



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens



**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

**អង្គជំនុំជម្រះតុលាការកំពូល**

Supreme Court Chamber

Chambre de la Cour suprême

**TRANSCRIPT OF APPEAL PROCEEDINGS**

**PUBLIC**

Case File N° 002/19-09-2007-ECCC/SC

17 November 2015

Before the Judges:

KONG Srim, Presiding  
Ya Narin  
Agnieszka KLONOWIECKA-MILART  
SOM Sereyvuth  
Chandra Nihal JAYASINGHE  
MONG Monichariya  
Florence N. MWACHANDE-MUMBA

The Accused:

NUON Chea  
KHIEU Samphan

Lawyers for the Accused:

SON Arun  
LIV Sovanna  
KONG Sam Onn  
Anta GUISSSE  
Arthur VERCKEN

Trial Chamber Greffiers/Legal Officers:

Amy BARBER  
Paolo LOBBA  
SEA Mao  
Volker NERLICH  
PHAN Theoun

Lawyers for the Civil Parties:

CHET Vanly  
HONG Kimsuon  
Marie GUIRAUD  
LOR Chunthy  
PICH Ang  
TY Srinna  
SIN Soworn  
VEN Pov

For the Office of the Co-Prosecutors:

CHEA Leang  
Vincent DE WILDE D'ESTMAEL  
Nicholas KOUMJIAN  
SENG Bunkheang  
SENG Leang  
William Smith  
SONG Chorvoin  
SREA Rattanak

For Court Management Section:

UCH Arun

**List of Speakers:**  
  
Language used unless specified otherwise in the transcript

Speaker	Language
Ms. CHEA Leang	Khmer
The GREFFIER	Khmer
Ms. GUIRAUD	French
Judge KLONOWIECKA-MILART	English
Mr. KONG Sam Onn	Khmer
The President (KONG Srim)	Khmer
Mr. KOUMJIAN	English
Judge MONG Monichariya	Khmer
Mr. NUON Chea	Khmer
Mr. SON Arun	Khmer

1

1 PROCEEDINGS

2 (Court opens at 0900H)

3 MR. PRESIDENT:

4 Please be seated.

5 (Short pause)

6 [09.01.52]

7 In the name of the United Nations and the name of the Cambodian  
8 people, the Supreme Court Chamber in the Courts of - in the  
9 Extraordinary Chambers in the Courts of Cambodia, opens its  
10 hearing to hear the Appeal against the Judgment dated 7 August  
11 2014, of the Trial Chamber of the ECCC, in case file 002/19  
12 September 2007, with the co-Accused Nuon Chea and Khieu Samphan.  
13 The Bench is composed of the following Judges: I, Kong Srim, the  
14 President, Judge Chandra Nihal Jayasinghe, Judge Som Sereyvuth,  
15 Judge Agnieszka Klonowiecka-Milart, Judge Mong Monichariya, Judge  
16 Florence Ndepele Mumba, and Judge Ya Narin.  
17 The greffiers are the following: Mr. Volker Nerlich, Mr. Sea Mao,  
18 Ms. Sheila Paylan, Mr. Paolo Lobba, and Mr. Phan Thoeun.  
19 And Mr. Sea Mao, are the Parties all present?

20 THE GREFFIER:

21 Mr. President, the Parties to this case are present except the  
22 International Counsel for Nuon Chea -- that is, Counsel Victor  
23 Koppe, is absent. Thank you.

24 [09.04.23]

25 MR. PRESIDENT:

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1 National Counsel for the defence of Nuon Chea, could you inform  
2 the Chamber the reason for the absence of your International  
3 Counsel for Nuon Chea?

4 MR. SON ARUN:

5 Good morning, Mr. President. Good morning, Your Honours. My  
6 client, Mr. Nuon Chea, would like to seek your permission to make  
7 a statement which lasts for about 20 minutes. His statement will  
8 indicate the reasons for the absence of his International Counsel  
9 for the Defence.

10 MR. PRESIDENT:

11 The International Co-Prosecutor, please be seated. Allow me to  
12 follow with our scheduling.

13 And the International Counsel for Nuon Chea, is it your statement  
14 that the absence of the International Counsel is per instruction  
15 of his client -- that is, the Accused Nuon Chea; am I correct? If  
16 that is the case, we still follow with the proceedings for the  
17 appeal hearing. Per procedures -- that is, pursuant to Internal  
18 Rule 22.1 of the ECCC Internal Rules, despite the absence of the  
19 International Counsel, the National Counsel for the Defence  
20 cannot proceed to defend your client.

