



DC-Cam Director Youk Chhang continues his testimony before the ECCC on Thursday, February 2, 2012.

The Defense Challenges DC-Cam Documents in Cross-Examination of Youk Chhang

“I am not a court” - DC-Cam Director Youk Chhang

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On Thursday, February 2, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued hearing the much-anticipated testimony of Documentation Center of Cambodia (DC-Cam)¹ director Youk Chhang. The day’s proceedings were dedicated to the cross-examination of Mr. Chhang by the Case 002 defense teams for accused Khieu Samphan and Nuon Chea. The Chamber had previously instructed the parties to limit their questioning to issues related to DC-Cam’s general documentation practices and processes.

Prior to the commencement of the day’s questioning, there was some brief confusion regarding the division of time between the three defense teams, resulting in a change of order, with the

DISCLOSURE: DC-Cam is a sponsor of the Cambodia Tribunal Monitor, and its director, Youk Chhang, serves as co-managing editor.

¹ DC-Cam researches the Khmer Rouge history and has provided the ECCC with approximately 500,000 pages of documentary evidence, prompting the Court to name DC-Cam as an “in-kind” donor. The defense teams have challenged the neutrality of DC-Cam and many of the Center’s documents.

Khieu Samphan defense, rather than Nuon Chea defense team, putting questions to Mr. Chhang first.

Examination of Youk Chhang by Khieu Samphan Defense

International counsel for Khieu Samphan, Arthur Vercken, began questioning Mr. Chhang for the day by explaining that he would focus on primary documents from the Democratic Kampuchea (DK) period. Mr. Vercken first asked Mr. Chhang whether he believes original documents or copies are the best source of information. This question triggered an immediate objection by the prosecution, which argued that the question asked for a conclusion that is outside the scope of Mr. Chhang's expertise. Mr. Vercken responded by arguing that, during the previous day's testimony, Mr. Chhang had indicated that DC-Cam conducts non-judicial quasi-investigative functions. The Chamber sustained the objection, but this decision did not appear to sit well with Mr. Vercken, who asked for a reason why the question was not allowed. Mr. Vercken argued that Mr. Chhang represents an organization that collects documents the world over and, therefore, expertise on the value of varying types of documents is fully within Mr. Chhang's knowledge.



Judge Lavergne explains the Trial Chamber's ruling on an objection by the prosecution.

Judge Jean-Marc Lavergne explained that such a question “is not warranted” because it does not deal with DC-Cam's procedures or processes. Mr. Vercken responded that this is “the problem” with the Case 002 trial, specifically that documents from DC-Cam form the bulk of the case file and have not been properly scrutinized.

Mr. Vercken then asked Mr. Chhang, “Where today are the originals of the documents that you believe date back to the era of [DK] and are in the possession of [DC-Cam]?” Mr. Chhang paused for a moment and then simply responded that such documents are “in Cambodia.” When asked where specifically, Mr. Chhang stated that, due to “security issues,” it is difficult to explain the locations of all the originals. He then sought guidance from the Chamber as to whether he should explain further.

International prosecution counsel Tarik Abdulhak then objected to the question, arguing that it was too broad because there are countless pages of documents, probably housed in various locations. He further suggested that the Chamber move to closed session if necessary to explore the current physical locations of original DK period documents. This latter suggestion was also

supported by international defense counsel for Nuon Chea, Michiel Pestman, who indicated that the Nuon Chea defense strongly desires to obtain information about the location of original documents because it planned to request the production of some original documents moving forward.

The Chamber judges then conferred briefly before ruling that Mr. Chhang did not need to answer the question due to security issues. Chamber President Nil Nonn stated that the Chamber considered it unnecessary at the current juncture to discuss the location of originals and thus a closed session was not immediately warranted.

