



International Civil Party Lead Lawyer Elisabeth Simmoneau Fort leads off the civil parties' document submissions.

**Victim Statements Highlighted and Defense Documents Deferred:
Document Presentation Continues in Case 002**

*Present the documents "now or never."
- Judge Claudia Fenz*

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On Wednesday, February 15, 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 were dedicated to the ongoing process of highlighting certain documents by placing them before the Chamber in open court.

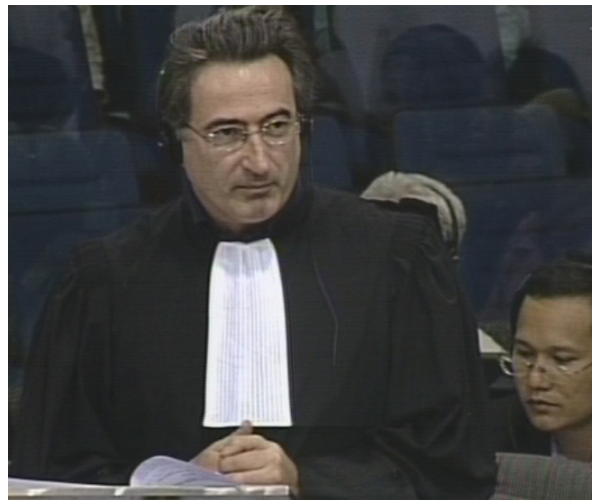
The Use of Civil Party Application Documents Still Undetermined

The Chamber gave the floor to the civil parties to place documents before the Chamber to start the day's proceedings. Prior to placing documents before the Chamber, civil party co-lead lawyer Elisabeth Simonneau-Fort made submissions to the Chamber regarding the use of civil party application documents during this process. She informed the Chamber that the civil parties chose 14 civil party applications to highlight before the Chamber and that these documents were selected because they are specifically relevant to the topic of the historical background of the Democratic Kampuchea (DK) period currently at issue. Ms. Simonneau-Fort also submitted that translation had been completed as far as possible for the documents, but asked that for certain, short excerpts, the Court's live translation service be permitted to simultaneously translate the

document as it is read out. She further submitted that, concerning the relevance of the application documents, the ECCC Co-Investigating Judges (CIJs) and Pre-Trial Chamber (PTC) had both already found the documents to have some relevance and probative value and argued that it would be “arbitrary” for the Trial Chamber to “cast aside” the applications en masse. Ms. Simonneau-Fort then reminded the Chamber that civil parties are full parties to the proceedings with all the rights attendant thereto.

National counsel Pich Ang then clarified that the civil parties only wished to highlight for the Chamber certain parts of statements made by civil party applicants.

The Chamber judges conferred briefly before Judge Jean-Marc Lavergne announced the Chamber’s considerations on this matter, stating that the Chamber judges are concerned only with the potential for presenting inculpatory witness statements before the Chamber without an opportunity for the accused to cross-examine the witnesses themselves. Thus, Judge Lavergne explained that the Chamber would issue a decision on the matter in line with applicable international jurisprudence in due course.



Civil party counsel Olivier Bahougne highlights video clips of a 2006 interview of Khieu Samphan.

Civil Parties Highlight Documents

International counsel Olivier Bahougne then began the process of placing documents before the Chamber, prefacing his presentation by stating that many civil parties had wanted to know why Khieu Samphan could commit such acts against his fellow Khmer people.

This triggered an objection from Khieu Samphan national defense counsel, Kong Sam Onn, who argued that Mr. Bahougne was making submissions to the court about a meeting with his clients rather than simply presenting documents. The Chamber sustained the objection, and President Nil Nonn directed Mr. Bahougne to refrain from unnecessary commentary.

Mr. Bahougne responded by moving to the first document highlighted by the civil parties, which was a statement by Khieu Samphan. In this statement, Khieu Samphan allegedly stated, “I do not believe there is justice in the world, because everyone wants to win.” The document further quoted him as saying that if there is any justice, he would not be prosecuted, because everything

he had done was for his country and he never earned any money as a member of the Khmer Rouge.

Next, Mr. Bahougne read out other documents, including ECCC transcripts wherein Khieu Samphan spoke nostalgically about the newspaper he founded, *L'Observateur*. Mr. Bahougne stated that the purpose of highlighting such statements was to demonstrate the “solicitude” Khieu Samphan held for ordinary people and their lives. The civil parties also highlighted excerpts from Khieu Samphan’s book, wherein he explained his flight from the city to join the Khmer Rouge in the countryside under fear of arrest. The civil parties also read out statements made by Khieu Samphan outlining his supposedly reluctant move to become the figurehead of the Khmer Rouge.