21 [09.06.48]

22 MR. SON ARUN:

23 Yes, I can follow the proceedings.

24 MR. PRESIDENT:

25 Thank you, Counsel. You may be seated.

3

1 The Chamber would like to inform the Parties that I will first  
2 start the opening of the appeal proceedings. And I noticed that  
3 the International Co-Prosecutor wants to take a stand before I  
4 proceed with the opening. You may take the floor.

5 MR. KOUMJIAN:

6 Good morning, Mr. President, Your Honours. What I was going to  
7 suggest is the question, Mr. President, that you asked, I think  
8 it's important to clarify that: that the absence of the  
9 International Co-Counsel for Nuon Chea is with his consent. I am  
10 not sure that the record is clear from what was translated about  
11 that. All I heard on the record was Mr. Son Arun say that he  
12 could follow the proceedings. But if -- please I hope Defence  
13 Counsel -- National Counsel will correct me if I'm wrong, but are  
14 we correct then in all of us taking his answer to mean that Nuon  
15 Chea consents to the absence of his International Co-Counsel?

16 [09.08.40]

17 MR. PRESIDENT:

18 Regarding this matter and as stated by the National Defence  
19 Counsel for Nuon Chea, the Accused Nuon Chea himself will make a  
20 statement. And for that, the Chamber will give the floor to Nuon  
21 Chea to make his statement after my opening statement of the  
22 appeal proceedings.

23 Today is the first day of the appeal hearing of the appeals  
24 brought by Nuon Chea and Khieu Samphan against the Judgment of  
25 the Trial Chamber of 7 August 2014, and the Co-Prosecutor's

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1 appeal regarding the applicability of the notion of joint  
2 criminal enterprise in its extended form. The Chamber has  
3 received extensive written submissions in which the Parties have  
4 set out their arguments in support of their respective appeals  
5 and the responses thereto.

6 [09.09.48]

7 The Chamber has carefully studied and analysed all these  
8 submissions in preparation for this hearing. It is not the  
9 purpose of the appeal hearing simply to rehearse the written  
10 submissions. Rather, it is an opportunity for the Parties to  
11 highlight the most important aspects of their appeals and in  
12 particular to reply to arguments contained in the responses to  
13 the appeal briefs.

14 Furthermore, I recall that in July of this year, the Chamber held  
15 a hearing to hear three additional witnesses on appeal. Moreover,  
16 the Chamber admitted eight additional documents into evidence.

17 The appeal hearing that commences today is an opportunity for the  
18 Parties to make submissions in relation to the additional  
19 evidence admitted on appeal by this Chamber, including the  
20 testimony of those three witnesses. It must be underlined that,  
21 as reflected in Internal Rule 109.6, the appeal hearing is not a  
22 mechanism for Parties to raise matters of fact or law that were  
23 not previously set out in their submissions on appeal. I would  
24 like to invite the Parties to keep this in mind when making  
25 submissions before the Chamber.

1 [09.11.37]

2 The appeal hearing also provides the Judges of the Chamber with  
3 an opportunity to ask Parties for clarification of their  
4 submissions and to address questions that, in the view of the  
5 Chamber, are conducive to the determination of the appeal. Some  
6 of the questions were communicated to the Parties on 5th November  
7 together with the final timetable for the appeal hearing.  
8 Nevertheless, the Judges of the Chamber may ask additional  
9 questions throughout the appeal hearing. In each session, there  
10 is time reserved for questions by the Chamber. The Judges may  
11 also ask questions at any time in response to the submissions of  
12 the Parties.

13 In order to ensure an efficient use of time, the Chamber has  
14 decided to split up the appeal hearing into six thematic  
15 sessions, grouping the various grounds of appeal. The first five  
16 sessions concern the appeals brought by Nuon Chea and Khieu  
17 Samphan. The appellants have submitted several hundred arguments  
18 in support of their respective appeals alleging factual, legal,  
19 and procedural errors.

