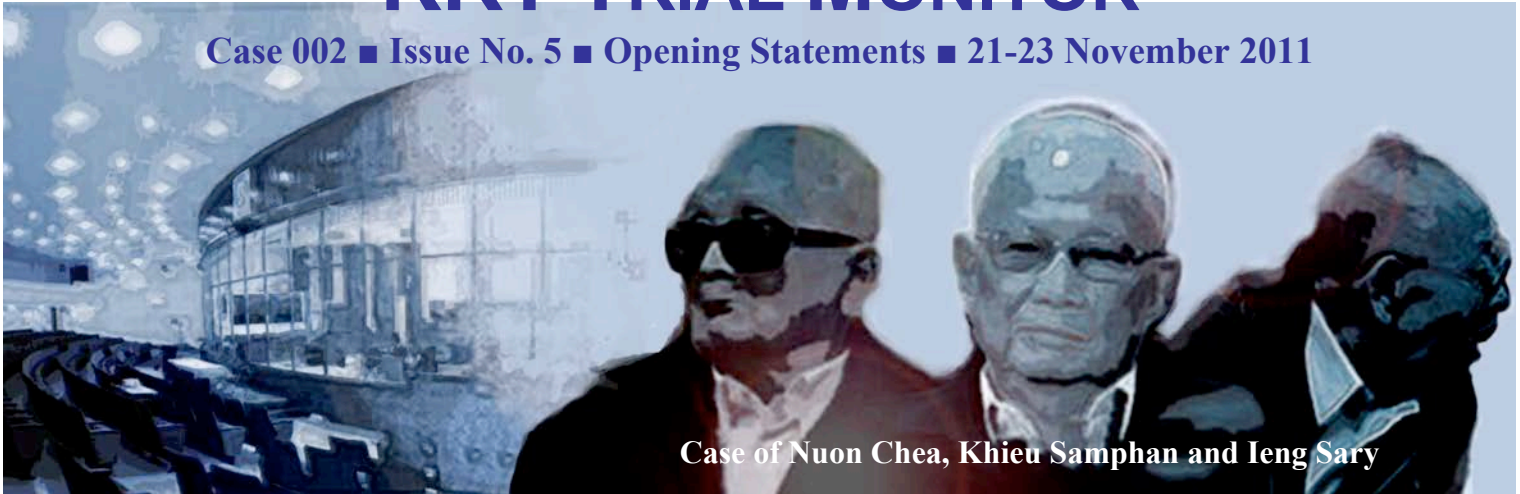


# KRT TRIAL MONITOR

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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

*None of the Accused here ever soiled his own hands with blood.  
But each of them, either alone or together, and with others long dead,  
set in motion strictly enforced plans and policies  
which unleashed an ocean of blood in this country.*

- Andrew Cayley, International Co-Prosecutor

## I. OVERVIEW

This week at the ECCC, hundreds of people – monks, civil parties, survivors, former Khmer Rouge cadres, police officers, students, and guests from various parts of the world – packed the Court's public gallery between 21 and 23 November 2011 to hear the Opening Statements in Case 002 against Nuon Chea, Ieng Sary and Khieu Samphan.

The session began with a reading of the charges against each Accused, marking a milestone in the protracted quest for justice by countless victims of the Khmer Rouge. This was followed by an oral review of the terms of the Severance Order by President of the Trial Chamber.<sup>1</sup> President Nil Nonn reviewed the matters which will be covered in the first trial of this complex case.<sup>2</sup> He also reminded the parties of the Trial Chamber's prerogative to amend the scope of the first trial to include additional portions of the Closing Order.<sup>3</sup> After these administrative matters had been reviewed, opening statements commenced.

The Prosecution had two days to present their opening statements<sup>4</sup> and discuss all the charges and factual allegations of Case 002. National Co-Prosecutor Ms. Chea Leang expounded on the crimes allegedly committed by the Accused, while International Co-Prosecutor Mr. Andrew Cayley presented the Prosecution's view of the facts of the case. After the Prosecution concluded its statements, all three defendants addressed the Chamber: Ieng Sary read a statement on the royal pardon and amnesty from King Norodom Sihanouk, while Nuon Chea and Khieu Samphan both gave lengthy statements denying any responsibility for the crimes they allegedly committed.

Also of note during the first part of the first day of the hearing, the Nuon Chea and Ieng Sary Defense teams raised the matter of their applications seeking to disqualify Judge Silvia Cartwright on the grounds that she had informal *ex parte* meetings with the International Co-Prosecutor and the Deputy Head of Administration, Knut Rosandhaug. The two Defense teams requested that Judge Cartwright recuse herself from the case, and called for Reserve Judge Claudia Fenz to replace her pending resolution of their application.<sup>5</sup> The Chamber declared that it would address the motions in due course. In the meantime, the Court restricted the hearing to the matters indicated in the Scheduling Order.<sup>6</sup>

## II. THE PROSECUTION'S OPENING STATEMENTS

The three most senior surviving leaders of the Khmer Rouge – Nuon Chea, Ieng Sary and Khieu Samphan – are on trial for genocide, crimes against humanity and grave breaches of the Geneva Conventions of 12 August 1949. The OCP made the following allegations on the positions held by the three Accused: Nuon Chea, known as Brother No. 2, was the former Deputy Secretary of the CPK, a member of the Military Committee of the Central Committee, and a full-rights member of both the Central Committee and the Standing Committee, the highest decision-making bodies of the CPK. Ieng Sary was DK's Deputy Minister for Foreign Affairs and a full-rights member of the CPK Central and Standing Committees. Finally, Khieu Samphan was the former Head of State (or the President of the Presidium) during the DK regime. He was a member of the Central Committee and a regular participant in Standing Committee meetings.<sup>7</sup> The fourth Accused, Ieng Thirith, the former Minister of Social Affairs, was declared unfit stand trial by the Trial Chamber shortly before opening statements commenced and the proceedings against her have been severed from the case at bar.<sup>8</sup>

Chea Leang launched the OCP's impassioned opening statements with a declaration that the Accused, through the CPK, "turned Cambodia into a massive slave camp, reducing an entire nation to prisoners living under a system of brutality that defies belief to the present day."<sup>9</sup> She presented a crime-based summary of the charges through the implementation of the CPK's Core Policies: (i) forced movement of the population from cities and towns to rural areas, (ii) the enslavement of the Cambodian people in work sites and agricultural cooperatives, (iii) the elimination of the CPK's perceived enemies through re-education and smashing through a nationwide network of security centers and killing fields, (iv) the targeting or persecution of specific groups such as Buddhists, the Cham Muslims and Vietnamese minorities, and (v) the practice of forced marriage as a means of achieving population growth.