Mr. Bahougne summed up by stating that these documents demonstrate that Khieu Samphan had a long-running association with the Khmer Rouge movement and was instrumental in starting the armed insurrection against the Lon Nol government.

The civil parties also highlighted Khieu Samphan’s thesis for his doctorate degree in economics, stating that Khieu Samphan was obsessed with seeing his economic theories put into practice in Cambodia. This preface drew another objection from the Khieu Samphan defense, who argued that Mr. Bahougne was again, making submissions, rather than simply highlighting documents.

This objection was again upheld, and Chamber President Nil Nonn instructed Mr. Bahougne to refrain from making submissions. Mr. Bahougne acknowledged the President’s instruction but noted that he was only seeking to frame the relevance of the document with his statement.

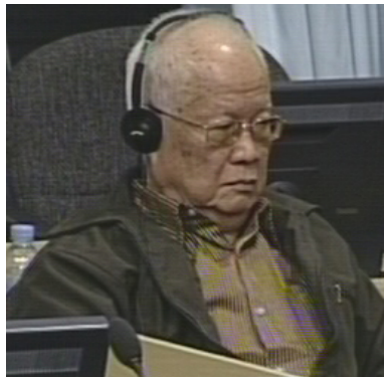
He then moved on to reading out excerpts from Khieu Samphan’s thesis and previous statements by Khieu Samphan concerning his thesis. These excerpts stated that capitalist landlords and “usurers” in Cambodia should be forced to become agricultural industrialists, who help, rather than damage the national economy and better peasant living conditions. Khieu Samphan classified people such as “hairdressers and cyclo drivers” as working in “unproductive” activities. Within the cities, Khieu Samphan’s thesis argued that the amount of imported goods available should be limited in order to foster new state enterprises and cooperatives of artisans and workers, thus spurring on local production.

The thesis also purportedly asserted that Cambodia had the capability to quickly begin production of pharmaceutical goods, by creating factories to process traditional medicinal ingredients. Another excerpt stated that new lands could be opened up in Cambodia without relying on foreign investment or requiring inhibitive amounts of capital by forming “mutual aid teams” and eventually cooperatives of workers to clear new farmlands and increase productivity. He argued that by doing so, rice production would be increased and exports could bring in foreign currency to develop Cambodia.

The civil parties then showed a series of video clips from an interview with Khieu Samphan contained in the film *Survive: In the Heart of the Khmer Rouge Madness*. In the first excerpt, Khieu Samphan stated, “I never talked about three tons per hectare [of rice], but I knew that one ton [of rice per hectare] was not enough to feed the population.”

Ieng Sary Retires at his Usual Hour

This concluded the presentation by Mr. Bahougne and the Chamber prepared to take its regular morning break. At this point, Ieng Sary defense counsel Ang Udom rose and made his now-daily request that Ieng Sary be permitted to retire to the courtroom holding cell for the day because of pain and swelling in his feet. This request was granted, as-per usual, by Chamber President Nil Nonn, who instructed the Ieng Sary defense to submit a written waiver signed by Ieng Sary.



Khieu Samphan remained the main focus of the civil party submissions throughout the proceedings on Wednesday.

Civil Parties Continue Highlighting Documents

Following the break, the civil parties began to play additional clips from *Survive*. In the first clip, Khieu Samphan stated that, although Cambodia was poor in the pre-DK period, it had “capital” in the form of its peasant workforce, which could produce rice to raise funds for the nation’s development.

The civil parties then ran into technical difficulties with screening the video clips, and Mr. Bahougne was forced to read out the transcripts of additional clips, clearly lessening their effect on the audience. During this process, Mr. Bahougne read out statements made by Khieu Samphan calling for the nationalization of the economy and emphasizing the need to avoid “waste” in order to produce the maximum amount of goods for export.

The next video clip was successfully played and showed Khieu Samphan discussing the charisma of Pol Pot as a leader. In the clip Khieu Samphan stated that he was surprised and impressed by Pol Pot’s capacity for “analysis” and also noted that he and his fellow intellectuals immediately were won over by Pol Pot’s vision on how to proceed with the struggle.

Mr. Bahougne then presented additional documents in which Khieu Samphan allegedly stated his desire to see socialist reforms implemented drastically and rapidly in Cambodia.