20 [09.13.03]

21 The Chamber has attempted to group them to make it easier for the  
22 public to follow the appeal hearing. In an annex to the initial  
23 scheduling order for the appeal hearing, the Chamber indicated  
24 which grounds of appeal and paragraphs from the appeal briefs  
25 should be discussed in the respective sessions. I should

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1 highlight that sometimes this categorization was not easy to  
2 make, and some grounds of appeal could fall into more than one of  
3 the sessions. The first session, which is to start immediately  
4 after this introduction, concerns the grounds of appeal alleging  
5 violations of the Accused fair trial rights as well as the issue  
6 of whether the ECCC's Internal Rules are unconstitutional and  
7 illegal.

8 The second session concerns the grounds of appeal related to the  
9 Trial Chamber's overall approach to the evidence. This session is  
10 scheduled to commence today after lunch. At the end of the day,  
11 time is reserved for the Supreme Court Chamber's questions on the  
12 subjects covered during today's sessions.

13 [09.14.44]

14 Tomorrow morning we will start with a session dedicated to the  
15 grounds of appeal related to the crimes for which the Accused  
16 were convicted. After lunch, the Chamber will commence with the  
17 session on the grounds of appeal related to Nuon Chea's and Khieu  
18 Samphan's individual criminal responsibility. We shall conclude  
19 this session in the morning of day three of the hearing. Also on  
20 Thursday morning, the Chamber shall hear submissions in relation  
21 to Khieu Samphan's arguments on appeal regarding the sentence  
22 imposed by the Trial Chamber. Thursday afternoon is dedicated to  
23 the appeal of the Co-Prosecutors and there is time allotted for  
24 final questions by the Chamber. During this last part of the  
25 hearing, the Accused may also address the Chamber in person, if



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1 they so wish, in accordance with Internal Rule 109.5.

2 As to the conduct of the individual sessions in compliance with

3 the applicable procedural rules, notably Internal Rules 108.5 and

4 109.4, each session will start with a report of the

5 co-rapporteurs. I appointed the co-rapporteurs for the appeals of

6 Nuon Chea, Khieu Samphan, and the Co-Prosecutors in June of this

7 year to address each aspect of the appeals.

8 [09.16.26]

9 Given the size of the appeals in a large number of grounds of

10 appeal, the co-rapporteurs' reports do not attempt to summarize

11 comprehensively and in detail all the submissions on appeal.

12 Rather, they served as an introduction to the relevant session

13 and as an overview to the general public of the issues raised on

14 appeal. If a particular argument or ground of appeal is not

15 mentioned in the report, this does not mean that the

16 co-rapporteurs have overlooked it.

17 Following the co-rapporteurs' remarks, the Parties will be

18 invited to make their submissions in the order indicated on the

19 timetable. The Parties are instructed not to go beyond the time

20 allotted to them, as we are running on a tight schedule. Should

21 it appear that particular aspects of the submissions require more

22 time, the Chamber has discretion to afford the Parties additional

23 opportunities to supplement their submissions in the time

24 reserved for the Judges' questions. This will not be done

25 routinely but only if strictly required.

1 [09.18.16]

2 Finally, in keeping with Internal Rule 109.4, I would like to  
3 inform Nuon Chea and Khieu Samphan of their fundamental rights  
4 under Internal Rule 21(d). This provision reads as follows:

5 "Every person suspected or prosecuted shall be presumed innocent  
6 as long as his or her guilt has not been established. Any such  
7 person has the right to be informed of any charges brought  
8 against him or her, to be defended by a lawyer of his or her  
9 choice, and at every stage of the proceedings shall be informed  
10 of his or her right to remain silent."

11 (Short pause)

12 [09.19.24]

13 The Judges of the Bench discussed the proceedings and we decide  
14 that the appeal proceedings will proceed despite the absence of  
15 the International Counsel for the Accused Nuon Chea. And the  
16 decision will be made later regarding his absence. And I would  
17 like now to give the floor to Nuon Chea to make his statement.  
18 And the time allocation to you is not more than 10 minutes. And  
19 you may proceed.

20 Security personnel, please escort the Accused into the dock.

21 (The accused is taken to the dock)

22 [09.21.28]

23 MR. SON ARUN:

24 Mr. President, I'd like to seek your permission that the  
25 statement to be read by my client Nuon Chea may take longer than

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1 the allotted time as this is a combined statement, also covering  
2 the aspects of the International Counsel for his defence. And it  
3 may run into 20 minutes. And we seek your permission for that.