When Cayley took the floor, cautioned that sympathy for the elderly Accused should not get in the way of their accountability. He emphasized:

They took from the people everything that makes life worth living: family, faith, education, a place to rear one's children, a place to rest one's head. They enslaved and starved their own people. They sought perceived enemies of their fledgling state everywhere. Intellectuals, capitalists, the middle classes, members of the former regime, so-called "traitors," the Cham, the Vietnamese, were all targeted for annihilation. They even banned love between human beings, that one noble quality that comes to the human more naturally than any other. Let us never for one moment forget in this trial that these are the malignant forces and this is the tragic legacy that these three elderly people represent.<sup>10</sup>

He stated that thousands of pages of documentary evidence will show that the mass violence that ensued during the DK regime was not accidental but the result of cold calculation and willing participation by the three Accused in a joint enterprise to implement the criminal policies of the CPK. Cayley likewise argued that, as senior leaders of both CPK and DK, Nuon Chea, Ieng Sary and Khieu Samphan had full knowledge of the implementation of the CPK's Core Policies, so much so that the control they exercised was "frightening, pervasive and complete."<sup>11</sup>

### a. Policy 1: Forced movement of the population from cities and towns to rural areas

Chea Leang's opening statement was a chronological précis of the circumstances surrounding the crimes charged, beginning with a nightmarish account of the systematic evacuation of Phnom Penh that took place on 17 April 1975. According to Chea Leang, Khmer Rouge troops forcibly moved thousands of people from the city to the countryside and coerced them to march on foot during the hottest period of the year without water, food,

transport or medical assistance. Those who resisted were threatened, beaten or shot on the spot. The same atrocities occurred in other towns such as Kandal and Sihanoukville, and between September and October 1975, around half a million people were again uprooted and forcibly moved to the North-West Zone (Battambang and Pursat) in furtherance of the CPK policy of forced labor. She further recounted that people were herded like animals, the Prosecution argued, but nobody dared to refuse for fear of “re-education.” Tens of thousands died from these forced evacuations, mostly from starvation.

Cayley alleged that the CPK leadership carefully planned the policy of forcible movement for years. Using the euphemism “seizing the people,” it was characterized by the evacuation of people from urban areas and killing everyone deemed an enemy. The OCP likewise rejected Khmer Rouge claims that forced evacuations were implemented to protect the people from food shortage or threats of bombing by the U.S. Evacuations were, in reality, carried out to alienate perceived enemies, so that they may be easily identified and eliminated.

Cayley noted that there is evidence in the case file indicating that Nuon Chea and Khieu Samphan agreed with the plan to evacuate Cambodian cities. Khieu Samphan, in a speech in January 1975, purportedly boasted that this important strategy “cut off the head and tails of the enemies.” The OCP likewise argued that although Ieng Sary was in Beijing at the time of Phnom Penh’s evacuation, he was part of the leadership that developed this evacuation scheme. Additionally, Cayley stated that it was Ieng Sary who officially announced to the world the execution of two Lon Nol officers who refused to flee Phnom Penh in 1975.

**b. Policy 2: Enslavement of the Cambodian people in work sites and agricultural cooperatives**

After entering statements about the forced evacuation of Phnom Penh, the OCP turned to the topic of enslavement under the Khmer Rouge. According to Cayley, following the forced movement of the population, the country became a vast work site, which one survivor described as a “prison without walls.” Cambodians were reduced to the status of slaves, as they were forced to work on labor sites and cooperatives in appalling work conditions and unreasonable work quotas. Cayley explained that people were under constant surveillance and those who failed to meet the work quotas were punished. Notably, the Accused approved a three-ton per hectare quota, irrespective of the quality of the soil, plant diseases, availability of seeds and the condition of the people. The OCP further related that in 1976, the CPK began to carry out its “Four Year Plan,” which required massive worksites for the construction of a network of dams and canals. The scarcity of food, water, medicine, the abhorrent work conditions, and unrealistic directives resulted in disease, starvation and the death of thousands of workers.

The Prosecution emphasized that the participation of the Accused in the implementation of this forced labor policy cannot be denied: they regularly inspected these worksites, decided the rice rations for the people, and were well aware that people were suffering from these inhumane conditions. Despite these circumstances, the Accused pushed for the construction of more dams and even increased production quota to 3.5 tons per hectare.

**c. Policy 3: The elimination of the CPK's perceived enemies through re-education and smashing through a nationwide network of security centers and killing fields**

Turning to the topic of CPK re-education camps and “smashing” policies, the Prosecution made note of the fact that the CPK established over 200 security centers throughout the country. In these security centers, the Khmer Rouge allegedly detained enemies – real and perceived – and subjected them to horrific conditions that divested them of their humanity. According to Cayley, the CPK initially sought out Vietnamese spies, CIA, KGB, and Lon Nol

soldiers. By 1976, however, the CPK leadership identified new enemies, and soon after, waves of internal purges occurred.

As the Prosecution detailed in their opening statements, the Khmer Rouge leadership implemented its policy of elimination by systematically registering prisoners before detaining them. Prisoners, cramped and shackled in small cells, ate, slept and defecated in the same place. They relieved themselves in receptacles such as helmets and gasoline cans, which some prisoners were also forced to use for eating. In order to force prisoners into giving confessions, cadres allegedly used deplorable torture techniques including severe beatings, hanging prisoners upside down, burning, using pincers to pull noses and nails, and suffocating prisoners with plastic bags. Prisoners frequently died from torture while those who survived were executed in methodical and highly organized ways. The CPK slogan, Cayley asserted, was “pull out the grass by the root,” which meant exterminating the whole family of a person associated with the enemy. Moreover, the Prosecution referred to communications in meetings and publications that repeated incessant instructions to cleanse the country of enemies.

The Prosecution alleged that the liability of the Accused for these crimes is from both direct responsibility and through a joint criminal enterprise. Apart from being a member of the Standing Committee, Nuon Chea was also purportedly a member of the military of the Central Committee, giving him direct control over security matters throughout the country. In Case 001, Kaing Guek Eav, alias “Duch,” the Chairman of Tuol Sleng or S-21 Security Center in Phnom Penh, claimed to have consulted with Nuon Chea every three to five days and submitted to him the confessions that the Standing Committee used to decide on who were to be arrested. The Prosecution further pointed to a recorded 2005 interview in which Nuon Chea acknowledged that people were arrested and executed, but justified these acts by saying that, “we only killed only bad people.”<sup>12</sup> Moreover, the Prosecution referred to Ieng Thirith’s statement in 2009, wherein she claimed that Nuon Chea was the person responsible for the torture and execution of students in the Ministry of Social Affairs.

Similarly, Ieng Sary was allegedly responsible for identifying “enemies” in the Ministry of Foreign Affairs. Annotated S-21 confessions appear to corroborate Ieng Sary’s personal responsibility for the arrest and execution of over 200 cadres and employees of the ministry, former diplomats, and Cambodian returnees. The sheer number of victims has led many to believe that this ministry was a “way-station en route to S-21.”<sup>13</sup> The OCP related that one former cadre referred to it as the “ante-chamber of death.”<sup>14</sup> Nuon Chea also used the phrase “to be sent as a diplomat” to refer to the arrest and execution of a cadre.