Mr. Chhang then stated that, if any parties sought to verify copied documents are accurate duplicates of originals, DC-Cam is “willing to assist them.” Mr. Vercken then exclaimed, “Precisely, Mister witness” and asked whether any ECCC judges or Office of the Co-Prosecutors (OCP) representatives had actually asked DC-Cam to verify such accuracy of duplicates provided to the Court. Mr. Chhang stated that he did not understand the question fully but that DC-Cam would be willing to allow any party to verify the authenticity of copied documents provided to them. Mr. Vercken then repeated his question concerning whether judges or the OCP have actually asked for any original documents. Mr. Chhang responded that, thus far, no one has asked to verify originals but that some court officials, such as Steve Heder from the OCP, had come to DC-Cam and scanned original documents for use at the ECCC.

Mr. Vercken then continued to explore the issue of original documents and copies and asked whether every document that has a DC-Cam document number appearing on it is necessarily a copy or image of a copy. Mr. Chhang responded that such documents are indeed copies of originals but that the Office of the Co-Investigating Judges (OCIJ) had requested scans of some original documents, which DC-Cam had provided.

Next, Mr. Vercken asked Mr. Chhang about correspondence between the OCP and DC-Cam concerning the submission of documents and an “authentication certificate” from DC-Cam. Mr. Chhang testified that the certificate in question was a written form certifying the authenticity of the provided documents. Mr. Vercken then inquired whether DC-Cam has provided only one such certificate or one for each request from the OCP. Mr. Chhang responded that, for each document request from the OCP, DC-Cam submitted a certificate indicating whether the provided copies were made of originals and certifying the accuracy of the copies.

Mr. Vercken then asked whether Mr. Chhang thought that a person who created falsified documents purported to be contemporaneous DK period documents would not simply falsify the date on the document. Mr. Chhang responded that he believes it would be “virtually impossible” for a person to fabricate nearly one million documents that contain information about DK period events while utilizing aged paper and Khmer Rouge-specific language and phrases. Continuing this theme, Mr. Vercken asked whether someone could also fabricate DK period documents by using Khmer Rouge terminology in order to make them seem authentic. Mr. Chhang responded that many documents are quite long, citing the example of a 200-page confession from *Tuol Sleng* prison, and would be very difficult to fabricate or alter. He also reiterated that documents are viewed in comparison with one another and that, again, he thought it would quite difficult for one individual to fabricate nearly one million pages of documents.

Mr. Vercken responded that he was not asking about all the documents but whether certain documents could be individually fabricated, asking specifically about the one document DC-Cam had rejected to which Mr. Chhang had previously testified. Mr. Chhang responded that this document was indeed false but pointed out that it was not purported to be a contemporaneous DK period document but one from the 1990s.

Mr. Vercken moved on by asking Mr. Chhang about his previous testimony that he had consulted with Vietnamese “experts.” Mr. Chhang responded that he is not unwilling to answer such a question because he does not recall using the term “expert” and did not want to affirm a statement he may not have made. Mr. Vercken then rephrased the question, asking about Mr. Chhang’s previous statement to the OCIJ concerning Vietnamese “experts.” Mr. Chhang then sought to ask Mr. Vercken for clarification about when he said such a statement and to have the document containing the statement produced.

The prosecution objected to the question and requested that Mr. Vercken provide a citation to a specific document if he planned on quoting from previous testimony. Mr. Chhang then interjected, “I am very happy to answer this question, but counsel failed to answer my question concerning the truthfulness of what I said yesterday.” He further stated that, according to his memory, in the Cambodian Ministry of the Interior, there was one expert working on documents, but this person had passed away.

Mr. Vercken reminded Mr. Chhang that it is not his role to question the defense counsel and asked him to answer questions more clearly. Mr. Chhang then stated that he could not recall the name of this individual expert now but the name of such individual must be included in his previous testimony provided to the OCIJ. Upon further questioning, Mr. Chhang testified that he had never personally received any documents from the “expert” in question but had received them from a “working group” at the Ministry of the Interior. He further stated that he wanted this testimony to be clear and suggested that indeed he had already made his statement clearly, even in the French translation to which Mr. Vercken was listening.



