



*Nuon Chea and his defence team at the ECCC on Monday*

## **Trial Chamber Resumes Case 002 Trial Proceedings by Turning to Topic of Hierarchy and Administrative Structures**

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On Monday, March 12, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) resumed trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary and Khieu Samphan. The Chamber had been on recess since February 16, when it concluded the initial portion of Case 002, trial 1<sup>1</sup> dedicated to an exploration of the historical background of the Democratic Kampuchea (DK) period.

Trial Chamber president Nil Nonn began the day's proceedings by announcing the scheduled events for the week. He noted that for the remainder of the week, the Chamber would not hear any evidence from witnesses or accused, but proceedings would focus on oral objections to documents put before the Chamber by the parties for the second portion of Case 002, Trial 1 related to the Khmer Rouge hierarchy and administrative structures.

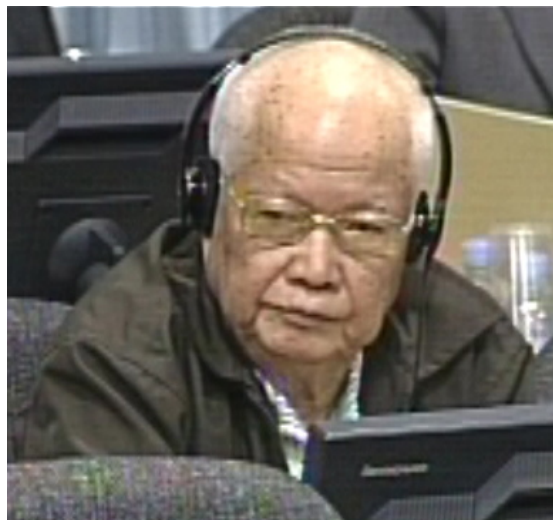
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<sup>1</sup> Case 002 has been divided into a series of “mini-trials” by the Trial Chamber.

### **Trial Chamber Greffiers Read Out Pertinent Portions of Closing Order**

Court greffiers then read out the portions of the Case 002 Closing Order relevant to the current phase of trial proceedings.<sup>2</sup> These sections sketched the administrative hierarchy of the Communist Party of Kampuchea (CPK) during the DK period (1975-1979) according to the investigatory conclusions of the ECCC Co-Investigating Judges (CIJs). The sections read out discussed the positions of the Case 002 accused as well as other high-level CPK officials and noted the fates of many such officials who were allegedly purged during the DK period. The sections also covered the creation of security offices in Cambodia under the authority of the CPK Central and Standing Committees, including S-21 *Tuol Sleng* prison (the subject of Case 001).

Another key issue raised in the sections read out, was the role accused Khieu Samphan held at CPK “Office 870” which was the code name for the office of the CPK command during the DK period. The sections read out stated that Khieu Samphan became the nominal head of Office 870 following the purge of his predecessor, but noted that Khieu Samphan denies having enjoyed any true authority at the Office, other than making administrative decisions on the allocation of resources throughout Cambodia.



*Khieu Samphan at the ECCC on Monday*

The sections read out next discussed the administrative structures created in DK and how tasks were assigned by the CPK leadership and implemented down the chain of command from the highest echelons of the leadership, to Zone authorities, down to local district and sub-district levels. In addition to the mechanisms by which orders were issued, the sections also discussed the opposite flow of information up the chains of command in DK all the way to the central leadership at Office 870 regarding issues such as agricultural production (especially rice crops) and state security. The Closing Order also stated that telegrams were sent regularly from Zone authorities to the CPK central command, but that local authorities were forbade from communication laterally across the administrative structures in DK. In addition to such communication, Zone and Sector authorities also are alleged to have attended regular meetings in

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<sup>2</sup> The full text of the Case 002 Closing Order is available on the ECCC website at: <http://www.eccc.gov.kh/en/articles/public-version-case-002-closing-order>.

Phnom Penh where additional instructions were provided by CPK leaders such as Pol Pot and Nuon Chea.

