

*Khieu Samphan's role in the CPK was the focus of many of the documents presented during the ECCC's afternoon session on February 13.*

**Case 002 Trial Continues:  
More Documents Highlighted by Parties**

*"Eliminate absolutely, all forms of private ownership . . . without compromise."*  
- Pol Pot, describing a Khmer Rouge goal in a speech

By: Randle DeFalco  
J.D. Rutgers School of Law – Newark  
Legal Advisor, Documentation Center of Cambodia (DC-Cam)

On Monday, February 13, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued to hear evidence in Case 002 against accused Nuon Chea, Ieng Sary and Khieu Samphan. The day's proceedings provided the prosecution with the opportunity to highlight certain documents by placing them before the Trial Chamber in open court. This documentary submission practice clearly failed to capture the interest of the audience in the courtroom, and during the afternoon session, many of the high school students who had been brought in to view the proceedings could be seen running around and playing games loudly on the grounds outside the courtroom.

***Preliminary Matters***

Trial Chamber President Nil Nonn opened the week's proceedings by announcing that Judge Sylvia Cartwright would be absent for the week due to unspecified health concerns. The President noted that alternate international Judge Claudia Fenz would sit in for Judge Cartwright during her absence. The Chamber also noted that Khieu Samphan had retained a new

international lawyer but informed the new counsel that she could only participate as an observer until such time as she takes an oath administered by the ECCC Supreme Court Chamber.

Before the Chamber could hand the floor over to the prosecution to begin placing documents before the Court, international counsel for Nuon Chea, Michiel Pestman, informed the Chamber that he had recently become aware that he had been referred to using the term *nayuk em* (a non-formal version of “you” in Khmer) “no less than twelve times” by Chamber President Nil Nonn on Wednesday, February 8, 2012. Mr. Pestman stated that he is not a Khmer speaker but had been informed by numerous individuals that the term is impolite and highly unusual in court. He noted that such language could create the appearance of bias against Nuon Chea by the President. The President did not respond directly to this statement but merely thanked Mr. Pestman for “his observation” and moved on.



*National counsel for Khieu Samphan, Kong Sam Onn, requests the Chamber limit the prosecution’s document presentation solely to those relevant to Trial 002/1.*

Khieu Samphan’s national defense counsel, Kong Sam Onn, then rose and requested that the Chamber limit the prosecution’s presentation for the day solely to documents relevant to the historical background of the Democratic Kampuchea (DK) period.

International prosecution counsel Vincent De Wilde d’Estmael responded that the prosecution did not consider the documents it planned on highlighting as “new” because they were all related to the first Case 002 trial.<sup>1</sup> Counsel Kong Sam Onn argued in response that some of the documents the prosecution planned to put before the Chamber had not been previously introduced by the prosecution.

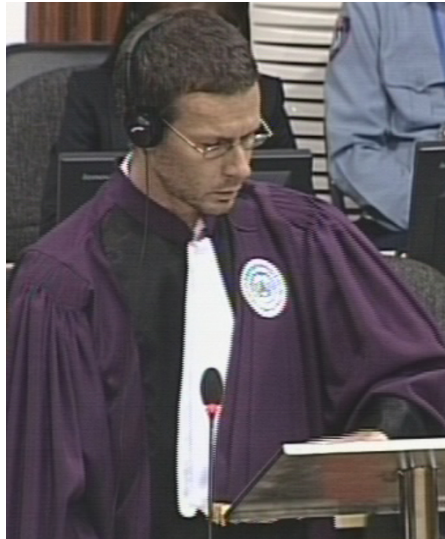
International counsel for Ieng Sary, Michael Karnavas, then rose and sought to clarify the situation, stating that some of the documents on the prosecution’s list of documents it planned to place before the Chamber had not been indicated as being specifically relevant to Case 002/1. He requested that the Chamber provide instruction as to whether all documents relevant to Case 002

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<sup>1</sup> Case 002 has been divided into a series of separate trials limited to specific events and time frames within the DK period. The first trial (trial “002/1”) concerns the historical background of the CPK prior to the DK period, as well as the evacuation of Cambodia’s cities and population transfers early in the DK period.

globally can be placed before the Chamber or solely documents relevant to Case 002/1. Mr. Karnavas argued that the prosecution must seek leave from the Chamber to present any document outside of the prosecution's list of documents specifically relevant to Case 002/1, citing the Chamber's previous instructions to parties as support.

