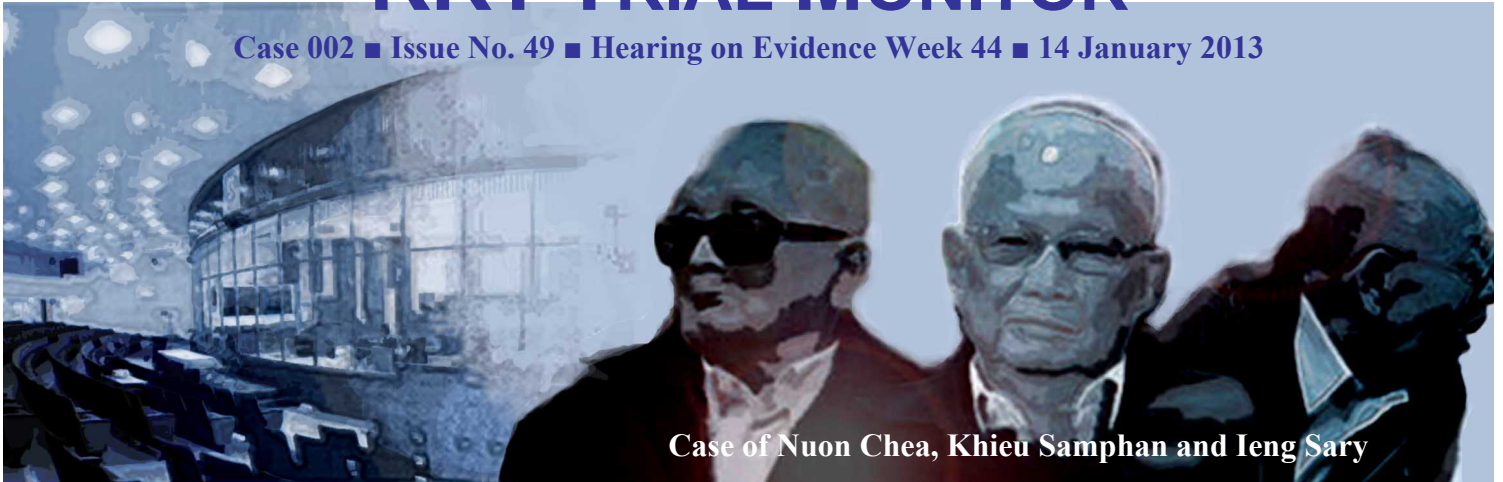


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 49 ■ Hearing on Evidence Week 44 ■ 14 January 2013



Case of Nuon Chea, Khieu Samphan and Ieng Sary

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

*[W]e were informed that our client  
had been taken urgently to the hospital because he had collapsed...*

- International counsel for Nuon Chea, Mr. Victor Koppe

## I. OVERVIEW

On Sunday, the 13<sup>th</sup> of January, Accused Nuon Chea was admitted to the hospital for severe bronchitis. Thus, the Trial Chamber convened only briefly on the 14<sup>th</sup> of January before adjourning to give Nuon Chea's Defense Team a chance to consult with the Accused as to whether or not he waives his right to be present. Later in the week, Khieu Samphan was also taken to the hospital. Taking into consideration the right of the Accused to be present during trial, these events led the Chamber to make adjustments on how trial is to proceed in the following week.

## II. LEGAL AND PROCEDURAL ISSUES

With both Nuon Chea and Khieu Samphan hospitalized during the week, and Ieng Sary following proceedings from the holding cell due to ill health, the right of an accused to be present in the proceedings and to participate in his defense was the central issue that the Trial Chamber faced this week.