Counsel Arthur Vercken cross-examines witness Youk Chhang for the Khieu Samphan defense.

Next, Mr. Vercken asked about documents received from Cambodian Prime Minister Hun Sen. Mr. Chhang responded that he received many documents from Hun Sen in the early 1990s, explaining that he had read Hun Sen's book at the time and requested copies of documents referenced in the book.

Mr. Chhang was then asked how long it took DC-Cam to collect the purported contemporaneous DK period documents that have been placed before the ECCC. Mr. Chhang responded that DC-Cam is still collecting documents and that the Center considers even survivors as "documents," seeking to interview as many DK period survivors as possible to create a historical record.

Mr. Vercken then stated that Mr. Chhang did not answer the question and asked Mr. Chhang again about the time it took to collect documents provided specifically to the ECCC. Mr. Chhang again, however, gave a long statement explaining the digitization of DC-Cam's entire repository of contemporaneous DK period documents currently ongoing in collaboration with Michigan University. He stated that, in the future, everyone will be able view these documents to see why people died during the DK period. Chamber President Nil Nonn then interjected and reminded Mr. Chhang to respond to the questions directly.

Mr. Vercken asked his question again. This time, the question seemed to come more clearly, suggesting that the earlier troubles were likely to have been, at least partially, the result of a slightly inaccurate translation. On the third phrasing of the question, Mr. Chhang seemed to understand that Mr. Vercken sought to inquire how long it would take DC-Cam to produce the originals of all documents already provided to the ECCC, if requested to do so.

This question triggered an objection from civil party international co-lead lawyer Elisabeth Simonneau Fort, who argued that it is not the proper role of the defense to command the production of originals but that this decision is the exclusive right of the Chamber judges.

After some debate between the parties, Mr. Chhang stated that, if the Chamber requires production of some original documents, DC-Cam will engage the ECCC technical staff in creating an appropriate method of safely transporting the documents. He declined to speculate, however, on how long this process would actually take. He then smiled and stated that, if "Uncle Nuon"² desires to see original copies of *Revolutionary Flag* booklets, Mr. Chhang has many of these documents and would be "happy" to bring them to the Court personally for inspection.³

Ieng Sary Retires to the Holding Cell at His Customary Time

This concluded the questioning by Mr. Vercken and the Chamber adjourned for its morning break. Just prior to the break, the defense for Ieng Sary submitted its customary request that Ieng Sary be allowed to waive his right to be present in the courtroom and retire to the holding cell for the day to view the proceedings via audio-visual link. As has become routine, the Chamber

² "Ohm Nuon" in Khmer.

³ Throughout the Case 002 trial proceedings to date, Nuon Chea has refused to accept any copies of documents, especially copies of *Revolutionary Flag* booklets. Also, previous testimony from the DC-Cam deputy director, Peoudara Vanthan, had indicated that a number of the documents provided to the Court by DC-Cam purportedly dating from the DK period have the annotation "Uncle Nuon" on them, believed by DC-Cam to denote that the document was transmitted to Nuon Chea.

President granted this request, instructing counsel to provide a written waiver to the Court signed by Ieng Sary.

Continued Questioning by the Khieu Samphan Defense

Following the break, questioning was continued by Khieu Samphan's national defense counsel, Kong Sam Onn, who began by asking Mr. Chhang whether DC-Cam employs trained experts in the field of authenticating documents. Mr. Chhang responded that DC-Cam does not employ such experts but follows a set of guidelines to gather information relevant to each document, such as the contact information of the individual who provided the document. Mr. Chhang then provided several examples of how documents were found and given to DC-Cam. One such example was a set of photographs provided by a Japanese photographer who had been in Phnom Penh in 1979 shortly after the fall of the Khmer Rouge regime. These photographs were transferred to DC-Cam through the Cambodian embassy in Japan at the time.