Chamber President Nil Nonn responded by observing that it is the Chamber's view that its scheduling memorandum was "abundantly clear" and that the Chamber would allow some additional documents to be placed before the Chamber, so long as the documents are especially relevant to the issue of the historical background of the DK period.



*International prosecutor Vincent De Wilde d'Estmael places a number of documents before the Chamber during the morning session.*

### ***Prosecution Begins Presenting Documents***

Mr. De Wilde d'Estmael then presented documents concerning specific dates leading up to the capture of Phnom Penh by the Khmer Rouge on April 17, 1975. He also noted that cooperatives were first implemented in 1973 according to the first document presented. The prosecution next highlighted a document consisting of a "marathon" speech delivered by Pol Pot, noting that the speech covered key dates and suggested the fate of opponents of the Khmer Rouge revolution. The prosecution highlighted the timeline of events leading up to the victory by the Khmer Rouge contained in the speech.

The political "lines" contained in the document were also highlighted by the prosecution. These lines largely reiterated the content of testimony provided thus far by Nuon Chea and discussed the definitions of "feudalists," "land-owners" and "imperialists," as well as the Khmer Rouge's strategy of starting the revolution in rural areas.

Other documents placed before the Chamber further explained the political lines of the Khmer Rouge. One such document labeled the "capitalists" as the masters of the state in pre-DK period Cambodia, stating that these capitalists controlled food and currency supplies while amassing large sums of money. One document stated that the Khmer Rouge believed that "businessmen" could become the "bosses" of the revolution, if they were not controlled. These documents

evinced a clear dislike and mistrust by the Communist Party of Kampuchea (CPK) of individuals it perceived as “businessmen.” According to excerpts of documents read out by the prosecution, the CPK forced these businessmen to work in “production” in DK as a means of controlling them.

The fourth document highlighted by the prosecution was a CPK publication concerning the third anniversary of the formation of peasant cooperatives in 1973. The document stated the importance of cooperatives to the CPK in establishing authority and facilitating party-ordered work projects. Cooperatives were also stated in the document to have been the key in winning the civil war and “defeating” capitalism in Cambodia. Mr. De Wilde d’Estmael completed the prosecution’s presentation of documents for the day’s first morning session by quoting from a statement purportedly made by Pol Pot in a speech that the CPK sought to “eliminate absolutely, all forms of private ownership . . . without compromise.”

### ***Ieng Sary Retires at his Usual Hour***

Just prior to the morning break, Ieng Sary’s national counsel, Ang Udom, rose and made his now-customary request that Ieng Sary be excused from the courtroom due to his ill-health and be permitted to view the rest of the day’s proceedings via audiovisual link in the courtroom holding cell. This request was granted as usual by the Chamber President, who reminded counsel to submit a written request, signed by Ieng Sary, waiving his right to be present in the courtroom.

### ***Prosecution Continues Presenting Documents***

Following the morning break, Mr. De Wilde d’Estmael continued highlighting documents and turned to a special issue of the much-discussed CPK publication, *Revolutionary Flag*. The prosecution highlighted statements in a speech purportedly made by Pol Pot and transcribed in an issue of *Revolutionary Flag*. These statements explained the decision to alter the official birthdate of the CPK and the decision to close markets in the Khmer Rouge-controlled liberated zones prior to the DK period to “control strategically the production lines.”

The documents highlighted by the prosecution included numerous statements evincing distrust of capitalists and other groups, which the prosecution argued foreshadowed the CPK’s targeting of such groups for discrimination and executions during the DK period.

Mr. De Wilde d’Estmael stated that the CPK’s statements about “life or death” class struggles demonstrated the CPK’s desire to eliminate certain class groups in Cambodia, resulting eventually in mass purges and executions. He further argued that former Cambodian King Norodom Sihanouk was included as a member of the enemy class, as defined by the CPK and thus, the revolution only allied itself with the King out of convenience.

The prosecution also highlighted a CPK document containing anti-Vietnamese rhetoric and a document containing the statutes of the party. According to Mr. De Wilde d’Estmael, the statutes consisted of thirty articles and remained largely unchanged from the 1968 CPK Congress onwards and thus, despite having been officially promulgated as law after the April 17, 1975 victory, they are highly relevant to the historical background of the DK period. The principles contained in the articles outlined the strict hierarchical nature of the Khmer Rouge movement, which required obedience and regular reporting to the “upper echelons” of the CPK.

