



## **Hearing of Evidence Begins with Questioning of Nuon Chea**

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Trial 002 reconvened today with the beginning of the evidentiary hearings and with the return of Nuon Chea to the witness dock. The day was filled with fits and starts, as the hearing of evidence was interrupted a number of times by procedural matters and brought to an end early for the day due to Nuon Chea's health.

The mood in the public gallery matched that of the proceedings. The crowd was subdued for much of the morning and whenever procedural matters were on the table, with a number of the students caught sleeping by the sharp-eyed security guards especially during the monotone reading of the Closing Order. As soon as Nuon Chea moved to the witness dock, however, the public gallery became livelier, as many of the civil parties present made their opinions known through loud comments to neighbors and shaking heads throughout the testimony.

### ***Procedural Formalities***

As with most days in the court, the Trial Chamber began with the completion of a number of procedural formalities. After the court was called to order, a clerk reported on the attendance of the parties, noting the absence of two of the international defense lawyers.

Civil Party Co-Lead Lawyer Pich Ang then introduced a new civil party lawyer who was subsequently recognized by the court. President Nonn also noted that a new international lawyer for Nuon Chea, Andrew Ianuzzi, had been recognized by a written order of the court last week.

Mr. Ianuzzi then stood and addressed the court, requesting the opportunity to address some preliminary matters before the proceedings continued. When President Nonn failed to respond or acknowledge him, Mr. Ianuzzi again appealed for the opportunity to be heard. President Nonn finally responded, stating that the court would complete the procedural formalities it had already begun before hearing the defense's matters.

Mr. Ianuzzi clarified that his remarks refer to the reading of the relevant sections of the indictment and therefore he wished to make his comments before the indictment was read. Ordering him to be seated, President Nonn informed him that the decision had been made and that he would be given the floor before the part of the case that is relevant to Nuon Chea.

### ***Order of the Evidentiary Hearings***

Referring to the Trial Chamber's severance order of 22 September 2011, President Nonn reminded the parties that this first phase of the trial would deal only with the (1) the history of the Communist Party of Kampuchea, and (2) the history of the defendants prior to the period of Democratic Kampuchea. The evidence to be presented during this first phase will be limited to the alleged facts contained in the paragraphs of the Closing Order of 15 September 2010 relevant to these matters.

President Nonn then stated that the evidentiary hearings would begin with the examination of the accused, beginning with Nuon Chea. The order of questioning would be as follows:

1. The President of the Trial Chamber;
2. Judges designated by the President;
3. Other judges who wished to examine the accused;
4. Co-Prosecutors;
5. Civil Parties; and
6. Counsel for each accused, with the counsel for the testifying accused proceeding last.

The examination of the accused is expected to end on 16 December 2011, and the court will resume with the testimony of civil parties, witnesses and experts on 10 January 2012. President Nonn clarified that, despite the severance of the proceedings, any witnesses, civil parties, and experts called during this phase of the trial should give testimony on all issues on which they have knowledge so that they will not need to be recalled at a later date. The court also stated that any civil party who testifies should indicate the specific harm he or she has suffered at the end of his or her testimony.

President Nonn then gave the pseudonyms of two civil parties and four witnesses who are expected to testify during this phase of the trial, reiterating that pseudonyms must be continue to be used until the particular witness, civil party, or expert has been examined in court.

Finally, President Nonn reminded the lawyers that objections to testimony must be made in line with the internal rules of the ECCC and the Cambodian Code of Criminal Procedure. He also stated that the court expects the counsel to adhere to professional standards in their examinations, stressing that rude or offensive language toward other parties would not be tolerated.

### ***Reading of the Closing Order***

With the procedural formalities completed, President Nonn requested the greffiers of the court to read the facts in the indictment relating to the first phase of the trial. Regarding the history of the Communist Party of Kampuchea, the greffier read paragraphs 18-32 of the Closing Order of 15 September 2010. These paragraphs address the alleged facts on the growth and activities of the Communist Party within Cambodia from the 1950s through the beginning of the 1970s, prior to the period of Democratic Kampuchea.