Kong Sam Onn then asked Mr. Chhang for further information about DC-Cam's written guidelines for collecting documents. Mr. Chhang responded that the guidelines were drafted by a law professor in the United States (US) who is currently the US Ambassador-at-Large for War Crimes Issues.

Mr. Chhang was then asked whether Cambodia currently has issues that require reconciliation in the view of DC-Cam and whether the Center's goals have changed over time. Mr. Chhang informed the Chamber that DC-Cam deputy director Peoudara Vanthan had already answered this question, but he could answer it again if necessary.

Chamber President Nil Nonn then directed Mr. Chhang not to answer the question and directed counsel Kong Sam Onn to stay on topic and not ask repetitive questions. Furthermore, the President reminded the parties that the "missions and vision" of DC-Cam are unrelated to the day's topics.

Kong Sam Onn responded that conditions have changed in Cambodia since 1995 when DC-Cam was created and that, since this time, the Khmer Rouge movement has been completely dismantled and its members absorbed into the government. Therefore, counsel argued that it was proper to explore whether the mission of DC-Cam had changed.

The Chamber President did not budge, however, and directed counsel to move on.

Kong Sam Onn then asked if Mr. Chhang had followed the testimony of his deputy Peoudara Vanthan during the previous week of hearings. Mr. Chhang indicated that he had seen portions of Mr. Vanthan's testimony and had also talked briefly with Mr. Vanthan following the completion of his testimony. Mr. Chhang testified that he had told Mr. Vanthan "not to be worried" because it was important to provide help to the Court. He further testified that he regularly reminds the entire DC-Cam staff that it is important for the victims to ensure that each accused receives a fair trial and good defense counsel and pointed out Ieng Defense counsel Michael Karnavas as an example of an effective defense advocate.

When asked about the specific categorization of documents at DC-Cam, Mr. Chhang stated that the Center holds both “primary” and “secondary” documents and that this is a classification easily understood by anyone who has completed their education, such as Kong Sam Onn himself, who has qualified as a lawyer.

Counsel Kong Sam Onn appeared irritated and stated that his education and personal background are not at issue and asked the Chamber to direct Mr. Chhang not to comment on them. Chamber President Nil Nonn then instructed Kong Sam Onn to ensure his questions are concise and reminded all parties to maintain proper courtroom decorum and use appropriate language.

Upon further questioning, Mr. Chhang then reiterated DC-Cam’s process of assessing and categorizing documents. He explained that any “assessment” of documents is done personally by him and is used to categorize documents for archiving.

Next, Kong Sam Onn asked Mr. Chhang about the “expertise” of DC-Cam’s staff in a series of questions. Mr. Chhang responded that the term “expertise” is too broad, especially in the Khmer language. He stated that DC-Cam’s staff overall has 17 years of experience in collecting documents and had also received trainings from archival experts at New South Wales University in Australia.

When asked once again about the testing of documents, Mr. Chhang testified that DC-Cam does not forensically examine documents but simply visually examines documents. He stated, “If you trained your eyes for 17 years, you would know” whether a document is an authentic Khmer Rouge document.

When asked for an estimation of the percentage of all documents placed before the ECCC that were derived from DC-Cam, Mr. Chhang stated that he did not want to make such an estimate, as it would be a guess. He did state that perhaps 60 percent of documents at the ECCC were provided by DC-Cam but was quite clear that this was only a very rough estimate.