### A. Nuon Chea's and Khieu Samphan's Right to be Present

At the beginning of the session on Monday, the Greffier informed the Chamber and the Parties that Accused Nuon Chea was absent. According to a preliminary medical report, Nuon Chea is suffering from acute bronchitis and was admitted to the Khmer-Soviet Friendship Hospital at 5:15 on Sunday afternoon. The Accused may be confined for four to seven days. International counsel for Nuon Chea, Mr. Victor Koppe, said that the Defense Team was informed on Sunday afternoon that Nuon Chea "collapsed" in the detention facility. Because the incident occurred late in the day, they were not able to confer with their client as to whether or not he waived his right to be present. Thus, Koppe requested for adjournment and for opportunity to confer with the Accused. None of the Parties had objections to this request. After deliberating, the Chamber, through Judge Silvia Cartwright, granted the request and adjourned the proceedings. Judge Cartwright also said that the Chamber would advise the Parties if hearing were to resume that week.

On the 16<sup>th</sup> of January, the Chamber issued a memorandum stating that it had been informed on that same day that Accused Khieu Samphan was “taken to hospital for observation.”<sup>1</sup> Additionally, the memorandum stated that Nuon Chea had indicated that he did not waive his right to be present for the hearings in Case 002/01.<sup>2</sup> The Chamber therefore “suspend[ed] the calling of witnesses, experts, and Civil Parties until such time as the Accused are able to participate in the proceedings in person or by audio-visual means pursuant to Internal Rule 81(5), or choose to waive their right to be present.”<sup>3</sup>

Notwithstanding this development, the Chamber said that it wished to proceed with “consideration of the admissibility of documents and the presentation of documents most relevant to ascertaining the truth in Case 002/01.” To this end, the Court requested that the Nuon Chea and Khieu Samphan Defense Teams indicate whether their clients would be willing to waive their presence for these document hearings.<sup>4</sup> These document hearings were earlier scheduled for 18-21 February 2013 (E236/4).<sup>5</sup> However, the Chamber advised that it would seek to hold these hearings earlier, should it remain impossible to hear evidence during the week commencing 21 January 2013.

### **B. Ieng Sary’s Right to Participate Effectively in his Defense**

Aside from the recent health issues of Nuon Chea and Khieu Samphan, Ieng Sary’s Defense Team has been raising questions surrounding Ieng Sary’s fitness to effectively participate in the proceedings and assist in his defense.<sup>6</sup> Ieng Sary, who was admitted to the hospital in September of last year,<sup>7</sup> issued waivers of his right to be present, which he withdrew on 3 December 2012.<sup>8</sup> At the time, he indicated that he “intend[ed] to participate directly in all courtroom proceedings by being physically present in the courtroom.”<sup>9</sup>

However, on 4 December 2012, one of the treating physicians reported that Ieng Sary’s physical condition was “not good,” and recommended that the Accused remain in the holding cell. Accordingly, the Chamber ordered that Ieng Sary participate in the proceedings via audio-visual means.<sup>10</sup> From then on, (up to and including this week) Ieng Sary has been following proceedings from the holding cell. The Chamber has denied requests to audio or video-record the Accused in the holding cell,<sup>11</sup> but has allowed the Defense Team’s Case Manager to stay with the Accused in the holding cell to “take notes” relating to his condition.<sup>12</sup>

The Trial Chamber indicated in a memorandum this week that it is “currently exploring measures to bring forward the dates of the reassessment of the medical fitness of the Accused Ieng Sary and Nuon Chea by the court-appointed medical experts, currently scheduled for early March 2013.”<sup>13</sup>

## **III. TRIAL MANAGEMENT**

Because of Nuon Chea’s hospitalization, the Trial Chamber suspended proceedings on Monday. No further hearings were conducted later in the week, after Nuon Chea indicated that he did not wish to waive his right to be present during the hearings, and Khieu Samphan was also taken to the hospital.

### **A. Attendance**

On Monday, Ieng Sary observed the proceedings from the holding cell, while Khieu Samphan was present in the courtroom. Nuon Chea was absent, because he had been admitted to the Khmer-Soviet Friendship Hospital due to health concerns.

**Judges Attendance:** National Judge You Ottara was absent from the courtroom due to a personal commitment. He was replaced by Reserve Judge Thou Mony.<sup>14</sup>

**Civil Parties Attendance.** Around 15 Civil Parties observed the proceedings from the courtroom and the main gallery.

**Parties Attendance.** All the Parties were properly represented on Monday, although the Greffier announced that Civil Party Lawyer Pich Ang would be late by an hour.