4 (Short pause)

5 [09.22.50]

6 MR. PRESIDENT:

7 The Chamber would like to inform the Defence Counsel for Nuon  
8 Chea, as well as Nuon Chea himself, that the statement to be read  
9 by the Accused is just part of the introduction of the appeal  
10 proceeding. And as indicated by the National Defence Counsel for  
11 Nuon Chea, he will participate in the proceedings of this appeal  
12 hearing. For that reason, please try to make the statement as  
13 short as possible per allotted time.

14 [09.23.37]

15 MR. NUON CHEA:

16 My respect to my beloved fellow Cambodians and to all those  
17 genuinely committed to truth and justice. I am Nuon Chea and I  
18 was the former deputy secretary of the Communist Party of  
19 Kampuchea. Eight years and two months ago, I was arrested and  
20 brought before this tribunal. I have been engaged in proceedings  
21 here ever since. I thought that this process, if done right,  
22 could allow Cambodia as an innocent, justice-loving nation to  
23 come together and meaningfully discuss what happened during the  
24 Democratic Kampuchea period. It could be our chance -- our only  
25 chance to learn the truth from me and from all those who lived

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1 through the period, before we die and take our memories and  
2 experiences to the grave forever. I have long recognized that  
3 some of my fellow Cambodians suffered during the Democratic  
4 Kampuchea period. As I have said repeatedly, I am remorseful for  
5 their suffering and I accept moral responsibility for it.

6 [09.24.05]

7 I have engaged with this tribunal because I believed that I have  
8 a responsibility to the Cambodian people to have them learn the  
9 truth about what really happened in Democratic Kampuchea to  
10 explain to them as the surviving leader of the Communist Party of  
11 Kampuchea, the reasons our Party undertook certain actions and  
12 what the results were. And I believe that this is what most  
13 Cambodians want from this Trial as well. However, from day one,  
14 it was my strong impression that this tribunal was not at all  
15 interested in exploring the truth. Instead, it seems to operate  
16 as though its mission was simply to endorse the instructions of a  
17 handful of officials in power and tell a tale approved by the  
18 government before the tribunal was established. And I was right.  
19 In August 2014, after seven years of proceedings and hundreds of  
20 millions of dollars, the Trial Chamber issued its first trial  
21 Judgment against me and sentenced me to life imprisonment in Case  
22 002/01. The Judgment was a shameful failure. It didn't simply  
23 fail to deliver truth and justice; it actually managed to take us  
24 even further away from the truth and to make a mockery out of  
25 justice altogether just in order to prosecute me.

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1 [09.25.46]

2 My lawyers in fact tell me that an academic report was recently  
3 released which says the same thing. Despite my lawyer's efforts  
4 to encourage a more realistic understanding of events, the Trial  
5 Judgment was extremely oversimplifying and inaccurate. For  
6 instance, the Trial Chamber Judges said the Communist Party of  
7 Kampuchea had a strict hierarchy. They suggested that Pol Pot and  
8 I controlled every single Khmer Rouge cadre from the lowest foot  
9 soldier to the highest members of the Party's Standing and  
10 Central Committees.

11 [09.26.30]

12 They ignored evidence that the Parties was in fact divided  
13 internally and that some Zones acted autonomously. They ignored  
14 evidence that some Standing and Central committee members, like  
15 So Phim and Ros Nhim, had created an opposing faction within the  
16 Party that tried to overthrow the legitimate government of  
17 Democratic Kampuchea in a coup organized and instructed by  
18 Vietnam. They ignored evidence that all of these events related  
19 to Vietnam's longstanding ambition to invade, expand, swallow up  
20 Cambodia and eliminate the Khmer people and integrate Cambodia  
21 into an Indo-Chinese federation with Vietnam at the head. My  
22 lawyer's attempts to present this evidence were met with  
23 scepticism, hostility, and anger. Their microphones were cut off.  
24 The Judges demonstrated extreme bias against me in the courtroom  
25 and in their Judgment, ignoring key submissions and evidence put

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1 forward by my lawyers. Hiding from the truth as the Trial Chamber  
2 Judges did in their Judgment serves no one but the Vietnamese. It  
3 does nothing to deliver justice and improve understanding. It  
4 simply threatens to reduce this whole tribunal to one useless  
5 waste of time and effort.