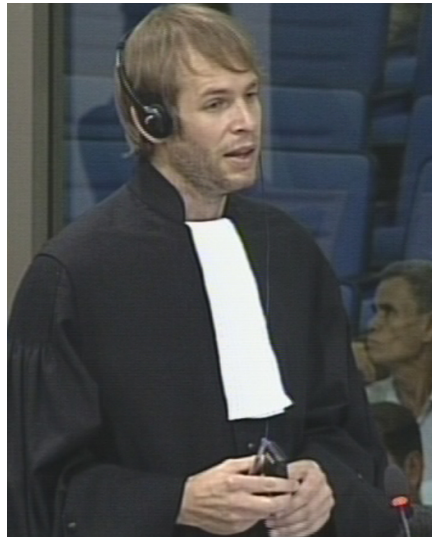
Kong Sam Onn then asked Mr. Chhang whether there are any documents out of the approximately one million pages of documents held by DC-Cam that were considered possible fabrications when received. Mr. Chhang answered by repeating his previous testimony that only one document has been rejected by DC-Cam to date.

Next, Kong Sam Onn asked about former DC-Cam staff members who currently work at the ECCC. In response Mr. Chhang stated that he feels free to name such individuals because they were recruited by standard ECCC hiring practices and therefore these individuals should “be proud of themselves.”

Nuon Chea Also Retires to the Holding Cell at His Customary Time

This concluded questioning by the Khieu Samphan defense, and the Chamber prepared to take its regular lunch break. Just prior to the judges standing and filing out of the courtroom, Nuon Chea defense counsel Michiel Pestman rose and stated that he had “almost forgot” to inform Chamber of Nuon Chea’s now-standard request to retire to the holding cell for the day to view the

proceedings via audio-visual. This request was quickly granted as per usual and the Chamber recessed for lunch.



Jasper Pauw, international counsel for Nuon Chea, continues the defense's cross-examination of the witness.

Nuon Chea Defense Questioning of Youk Chhang

When the afternoon session began, the floor was turned over to international defense counsel for Nuon Chea, Jasper Pauw, who thanked Mr. Chhang for his testimony thus far, as well as his assistance in providing documents to the defense in the past.

Mr. Pauw then asked Mr. Chhang to affirm that DC-Cam refers to both original and copied documents as “original” documents internally, so long as they were purportedly created during the DK period. Mr. Chhang affirmed that this is true but noted that, for the copies that are identified in such a way, the originals are held outside of Cambodia.

When asked about the collection of post-DK period documents, Mr. Chhang testified that DC-Cam does not specifically seek out documents created after the DK period but does hold some of these documents, which were mixed in with batches of DK period documents given to the Center.

Mr. Chhang then testified that scholars such as Ben Kiernan, David Chandler, and one other Chilean individual⁴ had made annotations on certain original documents. Upon further questioning, Mr. Chhang stated that he could not recall whether Steve Heder had made any notations on DK period documents held by DC-Cam.

Next, Mr. Pauw asked about the term “at-risk” documents used by Mr. Chhang in previous statements. Mr. Chhang responded that in 1997, during violent unrest in Cambodia, DC-Cam had moved certain documents to a secure location because of security concerns.

⁴ The ECCC translation service did not translate the name of this individual clearly.

Mr. Pauw then asked about DC-Cam's goal of "searching for the truth" of the DK era and asked about possible documents and information potentially not collected by DC-Cam. This prompted an objection from the prosecution, which argued that the subject is beyond the scope of the scheduled testimony. Mr. Pauw responded that, if DC-Cam's process of documentation is going to be explored, this necessitates a discussion of whether DC-Cam has encountered any evidence of other possible causes of death in DK.

The Chamber allowed this question, and Mr. Chhang stated that DC-Cam had indeed collected a significant amount of information related to the US bombing of Cambodia and other non-Khmer Rouge causes of death during the era. For example Mr. Chhang testified that DC-Cam had received many witness statements from Svay Rieng province, which was heavily bombed by the US. He further stated that DC-Cam staff members have also encountered other pieces of information, such as remnants of bombs and witness statements about deaths due to the US bombing or non-violent causes during the DK period, such as illness.