The sections read out also outlined the process by which telegrams were encoded, decoded, stored and eventually destroyed by the CPK during the DK period as a matter of purported official policy. The code names of various key offices, including Office 870 were also discussed and accused Khieu Samphan was quoted as stating that Pol Pot would often sign documents simply “870” which was short form for the CPK Central Committee collectively or the general highest leadership of the CPK, known collectively as “*Angkar*” (the “organization”). CPK print publications, including *Revolutionary Flag* booklets were also discussed as a mechanism of reflecting party policy on a monthly basis.

The next topics covered in the sections read out were the interrogation of Vietnamese soldiers at battlefields in Eastern Cambodia and the positions of each Case 002 accused in the CPK hierarchical structure. Nuon Chea was named as a member of the CPK Standing Committee and alleged to have been second in authority only to Pol Pot during the DK period.

### **Ieng Sary Initially Forbade from Retiring to the Courtroom Holding Cell**

Prior to the regular morning break, the Ieng Sary defense made its customary request that Ieng Sary be permitted to waive his right to be present in the courtroom and retire to the holding cell for the remainder of the day’s proceedings to participate via audio-visual link. Recently, these requests have been granted as a matter of routine due course however, on this day the Chamber denied this request due to the fact that the day’s proceedings were dedicated to reading out the allegations against the accused for the second section of the Case 002, Trial 1 proceedings. The Chamber then took its regular break.

### **Greffiers Continue Reading out Closing Order**

Following the break, Trial Chamber greffiers continued to read out portions of the Closing Order related to the roles and authority of Nuon Chea during the DK period. Following this portion, the topic turned to Ieng Sary and Khieu Samphan’s roles and authority in the CPK during the DK period. During the portion relevant to Khieu Samphan the Closing Order did note Khieu Samphan’s objection to assertions that he held anything other than an “honorific” title as President of the State Presidium in DK and the fact that some witnesses have corroborated this assertion. Nonetheless, much of the Closing Order also appeared to contradict this assertion, which, thus far, has been Khieu Samphan’s main defense.



*A National greffier reads aloud sections of the Closing Order*

### **Clarification on Status of Civil Party Translation Requests**

Following the completion of the greffiers' reading aloud pertinent sections of the Closing Order, Chamber President Nil Nonn noted that the Chamber was under the impression that the Civil Parties wished to object to certain matters. This led to some confusion within the courtroom, which was rectified when Judge Jean-Marc Lavergne clarified that the Chamber wished to know whether the Civil Parties had officially submitted a translation request for certain documents and the status of such documents. Civil Party lead co-lawyer Elisabeth Simonneau-Fort confirmed that the Civil Parties had requested translation of the documents at issue, consisting of several books and articles, but noted that the Civil Parties remained unsure regarding when the translation will be completed.

### **Ieng Sary and Nuon Chea Excused from Courtroom for Afternoon Session**

Following this clarification, Chamber President Nil Nonn announced the lunch adjournment. At this point the Ieng Sary defense reiterated its request that Ieng Sary be excused due to health concerns in light of the fact that the relevant sections of the Closing Order pertinent to Ieng Sary had already been read out. The Nuon Chea defense then joined this request on behalf of Nuon Chea, giving the same reasons as justification. Chamber President Nil Nonn then granted the requests and allowed Ieng Sary and Nuon Chea to retire to the courtroom holding cell to participate via audio-visual link for the remainder of the day's proceedings. He then reminded the two defense teams to submit a written waiver of the right to be present in the courtroom, signed by each of the two accused.

### **Nuon Chea Defense Submissions Regarding Documents**

Following the lunch adjournment, the floor was turned over to the Nuon Chea defense to make oral objections to documents related to the current phase of the Case 002, Trial 1 proceedings. Counsel Son Arun then rose and stated that the Nuon Chea defense had consistently been "clear" in its objections to certain documents, along with the other two defense teams. He stated the defense's continuing objections to scanned or copied documents, especially those copied by the

Documentation Center of Cambodia (DC-Cam), including those sourced from the S-21 *Tuol Sleng* Museum. Son Arun also argued that it is also necessary to examine original documents sourced from the Cambodian National Archives to ensure their authenticity as contemporaneous DK period documents. He further argued that some documents are illegible when copied and so originals should be produced for inspection. Son Arun then reiterated the defense's objection to any use of statements obtained under torture or the threat thereof at S-21.

