



Extraordinary Chambers in the Courts Of Cambodia

Case 002/01 Appeal Proceedings

Background Information

November 2015

Case 002/01

Case 002/01 is the first of at least two trials against Khieu Samphan and Nuon Chea. The case is currently under appeal, whereas a second trial, Case 002/02 is currently on trial before the Trial Chamber.

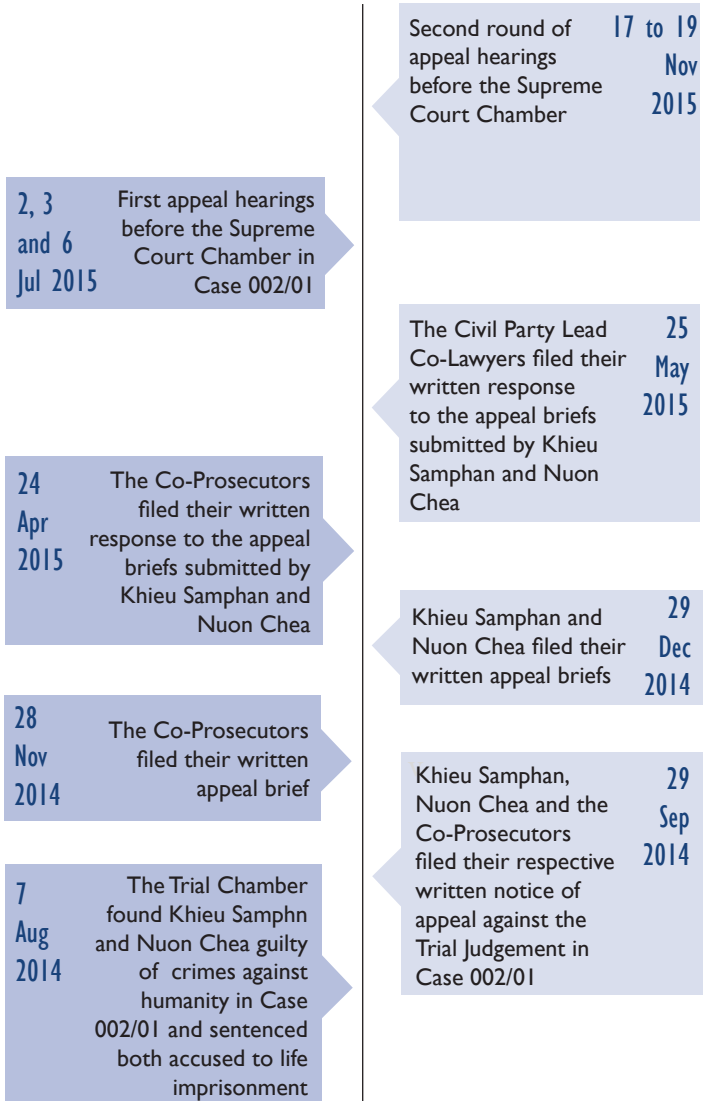
On 15 September 2010, Khieu Samphan and Nuon Chea were indicted on charges related to crimes against humanity, genocide and grave breaches of the Geneva Conventions of 1949 in what is referred to as Case 002. The charges against them are specified in the Closing Order of Case 002.

In September 2011, the Trial Chamber decided to separate (sever) the charges in the Case 002 Closing Order into a series of smaller trials. The first trial in Case 002, referred to as Case 002/01, commenced on 21 November 2011. The charges in Case 002/01 focused on:

- alleged crimes against humanity related to the forced movement of the population from Phnom Penh in April 1975 and later from other regions (phases one and two); and
- alleged execution of Khmer Republic soldiers and officials at Toul Po Chrey execution site in Pursat immediately after the Khmer Rouge takeover in 1975.

The hearing of evidence during trial in Case 002/01 ended on 23 July 2013, and the closing statements concluded on 31 October 2013. The Trial Judgement was pronounced on 7 August 2014. Khieu Samphan and Nuon Chea were found guilty of crimes against humanity and sentenced to life imprisonment. Both Khieu Samphan and Nuon Chea have filed appeals against the Trial Judgement, and pending determination on issues on appeal, the accused are presumed innocent. The Office of the Co-Prosecutors has also filed an appeal against the Trial Judgement limited to one legal issue regarding a specific type of individual criminal responsibility for crimes prosecuted before the ECCC.

