person Nuon Chea remains fit to stand trial in Case 002. That trial will resume on April 8, with two witnesses scheduled to testify so far. Finally, the Chamber notably mentioned in passing that the funding situation for the national side of the tribunal appears to have been temporarily resolved, with funds now secured for all national staff until the end of April 2013.

¹ Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC's hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

² The Supreme Court Chamber's decision may be accessed at http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-11%2018:26/E163_5_1_13_KH.PDF (in Khmer), http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-11_18:23/E163_5_1_13_EN-1.PDF (in English), and http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-03-05%2015:34/E163_5_1_13_FR.pdf (in French). Cambodia Trial Monitor's commentary on this ruling may be accessed at <http://www.cambodiatribunal.org/blog/2013/02/expert-legal-commentary-supreme-court-chamber-invalidates-case-002-severance>.

Purpose of Today's Hearing

At the outset of today's hearing, Trial Chamber President Nil Nonn advised that it had a threefold purpose:

- Announcing the Trial Chamber's decision concerning accused person Nuon Chea's fitness to stand trial;
- Announcing the Trial Chamber's decision in relation to ongoing proceedings in the Case 002 trial following the Supreme Court Chamber decision annulling the scope of Case 002/1; and
- Advising on the ongoing trial schedule.



Following this, Trial Chamber Greffier Se Kolvuthy advised that all parties to the hearing were present but for Mr. Chea, who was observing the hearings from his holding cell due to health reasons, and International Co-Counsel for Khieu Jacques Vergès. However, Mr. Samphan himself was in the courtroom and appeared to listen to the proceedings intently. Only a few people observed today's important announcements from the public gallery, with 250 villagers from Memut, Kampong Cham province arriving late and missing the hearing. The majority of these villagers appeared to have been born during or before the Democratic Kampuchea (DK) period.

Decision on Fitness of Accused Person Nuon Chea to Stand Trial

President Nonn then moved to the first topic, namely Mr. Chea's fitness to stand trial.

"Notwithstanding the advanced age and frailty of the accused and [his] precarious physical health," he said, the Trial Chamber had determined on the basis of the report and testimony of the medical experts Prof. John Campbell and Dr. Seena Fazel on Monday, April 29, 2013³ that Mr. Chea "clearly ... remains capable of meaningfully participating in his own defense." Thus, the Chamber affirmed its earlier finding that Mr. Chea was fit to stand trial. A written decision in this respect is to follow as soon as possible.

Decision Concerning the Severance of Case 002

The president turned to the question of the severance of Case 002. Providing a brief overview of the relevant chronology, the president noted that the Trial Chamber had initially issued a severance order on September 22, 2011 "in the interests of achieving a timely verdict in Case 002." That scope had limited the first trial in Case 002, known as Case 002/1, to forced evacuations and eventually to executions carried out at the Tuol Po Chrey execution site. However, following an appeal from the Office of the Co-Prosecutors (OCP) against this

³ Cambodia Tribunal Monitor's daily blog post on this hearing day may be accessed at <http://www.cambodiatribunal.org/blog/2013/03/examination-nuon-chea%E2%80%99s-fitness-stand-trial-and-renewed-discussion-case-002-severance>.

decision, on February 8, 2013, the Supreme Court Chamber decided to annul the Trial Chamber's severance order and related decisions.

Providing some context for the Trial Chamber's decision on how to move forward in light of this Supreme Court Chamber decision, the president said that:

Although the Supreme Court Chamber decision envisaged the possibility of a fresh severance of Case 002, the immediate consequence of the Supreme Court Chamber decision was that Case 002 was no longer confined in scope and the Trial Chamber [would be] unable to proceed to any verdict until all factual allegations and charges contained in the Case 002 Closing Order are adjudicated.

In annulling the severance of Case 002, the Supreme Court Chamber considered the Trial Chamber to have erred in its interpretation of the scope of its discretion to order severance pursuant to Internal Rule 89 *ter*. In failing to hear the parties prior to the issuance of its severance order and for having, among other factors, given inadequate consideration to the need to ensure that the charges retained in Case File 002/1 are sufficiently representative.