For the rest of the morning session, the civil parties presented other documents related to Khieu Samphan, including reading out survivor statements attesting to the “brutality” of Khmer Rouge cadres in the liberated zones prior to 1975. The final document presented by the civil parties during the morning session was another clip from *Facing Genocide*, which the prosecution had shown excerpts from also during the previous day’s proceedings, wherein Khieu Samphan stated

that he followed Pol Pot around “like his shadow” to learn from him and that Pol Pot discussed topics such as courage, heroism and patriotism and the “actual” situation on the ground during party meetings and educational trainings.

Nuon Chea Retires and Requests to Comment on the Documents Highlighted

Just prior to the lunch break, Nuon Chea defense counsel Michiel Pestman informed the Chamber that Nuon Chea wished to make his usual request to retire to the courtroom holding cell for afternoon session. Mr. Pestman also informed the Chamber that Nuon Chea wished to comment the following morning for approximately 15 minutes on the documents presented thus far by the parties. The Chamber President granted Nuon Chea’s request to retire to the holding cell but did not state when Nuon Chea would be permitted to comment on documents.

Nuon Chea Defense Documentary Issues Currently Left Unresolved

Following the lunch break, the Chamber announced its decision regarding the list of six documents the Nuon Chea defense wished to highlight during the afternoon’s proceedings. Chamber President Nil Nonn noted that the prosecution had pointed out the practice of late filing of documents by the Nuon Chea defense and had objected to four of the six proposed documents. The President then proceeded to state that the Chamber would allow two of the documents to be discussed immediately by the Nuon Chea defense but would issue a decision as to the other documents at a later date.

Nuon Chea defense counsel Michiel Pestman then requested the opportunity to respond to the objections of the prosecution to the four documents in open court. International prosecution counsel Dale Lysak responded by observing that none of the six documents at issue had been translated into either French or Khmer and argued that this fact further supported the prosecution’s position that the documents should not be presently discussed.



Nuon Chea’s international counsel Michiel Pestman responds to an objection by the prosecutors to documents that he is seeking to present.

The Chamber judges then conferred briefly before Chamber President Nil Nonn instructed the Nuon Chea defense to submit its response to the prosecution objections in writing. Judge Fenz then clarified in English that the Chamber would like to hear comments orally from the Nuon Chea defense solely on the translation issue that the prosecution had raised moments before. She

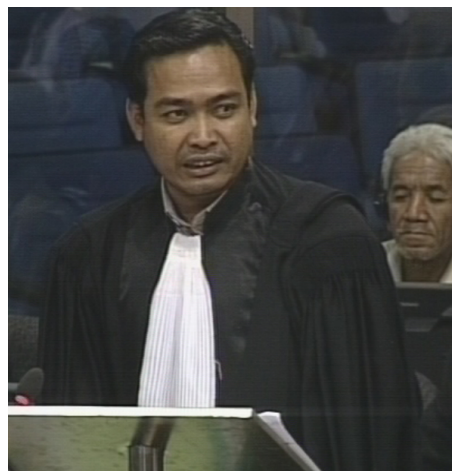
then reminded Mr. Pestman that the defense was limited to written submissions to respond to the prosecution's initial objection to the four documents and was therefore presently forbidden from discussing the documents.

Mr. Pestman responded by first noting that the defense preferred to make oral submissions on the issue in order to keep the public informed, contending that the content and significance of written submissions is often "lost" on lay audiences. He then informed the Chamber that some of the excerpts the defense wished to present to the Chamber were translated, while others were not.

The Chamber President then ruled that the two excerpts could be presented by the Nuon Chea defense without being translated first because the excerpts themselves were short and could be simultaneously translated without difficulty.

Khieu Samphan Defense Takes Issue with the Previous Day's Transcript

Khieu Samphan defense counsel Kong Sam Onn then interjected and sought to comment on a problem with the transcript from the previous day's proceedings. He stated that, in a document that prosecution had purported to be a speech delivered by Khieu Samphan, the transcript indicated that Khieu Samphan had stated that Hu Nim and Hou Youn "died" because of the orders of Prince Sihanouk. He stated that this was a grave misinterpretation because the true statement should have been that these two men were only "suspected to have died under the orders of Prince Sihanouk" by the Cambodian public.¹ The Chamber instructed Kong Sam Onn to submit a correction request in writing, in line with established ECCC practice and forbade him from making any more submissions on the issue. The President then gave the floor to the civil parties to continue highlighting documents.



National counsel Som Sokun highlights some civil party application documents for the court.

Civil Parties Highlight Application Document Statements

¹ Khieu Samphan, Hu Nim and Hou Youn were widely believed to have been killed by Prince Sihanouk's security forces in the late 1960s. When the men resurfaced as members of the Khmer Rouge, they were nicknamed "the three ghosts" because they had been presumed dead for years. Hu Nim and Hou Youn were killed during the DK period. The circumstances surrounding Hou Yuon's 1975 death remain unknown, while Hu Nim was tortured at the Khmer Rouge *Tuol Sleng* prison in Phnom Penh and executed in 1977.