6 [09.28.24]

7 As disappointing as the Trial Judges and Investigating Judges had  
8 been, my lawyers and I still thought that there could be a  
9 chance, however small, that things might be different before you  
10 Supreme Court Chamber Judges. Accordingly, in consultation with  
11 me in December last year, my lawyers submitted to you a 270-page  
12 brief in English. It reflected that very poor quality of the  
13 Trial Judgment by appealing it on no less than 223 grounds. Some  
14 of those grounds relate to gross violations of my right to a fair  
15 trial by both the Trial and Investigating Judges. I want to take  
16 this opportunity to highlight the most serious violations of them  
17 all, the Trial Chamber's refusal to call Heng Samrin as my  
18 witness. Heng Samrin was by far the most important witness for  
19 the first trial. My lawyers requested him as a witness many times  
20 throughout the trial.

21 [09.30.01]

22 As a regiment commander and deputy commander of one of the  
23 divisions which led the evacuation of Phnom Penh, he is the most  
24 important person still alive to have participated in the  
25 evacuation. Since he was one of So Phim's right-hand men in the

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1 East Zone military, he could have testified extensively about how  
2 the evacuation was to be carried out. I am sure he would have  
3 agreed with me that no unnecessary harm was to be inflicted upon  
4 the people of Phnom Penh and other cities. He could have  
5 confirmed my position that there were never any orders to kill  
6 Lon Nol soldiers and officials, or to kill innocent people during  
7 the evacuation. He could also have testified about his plans to  
8 overthrow the government of Democratic Kampuchea in a coup by  
9 Vietnam, because he was a senior member of that faction and  
10 attended secret meetings in Prey Veng town led by So Phim to plan  
11 the coup. Indeed, when Vietnam cruelly invaded Cambodia, Heng  
12 Samrin was the person they installed as the new leader of their  
13 puppet government. But not only was Heng Samrin my most important  
14 witness; Heng Samrin was also my only character witness. I have  
15 known Heng Samrin well for over 60 years. He knows me very well.  
16 He used to be my messenger, and he came with me to meetings with  
17 So Phim. So Phim was like a relative to me. I was very close to  
18 So Phim. His defection to Vietnam was devastating to me. Heng  
19 Samrin could have testified in detail about many things that  
20 happened in Democratic Kampuchea and about my character.

21 [09.32.19]

22 My lawyers told me that they don't know of any Court in the  
23 world that would ever refuse to hear a character witness. Despite  
24 all of these reasons, every single Cambodian Judge in the Trial  
25 Chamber refused to call Heng Samrin as a witness, just like all

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1 the Cambodian Judges and prosecutors before them. They said that  
2 trying to summons Heng Samrin, who is the President of the  
3 National Assembly, could lead to many problems and they weren't  
4 prepared to take this risk. They admitted that these problems  
5 would undermine the Trial Chamber's position.

6 In doing so, the National Judges admitted that this tribunal is  
7 powerless. It is disrespected and it is simply acting under the  
8 pressure of the government. And International Judges are no  
9 better. For although they agreed that Heng Samrin should have  
10 been called, they refused to consider what the effect of his  
11 evidence would have been on their Judgment. Why are the  
12 International Judges even here then?

13 [09.33.49]

14 Because of the decision not to call Heng Samrin and because of  
15 the poor quality of the Judgment, I discussed with my lawyers to  
16 seek the disqualification of the Trial Chamber from the second  
17 trial against me. My lawyers argued that it was clear that the  
18 Judges were biased and could not bring an open mind to the second  
19 trial against me. Of course, this motion was dismissed although  
20 one International Judge said he would have agreed with us. We  
21 were forced to press ahead in the second trial with the same  
22 Judges and the same unfair procedures in place. It has now been  
23 nearly a year since we started hearings in the second trial, and  
24 it has proved to be at least as frustrating, biased, and unfair  
25 as the first trial, maybe even more so. The situation has in fact



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1   become so bad that three months ago, my lawyers walked out of  
2   proceedings in response to the latest injustice. As I explained,  
3   my lawyers could no longer take what was happening in this  
4   courtroom. The injustice that day was one of many and too much  
5   for them to bear, especially knowing that there would be more and  
6   more injustices coming in the future.