After discussing the CPK statutes, Mr. De Wilde d'Estmael concluded his portion of the prosecution's presentation and turned the floor over to national prosecution counsel Chan Dara Reasmey to highlight additional documents.

The first document presented by Chan Dara Reasmey was an article purportedly outlining the CPK's standpoints on certain issues. This included the CPK's policy of "smashing" (killing) enemies, monitoring civilians and the roles of cooperatives.

This document outlined the role of "the rear" in supporting front-line Khmer Rouge guerrillas fighting against Lon Nol government forces during the 1970-1975 civil war. The document stated that if the rear areas are "loose," spies could infiltrate and subvert the party and thus compromise the armed struggle being fought. This document stated in a section entitled "the enemy fights us from behind" that the CPK would smash enemies "one by one" in order to root out all enemies.

Chan Dara Reasmey argued that the statements in the document demonstrates that the CPK identified "enemies" using the same class-based analysis that underlying the regime's socio-economic policies and view of the "class struggle" in Cambodia. He then read out another excerpt that classified "the class struggle" as "a life or death struggle."

The second document presented by Chan Dara Reasmey was an article from a 1972 special issue of *Revolutionary Flag*. Chan Dara Reasmey argued that the document explained the CPK's process of collectivization and the ideology of the CPK, introducing such terms as "smashing" of enemies, "class struggle," and other recurring themes that later became recurrent in CPK rhetoric. He stated that the document also demonstrated the strict control over all subordinate levels of the CPK by the highest echelons of the party's leadership.

Chan Dara Reasmey then read out an excerpt from a sub-section of the article entitled "This Revolutionary War," which stated that the class struggle had "intensified" and would continue to do so going forward.

At this point, the Chamber prepared to adjourn for the regular lunch break, and the Nuon Chea defense made its now-customary request that Nuon Chea be permitted to retire to the courtroom holding cell to participate via audio-visual link for the afternoon session. The Chamber granted this request and instructed the defense to submit a written waiver, signed by Nuon Chea, of his right to be present in the courtroom. The Chamber then adjourned for lunch.

***Ieng Sary Defense Argues that Prosecution Commentary on Documents is Improper***

Following the lunch break, the prosecution informed the Chamber that it had responded to an email received from the Ieng Sary defense received just prior to the beginning of the day's proceedings that raised concerns about the scope of documents to be placed before the Chamber. Prosecution counsel De Wilde d'Estmael then requested that the prosecution be provided more time to put documents before the Chamber because preliminary procedural matters had consumed 40 minutes of the prosecution's allocated time during the morning session.



*Michael Karnavas, defense counsel for Ieng Sary, objects to the prosecution's request for additional time.*

This prompted a response from Ieng Sary defense counsel Michael Karnavas, who objected to any additional time being given to the prosecution. Mr. Karnavas argued that the prosecution should not be awarded any additional time because it had wasted time during the morning session by improperly characterizing documents and offering the prosecution's view of them, stating that "the public is being treated to a closing argument on documents."

After conferring briefly, the Chamber announced that it would consider the prosecution's request for additional time, but Chamber President Nil Nonn appeared largely to agree with the arguments put forth by Mr. Karnavas, calling them "proper" and reminding the prosecution to stay on topic and simply to put documents before the Chamber. He then instructed the prosecution to continue putting documents before the Court.

### ***Prosecution Continues Putting Documents before the Chamber***

Prosecution counsel Chan Dara Reasmey then continued placing documents before the Chamber. During his presentation, Chan Dara Reasmey highlighted a document that required "clear and regular reports to the upper levels" of the CPK, allowing the party's leaders to issue "direct and timely advice."

Chan Dara Reasmey also quoted from a document that stated that "imperialists, feudalists and capitalists" made "propaganda" that deluded individuals to seek "personal interest" and, as a result, many youths from the pre-DK society sought out personal wealth and fulfillment over supporting national interests. Thus, the document reasoned that the CPK had to move forward with revolution towards socialism and communism, which are "societies in which people no longer abuse one another."

The next document outlined the CPK's policy regarding sexual morality and marriage and stated that it is "imperative" that everyone in DK make marriage requests to *Angkar* (the revolutionary "organization" or the CPK in abstract). The document also stated that it was improper for people to choose their spouses "subjectively" according to their emotions and that it was instead more important to examine a potential spouse's revolutionary background in order to select a "clean" partner.