Timeline



Case 002/01 Trial in Numbers

- The trial commenced on 21 November 2011 and ended with closing statements on 31 October 2013.
- 222 trial days over the two-year period.
- 92 individuals testified during trial, including 3 experts, 53 fact witnesses, 5 character witnesses and 31 Civil Parties.
- 103,724 persons attended the trial proceedings during the 222 trial days.



The Accused



Khieu Samphan

Alias: *Hem*
Date of birth: 27 July 1931
Place of birth: *Rom Chek, Rom Duol, Svay Rieng*
Date of arrest: 19 November 2007
Position in democratic Kampuchea: *Head of State (Chairman of the State Presidium)*



Nuon Chea

Date of birth: 7 July 1926
Place of birth: *Voat Kor village, Battambang province*
Date of arrest: 19 September 2007
Position in Democratic Kampuchea: *Deputy Secretary of the Communist Party of Kampuchea*

Khieu Samphan received a bursary to study in France in 1955 and published his doctoral dissertation “Cambodia’s economy and industrial development”. Upon his return to Cambodia, Khieu Samphan became a professor before being appointed Secretary of State for Trade in Sihanouk’s regime in 1962. Under threat from Sihanouk’s security forces, he allegedly went into hiding in 1967 and reemerged within the Khmer Rouge resistance in the early 1970s. In 1976 he was appointed Democratic Kampuchea’s Head of State. He succeeded Pol Pot after the latter retired as the official head of the Khmer Rouge in 1987, and represented Kampuchea at the 1989 International Conference on Cambodia in Paris. After pledging allegiance to the Cambodian government in 1998, he left the Khmer Rouge and lived in the north-western province of Pailin until being arrested.

Nuon Chea (his name at birth was Lao Kim Lorn) studied law at Bangkok’s prestigious Thammasat University, where he became a member of the Thai Communist Party. Appointed Deputy Secretary of the CPK in 1960, he retained this position and his membership in the CPK’s Standing Committee throughout the period of Democratic Kampuchea. He remained with the Khmer Rouge until reaching a deal with the Cambodian government in December 1998 that allowed him to live near the Thai border.

The Case 002/01 Trial Judgement

The Trial Chamber pronounced the Judgement in Case 002/01 on 7 August 2014. Khieu Samphan and Nuon Chea were found guilty of the crimes against humanity of extermination (encompassing murder), persecution on political grounds and other inhumane acts (comprising forced transfer enforced disappearances and attacks against human dignity).

With regards to the factual allegations the Trial Chamber found that:

- At least two million people were forcibly transferred from Phnom Penh by Khmer Rouge soldiers under false pretexts and threats, often at gunpoint, with almost no prior warning and in terrifying and violent circumstances, resulting in large numbers of people being killed or dying of exhaustion, starvation or illness. Trial Chamber found that the following crimes against humanity were perpetrated: murder; extermination; political persecution; and other inhumane acts in the forms of forced transfer and attacks against human dignity.
- Between September 1975 and early 1977, at least 300,000 to 400,000 people were forcibly displaced from various locations in Kandal, Kampong Thom, Kampong Cham, Takeo, Kampong Speu, Kampong Chhnang, Prey Veng and Svay Rieng Province, Battambang and Pursat Provinces, Kampong Thom Province and Preah Vihear Province. The Chamber has further found that, between September 1975 and December 1977, more than 30,000 people were displaced to Kratie, from and within Prey Veng and Svay Rieng Provinces, within Kampong Thom and Kampong Cham Provinces and within Battambang Province. Most people were ordered to leave their locations and transferred under armed guard. Those who refused transfer or attempted escape were arrested, detained or transferred in a further round of movements. The Trial Chamber found that the following crimes against humanity were perpetrated: extermination; political persecution; and other inhumane acts in the form of forced transfer, attacks against human dignity and enforced disappearances.
- Immediately after 17 April 1975, at least 250 Lon Nol soldiers and officials were transported from Pursat to Tuol Po Chrey and then executed. The Trial Chamber found that the executions constitute the crimes of murder, extermination and political persecution as crimes against humanity.

The Trial Chamber also endorsed the implementation of eleven reparation projects sought by the consolidated group of 3,869 Civil Parties (victims admitted as parties).

Q1 How long will the appeals process take?

Due to the complexity of the appeals, a number of requests for admission of new evidence, as well as the fact that three working languages (Khmer, English and French) are being used at the Court, it is difficult to precisely project when the appeals judgement can be pronounced, but the Supreme Court Chamber is currently working with the goal of pronouncing the appeals judgement by the end of the second quarter of 2016, contingent on a number of variables.