Son Arun then turned to statements made by accused Kaing Guek Eav, alias Duch, in Case 001 regarding the highest levels of authority in DK. He argued that during his testimony Duch had inflated his position in the CPK and overstated his knowledge of Khmer Rouge policies and hierarchies and thus, such testimony should be disregarded during the present portion of the Case 002, Trial 1.

International counsel Andrew Ianuzzi then continued the submission of the Nuon Chea defense and began with a general argument regarding relevance of all documents globally in Case 002, Trial 1. He argued that the "central thread" of the first "mini-trial" is the evacuation of Phnom Penh and the first population transfer of the DK period. Therefore, Mr. Ianuzzi argued that all evidence submitted should be subjected to the "exact same surgical approach" taken by the Trial Chamber in its Severance Order (which divided Case 002 into a series of trials), to "strictly limit the number of documents deemed relevant" to the issues at hand in Case 002, Trial 1.



*Nuon Chea International counsel Andrew Ianuzzi*

Mr. Ianuzzi then noted that the Nuon Chea defense has no objection to the use of documents whose translation is currently pending by the Civil Parties, due to the ongoing translation difficulties all parties are facing.

He next argued that as for the other documents contained on the list of documents to be discussed during the day's hearing, nine of the ten documents "do not relate" to the topics covered in Case 002, Trial 1. Therefore, the Nuon Chea defense objected to the use of the nine documents, which it considered irrelevant in line with Mr. Ianuzzi's global objection.

Mr. Ianuzzi concluded with some general comments regarding documents, to avoid the “tedium” of going through each document *ad nauseam*, but stated his intention to provide written submissions on the issue in the near future. He then turned to statements made under torture or the threat thereof and quoted previous statements on the issue made by the Trial Chamber judges in Case 001, which narrowly circumscribed the use of torture-tainted evidence. He argued that these statements and the general prohibition on torture-tainted evidence in force under international law, forbid the use of such evidence at the ECCC.

Mr. Ianuzzi then conceded that DK period “commerce” documents are relevant to CPK communication structures, but continued by objecting to various other documents he argued were irrelevant to Case 002, Trial 1. During his submissions, Mr. Ianuzzi asserted that if the Chamber does not exclude sufficient irrelevant documents, all parties will be left with an “unnecessarily unmanageable dossier.” He also requested guidance from the Chamber regarding when the parties will be provided with an opportunity to “make substantive” submissions on the probative value of documents beyond their simple admissibility.

Mr. Ianuzzi then argued that interviews with four prominent Cambodian government officials who have refused to testify at the ECCC should be excluded, along with an interview with Case 004 suspect Im Chaem conducted by DC-Cam.

Finally, Mr. Ianuzzi noted that during the Chamber’s recent recess, there was an “attempted escalation” regarding the Nuon Chea defense’s request for action regarding statements made by Prime Minister Hun Sen, by the Prime Minister himself. He noted that during the break Hun Sen had threatened legal action against a person the Prime Minister characterized as an “arrogant member” of the Nuon Chea defense team. Mr. Ianuzzi submitted that “such thuggish behaviour is to be condemned” and made a “new request pursuant to Rule 35” for summary action by the Trial Chamber regarding the additional comments made by Hun Sen.

### **Ieng Sary Defense Submissions on Documents**

The floor was then turned over to Ieng Sary defense counsel Michael Karnavas to make submissions regarding documents. Mr. Karnavas began by arguing that it is the position of the Ieng Sary defense that the prosecution has been attempting to prosecute Case 002 through the submission of documents, rather than through the evocation of live testimony. He continued by stating that this is an improper method, as live testimony is preferable and some documents can be mischaracterized by the prosecution and argued that the prosecution should be forced to present live testimony for any evidence relating to the acts and conduct of the accused.



*Ieng Sary defence counsel Michael Karnavas*

Mr. Karnavas then began his specific submissions with a discussion of DK period autobiographies created by Khmer Rouge prisoners, which he characterized as unsworn statements made under “dubious circumstances” and under the constant threat of torture.

As for other biographies, Mr. Karnavas pointed out some inconsistencies in the nature of the documents purported to be a “biography.” For example, he noted that one purported “biography” was actually an interview conducted by DC-Cam and not a true biography in the same vein as other biography documents on the case file. He requested that the Chamber take some action to clarify this apparent incongruity or exclude such documents altogether.