As regards Khieu Samphan, Cayley highlighted the former’s presence at meetings where the Standing Committee decided arrests, detentions, interrogations and executions. Apart from being aware of the arrest and disappearance of a number of individuals, the Prosecution also points to evidence that this Accused publicly endorsed the decision to purge enemies. In a speech, Khieu Samphan implored, “[w]e must wipe out the enemy as masters of the situation. Everything must be done neatly and thoroughly.”<sup>15</sup>

**d. Policy 4: Targeting or persecution of specific groups such as Buddhists, the Cham Muslims and Vietnamese minorities**

Another policy of the CPK highlighted by the Prosecution was that of persecuting certain religious or ethnic groups, such as Buddhists, Cham Muslims, and members of the Vietnamese minority. Cayley called the Chamber’s attention to a policy meeting held on 20 May 1975 allegedly attended by all the Accused, where the CPK decided that their version of utopia would only have only one kind of person: the worker peasant. This policy decision was communicated throughout the country, with Nuon Chea allegedly doing most of the dissemination. Additionally, the Prosecution argued that while the CPK’s official policy prohibited only reactionary religions, in practice, all religions, including Buddhism, were

considered reactionary. Consequently, the CPK branded Buddhists as “leeches, bleeding sucking parasitic worms, and feudalists who suck the blood of the people.”<sup>16</sup> They forcibly defrocked monks and in many cases coerced them to marry. Cayley posited that the CPK closed down, desecrated, and converted temples into security centers where they tortured and executed their prisoners. They also systematically and extensively persecuted monks since Buddhism represented a source of opposition to the CPK.

Similarly, the Prosecution argued, the CPK leadership ordered the systematic extermination of Cham Muslims because of their ethnicity and religion. Beginning April 1975, the CPK purportedly prohibited Islamic practices and the Cham language, burned copies of the Quran, destroyed mosques, and killed Cham leaders and those who refused orders to abandon their religion. Cayley quoted an alleged telegram from Pol Pot to Nuon Chea dated 30 November 1975, referring to the Cham and expressing the need to separate the Cham and transfer them in a location far from the Mekong River. From 1977, the CPK carried out a concerted campaign to annihilate the Cham, declaring that, “Cham is the biggest enemy who must be totally smashed before 1980.”<sup>17</sup> This resulted in the systematic round-up and massacre of Cham. Cayley stressed since any individual identified as Cham was not even subjected to interrogation but was instantly executed, 90% of the Cham people had perished by the time the regime fell.

The Prosecution proceeded to assert that, in the same vein, there was a centrally-directed plan to destroy the Vietnamese because of their ethnicity. In 1975, Cayley recounted, a mass deportation of the ethnic Vietnamese occurred, resulting in the forcible removal of 150,000 to 200,000 people. By April 1977, the CPK leadership openly employed the language of genocide in relation to the Vietnamese and proclaimed that, “it was imperative to wipe out these people, to sweep more of them and to make things permanently clean.”<sup>18</sup> Moreover, the Prosecution alleged that, in a 1978 broadcast on national radio, the CPK leadership incited genocide by stating that in terms of number, 1 Khmer should kill 30 Vietnamese, and as such, Cambodia needs 2 million to crush 50 million Vietnamese. By 1979, almost all remaining Vietnamese in Cambodian territory had been wiped out.

Apart from targeting groups on account of their religion and ethnicity, the Khmer Rouge likewise allegedly singled out groups they believed to have been associated with “traitors.” Another purge highlighted by the OCP was one that reportedly took place in the East Zone, where some leaders were arrested on suspicion of treachery. According to the OCP, the CPK began to perceive all East Zone inhabitants as traitors, based merely upon the association of these villagers those already accused of treachery. The leadership allegedly condemned the entire group of villagers to death. Under the pretense of being reallocated to another village, cadres provided these people with blue *kramas* or traditional scarves to identify them as East Zone evacuees. Those wearing these blue scarves were then subjected to persecution and execution. According to the Prosecution, this was the bloodiest killing operation orchestrated by the CPK, having resulted in the death of 100,000 to 250,000 people.

**e. Policy 5: The practice of forced marriage as a means of achieving population growth**

The final CPK policy highlighted by the Prosecution was the alleged practice of systematic forced marriage to spur population growth. The OCP pointed to evidence that, as part of the CPK’s plan to expedite population increase, the leadership instructed the implementation of arranged marriages completely entirely incompatible with Cambodian tradition. This, Counsel argued, was an attack on the most important structure of the Cambodian society: the family. Cadres arbitrarily chose men and women and ordered them to marry in mass weddings. The cadres reportedly ensured consummation of the marriage by eavesdropping on the couple. The Prosecution maintained that this amounts to systematic rape in the

context of marriage, since those who did not comply were taken for re-education, and often “smashed.”

#### **f. Conclusion of OCP’s Opening Statements**

In closing, Chea Leang argued that the atrocities committed by the Accused should be legally characterized as genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949. She summed up the Prosecution’s account of this dark episode in Cambodia’s history, thus:

Evidence you will hear will show that the regime presided by the Accused is one of the most brutal and horrific in modern history. The CPK enslaved the entire Cambodian nation. It caused the death of one in four people living under its rule. To be forced from one’s home, to lose one’s family, to be denied movement, speech and religion, to be subjected to forced labor, starvation, torture and abuse, to live in the constant fear of execution. In short, to be stripped of any human dignity, this nightmare became the reality for millions of Cambodians from 17<sup>th</sup> of April 1975 to the 6<sup>th</sup> of January 1979. Every Cambodian who lived through this regime was affected by the CPK policies. [...] The suffering and pain inflicted on the victims is nothing short of staggering. The scars that this country bears will take generations to heal.<sup>19</sup>

Cayley, in turn, stressed the broader importance of this trial, as “here in Cambodia, a unique opportunity has been given to address this impunity after 30 years, to set a powerful example and to send a strong warning from the past to the future...”<sup>20</sup> While acknowledging that external forces and other persons played key roles in the unfolding of these tragic events, he maintained that these circumstances do not exonerate the Accused. With his voice breaking, he emphasized the bloody legacy of the three Accused to this country:

...[t]he Accused who are before you are thieves of time and common murderers of an entire generation of Cambodians. They robbed decades of development and prosperity in this country. They left gaping holes in every Cambodian family. They removed all breath from law and other noble institutions. No one is not affected by what these three elderly men have done.<sup>21</sup>

Chea Leang concluded by assuring the Chamber that the Co-Prosecutors will prove the guilt of the Accused beyond reasonable doubt. She emphasized that the present proceedings are not an act of revenge, but rather an ascertainment of truth and a determination of guilt.