Q2 Since there are appeals related to alleged error of laws and errors of fact, will the Supreme Court Chamber hear the entire Case 002/01 again afresh?

No. The Supreme Court Chamber is bound by the confines of the scope of the appeals, and its principal role is to decide whether the trial judgment is tainted by any legal or factual errors. But in determining whether an alleged error occurred, it may itself examine evidence or call new evidence to determine the issue, which is what the witness hearings in July 2015 was meant to help achieve. In fact, there is a controversy among the parties as to the correct approach regarding alleged factual errors, which the Supreme Court Chamber will have to decide in the course of the proceedings.

Q3 Will there be more appeal hearings than those scheduled for November 2015?

No further hearings are planned at this time.

Q4 What is the composition of the Supreme Court Chamber and the voting rules for deciding on the appeals?

There are four Cambodian judges and three international judges in the Supreme Court Chamber. In order to make a decision, at least five out of seven judges must vote together.

Q5 Can the parties appeal against the Supreme Court Chamber's appeal judgement?

No. The decisions of the Supreme Court Chamber are final and enforceable.

The Appeals

The Khieu Samphan appeal

Khieu Samphan is advancing 148 grounds of appeal against the Trial Judgement in Case 002/01, alleging that the Trial Chamber made a number of errors in law and in fact.

Khieu Samphan requests the Supreme Court Chamber to reverse the Trial Judgement and acquit him of all charges and order his immediate release. In the alternative, Khieu Samphan asks his life sentence to be reduced to a specific number of years of imprisonment.

The Nuon Chea appeal

Nuon Chea is advancing 223 grounds of appeal against the Trial Judgement in Case 002/01, alleging that the Trial Chamber made a number of errors in law and in fact.

Nuon Chea requests the Supreme Court Chamber to invalidate the trial judgment and acquit him of all charges.

The appeal by the Office of the Co-Prosecutors

The Co-Prosecutors allege that the Trial Chamber erred in law by not allowing prosecution of the accused under the doctrine of the most extended form of joint criminal enterprise commonly referred to as JCE III.

JCE III is a mode of liability where a member of a joint criminal enterprise can be held criminally responsible for criminal acts committed by another member of the group, even when the act was not expressly included in the scope of the criminal enterprise, but it was nevertheless foreseeable that the criminal act may be a consequence of the joint criminal enterprise.

The Office of the Co-Prosecutors requests the Supreme Court Chamber to declare that Joint Criminal Enterprise III is a mode of responsibility which can be applied in the ECCC proceedings.

The Supreme Court Chamber



Judge KONG Srim, President (Cambodia)

Judge KONG was appointed as the President of the Supreme Court Chamber and a National Resident Judge to the ECCC by Royal Decree on 7 May 2006. Before this period, he was a Deputy General Prosecutor of the General Prosecution attached to the Appellate Court; Prosecutor of the General Prosecution attached to the Appellate Court; the Deputy Chief of Prosecution office and the Department of Criminal and Civil affairs of the Ministry of Justice; and an Officer of the Ministry of Justice. Recently, he is the Deputy Chief of the Supreme Court and the member of the Supreme Council of Magistracy. He has been a Law Lecturer at different universities in Phnom Penh, Cambodia. H.E. Mr. KONG Srim holds a Bachelor's degree of Arts majoring in Law from Faculty of Law, Ho Chi Minh, Vietnam, and Master's degree of Law majoring in Private Law, RULE.



Judge Chandra Nihal Jayasinghe (Sri Lanka)

Judge Jayasinghe was previously Sri Lanka's High Commissioner to the United Kingdom. He previously served as a senior Presiding Judge of the Supreme Court of Sri Lanka and President of the Court of Appeal of Sri Lanka. He served 22 years in the Attorney General's Department, mostly in criminal work, where he was Senior State Counsel and eventually elevated to Deputy Solicitor General in 1994. Mr. Jayasinghe was awarded Bachelor of Laws Degree from the University of Colombo, was a visiting scholar at University of Illinois, Chicago, and received a Diploma in Human Rights by University of Lund, Sweden.



Judge SOM Sereyvuth (Cambodia)

Judge SOM has been a Judge of the Supreme Court of Cambodia and a Head of Examination Department. He is in charge of publishing the Journal of the Supreme Court Judgments. From 1980 to 1985, he served as an Official in the Ministry of Interior and as an Acting Head of Department. In 2001, he obtained a certificate of Intellectual Property Law Enforcement for Developing Countries from World Intellectual Property Organization in collaboration with (ENM) held in Paris and Geneva. In 1998, he received a bachelor of law (Droit Public) from the University of Law Lumiere, Lyon 2, Lyon France. From 1994 to 1995, he was a student judge of International School for Judges and Prosecutor (ENM a Bordeaux).