7   [09.35.40]

8   And while my lawyers have done their best to press on and  
9   continue with the trial, every day, they face more injustices. At  
10   the same time as participating in the second trial, my lawyers  
11   have also been very active with the Supreme Court Chamber. In  
12   consultation with me, they have filed many requests to admit new  
13   evidence when this new evidence has come to light. This new  
14   evidence, more than ever before, provides insight into the head  
15   and tail of the crocodile and not just the crocodile's body. The  
16   evidence confirms that Vietnam attempted a coup d'état during the  
17   Democratic Kampuchea period. According to the film makers, Thet  
18   Sambath and Robert Lemkin, already in May 1975, So Phim and Ros  
19   Nhim held a meeting in Phnom Penh. With some other Zone leaders,  
20   they agreed to try to destabilize and overthrow the government of  
21   Democratic Kampuchea. Their plans included assassination attempts  
22   against Pol Pot; stocks of weapons, uniforms, food and other  
23   supplies were gathered; meetings were held; false propaganda was  
24   spread; many people were starving because of their plans; two  
25   coup attempts took place in 1976, namely an explosion in Siem

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1 Reap in February and an attack outside the Royal Palace in April.  
2 According to the evidence, these plans were part of a much  
3 grander scheme of Vietnam which began in 1977, and involved  
4 several zones around the country, which would crash our  
5 government militarily.

6 [09.37.54]

7 The new evidence now clearly tells us that if this rebellion  
8 would not succeed, Vietnam would invade Cambodia directly. And as  
9 we all know, that is what they finally did using over a hundred  
10 thousand soldiers and some tanks.

11 In the beginning, my lawyers and I were encouraged by the Supreme  
12 Court Chamber response to the evidence request. It seemed as if  
13 it was the first time at this tribunal that Judges, including  
14 Cambodian Judges, were willing to come to this Case with an open  
15 mind to engage in a real discussion about the issues. My lawyers  
16 were particularly encouraged by the Chamber's agreement to open  
17 an investigation into evidence that was collected by the film  
18 makers, Thet Sambath and Rob Lemkin. They were also further  
19 encouraged when the Chamber scheduled testimony of three  
20 witnesses we had asked to testify on appeal. In light of all of  
21 these developments, my lawyers had been preparing for, and  
22 carefully and patiently awaiting these appeal hearings.

23 [09.39.33]

24 Their disappointment was immense therefore when the Chamber  
25 announced that not one of the witnesses we requested would be

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1 called to testify on appeal. None. Not Heng Samrin, not Rob  
2 Lemkin, not Thet Sambath. My lawyers had thought that the Chamber  
3 would at least call Heng Samrin, that what he has to say is  
4 obviously incredibly important. But they were wrong. In the end,  
5 you decided in the same way as all the Judges before you. How  
6 disappointing. That Supreme Court Chamber decision also dismissed  
7 all our new evidence and offered no reasons at all, making it  
8 impossible to understand. Your Honours, because of your decision,  
9 the outcome of the appeal is now irrelevant to me. It has become  
10 clear to me that the Supreme Court Chamber is just as biased,  
11 unwilling, and as afraid as those that have come before you to  
12 really explore what the truth was.

13 [09.41.03]

14 You refused to give me even just the chance to tell the Cambodian  
15 people my side of the story. Your decision has confirmed that my  
16 assessment of this tribunal has always been right, as the Court  
17 would serve only those who it belongs to. It is nothing but a  
18 meaningless effort designed just to convict me. Accordingly,  
19 following a discussion with me, my international lawyer, Victor  
20 Koppe, is not participating in these hearings. I will also leave  
21 these proceedings once I have finished making my comments. And I  
22 would also like to instruct my national lawyer, Mr. Son Arun, not  
23 to participate in these proceedings any further, and not to  
24 respond to any kind of questions by the Judges or the other  
25 Parties. We choose instead to rest on the arguments made in my

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1 appeal brief. However, I have stopped short of withdrawing my  
2 appeal altogether in honour of the responsibility I continue to  
3 feel to help the Cambodians understand the truth of what really  
4 happened in the Democratic Kampuchea period. I urge you Judges to  
5 have courage to consider your commitment to truth and justice  
6 when writing your judgment. The Cambodian nation, which has clear  
7 and delight (sic) knowledge, is waiting for you to deliver truth  
8 and justice in your judgment. Cambodia will never have this  
9 opportunity again. Thank you.