### **III. Responses of the Defense**

#### **a. Response by Nuon Chea and his Co-Defense Lawyers**

The Nuon Chea Defense expressed surprise when the Chamber instructed them comment on the OCP’s opening statements upon the resumption of the session on Tuesday afternoon. They asked to instead make their response on the next day but the Chamber denied the request. As such, only Nuon Chea responded to the OCP’s statement. He took the stand for approximately 90 minutes, during which, he provided his account of history and put the accusations against him into context. Nuon Chea’s prepared statement addressed to his “beloved Cambodian people”<sup>22</sup> expressed his view of the Chamber:

I am of the opinion that this Court is unfair to me since the beginning because only certain facts are to be adjudicated by this Court. I must say only the body of the crocodile is to be discussed, not its head or the tails which are the important parts of its daily activities. All it means, the root cause and its consequence are those that happened pre-1975 and post-1979 are ignored by this Court.<sup>23</sup>

Eager to lend historical context, Nuon Chea spent majority of his time giving an account of events and policies that primarily took place before 1975 and after 1979. First, Nuon Chea spoke about the origins of the communist movement in the 1930s in Indochina, how it split into three parties because of the complex socio-political milieu in Vietnam, Laos and Cambodia, and how Vietnam secretly tried to dominate Laos and Cambodia. According to the Accused, from 1960 to 1979, in close cooperation with the Soviet Union, the Vietnamese employed every trick available to destroy the revolution of Kampuchea, including a policy of impoverishment of Cambodia. This Vietnamese influence was the main factor for the confusion in Democratic Kampuchea. Nuon Chea offered the following to explain Vietnam's motives:

Vietnam is of the idea of expansionism; that is, to have the doctrine, to be the boss to the smaller country, to the weaker country. Vietnam had the view of the doctrine of invasion, expansion, land grabbing and racial extermination. Vietnam was greedy of power for their own interest and economics or, in short, they were egoism.<sup>24</sup>

Subsequently, Nuon Chea expounded on the policy adopted by the CPK in its first general assembly in September 1960 and the strategy it followed for the most part of the 1960s. He proceeded to discuss the strategy the CPK adopted after Lon Nol soldiers had abducted and killed Party Secretary Tou Samouth in July 1962. According to the Accused, the CPK leadership made a point of understanding the political line of the party in power, adapting it to the change situation in the country, gathering all forces regardless of political or religious background, and ultimately, isolating the enemy.

Nuon Chea recounted how, in response to intensified suppression, persecution, arrests and arbitrary executions by those in power, the CPK zone secretaries decided to take up arms in January 1968, in order to protect the people. Nuon Chea believed that the Vietnamese communist movement did not welcome this development, because it wanted to "liberate" Cambodia itself. Following the U.S. bombing of Cambodian territory, the Lon Nol coup d'état and King Sihanouk's appeal to people to take up arms, the resistance forces gathered in the northeast where, according to the Accused, people from all walks of life joined them, including "opportunists," "vagabonds," "unemployed," "robbers", "spies" and other "bad elements." These people, he alleged, would later cause "chaos and complication to the revolutionary movement."<sup>25</sup> Moreover, according to Nuon Chea, Vietnamese communists pretending to be King Sihanouk's soldiers conducted incursions into Cambodia in an attempt to gain power in the villages. As the U.S. bombing in the region continued and intensified millions of homeless Cambodians faced food shortages. Accordingly, the CPK revolutionary army, seeking to better the lives of Cambodians according to Nuon Chea, advanced toward the conquest of Phnom Penh on 17 April 1975.

While Nuon Chea clarified that he would respond only to the accusations that are part of the first segment of the trial, he did not directly address any of the specific charges outlined by the Prosecution their opening statements. He did say, however, that he was not present at the "liberation" of Phnom Penh on 17 April 1975, because he had to stay in provinces to educate the zone cadres. In the aftermath of the "liberation," some Lon Nol soldiers reportedly fled to the Thai-Cambodian border where they "stirred chaos," while some fled to the southern Vietnamese-Cambodian border or hid in Phnom Penh. Nuon Chea also shared a rather confusing narration of events: a number of Lon Nol soldiers disguised themselves as members of the RAK by wearing the black garb of the Khmer Rouge, arrest officials of the former Lon Nol regime, and deceived them into believing that they would be brought to meet King Sihanouk. Instead, these soldiers took them to be killed. Additionally, Nuon Chea explained that these soldiers masquerading as members of RAK executed revolutionaries and their families.

To explain why the CPK evacuated Phnom Penh, Nuon Chea summarized the questions, answers and resulting strategy decisions of an extraordinary session of the Standing Committee in mid-1974. During this meeting, the Standing Committee resolved to settle the conflict between the CPK with the U.S. and Lon Nol supporters. It also opted to empty Phnom Penh and other urban areas because it feared looting by Lon Nol soldiers and widespread food shortages. Significantly however, when the Standing Committee unanimously decided to temporarily evacuate the city inhabitants to cooperatives, it justified this strategy as a means to analyze the situation, particularly, Vietnam's reaction to these developments. Nuon Chea did not address the second phase of forced movement of the population.

The rest of Nuon Chea's statement elaborated on the strained relationship between Cambodia and Vietnam. He recounted meetings of representatives of the two countries before and during the Democratic Kampuchea regime. He considered these meetings fruitless because Vietnam adamantly denied Cambodia's independence. This resulted in continuous fighting in Ratanakiri and Mondulakiri, attempts of a coup d'état and two large-scale attacks by Vietnam, which eventually led to its occupation of most of Cambodia by January 1979. Nuon Chea denounced Vietnam's invasion of Cambodia as a violation of international law. He further observed that Vietnam never relinquished its control over some areas of Cambodia. According to him, the army of the Communist Party of Vietnam, as well as Vietnamese cadres, to this day, still continue to remain discreetly on Cambodia's soil, with the objective of occupying, annexing and swallowing Cambodia. Nuon Chea believes that these elements seek to rid Cambodia of her race and ethnicity and bring further Vietnamese illegal immigrants to live in Cambodia. He pointed out that this was part of Vietnam's "python suffocating a young deer-strategy"<sup>26</sup> aimed at swallowing its defenseless prey that is Cambodia.

Throughout his statement, Nuon Chea spoke with a strong voice, and appeared quite capable of giving detailed information about strategy meetings that happened over 35 years in the past. Essentially, he presented himself as a patriot who defended Cambodia against foreign enemies, and whose only intent was to build a clean and independent society. In terms of legal defenses, the Accused ostensibly suggested necessity for committing acts including the forcible evacuation of Phnom Penh. Beyond that, however, he neither denied the crimes charged against him, nor discussed his responsibility for what happened in Democratic Kampuchea. The arguments and evidence that Nuon Chea's lawyers plan to present to exonerate him remain to be seen.