A second greffier then read the paragraphs of the Closing Order related to the history of the each accused prior to the establishment of Democratic Kampuchea. The relevant paragraphs are:

- Nuon Chea: Paragraphs 862-868 and 1577-1580;
- Ieng Sary: Paragraphs 994-1000, 1091, and 1585-1588; and
- Khieu Samphan: Paragraphs 2026-1030 and 1598-1600.

These paragraphs discuss each accused's membership in Communist parties and political activities prior to 1975, as well as the accused's family histories and education. The reading of this information caused a response from a number of the civil parties sitting in the public gallery; the alleged fact that Ieng Sary's father was Khmer Krom and his mother half-Vietnamese seemed to prompt the most interest, causing a number of the observers to comment to their neighbors.

After the reading of the Closing Order, President Nonn then asked the Prosecutor whether there are any agreed facts between the parties. The deputy co-prosecutor responded that it was his understanding that there are no agreed facts. Judge Cartwright brought the court's attention to a memorandum filed recently by Ieng Sary in which certain limited facts were admitted.

Michael Karnavas responded for Ieng Sary's team, stating that they did respond to the prosecutor's request with "modest" agreements, mostly regarding the accused's background. He stated that he would be willing to discuss these agreed facts with the Prosecutor and report back to the court but that these issues should not delay the day's proceedings. President Nonn concurred, stating that the matter would again be addressed before the court proceeded to the examination of Ieng Sary.

### ***More Procedural Matters***

Before beginning the examination of the accused, the court returned to Nuon Chea's counsel to complete the preliminary matters he had attempted to raise previously. Mr. Ianuzzi brought the court's attention to a memorandum of the Trial Chamber senior legal officer in which it was stated that witness statements and documents contained in the footnotes of the Closing Order will be deemed part of the case file. He reiterated Nuon Chea's objection specifically to the inclusion in this list of witnesses who will not appear before the court during the trial.

Mr. Ianuzzi also referred to a memorandum from the co-prosecutors in which the prosecution provided "indicia of reliability" for documents and witness statements it would put forward during the trial. He welcomed this step by the prosecution and requested the court also considering doing the same with the evidence it would include in the case file on its own motion.

Finally, Mr. Ianuzzi took issue with a recent memorandum of the senior legal officer that stated that witnesses would be allowed to read their previous statements prior to testifying in order to refresh their memories. He reminded the court that Nuon Chea's team had made objections a number of times to this practice and said that they had yet to receive what they considered a "reasoned" decision on this matter. He requested that the court stay the examination of these witnesses until a reasoned decision is filed.

Counsel for Ieng Sary, Ang Udom, also raised a preliminary matter separate from those raised by Mr. Ianuzzi. Stating that the practice in national court is to exclude witnesses and civil parties from the hearings, he requested that the court consider following this practice.

President Nonn responded to both lawyers, stating that their observations will be considered and that the court will make a decision shortly. He did note for Mr. Udom, however, that the “extraordinary” nature of the ECCC means that they cannot follow the practice of the national courts wholesale. He also defended the practice of the court, saying that it has been very careful to protect confidentiality in the proceedings as much as it can, given the public and well-publicized nature of this court.

Before the morning break, the civil party co-lawyer Elisabeth Simonneau Fort requested that the court remember in making its decision on this last matter that Cambodian and civil law both make a distinction between civil parties and witnesses. Civil parties are entitled to attend all hearings, even if they will not testify.

### ***Examinations Begin: Nuon Chea***

As soon as the court resumed after the morning break, President Nonn instructed the security guards to bring Nuon Chea to the witness dock to begin his examination. The public gallery became very restless while Nuon Chea moved to the dock with the aid of two security guards, with a few people distinctly noting how weak he had become.

Before Nuon Chea’s examination began, one of his lawyers called the court’s attention to some terms that were missed in the reading of the Closing Order. Specifically, he noted that the greffier had not read out the acronyms for the National United Front of Kampuchea, *i.e.*, “FUNK”, and the Royal Government of National Union of Kampuchea, *i.e.*, “GRUNK” in paragraph 25. He also noted that the greffier had failed to read aloud the name of Prince Norodom Sihanouk in paragraphs 25 and 27.