Judge Agnieszka Klonowiecka-Milart (Poland)

Judge Klonowiecka-Milart was the most senior international judge in the United Nations Interim Administration Mission in Kosovo. She was appointed to the Supreme Court of Kosovo where, together with members of the national judiciary, she adjudicated war crimes, genocide, crimes against humanity, terrorism and other serious crimes. She was seconded several times to the Department of International Cooperation and European Law in the Polish Ministry of Justice, where she participated in the law revision and law reform for conformity with international standards, mainly those of the European Convention on Human Rights (ECHR) and the European Union.



Judge MONG Monichariya (Cambodia)

Judge MONG has been a Chief Judge of the Preah Sihanouk Provincial Court from 2009. He was appointed as a Judge of the Supreme Court in 2002, and he has served as a Judge of Phnom Penh Court since 1996. He was training Judge of the Ministry of Justice in 1994. He has been a member of Cambodian team drafting Civil Code and Civil Procedure Code since 1999. And from 2004 till present, he has been a Trainer at the Royal School for Judges and at the Lawyers' Training Centre. He was a Researching Student for a Ph. D Program in Law at Build Bright University and he obtained a Master's of Art in Law from the Kazakhstan National University, Republic of Kazakhstan in 1993 (State of Former Soviet Union). In 1995, he received a Certificate on Judicial Profession. For two years, he served as training Judge at the Ministry of Justice, seven years as a Judge of Phnom Penh court, seven years as a Judge of the Supreme Court and six months as the Chief Judge of Preah Sihanouk Provincial Court. From 2004 to 2005, he attended UNDP Course at Royal School for Judges and Prosecutors. In 2002, he attended the Course on International Criminal Court organized by the Council Minister of Cambodia in cooperation with the Centre for Restorative Justice in Asia.



Judge Florence Ndepele Mwachande Mumba (Zambia)

Judge Mumba has held judicial office since 1980. She was the first woman to be appointed High Court Judge in Zambia. After eight years as High Court Judge, she was appointed to the Office of Investigator General (Ombudsman) in 1989 and, whilst holding this office, she served as Director on the International Ombudsman Institute Board where she was elected Vice-President of the Board until 1996. Judge Mumba served on the UN Commission on the Status of Women from 1992 to 1995; she participated in the formulation of resolutions to characterize rape as a war crime. In 1997, she was appointed Supreme Court Judge and was elected Judge of the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague where she also served as Vice-President from 1999 to 2001. From 2003 to 2005, Judge Mumba served as Judge of the Appeals Chamber in the ICTY and International Criminal Tribunal for Rwanda (ICTR). From August 2008 to January 2011 she served as Chairperson of the Electoral Commission of Zambia. She was previously a Supreme Court Judge in Zambia. As a distinguished lawyer and women's rights activist, she has travelled extensively presenting papers and lectures. Judge Mumba has advocated the rule of law in governance throughout her career.



Judge YA Narin (Cambodia)

Judge YA is currently the President of the Mundulkiri Court. Prior to that, he has served as a judge at the Rattanakiri Court since 2002, and was promoted to President of the court in 2005. He took judicial office in 2001, following his employment as an official in Secretariat of the Law Council in the Council of Ministers. In the secretariat he was responsible for studying draft laws and regulations proposed by the Ministries. He began his legal studies at Kazakh State University in 1987. He went on to obtain his Ph.D from the State and Law Institute of Kazakhstan in 1998, specializing in criminology.



Judge SIN Rith, Reserve Judge (Cambodia)

Judge SIN studied law for ten years in the Republic of Kazakhstan. He received his Ph.D in law in 1997 at Kazakhstan National University. He began as a Legal Officer at the Ministry of Justice in 1998. He was appointed to the Judiciary in 2001 as the Deputy Prosecutor to the Battambang Court. In 2005, he was appointed to the Supreme Court as the Lead Prosecutor. Mr. Rith has worked as a member of the team tasked with drafting the Civil Code and Civil Procedure Code for Cambodia. He taught criminology and international criminal law as a Professor at the Royal School for the Judicial Professions and the Royal University of Law and Economics.