This completed the presentation of documents by Chan Dara Reasmey, and the floor was turned over to national prosecution counsel Veng Huot, who presented documents related to the background and roles of Khieu Samphan in the CPK. The prosecution argued that the documents establish Khieu Samphan's long-running relationship with the Khmer Rouge movement and the various leadership roles he assumed therein.

The first document presented by Veng Huot was a report by the United States' (US') Foreign Broadcast Information Service (FBIS). This document allegedly consisted of a speech delivered by Khieu Samphan and stated that the Lon Nol regime was relying entirely on US food aid and that the Khmer Rouge were actively attacking the supply routes for this aid along the Mekong River. The speech also called for people living in Khmer Rouge-controlled areas to work hard to achieve a dry-season rice harvest and to watch vigilantly for enemies. Veng Huot argued that the document demonstrates Khieu Samphan's senior role and decision-making power in the CPK at the time.

This prompted an objection from Khieu Samphan defense counsel Kong Sam Onn, who argued that the prosecution was making an improper submission on the document. Chamber President Nil Nonn sustained the objection and reminded the prosecution to refrain from abstracting entire documents.

Veng Huot then read out excerpts from additional FBIS reports allegedly containing speeches delivered by Khieu Samphan. When counsel began to discuss the relevance of the speeches and what the prosecution believes they establish, Kong Sam Onn objected again and argued that the prosecution was again testifying regarding the contents of documents.

International prosecution counsel Tarik Abdulhak responded by arguing that it is important for the prosecution to be allowed to provide "context" to the documents presented and requested that objection be overruled.



*International Reserve Judge Claudia Fenz, sitting in for the absent Judge Cartwright, clarifies a decision by the Chamber for the parties.*

Appearing frustrated by the same issue arising numerous times, Chamber President Nil Nonn gave the floor to Judge Claudia Fenz, who “clarified” by stating that one of the objectives of the hearing was to allow the public to understand the documents that will be important to Case 002. She continued that this process allows counsel to put documents “in context” to a limited degree but advised counsel to be mindful of the “fine line” between contextualization and argument and instructed all parties to strive “not to cross” the line. Following this instruction, Chamber President Nil Nonn announced the afternoon break.

Following the break, Veng Huot continued placing documents before the Chamber and highlighted media documents, such as newspaper articles, FBIS reports and CPK press releases, containing statements allegedly made by Khieu Samphan. Veng Huot stated that these documents demonstrate the senior role of Khieu Samphan in the CPK and also provide insights into CPK policy.

Following completion of his portion of the prosecution’s presentation, Veng Huot turned the floor over to international prosecution counsel Tarik Abdulhak, who began his portion of the prosecution’s presentation by highlighting Khieu Samphan’s book and certain passages therefrom. Mr. Abdulhak read out limited passages from the book, wherein Khieu Samphan explained that he was “excited” when he first joined the Khmer Rouge because he saw the movement as a “real” nationalistic force taking shape. Another passage outlined Khieu Samphan’s attitudes towards the sometimes competing interests of human rights and sovereignty and suggested that he was of the view that protecting the sovereign interests of one’s homeland trumps human rights considerations when the two concerns come into conflict.

The prosecution then highlighted a passage purporting to discuss the first time Khieu Samphan met Pol Pot and Nuon Chea in 1970 and noted that Khieu Samphan had already begun to make



announcements on behalf of the Khmer Rouge prior to this meeting. In the book, Khieu Samphan also stated that he was “dictated by [his] conscience” to join the Khmer Rouge because it was the only legitimate nationalist force that existed in Cambodia at the time.



*Khieu Samphan prepares for a speech during the DK period. (Source: Documentation Center of Cambodia)*

Mr. Abdulhak also placed additional documents before the Chamber, including a document co-authored by Khieu Samphan, Hou Yuon and Hu Nim, on behalf of the CPK that discussed the “smashing” of the heads of enemies during the civil war against the Lon Nol government. Finally, Mr. Abdulhak highlighted excerpts from a book by Philip Short on the Khmer Rouge history and an interview with Khieu Samphan, wherein Khieu Samphan allegedly stated that CIA spies were “everywhere” in pre-DK Cambodia.

This concluded the day’s proceedings ,and Mr. Abdulhak informed the Chamber that the prosecution would conclude presenting documents the following morning by showing several short film clips. Hopefully, such clips will help arouse the audience’s interest in the proceedings, which has waned considerably during the technical and non-narrative process of highlighting documents. Proceedings will resume at 9 a.m. on Tuesday, February 14.