President Nonn responded that the acronyms had not been read because there was no corresponding shortening of these names in Khmer, and the court did not wish to confuse anyone as the Order had been read in Khmer. As for the missing names, he stated that the greffier had been ordered to read the public version of the Closing Order, which redacts the names of potential witnesses, and he advised the counsel to refer only to the public version.

President Nonn then turned to Nuon Chea and began the examination of the accused. Asked questions regarding his personal history, Nuon Chea stated that his birth name was Lao Kim Lorn and that his “revolutionary name” is Nuon Chea. He was born on 7 July 1926 in Voat Kor village in Battambang province. He stated that his father and his mother were “truly Cambodian.” He was the third of nine children, and only three of his siblings survived. He is married to Ly Kimseng.

Regarding his education, he reported that he started school at the age of seven during the “French colonial regime.” He attended secondary school, which he referred to by the French term *lycée*, in Battambang province, and, when Battambang was “given to Thailand” in 1941, he continued

his education in Thailand. While in Thailand, he also worked, first in the Thai Ministry of Finance and later at the Ministry of Foreign Affairs. It was during this time, he said, that he heard the news of the French occupiers killing Cambodians, so he “started the resistance.”

After Nuon Chea had answered these preliminary biographical questions, President Nonn informed him of his rights in the trial. Specifically, Nuon Chea has the right to be defended by a lawyer of his choice at every stage; President Nonn noted that he was now defended by three international lawyers and one Cambodian lawyer and had also been represented during the investigation and pre-trial stage. He also has the right to remain silent, the right to be protected from self-incrimination, and the right to be notified of the charges against him.

When asked if he knew the charges against him, Nuon Chea stated that he had read some documents and believes that the charges include war crimes, genocide and “others I do not recollect,” which may be crimes against humanity.

President Nonn then read the charges against Nuon Chea as stated in the Closing Order and which include crimes against humanity, specifically murder, extermination, enslavement, forced transfer, imprisonment, torture, persecution on political, racial and religious grounds, and other inhumane acts; genocide; and grave breaches of the Geneva Convention of 1949. He noted that the Pre-Trial Chamber had included the charges of rape under “other inhumane acts” in crimes against humanity. He stated that Nuon Chea had been informed numerous times of these charges in person and in writing and through his counsel and had been given an opportunity to appeal these charges.

In response, Nuon Chea requested an opportunity to give a statement on the “summary of [his] struggle” to liberate Cambodia. In his subsequent statement, he reiterated and expanded on what he had said on 22 November 2011 in his response to the co-prosecutors’ opening statement.

Nuon Chea stated that his desire to join a resistance movement sprung from witnessing the mistreatment of Cambodians by the French and by the rich during the French colonial period. He said that he saw many Cambodians arrested, imprisoned and beaten as slaves. It is from these experiences, he said, the “the love of justice embedded in my mind.”

After Battambang was ceded to Thailand, Nuon Chea said, he decided to stay there to study because he “wanted to know what an independent country was like.” He went to study in a pagoda there because he was poor and his family was struggling. But he found that Thailand was not as independent as he had originally thought. Just as in Cambodia, “the powerful oppress the weak,” and Thailand was controlled much by the Chinese, he claimed. “Injustice was everywhere.”

At this time he began to read Cambodian Communist newspapers and began to see this ideology as a potential route to liberate Cambodia. He began to learn more about Communism from Thai friends as well as “progressive” professors at his university.

In 1950 he joined the Communist Party of Thailand. Through this organization, he went to Cambodia, where he was allowed to conduct activities with the support of the party in Thailand. He worked in the propaganda section, trying to educate people of the mistreatment by the French.

Nuon Chea then stated that he soon learned that the Communist movement in Cambodia at that time had been installed and was controlled by the Vietnamese. He was chosen by the party to study in North Vietnam, but while there he became disenchanted with the party because he believed that it was still just a puppet of the Vietnamese and not independent.