National civil party counsel Som Sokun then resumed presenting documents on behalf of the civil parties. Som Sokun first read out excerpts from various civil party application documents submitted to the ECCC. There was no objection to this process, despite the Chamber's earlier reticence to allow the discussion of potentially inculpatory statements without any opportunity for cross-examination. However, the documents were all general in nature and did not make allegations specifically against any accused, perhaps allaying the fears of the Chamber judges.

In these applications, the applicants related their experiences of being evacuated, underfed and forced into military service in Khmer Rouge "liberated areas" during the civil war from 1970-1975. One applicant was arrested in 1974 by the Khmer Rouge because he was suspected of being an enemy. The applicant's statement recounted a horrific experience of arrest, forced labor, torture and confinement in terrible living conditions.

Another applicant was assigned to be a medic by the Khmer Rouge and was tortured and raped by a Khmer Rouge soldier when she refused to marry a man from Laos. She stated that she was mistreated again many times and forced to work in the jungle, where she was afraid of the animals. Other applicants related similarly horrific stories of evacuation, forced labor, abuse and the execution of loved ones. One applicant was a former monk who had to disrobe after the Khmer Rouge outlawed Buddhism where he lived. These applications were highlighted until the Chamber's regular afternoon break.

Nuon Chea Defense Declines to Comment on Only Two of Six Proposed Documents

Following the afternoon break, the floor was given to the Nuon Chea defense team to highlight documents before the Chamber. Defense counsel Michiel Pestman first stated for the record that the defense had submitted a third written application seeking the disqualification of Chamber Judge Sylvia Cartwright. He then stated that the Nuon Chea defense could not highlight any documents until a decision was issued by the Chamber regarding the four documents objected to by the prosecution (see above). He argued that quoting from the two permitted documents would not create a coherent narrative for the Chamber or the public to follow. He then attempted to reserve the right to put documents before the Chamber following the issuance of its decision regarding the four documents.² He next sought to turn the floor over to his colleague, Jasper Pauw, to make additional comments related to the historical background of the DK period segment of the Case 002 trial.

The Chamber judges conferred for several minutes before Chamber President Nil Nonn stated that the Nuon Chea defense had already been instructed to present the two approved documents immediately. Judge Fenz clarified that for the two documents approved, the Nuon Chea defense had the choice of "now or never."

Mr. Pestman responded that the defense would comment on the two documents later or, if forbade from doing so, would mention the documents during closing arguments. He then attempted to hand the floor over to Mr. Pauw.

² During his submission, Mr. Pestman referred to the two approved documents as the "Vickery" and "Shawcross" documents. He was therefore likely referring to books by Michael Vickery (*Cambodia 1975-1982*) and William Shawcross (*Sideshow: Kissinger, Nixon, and the Destruction of Cambodia*).

Prosecution counsel Dale Lysak interjected and objected to any use of time by the defense other than to submit documents. He also offered to explain the prosecution's general reasons for objecting to the four documents in order to keep the public better informed.

Mr. Pestman then made a counter-objection, stating that the prosecution cannot make submissions on the topic of the four documents because the defense was already forbade from doing so. He declined, yet again, to discuss the two approved documents when asked whether he would do so by the President.

Before the Chamber could adjourn for the day, Mr. Pauw interjected and stated that he had to request immediately that the Chamber refrain from closing the proceedings related to the topic of the historical background of the DK period. He argued that it was important to discuss the issue in open court, where the public can hear. He maintained, "What is very relevant, when considering the facts of this case, is to study and discuss properly what happened in Cambodia between the years 1970 and 1975." Mr. Pauw further argued, "When you assess the acts of a leader . . ., it simply matters whether his country, Cambodia, has just been destroyed for years on end by American B-52 bombers . . . [and] whether he takes control over a blossoming and healthy city or a city on the brink of starvation." He noted that the public does not read party filings and that one cannot properly assess the actions of the Khmer Rouge once in power without first analyzing the state of the nation the regime took over.

When Mr. Pauw began to turn to international case law on this issue, his microphone abruptly cut out, and President Nonn noted that the Chamber believed Mr. Pauw would only make a brief request. He stated that the Chamber understood the defense's written submissions and had already ruled on the issue. The President then immediately adjourned the day's proceedings before any other statements could be made.

The Case 002 trial will resume Thursday, February 16, at 9 a.m.