#### **b. Response by Ieng Sary and his Co-Defense Lawyers**

The Ieng Sary Defense chose not to respond to the opening statements, asserting that the Prosecutors did not present any evidence to substantiate their claims. "That we decided not to make our opening statements in this proceeding does not mean we concur or agree with the arguments raised by the prosecution," reminded National Co-Defense Lawyer Ang Udom. He then asked the Chamber to instruct the OCP to provide details of the documents on which their opening statements are based. He explained that the Ieng Sary Defense had previously asked the OCP for information but the latter simply referred them to the case file in response. The Trial Chamber did not address this request.

While Ieng Sary did not comment on the OCP's opening statements, the Chamber allowed him to give a statement, which he had first requested to read on Monday morning. Ang Udom offered to read it on Ieng Sary's behalf but was prohibited by the Chamber to do so. As such, Ieng Sary was steered to the dock in his wheelchair. He slowly read his statement and began with the assertion that he had received a royal pardon and amnesty from King Norodom Sihanouk with the concurrence of the National Assembly. Briefly after, Ieng Sary stopped reading, laid his hand over his heart, and announced: "I am very exhausted, I perhaps, cannot continue reading it, because my heart does not allow me to continue



reading.”<sup>27</sup> This led to another request by the National Co-Defense Lawyer to read the statement on his client’s behalf, which was again denied by the Chamber.

Feigned or real, Ieng Sary visibly labored through his reading of the remainder of his statement, laying his hand on his heart twice to accentuate his efforts. He reiterated that he disagrees with the Trial Chamber’s ruling that his royal pardon and amnesty do not apply, and that it is now incumbent on the Supreme Court Chamber to resolve this issue. Ieng Sary further declared that he is troubled by the Trial Chamber’s refusal to grant a stay of the proceedings against him until the Supreme Court Chamber settles the issue of his prior pardon. He lamented that the Trial Chamber should have decided the question more expeditiously, especially since he has been in the ECCC’s custody for more than four years. He concluded:

Because the Trial Chamber is not acting correctly, I am of the opinion that I should not participate in this trial until the Supreme Court Chamber has ruled on the Royal Pardon and Amnesty. However, out of respect for this institution, I will continue to participate as I have always done so since I was charged, arrested and brought to the ECCC Detention Facilities.<sup>28</sup>

### **c. Response by Khieu Samphan and his Co-Defense Lawyers**

Khieu Samphan was the last of the three Accused to address the Court. “I have the feeling that you really want my head on the block,”<sup>29</sup> he remarked during a 45-minute statement that was less historical, and more rhetorical than that of his Co-Accused Nuon Chea. He said it was difficult to respond to the Prosecutors’ “monumentally biased” opening statement that relied on undisclosed sources. “What type of trial will I be given 36 years after what happened by merely relying on anonymous witnesses, various newsletter articles, and books written by journalists?”<sup>30</sup> Khieu Samphan asked, pointing out that historians, journalists, chroniclers and novelists are neither judges, nor persons bound by oath to tell the truth. In addition, Khieu Samphan accused the Co-Prosecutors of ignoring the context of the struggle of the CPK, and declared that at the time, the communist movement gave hope to millions of youths around the world amidst carpet-bombing of Cambodia by the U.S. and the machinations of the illegitimate Lon Nol government. He maintained,

I contributed to the national reconciliation in order to defend my country, to be a nation with a sovereign, independent both toward the United States, to the Communist Vietnam, who always tries to find all sorts of means to include Cambodia into the Chinese – into the Indo-Chinese Federation controlled by Vietnam.<sup>31</sup>

Khieu Samphan then proceeded to justify the legitimacy of the CPK’s objectives and pointed out that even the OCP had acknowledged that there was a shortage of food and medicine in Phnom Penh before its “liberation” on 17 April 1975. He went on to emphasize that his role in the Party was very limited. He denied having been the head of the CPK’s Office 870 and a member of the Standing Committee. He contended that although he had participated in 14 out of 19 of the Standing Committee’s policy meetings, he had only spoken at them twice and never on subjects related to the charges against him. He said it was absurd to believe that when he visited the work sites, alone or accompanied by King Sihanouk, “workers were being murdered in front of [them] with hoes or bullets in the back of the neck.”<sup>32</sup> If the OCP believed him to be a member of a joint criminal enterprise simply because he was the President of the Presidium, the Accused asked, why were they not also prosecuting King Sihanouk, who held this position before him? Khieu Samphan then continued to argue,

You would have the public believe that everybody is lumped together in the same bag, but it’s a lie, a manipulation. In fact you, know very well that Democratic Kampuchea was very structured, compartmentalized and had a penchant for secrecy.<sup>33</sup>

Khieu Samphan also acknowledged in his statement that “horrors” had occurred in Democratic Kampuchea. He expressed his hope that he would have the opportunity to explain to the Cambodian public that, despite his official senior position, he was not informed of all that was happening in the country and had no part in the decision making process. The people, he challenged, may then judge for themselves. After a *sampeah* towards the public gallery, Khieu Samphan returned to his seat.

After the statement by the third Accused, Khieu Samphan’s newly-appointed National Co-Defense Lawyer, Kong Sam Onn,<sup>34</sup> took the opportunity to respond to the OCP’s opening statements on his client’s behalf. Kong Sam Onn repeated some of his client’s arguments, and added that the OCP has to prove not only that the crimes committed over 30 years ago fall within the jurisdiction of the ECCC, but also that Khieu Samphan was responsible for them. This is difficult, he claimed, considering the chaos at the time, which Kong Sam Onn compared to the aftermath of Hurricane Katrina in the United States, and to the mass panic that cost hundreds of lives during the Water Festival tragedy in Phnom Penh in November 2011. He further argued that the OCP has confused Committee 870 with Office 870, two different institutions in DK. Counsel for the Accused then asked the Chamber to order the correction of Khieu Samphan’s biography, as published on the ECCC’s website, to reflect that Khieu Samphan was not appointed head of state in 1975 but one year later. He proceeded to remind the Chamber to see past the Co-Prosecutors’ play of words, and emphasized that when judging what happened half a century ago, one cannot rely on current perspectives because these, he believed, are the views of the victor. Kong Sam Onn concluded by noting that he planned to respond to the OCP’s allegations in more detail once the latter present their evidence.