Judge Phillip Rapoza, Reserve Judge (USA)

Judge Rapoza was recently the Chief Justice (President) of the Massachusetts Appeals Court. He received a B.A. degree magna cum laude from Yale University and a J.D. (juris doctor) degree from Cornell University Law School. He has served in the legal profession for over 35 years. After 16 years as a prosecutor and then a defense lawyer, in 1992 he was appointed as a trial judge. In 1998, he was appointed to the court of appeals, and in 2006, he was elevated to his current position as the court's Chief Justice. He also has been active in the field of international justice. From 2003 to 2005, he served as an international judge and the coordinator of the Special Panels for Serious Crimes in Timor-Leste, dealing with crimes against humanity and other serious offenses that occurred prior to that country's independence. Since then he has returned to Timor-Leste on numerous occasions to assist with UN efforts to develop the country's justice sector. He has also headed a UN Criminal Justice Advisory Team in Haiti and has participated in programs and trainings in Cambodia relating to the ECCC. Chief Justice Rapoza, who is of Portuguese descent, was decorated by the President of Portugal and holds the rank of Commander in the Order of Prince Henry the Navigator. He is also a recipient of the Brazilian Medal of International Merit. He has received numerous awards and holds several honorary degrees.

Defence Counsels



Mr. SON ARUN, National Co-Lawyer for Nuon Chea (Cambodia)

Mr. SON Arun (Cambodia) studied at the Lawyer School of Cambodia Bar Association in 1996 then became a member of the Bar Association and started his career as a private lawyer. He has served as legal advisor to Cambodian National Assembly since 1993. Mr. Son has been national Co-Lawyer of Mr. Nuon Chea since 20 September 2007. He holds a Bachelor Degree in Business Administration from Houston University in Texas, USA. Additionally, Mr. Son also participated in training on Defense Strategies before the Civil and Criminal Courts.



Mr. Victor Koppe, International Co-lawyer for Nuon Chea (The Netherlands)

Mr. Victor Koppe studied international law and international relations in The Netherlands and the United States. Admitted to the Dutch Bar in 1989, he initially specialised in white collar crime. Afterwards his focus shifted toward terrorism cases and political extradition matters. He defended several members of the Dutch Hofstad-group, Samir Azzouz, Wesam al Delaema and Mullah Krekar as well as leading members of the Kurdish PKK and the Basque ETA. For the past decade, Mr. Koppe has been working in the field of international criminal law. He represented Moinina Fofana before the Special Court for Sierra Leone, Radovan Stankovic before the International Criminal Tribunal for the Former Yugoslavia in the Rule 11bis referral procedure, the Liberation Tigers of Tamil Eelam (LTTE) before the European Court of Justice in Luxembourg in respect of its placement on the list of terrorist organisations and Yvonne Basebya before the court of The Hague for her involvement in the 1994 genocide in Rwanda. He teaches international criminal law at the Royal University of Law and Economics in Phnom Penh.



Mr. KONG Sam Onn, National Co-Lawyer for Khieu Samphan (Cambodia)

Mr. KONG Sam Onn (Cambodia) is a member of the Bar Association of the Kingdom of Cambodia and the president of Cambodia Law Services (CLS). Mr. Kong has extensive experience in human rights law, court proceedings and criminal defence. He has represented clients in numerous high-profile cases, including journalists, politicians, government officials, military officials and lay people whose basic human rights have been abused. Mr. Kong is a Law Lecturer at the Paññasastra University of Cambodia (PUC). Mr. Kong is a doctoral candidate at Nagoya University. He holds a Master's degree in law from the University of Hong Kong and a Bachelor's degree in law from the Faculty of Law and Economics, Royal University of Phnom Penh.



Mr. Arthur Vercken, International Co-Lawyer for Khieu Samphan (France)

Mr. Arthur Vercken is French criminal lawyer working on national and international criminal cases. His national activities cover all aspects of criminal defense, focusing on the most serious crimes, terrorism, and international trafficking. Former Secrétaire de la Conférence du Stage du Barreau de Paris, he taught criminal procedural law on a regular basis at the École des Avocats of Paris (Lawyers Professional Training Centre) and has contributed or co-signed several textbooks in the field. At the international level, Mr. Vercken brought the Daniel Tibi Case before the Inter-American Court of Human Rights. He is included on the list of approved counsels at the International Criminal Tribunal for Rwanda before which he has defended two accused (Mr. Jean Mpambara, acquitted in 2006 in first instance, and Mr. Callixte Kalimanzira). Mr. Vercken is also included on the list of approved counsels of the Special Tribunal for Lebanon and the International Criminal Court in The Hague. At the ICC, he served as a reserve attorney and then defended M. Callixte Mbarushimana for whom he obtained liberation in December 2011, followed by the confirmation of the withdrawal of all charges by the ICC Chamber of appeal on 30 May 2012.