**Attendance by the Public:**

DATE	MORNING	AFTERNOON
Monday 14/1/13	<ul style="list-style-type: none"> <li>▪ 100 villagers from Kampong Chhnang and Rolea Pa-eur districts, Kampong Chhnang Province</li> <li>▪ 100 students from Pour un Surire d'Enfant Organization</li> <li>▪ 3 foreign observers</li> </ul>	(No court proceedings.)

**B. Time Management**

Due to the hospitalization of Nuon Chea, and thereafter of Khieu Samphan, the scheduled hearing of evidence was cancelled this week. The Trial Chamber indicated that it seeks to conduct document hearings commencing next week.

**C. Time Table**

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 14/1/13	9:09	9:29	-	-	-	20 minutes
Average number of hours in session						20 minutes
Total number of hours this week						20 minutes
Total number of hours, days, weeks at trial						633 hours 42 minutes
144 TRIAL DAYS OVER 45 WEEKS						

**Unless specified otherwise,**

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations; and
- photos are courtesy of the ECCC.

**Glossary of Terms**

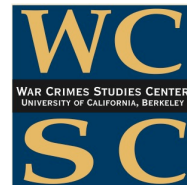
Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



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\* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

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<sup>1</sup> Trial Chamber. “Adjournment of proceedings” (16 January 2013). E258. 1.

<sup>2</sup> Ibid. See also Nuon Chea Defense. “Letter of Non-Waiver Right for NUON Chea” (14 January 2012). E257.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

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<sup>5</sup> Trial Chamber. "Revised Schedule for Forthcoming Document Hearings (commencing Monday 21 January 2013)" (17 January 2013). E223/3 [hereinafter **REVISED SCHEDULE FOR DOCUMENT HEARINGS**]. Par 2.

<sup>6</sup> CASE 002 KRT TRIAL MONITOR. Issue No. 45, Hearing on Evidence Week 40 (4-7 December 2012). 13-15.

<sup>7</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 36, Hearing on Evidence Week 31 (20-21 September 2012). 3-

4.

<sup>8</sup> The Defence for Ieng Sary. "Ieng Sary's Withdrawal of Waivers of Right to be Present" (3 December 2012). E237/2. The waivers bear document numbers E229, E237 and E23711.

<sup>9</sup> Ibid.

<sup>10</sup> Trial Chamber. "Decision on the IENG Sary Defense Request to Audio and/or Video Record IENG Sary in the Holding Cell" (16 January 2013). E254/3.

<sup>11</sup> Ibid, par. 17.

<sup>12</sup> Ibid, par. 11: "...the Chamber notes that on 4 December 2012, it specifically instructed the Defense not to video-record the Accused in the holding cell. The Defense then informed the Chamber that its Case Manager would remain with the Accused in the holding cell in order to take notes. In fact, the Case Manager made a number of audio recordings over the course of two days, including conversations with the Accused's treating physicians without their clear consent, and without filing an appropriate request to the Chamber. The Chamber considers the Defense's approach to this matter verges on misconduct pursuant to Internal Rule 38 and should not be repeated."

<sup>13</sup> REVISED SCHEDULE FOR DOCUMENT HEARINGS. Par. 8.

<sup>14</sup> IR 79 (4) states: "In case of absence of a sitting Judge, the President of the Chamber may, after consultation with the remaining judges, decide to adjourn the proceedings or designate a Reserve Judge to sit in place of the absent Judge for the remainder of the proceedings in question."



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This publication was originally produced pursuant to a project supported by the War Crimes Studies Center (WCSC), which was founded at the University of California, Berkeley in 2000. In 2014, the WCSC re-located to Stanford University and adopted a new name: the WSD Handa Center for Human Rights and International Justice. The Handa Center succeeds and carries on all the work of the WCSC, including all trial monitoring programs, as well as partnerships such as the Asian International Justice Initiative (AIJI).

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