Finally, International Co-Defense Lawyer for Khieu Samphan, Jacques Vergès, took the floor to remind the listeners of “the forgotten dead of this trial”: the victims of the bombs and agent orange of the U.S. Military. He declared that he considered the OCP’s opening statements reminiscent of Alexander Dumas’ work: “fantastical”<sup>35</sup> and “pure literature.”<sup>36</sup> Mr. Vergès went on to declare emphatically,

... in this torment that Cambodia went through, men did make mistakes, they even committed crimes, but they are not monsters. What we are talking about is the work of global powers here that were involved as well, and there are some who have nothing to apologize for. The Presidents of the Presidium have nothing to apologize for. One, I believe, was called Norodom Sihanouk. The other, I believe, was called Khieu Samphan.<sup>37</sup>

#### **IV. Legal and Procedural Issues: Fair Trial Rights**

Like other tribunals, the ECCC is duty-bound to respect the fair trial rights of the Accused and balance these rights with that of the other parties. Article 33 new of the ECCC Law provides, “The Extraordinary Chambers of the trial court shall ensure that trials are fair and expeditious and are conducted in accordance with existing procedures in force, with full respect for the rights of the accused [...]”. This article further states that the ECCC “shall exercise its jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15” of the ICCPR. Additionally, the ECCC’s Internal Rule 21.1(a) states, “ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties.” Fair trial guarantees include the right of the accused (i) to be notified in a timely manner and in a language the accused understands, (ii) to adequate time and means for the preparation of a defense, (iii) to be tried without undue delay, (iv) to be tried in his presence, to defend him or herself, or the right to a counsel chosen by the accused and the right to communicate privately with the counsel, (v) to examine or have examined witnesses, (vi) not to incriminate himself, (vii) to appeal at first instance to a higher court and (viii) to be free from double jeopardy (*ne bis in idem*).<sup>38</sup>

Three legal issues that arose during Opening Statements are worth noting insofar as they may be indicative of the general conduct of the trial and thereby provide insight on the Chamber's treatment of the fair trial rights of the Accused vis-à-vis the rights of other parties: (i) the request for recusal or disqualification of Judge Cartwright by the Nuon Chea and Ieng Sary Defence, and (ii) the Chamber's denial of the Nuon Chea Defense's request to defer their response to the OCP's opening statements; and (iii) the exercise by Ieng Sary and Khieu Samphan of their right to remain silent.

#### **A. The Right to a Impartial Judiciary: Request for Recusal or Disqualification of Judge Silvia Cartwright**

In the beginning of the first day of the Opening Statements, Nuon Chea and Ieng Sary's lawyers raised the matter of informal meetings Judge Cartwright, Deputy Director of Administration, Knut Rosandhaug, and the International Co-Prosecutor have been allegedly holding since April 2011.<sup>39</sup> Nuon Chea's International Defense Counsel, Mr. Michiel Pestman, informed the Chamber that his team intends to file an application for disqualification of Judge Cartwright.<sup>40</sup> Subsequently, Ieng Sary's International Defense Counsel, Mr. Michael Karnavas, declared that he had likewise filed a request for information from the International Co-Prosecutor and Judge Cartwright on the *ex-parte* meeting they conducted in November 2011, in which none of the Defense Lawyers participated.<sup>41</sup> He stated that the Defense did not receive the same privileges as the International Co-Prosecutor. While the request is pending, Counsel argued, Reserve Judge Claudia Fenz, should replace Judge Cartwright. The Chamber did not respond to Pestman and Karnavas' requests.

On the second day, Pestman reminded the Court that they had an outstanding request for Judge Cartwright's disqualification. He asked that she recuse herself while a decision on the motion is pending.<sup>42</sup> The Chamber did not act on Pestman's request. Finally, on the third day, Pestman raised the matter anew, but mentioned that he understood that their request for disqualification "was not well received."<sup>43</sup> Neither the OCP nor the CPLCL made any comment as regards this matter.

There is no indication that Judge Cartwright will recuse herself. It remains to be seen whether or not the Chamber will find the *ex-parte* meetings as valid and sufficient grounds to disqualify her. As President Nil Nonn stated, the Chamber will issue its ruling in due course.

#### **B. The Right to Adequate Time and Means for the Preparation of a Defense: Allocated time to the Defense Teams and Schedule of the Opening Statements**

In the afternoon session of the second day of the proceedings, the Nuon Chea Defense took the floor to comment on the Prosecution's opening statements. Pestman expressed that they were taken "a little bit by surprise" because they had expected to respond on the third day, 23 November, and not in the afternoon of the second day. He further explained that because the Prosecution's statements discussed all the charges against Nuon Chea instead of the limited scope of the first mini-trial,<sup>44</sup> they needed time to consult with their client to be able to respond to all of the OCP's allegations. Pestman also referred to the Scheduling Order which allotted two days for the OCP to conclude their opening statements.<sup>45</sup> He further explained that their reply had two parts: (i) the prepared statement of Nuon Chea to be presented on Tuesday afternoon; and (ii) the response of the Defense to be presented on Wednesday. This proposed schedule, according to Pestman, would allow the Defense to consult Nuon Chea about the OCP's statements.

In response, President Nil Nonn instructed Pestman to provide documentation to support their request, considering that, based on the Scheduling Order, none of the parties is entitled to extra time. The Nuon Chea Defense clarified that they were not asking for extra time, but simply for the Chamber to allow them to defer their response to the Co-Prosecutors'

statements to the next day. The Chamber rejected this request outright. President Nil Nonn noted that he stated orally on the first day of the hearings that the Co-Prosecutors “are allocated a total of one and a half days.”<sup>46</sup> Mr. Pestman acknowledged as much, but argued that he had relied upon the written Scheduling Order, which states that “[t]he Co-Prosecutors shall be allocated a total of two days.”<sup>47</sup> In addition, he explained that the ECCC website provides the same information. Despite these attempts to persuade the Chamber to allow them to split their presentation into two parts, President Nil Nonn remained steadfast in his ruling that each defense team had only half a day to comment on the OCP’s statements. He commented that it was regrettable if the Nuon Chea Defense did not want to use their time, but the Chamber proceeded to address other matters.

Towards the end of the session, Mr. Pestman once again endeavored to argue that his team should be entitled to respond on day three of the proceedings.

While Judge Cartwright stated that the Nuon Chea Team no longer has any further opportunity to respond at this point, she clarified that they will have other opportunities to comment at later stages in the trial.<sup>48</sup> When Pestman asked to be allowed to respond to Judge Cartwright’s “observation,”<sup>49</sup> Judge Cartwright, speaking on behalf of the Chamber, denied the request and remarked, “It wasn’t an observation. It was a ruling.”<sup>50</sup>

On the third day of the hearing, Pestman expressed his objection to the Chamber’s ruling denying them the chance to respond on Wednesday morning. He indicated that while the Nuon Chea Defense is not popular with the Chamber, this should not result in the deprivation of their right to respond to the OCP’s opening statements.<sup>51</sup> Pestman further suggested that his team be allowed to continue after the Khieu Samphan Defense finished giving their comments. The President refused, declaring that since the Nuon Chea Defense did not use the remaining time given to them on the second day, their allocated time has expired.

### **C. The Right Against Self-Incrimination: Ieng Sary and Khieu Samphan’s Exercise of their Right to Remain Silent**

At the end of the hearing, Chea Leang requested clarification on whether the three Accused plan to “participate” (although it appears she meant “to testify”) in the hearing on evidence.