Ms. Anta Guisse, International Co-Lawyer for Khieu Samphan (France)

Ms. Anta Guissé is a French defence lawyer with over ten years of experience in international criminal law, having worked for the defence in three cases at the United Nations International Criminal Tribunal for Rwanda, and as a victims' representative at the International Criminal Court. Among many other postings, Ms. Guissé has been a board member and legal advisor of the 'Citizenship Governance Initiatives', a Cameroon-based association working on citizens' participation and governance, and has also been a trainer for the ICTR Capacity Building Programme to coach Rwandese lawyers in international humanitarian law.

Co-Prosecutors



Ms. CHEA Leang, National Co-Prosecutor (Cambodia)

MS. CHEA received her Master's of Arts in Law from Martin Luther University in Germany in 1995. From 1996 to 2002 she began her legal career at the Ministry of Justice and became Deputy in the Training Office of Ministry of Justice, as well as a member of the legal committee to create the Cambodian Penal Code. She joined the Cambodian judiciary as a Prosecutor in the Appeals Court in 2002, taking part in trial at the Court of Appeals and inspecting prosecutors' work at the provincial level. In 2009, she was appointed Prosecutor General of the Supreme Court, which is the highest prosecutorial position in Cambodia. She has received additional legal training in Denmark, Japan and The Hague. In addition to Khmer, she speaks German and English.



Mr. Nicholas Koumjian, International Co-Prosecutor (USA)

Prior to his appointment, Mr. Koumjian was Senior Appeals Counsel for the prosecution of the former President of Liberia, Charles Taylor, at the Special Court for Sierra Leone. He represented Abdallah Banda and Saleh Jerbo before the International Criminal Court in a case involving the situation in Darfur, and assisted victims from the Ivory Coast on a pro-bono basis. He was previously Principal Trial Attorney for the trial of Charles Taylor, headed the UN-funded Serious Crimes Unit in East Timor, and was a trial attorney at the International Criminal Tribunal for the Former Yugoslavia and State Court of Bosnia and Herzegovina. Before entering the international arena, Mr. Koumjian worked as a prosecutor in Los Angeles for twenty years.

Civil Party Lead Co-Lawyers



Mr. PICH Ang, National Civil Party Lead Co-Lawyer (Cambodia)

Mr. PICH holds a Master's of Private Law and Human Rights Law, and a Bachelor of Law from Lyon, France. Prior to his appointment, he served as Civil Party Co-Lawyer. He previously worked as a lecturer at the Royal University of Law and Economics and Build Bright University, as a lawyer at a Cambodian international law firm and as a legal assistant at the Ministry of Women's Affairs.



Ms. Marie Guiraud, International Civil Party Lead Co-Lawyer (France)

Originally trained in Business and Corporate Law in France, Ms. Guiraud later specialised in Public International Law and Human Rights (LLM, University College London). She went on to work in the field of human rights and corporate accountability: in particular, she headed the "Globalization and Human Rights" Office at the International Federation for Human Rights (FIDH), an international human rights organization, for six years. She also worked on women's rights issues. Ms. Guiraud became a litigator in 2005 and joined the Paris-based law firm Stasi & Associés, specialised in criminal law. She set up her own practice in 2007 and developed her activity, both before French and foreign Courts. In France, she represents both Defendants and Victims (civil parties) in all areas of criminal law, including in cases of complexity and gravity (e.g. terrorist cases, transnational crimes case). Abroad, Ms. Guiraud specialised in civil party representation: she represents victims of international crimes before Ivorian and Congolese Courts and she was a Civil Party Lawyer in case 002/01 before the ECCC. She is qualified to practice law in France and Cambodia and works in both French and English.

Key Documents:

Nuon Chea's appeal brief:

<http://bit.ly/1L4Pakx>

Khieu Samphan's appeal brief (French language version):

<http://bit.ly/1etihS9>

The Co-Prosecutor's appeal brief:

<http://bit.ly/1SunWpp>

Case 002/01 Trial Judgement:

<http://bit.ly/1G9w5rN>

Summary of Case 002/01 Trial Judgment:

<http://bit.ly/1qFOnZ7>



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