In order to minimize further delay to proceedings in Case 002, on February 12, 2013, the Trial Chamber scheduled hearings on the issue of severance, outlining a number of issues for the parties to address in the light of the Supreme Court Chamber decision. Following these hearings on February 18, 20 and 21, 2013,⁴ in-court examination of the court-appointed medical experts who reassessed the fit to stand trial of the accused Nuon Chea on March 25, 2013, and having weighed the factors identified in the Supreme Court Chamber decision and the impact of the death of Ieng Sary, the Chamber issues its president decision.

The president then announced that the Trial Chamber's decision on the question of severance and ongoing hearings in Case 002 was as follows:

For the reasons that will be outlined in its written decision, the Trial Chamber decides to sever Case 002 pursuant to Internal Rule 89 *ter* by confining the scope of Case 002/1 to the charges related to forced movement of population phases one and two, and executions at Tuol Po Chrey.

Upcoming Hearing Arrangements and Funding for National Staff

Finally, the president announced the arrangements which the Trial Chamber has determined for hearings in Case 002 moving forward. Under these arrangements, hearings in the case will resume on Monday, April 8, 2013, with the questioning of witness TCW 100 by the Lead Co-

⁴ Cambodia Tribunal Monitor's daily blog posts on these hearing days may be accessed at <http://www.cambodiatribunal.org/blog/2013/02/trial-against-senior-khmer-rouge-leaders-should-include-crimes-s-21-prosecution-argues> (February 18), <http://www.cambodiatribunal.org/blog/2013/02/defense-teams-argue-hearing-entire-case-002-severance-case-against-khieu-samphan> (February 20), and <http://www.cambodiatribunal.org/blog/2013/02/parties-debate-upcoming-hearings-and-proposed-expansion-trial> (February 21).

Lawyers for the civil parties. TCW 100, who is the former Khmer Rouge security center head Chhaom Se, had begun testifying in January 2013, with his continued testimony interrupted by the hospitalization of Mr. Chea due to bronchitis and a collapse.⁵ Upon the conclusion of Mr. Se's testimony, witness TCW 536 will testify. Trial Chamber judges will be the first to question this witness, followed by the parties to the proceedings.

The president stressed that the Chamber would do its best to ensure proceedings would be conducted in Case 002/1 as scheduled. However, he noted that this might not be possible if the Chamber was faced by challenges such as the non-attendance of essential national staff "who may not show up at work or due to budget shortfalls." If this were to occur, he said, the Chamber would endeavor to advise parties of this by next Monday, April 1, 2013.

Judge Silvia Cartwright then advised that the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) coordinator had just informed the international judges this morning that "funding for national staff has been secured through to the end of April and that ongoing discussions are underway to stabilize funding from that point on." She did not announce who has provided this funding. However, as it was too late to schedule witnesses for next week for a variety of reasons, she advised that the Chamber preferred to keep to the April 8 schedule which had been indicated to the parties yesterday.



In addition, Judge Cartwright advised that the Chamber intended to seek further submissions from the parties concerning witnesses and experts who were to be heard in the weeks following April 8 if it considered this necessary for trial management reasons. However, pending such a request from the Chamber, the parties were advised not to propose further witness and expert lists or proposed schedules for the ongoing hearings in Case 002/1. Judge Jean-Marc Lavergne then clarified, for the purposes of those listening to this statement on the French language channel, that this meant that parties should not make such submissions unless the Trial Chamber deems it necessary.

The president then adjourned hearings for the day at the earlier time of 9.20 a.m. Hearings will resume in the ECCC at 9 a.m. on Monday, April 8, 2013, with the continued testimony of witness Chhaom Se.

⁵ The first day of Mr. Se's testimony took place on January 11, 2013. Cambodia Tribunal Monitor's daily blog post on that hearing may be accessed at <http://www.cambodiatribunal.org/blog/2013/01/military-structures-security-centers-and-internal-purges-spotlight>.