In response, Mr. Karnavas, expressed that he was “shocked” that the National Co-Prosecutor seemed to confuse “participate” and “testify.” He clarified that participating does not mean necessarily taking the stand and giving evidence. While in general, “to participate” means to be present in the courtroom and to consult with counsel, “to testify” must be understood in a narrower sense, that is, to make a statement before the Chamber that may be used as evidence. He emphasized that the Accused has fair trial rights, including the right to speak or not to speak. Karnavas reiterated that Ieng Sary had “already indicated, in writing, having executed a waiver, that he will not be testifying.”<sup>52</sup> He clarified, however that his client will continue to participate in the proceedings by coming to court and instructing his lawyers. Pestman, on the other hand, answered cryptically, stating, “we will cross that bridge when we get there.”<sup>53</sup> Finally, Khieu Samphan assured the Chamber that he is willing to testify, but he clarified that he will respond at the appropriate moment, when the need arises.

After the defense lawyers spoke, International CPLCL, Elizabeth Simmoneau–Fort, emphasized that, although silence is the right of the Accused, “out of respect for the people of Cambodia, who they claim that they love...very much,”<sup>54</sup> the least the Accused could do is to provide some explanations on the crimes alleged against them. She added, “those explanations would be the very least we could hope for. If they could actually tell the truth, that will be even better.”<sup>55</sup> National CPLCL, Pich Ang, likewise reminded the Accused that the Civil Parties and victims have been waiting for what they have to say for a long. He

cautioned that, if they choose not to respond, it may be presumed that they are admitting their guilt.

This supposition earned an explosive retort from Karnavas, who rebuked the Pich Ang for his “fundamental lack of understanding”<sup>56</sup> of the concept of fair trial rights. He clarified that it was within his client’s fair trial rights to remain silent if he wishes to do so and stressed that “[s]ilence does not mean guilt.”<sup>57</sup> Karnavas ended with the admonition that he would appreciate it if the CPLCL would not be allowed to make such “grossly inappropriate comments”<sup>58</sup> and that he expected more from them than just pandering to the audience.<sup>59</sup> The President reminded Karnavas not to use warning terms in the courtroom in the future. However, when Simmoneau–Fort stood up to answer to Karnavas, the President did not give her the floor. This marked the end of the Opening Statements.

## **V. Civil Party Participation**

As a testament of the importance of the opening statements, a large number of the Civil Parties from different parts of Cambodia traveled to the ECCC to see this week of proceedings firsthand. Some even flew in from other countries just to attend the hearings. They were present in the main gallery and a few of them were seated in the courtroom, all eagerly awaiting this moment with mixed emotions. They listened intently and some openly wept during the course of the three-day hearing. However, some were reportedly a bit disappointed by the opening statements, because the Trial Chamber did not allot time in the Scheduling Order<sup>60</sup> for any of their lawyers to present statements. The CPLCL attempted to obtain 15 to 30 minutes within which to proffer their statements but the Chamber, citing Rule 89*bis* (2)<sup>61</sup> explained that Civil Parties and their lawyers may attend the hearing but are not allowed to respond to the opening statements.

It is interesting to note that none of the defense teams objected to the request of the CPLCL. On the contrary, the Noun Chea Defense, who from their own admission, rarely agrees with the Civil Party Lawyers, expressed support for the latter’s appeal to present their opening statements. Moreover, a careful reading of the relevant internal rule shows that it does not expressly prohibit civil party lawyers from giving their opening statements. As such, it could be argued that the allotment of time for them to do so lies within the discretion of the Chamber. In any event, the Chamber opted not to exercise that discretion.

## **VI. Trial Management**

### **A. Conduct of Hearing and Schedule**

The Trial Chamber showed considerable resolve to follow the Scheduling Order and disallowed discussion of matters that it considered unrelated or irrelevant to the agenda. It is commendable that the Trial Chamber exhibits determination to adhere to its scheduling orders, particularly because of the complexity and expected length of the trials, and the advanced age and failing health of the Accused and the Civil Parties. It may be worth bearing in mind, however, that a very strict trial management strategy may raise concerns insofar as it may compromise certain rights of the parties.

### **B. Translation**

Translation services were generally satisfactory and efficient, except for a mistranslation of Nuon Chea’s statement regarding the U.S. bombing of Cambodia from February to mid-August 1973: U.S. B-52 Bomber planes for 200 days and 200 nights in Khmer was translated into English as “52 bombs for 20 days and 20 nights.”<sup>62</sup>

### C. Attendance and Statements of the Accused

All the Accused were present during the three hearing days. Karnavas, asked twice whether Ieng Sary could attend the hearing from the holding cell because the latter was suffering from back problems. Karnavas proposed Ieng Sary's remote participation in the holding cell and argued that his client need not be present because the opening statements do not constitute evidence. He further maintained that no other international tribunals force defendants to be present in court. The Chamber rejected Karnavas' request and ruled that the presence of the Accused was important and that they should hear all the charges against them.

### D. Attendance by the Public

On the first day of the Opening Statements, more than 900 visitors followed the proceedings from either the gallery, which offers 482 seats to the public, or through media facilities installed in the waiting area. On each of the second day and third days, close to a thousand visitors came to the ECCC. The Court's personnel handled the influx of people quite well, but the lack of space prompted them to rotate a number of visitors in and out on some occasions.

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 21/11/11	09.06	10.30 -10.59	12.02-13.34	14.30-14.52	16.15	4 hours and 46 minutes
Tuesday 22/11/11	09.01	10.28 -10.54	12.04-13.32	14.26-14.48	16.02	4 hours and 45 minutes
Wednesday 23/11/11	09.02	10.11 -10.33	-	-	12.09	2 hours and 45 minutes
<b>Average number of hours in session:</b> 4 hours and 5 minutes						
<b>Total number of hours this week:</b> 12 hours and 15 minutes						
<b>Total number of hours, days, and weeks at trial:</b> 12 hours and 15 minutes						

#### Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* (Case No. 002/19-09-2007-ECCC) before the Extraordinary Chambers in the Courts of Cambodia;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- **Case 001** refers to *Case of Kaing Guek Eav alias "Duch,"* Case No. 001/18-07-2007-ECCC; and
- photos are courtesy of the ECCC.