Mr. Chhang then affirmed that DC-Cam does collect and catalogue such information and has written articles in DC-Cam's magazine *Searching for the Truth* about suffering during this period that was not caused by the Khmer Rouge. He also stated that, when DC-Cam interviews DK period survivors, the Center's interviewers request a full personal history from each interviewee, which often dates back to well before the DK period.

Next, Mr. Pauw asked Mr. Chhang about DC-Cam's working relationship with the OCP. Mr. Pauw asked Mr. Chhang specifically whether he had met with representatives of the OCP prior to receiving any letters requesting documents. Mr. Chhang responded by providing only the general practice of DC-Cam in receiving and fulfilling document requests. When Mr. Pauw repeated the question, Mr. Chhang responded that he had not discussed documents with the OCP prior to receiving requests but had allowed OCP representatives to work in DC-Cam's offices on one specified day of the week, just like every other party. Mr. Chhang also testified that he could not recall when he first met Robert Petit, the first International ECCC Co-Prosecutor. Mr. Chhang further stated that the first time he did meet Mr. Petit he was surprised because Mr. Petit was "a man of few words" and did not say much. Upon further questioning, Mr. Chhang denied that he had advised Mr. Petit during this initial meeting on which DC-Cam documents would be useful in prosecuting the Case 002 accused.

Mr. Pauw then asked Mr. Chhang whether he knew how the OCP selected DC-Cam documents, triggering an objection from the prosecution, which argued that the question called for an answer outside the knowledge of Mr. Chhang.

This objection was sustained by the Chamber, and Mr. Pauw moved on, asking whether the OCP has asked DC-Cam for documents it did not possess. Mr. Chhang explained that he had not discussed documents with OCP representatives but only received requests from the OCP for documents listed in DC-Cam's database.

Mr. Chhang then denied that DC-Cam analyzed or assessed whether documents appear inculpatory or exculpatory in nature, vis-à-vis the Case 002 accused. When Mr. Pauw pushed the

issue, the prosecution again objected, stating that Mr. Chhang’s view on this subject is not relevant to the admissibility of documents.

The Chamber judges then conferred briefly before upholding the objection.

Mr. Pauw then asked whether DC-Cam preferred that certain individuals be prosecuted when it carried out its work in support of creating an independent court. This triggered another objection from the prosecution, who argued that the question is irrelevant.



Judge Cartwright questions witness Youk Chhang on his public statements on behalf of DC-Cam.

Judge Sylvia Cartwright then requested that Mr. Pauw rephrase his question to refer only to any statements made publicly by Mr. Chhang officially on behalf of DC-Cam as its director and specifically only statements regarding who should be prosecuted by the ECCC. Mr. Pauw stated that he would be “delighted” if this exact question was put to Mr. Chhang.

Judge Cartwright then smiled and put the question to Mr. Chhang herself. In response, Mr. Chhang stated that he has stated publicly numerous times that “anyone who committed crimes” should be prosecuted by the ECCC.

Next, Mr. Pauw asked if Mr. Chhang ever stated in the *Searching for the Truth* magazine that Nuon Chea should be prosecuted. Mr. Chhang affirmed that this was true, but he could not remember which issue.

Upon further questioning concerning the initial goals of DC-Cam and whether this included collecting evidence for a court, Mr. Chhang responded, “I am not a court, I am not a senior researcher,” but, instead, a person focused on collecting documents. During this line of questioning, Mr. Chhang affirmed that he had created files on specific individuals but explained that the files were created after receiving requests from researchers who sought information on such individuals. He explained that many individuals approached DC-Cam and asked for information about security centers and specific Khmer Rouge cadres, such as Ieng Sary, for example. Thus, Mr. Chhang created topical folders to make it easier to provide organized information to researchers.

Next, Mr. Chhang affirmed that DC-Cam does indeed have a “Nuon Chea folder” and added that the contents of this folder had already been transmitted to the ECCC Defense Support Section (DSS). Mr. Chhang further testified that he could not recall precisely when the folder was first created but repeated that the folder was created to fulfill document requests received from an external researcher.