This control by Vietnam continued, he claimed, after Cambodia's independence from France was recognized at the Geneva Conference of 1954. At this point, he said, "the seeds of resistance were demolished." When Nuon Chea returned to Cambodia at that time, he saw that everything was under the control of Vietnam, and that the Khmer people had been reduced to serving only as messengers and soldiers. The few who were allowed to be commanders were merely "puppets" of Vietnam. The Communist party that grew up in Cambodia throughout that time was Vietnamese-created, he said; it was not "pure Khmer."

When Lon Nol overthrew King Sihanouk, the King appealed to the people to escape to the jungle. "Both good and bad entered," Nuon Chea claimed. "Some were bandits, but they joined with us. They arrested and killed Cambodians, and they placed the blame on Communists." This led to a very confusing and chaotic time, he said.

In closing, Nuon Chea continued to assert that the Communist movement that led to the war crimes at trial was not Khmer led, but came solely from the Vietnamese who controlled the party at that time. "It was Vietnam who killed Cambodians," he declared. "I do not want the next generation to misunderstand history, to think the Khmer Rouge are criminals," he stated. "There is nothing true about that."

Prompting headshaking and murmurs of disbelief from the villagers in the public gallery, Nuon Chea asserted that everything that has been charged in the court is wrong. "Now we see enemies as friends," he stated, likening Vietnam to a python suffocating a young deer. "One day, we will sadly become prey of the python." Declaring that the monks can be his witnesses, he concluded by stating that the accusations against him are not right because he devoted himself to protecting his country.

President Nonn thanked Nuon Chea for his observations and adjourned the court for the lunch break.

### ***A Final Batch of Procedural Formalities***

Upon returning from the lunch break, the court took a few moments to deal with more procedural formalities that had arisen. First, a new international lawyer had joined Khieu Samphan's team and was recognized by the court. Second, the co-prosecutor noted that Nuon Chea had referred to a blue binder of notes during his comments during the morning session. In line with the directions of the senior legal officer, the co-prosecutor requested that a copy of those notes be shared with the other parties. Noting that the notes were handwritten on copies of documents

already available in the case file, Nuon Chea's lawyer nonetheless agreed to make copies of these handwritten notes available for the parties.

President Nonn then announced the court's decision regarding the request from Ieng Sary's team for an exclusion of witnesses and civil parties from the proceedings before they testify. Reiterating that provisions under domestic law cannot be entirely applied in the ECCC, he referred to Internal Rule 88(2), which states that experts and witnesses will sit in a separate chamber "whenever possible" and not communicate with each other when in this chamber. The court will "do its best" to make sure this rule is adhered to and will work with the Witness and Expert Support Unit (WESU) to ensure this chamber is maintained. Regarding civil parties, however, they are allowed to remain in the allocated seating throughout the proceedings, as they are parties. President Nonn did make one caveat regarding the witnesses, though, noting that as the trial is public, anyone who wishes to observe the proceedings through media or in the public gallery will likely be able to do so.

Judge Cartwright then offered the court's decision regarding the requests made by Nuon Chea's team in the morning session. First, regarding the status of the documents in the Closing Order and its footnotes, she brought the parties attention to a 17 November 2011 memorandum of the court, stating that these documents are deemed to be put before the Trial Chamber "unless challenged." If one of the parties challenges a document, the Trial Chamber will ensure time is given for the hearing of this challenge.

Second, regarding the presentation of previous statements to the witnesses, Judge Cartwright reiterated that this concession is merely to refresh the witnesses' memories. The prior statements may not be used in court and will be taken away from them as soon as they have finished reading the documents.

The lawyer for Khieu Samphan then asked for clarification regarding President Nonn's decision, stating that the French translation of his statements made it seem that he was authorizing witnesses to attend the trial before they have testified. President Nonn responded that, due to the wide publicity of the trial, the ability of the witnesses and experts to observe the proceedings in some way was beyond the control of the court. But, he stated, WESU would be asked to help as much as possible with encouraging witnesses to refrain from observing the proceedings before they testify.

Judge Lavergne reinforced President Nonn's statements by pointing out that up to 500 people can attend the proceedings per day in the public gallery alone and that it would be extremely difficult to check all of these people.