Regarding witness statements, Mr. Karnavas stated that such statements should be entered into evidence if such witness provides live testimony, which he argued is preferable to documentary evidence, returning to his overarching theme. He argued that the proper role of such statements however, is limited to cross-examination and rehabilitation of live witnesses.

Mr. Karnavas then turned to certain documents found and then apparently lost, by Professor Ben Kiernan, who now only has copies of such documents. He requested that the Chamber question Professor Kiernan about this issue if he appears as a witness before admitting the copied documents.

Next, Mr. Karnavas turned to the issue of relevance of documents to Case 002, Trial 1 and reiterated many of the arguments raised by the Nuon Chea defense in the process. For example, according to Mr. Karnavas, documents related to the Tram Kak worksite and Kraing Ta Chan security office were listed as relevant to evidence of targeting and mistreatment of specific groups, rather than any topic from the first Case 002 trial. Thus, he reasoned, such documents have no proper use in Case 002, Trial 1.

Mr. Karnavas also argued that one certain document was illegible and could not even be accurately translated into English and therefore should be excluded. The Court then took its regular afternoon break.

Following the break, Mr. Karnavas provided an overview of the Ieng Sary defense's view of international practice of prosecutorial strategy regarding the submission of transcripts of interviews in lieu of live testimony. He asserted that often prosecutors seek to admit testimony and other evidence that is not necessarily damaging to the defense in a current case in the hopes that the defense will not object. Following this manoeuvre, Mr. Karnavas alleged that prosecutors often then try to shoehorn this evidence into subsequent cases by making a motion to import judicially recognized facts from previous cases. Thus, Mr. Karnavas argued that the Chamber should remain vigilant to strictly circumscribe the admission of evidence to that which is directly relevant to Case 002, Trial 1.

Mr. Karnavas also objected to a "Genocide" site map, which he argued was clearly biased based on the orientation of the sponsoring organization, Yale University's "Cambodian Genocide Project." He read out some excerpts from the document, which he argued simply assumed that genocide was committed as a legal conclusion. He noted that the authors are not lawyers, but both repeatedly used loaded legal terms, especially "genocide" throughout their report and added that the document may not even be relevant to Case 002, Trial 1, even when such problematic language is put aside.

As for video evidence, especially interviews, Mr. Karnavas argued that it would be a violation of Ieng Sary's right to confront adverse witnesses if such footage is admitted and the content thereof goes to the conduct of the accused without any opportunity to question the people involved in the video in open court. He suggested that the Chamber should seek the live testimony of anyone appearing in videos and only consider the use of video evidence in lieu of live testimony if such individuals do not come to the Court to testify.

Mr. Karnavas then turned to international reports and media articles, arguing that such documents must be independently corroborated before they are admitted into evidence. Furthermore, Mr. Karnavas argued that prior to the admission of any "analytical" reports authored for the ECCC Office of the Co-Prosecutors authored by current ECCC employees, the authors of such reports must be called to testify, regardless of whether such individuals may have already testified in Case 001.

Mr. Karnavas then objected to several additional documents as examples of the types of documents the Ieng Sary defense believes to be improper for use in Case 002, Trial 1, including a paper written by a graduate student at Yale University and another paper written by an individual associated with DC-Cam on the topic of the Khmer Krom (lowland Cambodians) experience during the DK period and their standing in relation to the ECCC proceedings. He summarized by objecting to the admission of any such "working papers" absent live testimony by their authors. He also objected to the used of documents related specifically to former Case 002 accused Ieng Thirith, whose case has been severed and who has been ruled unfit to stand trial due to dementia brought on by Alzheimer's disease.

### **Chamber Denies Nuon Chea Defense Written Submissions and Adjourns**

The Chamber then prepared to adjourn for the day and made two observations to the Nuon Chea defense team. Chamber President informed the defense that it would not entertain written submissions on objections to documents because the defense had not used its time during the



day's proceedings to argue its position fully. The President also informed the Chamber that any discussion of the probative value of admitted evidence would not take place until the conclusion of hearing all evidence in Case 002, Trial 1. The Chamber then adjourned for the day, with proceedings to resume the following morning at 9 a.m.