Mr. Pauw then asked whether DC-Cam has ever analyzed the contents of the Nuon Chea folder to see whether it contained inculpatory documents. Mr. Chhang responded that he is not a lawyer and is not interested in legal matters but rather seeks historical information. He noted that, if he wants more information explaining the context or relevance of a document, he seeks outside information.

When asked if DC-Cam ever collected documents with the goal of prosecuting certain individuals, Mr. Chhang stated that DC-Cam “searches for the truth” and that he is therefore interested in all DK period documents, even seemingly unimportant ones. When asked about a DC-Cam poster that included a statement containing the word “evidence” in it, Mr. Chhang responded, “The law never monopolized the term ‘evidence,’” explaining that he comes from a social science background, where the term is used differently as part of learning about history.

Mr. Pauw then asked about DC-Cam’s “Promoting Accountability” Project. Mr. Chhang explained that the Project was created with the goal of finding out “what happened in our history, for the crimes committed in the DK period.” Mr. Pauw inquired whether DC-Cam has specifically looked for evidence implicating DK period leaders in alleged atrocities. Mr. Chhang responded that the goal of the Project was to collect information for the Court to ascertain who committed crimes during the DK period.

Next, Mr. Pauw asked about the “illumination of chains of command” in DK, which was stated as a goal of the Promoting Accountability Project and specifically why such “illumination” is important to DC-Cam. This triggered another objection from the prosecution, which argued that the defense was veering off into irrelevant matters.

The Chamber judges then conferred among themselves briefly before denying the objection and ordering Mr. Chhang to answer the question.

Mr. Chhang responded that DC-Cam sought to find out about chains of command because the Center wanted to determine “who killed two million Cambodians.” He further explained that, during interviews, interviewees rarely admitted to killing anyone during the DK period and so the Center sought to research the issue in more depth.

Following the afternoon break, Mr. Pauw displayed a document apparently authored by Mr. Chhang. When asked about the document, Mr. Chhang explained that the document was created to explore the Communist Party of Kampuchea (CPK) Central and Standing Committees and was a compilation of CPK documents. Upon further questioning, Mr. Chhang testified that the report was listed as “confidential” because it was provided to the ECCC. He further explained

that some ECCC interns had used such documents improperly for personal purposes in the past and he wanted to ensure that draft documents provided to the Court were handled properly.

Next, Mr. Pauw asked Mr. Chhang about email correspondence, contained in the confidential report, from Ben Kiernan to Mr. Chhang regarding Khmer Rouge documents held by the *Phnom Penh Post*. Mr. Chhang responded that the *Phnom Penh Post* holds numerous Khmer Rouge documents, especially photographs. He further stated that many of these photographs, along with some paper documents, were sourced from Anlong Veng, a place where many former Khmer Rouge cadres live, that was inaccessible until relatively recently. Mr. Chhang further testified that he eventually obtained some photographs from the *Post* but never obtained all of the documents he had requested.

Mr. Pauw then asked Mr. Chhang about a statement in another email he had received and that was contained in the confidential report, wherein Craig Etcheson referred to “key culprits.” Mr. Chhang stated in response that Mr. Etcheson is an “activist” who works at the ECCC OCP and can therefore be asked directly about this phrase. When asked about another statement by Mr. Etcheson referring to a specific former Khmer Rouge cadre, Mr. Chhang stated that Khmer Rouge researchers compete with each other and each researcher has his own “list” of individuals he considers appropriate for prosecution. When asked if DC-Cam had created its own “list” in the 1990s of people it wanted prosecuted, Mr. Chhang responded that at first Ben Kiernan was “the boss” of DC-Cam from 1995 to 1996 and that, during this time, Mr. Kiernan wrote a book listing individuals he believed were suitable for prosecution.