### ***Examination of Nuon Chea Continues***

With the procedural matters out of the way, Judge Cartwright continued the examination of Nuon Chea. Working directly from the alleged facts contained in the Closing Order and statements made by Nuon Chea in court, she asked him a number of clarifying questions regarding the history of the Communist movement in Cambodia and his membership and role

within this movement. Although eventually answering every question, Nuon Chea responded slowly, the strain of the long day obvious in his voice.

In response to Judge Cartwright's questions, Nuon Chea stated that, when he arrived in Cambodia in 1951, he was persuaded to join the Indochinese Communist Party (ICP), due to the party principle that a person who wishes to conduct Communist activities must join the party of the country in which he or she is acting. In 1951, Vietnam decided to divide the ICP into three parties, one for each country – Vietnam, Cambodia, and Laos – in which it was working. This decision was made, Nuon Chea claimed, because Vietnam knew that Cambodians would not accept the ICP as it was constituted previously. But even though it was technically three separate parties, none of the parties was independent, he again claimed, and all remained under the control of Vietnam.

In response to whether the Khmer Workers' Party was the "first true Cambodian Communist party", Nuon Chea stated that in 1960 a number of people in the Khmer Revolutionary People's Party saw that many Cambodians wished to "free ourselves from the control of Vietnam." These people, including Tou Samouth (whom Nuon Chea referred to as "Grandfather"), decided to organize a party with its own party lines, statutes, and strategies; this plan developed into the Khmer Workers' Party. He stated that the Vietnamese did not support this new party and promptly set out to destroy it. Stating that Vietnam tried to divide the party from the inside, he claimed that undercover members infiltrated the party to try to gain control for Vietnam. Attempting again to "reveal the ambition of Vietnam to swallow Cambodia", Nuon Chea retold a story from his opening remarks of a Vietnamese leader referring to the three million hectares of arable land in Cambodia as "very delicious."

Nuon Chea stated that the Khmer Worker's Party was renamed the Communist Party of Kampuchea in 1960 in order to distance it from the Vietnamese and Chinese parties, which also used the term "worker party". This change was in name only, however, and the party line was maintained. Regarding his role within these parties, Nuon Chea admitted that he was the deputy secretary of the Khmer Revolutionary People's Party, the Khmer Workers' Party, and the Communist Party of Kampuchea.

When asked about his knowledge of the disappearance of Tou Samouth in 1962, Nuon Chea stated that he had visited Tou Samouth's home and asked his wife where Samouth was. When told that he had gone to a market but had not returned for a long while, Nuon Chea suspected Samouth had either been involved in an accident or had been arrested. He went to Saloth Sar (alias Pol Pot) to ask advice on how to proceed. According to the party principle, he stated, the residence of the person who had been captured was to be vacated. Saloth Sar convinced Nuon Chea to wait until inquiries could be made, however. A few days later, some military contacts of Saloth Sar informed him that an important Khmer Rouge leader had been captured, tortured, and then executed at a pagoda. He assumed this important leader had been Tou Samouth.

After Nuon Chea related this story, the court took its afternoon break.

Upon returning from break, Nuon Chea requested that the court be adjourned for the day to allow him to recover from the questioning, as his "heart is not very good." After conferring with the



other judges for a while, President Nonn urged Nuon Chea to “proceed slowly”, prompting laughter from the public gallery. Nuon Chea appealed again for a break, to which the court responded that they would continue for thirty minutes more and then determine how best to handle his need for frequent breaks tomorrow.

Judge Cartwright returned the questioning to the disappearance of Tou Samouth, asking whether Samouth’s family was evacuated to a safe area and encouraging Nuon Chea to tell the full story of the disappearance again.

The judge then probed into Nuon Chea’s training in Vietnam. He responded that he had received political education there for more than a year, but that he had not attended regular sessions. He denied attending any military training either in Vietnam or at any other time.

As Judge Cartwright began asking about a possible “secret defense unit” of the party, Nuon Chea stopped responding to the questions and again implored the court to allow him to break for the day.

After conferring for a while with the other judge, President Nonn announced that, since the accused had been cooperating with the Trial Chamber and had been taking questions all day, his request for an early recess would be granted. The court was then adjourned for the day and will proceed with the examination of Nuon Chea on Tuesday, 6 December 2011.