#### Glossary of Terms

CCP	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)
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)
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witnesses and Experts Support Unit



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- <sup>1</sup> “Severance Order Pursuant to Internal Rule 89TER” (22 September 2012). E124.
- <sup>2</sup> The Severance Order has prompted Parties to use different terms to refer to the first segment of the proceedings, including “Case 002/01,” “first mini-trial,” “first phase.”
- <sup>3</sup> *Ibid.*
- <sup>4</sup> Trial Chamber. “Scheduling Order for Opening Statements and Hearing on the Substance In Case 002” (18 OCTOBER 2011). E131. [hereinafter, “**SCHEDULING ORDER**”].
- <sup>5</sup> Defense for Nuon Chea. “Urgent Application for Disqualification of Judge Cartwright” (21 November 2011). E137/2 [hereinafter, **NUON CHEA’S URGENT APPLICATION FOR DISQUALIFICATION E137/2**].
- <sup>6</sup> SCHEDULING ORDER.
- <sup>7</sup> CASE 002. Case File No.: 002/19-09-2007-ECCC-OCIJ. Office of the Co-Investigating Judges. Closing Order (15 September 2010). D427.
- <sup>8</sup> For more information on Ieng Thirith’s fitness to stand trial, please refer to *KRT Trial Monitor*, issue numbers 3 and 4.
- <sup>9</sup> Trial Chamber. “Transcript of Trial Proceedings” (21 November 2011). E1/13.1. [hereinafter, “**TRANSCRIPT (21 NOVEMBER 2011)**”]. Lines 3-6. 16.
- <sup>10</sup> *Ibid.*, at lines 14-25; 1-2. 110-111.
- <sup>11</sup> Trial Chamber. “Transcript of Trial Proceedings” (22 November 2011). E1/14.1. [hereinafter, “**TRANSCRIPT (22 NOVEMBER 2011)**”]. 17-18. 15.
- <sup>12</sup> *Ibid.*, at lines 12-13. 56.
- <sup>13</sup> *Ibid.*, at lines 15-16. 45.
- <sup>14</sup> *Ibid.*, at line 20.
- <sup>15</sup> *Ibid.*, at lines 17-19. 52.
- <sup>16</sup> *Ibid.*, at lines 1-3. 53.
- <sup>17</sup> TRANSCRIPT (21 NOVEMBER 2011). Lines 19-21. 65.
- <sup>18</sup> *Ibid.*, at lines 15-17. 88.
- <sup>19</sup> *Ibid.*, at lines 16-15. 106; 1-10. 107
- <sup>20</sup> TRANSCRIPT (22 NOVEMBER 2011). Lines 12-13. 56.
- <sup>21</sup> *Ibid.*, at lines 17-25. 67.
- <sup>22</sup> *Ibid.*, at lines 25-1. 76-77.
- <sup>23</sup> *Ibid.*, at lines 16-22. 77.
- <sup>24</sup> *Ibid.*, at lines 19-25. 80.
- <sup>25</sup> *Ibid.*, at lines 25-21. 90-91.
- <sup>26</sup> *Ibid.*, at line 24. 101.
- <sup>27</sup> Trial Chamber. “Transcript of Trial Proceedings” (23 November 2011). E1/15.1. [hereinafter, “**TRANSCRIPT (23 NOVEMBER 2011)**”]. Lines 9-11. 3.
- <sup>28</sup> *Ibid.*, at lines 22-25; 1-2. 4-5.
- <sup>29</sup> *Ibid.*, at lines 22-23. 13.
- <sup>30</sup> *Ibid.*, at lines 14-16. 10.
- <sup>31</sup> *Ibid.*, at lines 9-14. 13.
- <sup>32</sup> *Ibid.*, at lines 19-22. 16.
- <sup>33</sup> *Ibid.*, at lines 3-6. 16.
- <sup>34</sup> Dr. Sa Sovan withdrew as Khieu Samphan’s national counsel and was replaced by Mr. Kong Sam Onn.
- <sup>35</sup> TRANSCRIPT (23 NOVEMBER 2011). Line 18. 39.
- <sup>36</sup> *Ibid.*, at line 25. 41.
- <sup>37</sup> *Ibid.*, at lines 9-16. 42.
- <sup>38</sup> See ICCPR, Art. 14.
- <sup>39</sup> Mr. Rosandhaug admitted to attending these meetings in an email to the defense lawyers. We have no access to this email.
- <sup>40</sup> **NUON CHEA’S URGENT APPLICATION FOR DISQUALIFICATION E137/2**. See also Nuon Chea Defence Team Letter to Presiding Judge Nil Nonn. “Request for Information Related to Ex-Parte Meeting between Judge Cartwright, Andrew Cayley, and/or Knut Rosandhaug. Phnom Penh (4 November 2011).
- <sup>41</sup> See CASE 002. Case No. 002/19-09-2007-ECCC/TC. Defense for Ieng Sary. “Ieng Sary’s Request for Investigation Concerning *ex parte* Communications Between the International Co-Prosecutor, Judge Cartwright and Others” (18 November 2011). E137/2.1 [hereinafter, **IENG SARY’S REQUEST FOR INVESTIGATION E137/2.1**].
- <sup>42</sup> *Ibid.* on 22 November 2011.

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<sup>43</sup> *Ibid.* on 23 November 2011.

<sup>44</sup> Based on the Trial Chamber's "Severance Order Pursuant to Internal Rule 89<sup>ter</sup>" dated 22 September 2011, separating the proceedings in Case 002, the first trial will cover (i) the structure of DK; (ii) roles of each Accused during the period prior to the establishment of DK, including when these roles were assigned; (iii) role of each Accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines of communication throughout the temporal period with which the ECCC is concerned; and (iv) policies of DK on the issues raised in the Indictment. In addition, the first trial will be limited to (a) factual allegations described in the Indictment as population movement phases 1 and 2; and (b) crimes against humanity including murder, extermination, persecution (except on religious grounds), forced transfer and enforced disappearances (insofar as they pertain to the movement of population phases 1 and 2).

<sup>45</sup> SCHEDULING ORDER.

<sup>46</sup> TRANSCRIPT (21 NOVEMBER 2011). Lines 21-22. 11.

<sup>47</sup> CASE 002. SCHEDULING ORDER. 2.

<sup>48</sup> TRANSCRIPT (22 NOVEMBER 2011). Lines 2-3. 122.

<sup>49</sup> *Ibid.*, at lines 6-7.

<sup>50</sup> *Ibid.* at lines 7-8.

<sup>51</sup> TRANSCRIPT (23 NOVEMBER 2011). Lines 11-15. 7.

<sup>52</sup> *Ibid.*; See also CASE 002. Case No. 002/19-09-2007-ECCC/TC. Defense for Ieng Sary. "Ieng Sary's Notice to the Trial Chamber that he will not Testify During Trial" (24 October 2011). E101/4.

<sup>53</sup> TRANSCRIPT (23 NOVEMBER 2011). Lines 4-6. 48.

<sup>54</sup> *Ibid.* at lines 9-10. 49.

<sup>55</sup> *Ibid.* at lines 12-14.

<sup>56</sup> *Ibid.* at lines 10-12. 50.

<sup>57</sup> *Ibid.* at line 21.

<sup>58</sup> *Ibid.* at lines 11-13. 51.

<sup>59</sup> *Ibid.* at lines 1-3. 51.

<sup>60</sup> See Scheduling Order 2.

<sup>61</sup> Rule 89 *bis* (2) on the substantive hearing provides: "[b]efore any Accused is called for questioning, the Co-Prosecutors may make a brief opening statement of the charges against the Accused. The Accused or his/her lawyers may respond briefly."

<sup>62</sup> The Khmer members of the AIJI Monitoring Team observed this mistranslation. Notably, the Translation Unit did not correct it. See TRANSCRIPT (22 NOVEMBER 2011). Lines 6-8. 94.