Mr. Pauw then asked Mr. Chhang about a statement in yet another email contained in the confidential report, wherein Mr. Chhang stated that he preferred not to name individuals to the *Phnom Penh Post* newspaper because DC-Cam did not have its “legal program” off the ground. This question triggered another objection from the prosecution, which argued that the Nuon Chea defense was attempting to put DC-Cam as an institution “on trial” rather than focusing solely on the Center’s methods and processes regarding collecting and storing documents.

The Chamber then conferred for several minutes before sustaining the objection and instructing Mr. Pauw to move onto another line of questioning.

In response, Mr. Pauw read out another email, this one sent by Steve Heder, which stated that Ben Kiernan and DC-Cam were wrong in shaping investigations along “political lines.” This triggered an immediate objection from the prosecution, who argued that the question was in contravention of the Chamber’s orders just moments prior.

Mr. Pauw argued that the civil parties had explored the issue of possible outside influences on DC-Cam’s work the previous day and, thus, the defense should enjoy the same rights to question Mr. Chhang on the issue.

Chamber President Nil Nonn sustained the objection, instructing defense counsel to cease using text authored by individuals other than Mr. Chhang himself during questioning of Mr. Chhang.

Mr. Pauw responded by asking generally if DC-Cam had been involved in delineating the personal jurisdiction of the ECCC. Predictably, the prosecution objected again on the same grounds.

Mr. Pauw responded that the Nuon Chea defense is concerned that “the OCP seems to show little interest in the motives of DC-Cam, the main donor of documents to this Court.” He further asserted that, simply because DC-Cam claims to be an independent research organization, this does not necessarily make such a statement true. Mr. Pauw continued by arguing that the emails he had just discussed suggested that DC-Cam had “an agenda” regarding who would be prosecuted that must be explored because it is central to the Center’s objectivity during the collection of documents.

This objection was sustained, and Judge Cartwright informed the Nuon Chea defense that the Chamber “fully understands” the defense’s line of questioning and skepticism of DC-Cam’s collection of documents but had heard enough on the issue. She further reminded Mr. Pauw that witnesses cannot be asked to comment on what is in the mind of another individual.

Mr. Pauw responded that he would move on but stated that it was the Nuon Chea defense’s position that many of its questions had not been answered and reserved the right to argue this position further in submissions.

At this point, Judge Cartwright interjected and asked Mr. Pauw to pause for a moment, as the Chamber needed to deliberate on an administrative matter.



Trial Chamber President Nil Nonn closes the day with the court’s ruling on a previous application by the Nuon Chea defense.

Chamber Issues Decision on Previous Application by Nuon Chea Defense

After a brief discussion among the judges, Chamber President Nil Nonn announced that the Chamber would orally issue its decision on the Nuon Chea defense’s previous application requesting that the Chamber condemn statements made by Prime Minister Hun Sen regarding the guilt of Nuon Chea.⁵ Chamber President noted the right of all accused to the presumption of

⁵ During previous proceedings, the Nuon Chea defense asserted that, in a public statement to Vietnamese media outlets, Prime Minister Hun Sen had claimed that Nuon Chea had lied during his testimony at the ECCC, is a “murderer,” and is also a “perpetrator of genocide.” The Nuon Chea defense made a formal request that the Trial

innocence enshrined in the Cambodian Constitution and stated that the Chamber will not consider any statements by individuals when assessing the guilt or innocence of any accused.

The President then stated that the proceedings would adjourn for the day and resume on Monday, February 6, 2012 at 9 a.m., with the continued testimony of Mr. Chhang.

Author's Note: On Friday, February 3, 2012, the Supreme Court Chamber of the ECCC will announce its judgment on appeal in ECCC Case 001 against Kaing Guek Eav, alias *Duch*. The Cambodian Tribunal Monitor will provide a blog summary of this event.

Chamber officially condemn the statements of the Prime Minister and request that he refrain from making additional statements commenting on the guilt or innocence of Nuon Chea in the future.