10 [09.44.48]

11 MR. PRESIDENT:

12 After hearing the statement of the Accused, you are not intended  
13 to be here in the courtroom; is that correct? And now the matter  
14 is about the co-counsel -- the National Co-Counsel for Mr. Nuon  
15 Chea; are you willing to participate in the courtroom?

16 MR. SON ARUN:

17 Mr. President, as stated in the statement of the Accused, my  
18 client instructs me not to participate in the appeal hearing  
19 today.

20 MR. PRESIDENT:

21 So, it means that you will not be participating in the appeal  
22 hearing. But from what I heard from the Accused, he stated that  
23 you will be here but not respond to any question or any comments.

24 [09.46.00]

25 MR. SON ARUN:

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1 In the statement of Mr. Nuon Chea, he instructs me to leave the  
2 courtroom after the break. He instructs Son Arun, the Defence  
3 Counsel, not to respond any question or comments, and also not to  
4 participate in the appeal hearing after the break. I think it is  
5 clear enough from the statement of the Accused.

6 JUDGE KLONOWIECKA-MILART:

7 Counsel, this is -- this Chamber's considered opinion that it is  
8 not for the Accused to decide whether you stay or not in the  
9 courtroom. It is only the Chamber that can dismiss you upon such  
10 an application. Meanwhile, it is obligatory that the Accused have  
11 a counsel and as such, the counsel needs to stay in the  
12 courtroom. As to the presence of the Accused, we may discuss  
13 whether we consider it obligatory or not.

14 You may want to consult Internal Rule 22.4, Article 301 of the  
15 Cambodian Code of Criminal Procedure, and Article 7 of the  
16 Administrative Regulation of the DSS that are binding upon you.  
17 Thank you.

18 I think it will serve this appellate hearing if the Parties  
19 kindly follow the order of the proceedings as announced by Mr.  
20 President, which commences with the report of the rapporteurs on  
21 the part that we will be discussing today, following which the  
22 Parties are invited to furnish any comments they may wish to  
23 make.

24 [09.48.37]

25 MR. PRESIDENT:

20

1 I would like to clarify the matter with you, Counsel. A while  
2 ago, the Accused stated that he will not be present in the  
3 courtroom. And as clearly stated by Judge Milart, the counsel is  
4 required to be in the courtroom in accordance with Article 301 of  
5 the Cambodian Criminal Code of Procedure. I understand that there  
6 is an instruction from your client, but you are obliged to be  
7 here in the courtroom in accordance with Article 301 of Cambodian  
8 Criminal Court -- Procedural Code. So now, I want to make it  
9 clear with you, you will be here in the courtroom or you will  
10 leave the courtroom as well?

11 [09.49.42]

12 MR. SON ARUN:

13 Thank you, Mr. President. I would like to inform Your Honours  
14 that we are professional -- I am a professional lawyer. I must  
15 respect all existing laws. And let me make it clear that I duly  
16 respect this Chamber; however, I am required to listen to the  
17 instruction of my client. If not, my client will dismiss me.  
18 Therefore, I shall and must listen to the instruction of my  
19 client. Thank you.

20 MR. KONG SAM ONN:

21 Mr. President, allow me to make a comment here.

22 MR. PRESIDENT:

23 Please, all be seated. This means that you will recuse -- you  
24 will excuse and you will leave the courtroom. So it is a matter  
25 for you to decide. As Judge Milart and I informed you already,

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1 you are obliged to present in the courtroom in a felony case. So  
2 it is a matter of the decision by the Supreme Court Chamber in  
3 this Case. So now, once again, I will give you another chance to  
4 clarify the matter.

5 [09.51.43]

6 MR. SON ARUN:

7 In accordance with Article 28 of the Statute, we will rely on our  
8 conscience and we will also need to listen to the instruction of  
9 client, for the interest of the client.

10 JUDGE MILART:

11 Counsel, this is on behalf of the Chamber, I am warning you that  
12 if you leave the courtroom, you will be in contempt of Court, and  
13 we will be drawing consequences of it. This Chamber does not  
14 allow you to leave. I also want to inform you that this is  
15 crystal clear for this Chamber that this appears like a tactics  
16 aimed at obstructing the proceedings, has been used in other  
17 international tribunals unsuccessfully. And we have citations  
18 from cases where international criminal tribunals did not allow  
19 such a walkout, even upon instruction from the client. This is  
20 our final position on this matter. I suggest the hearing  
21 continues.

22 [09.53.13]

23 MR. SON ARUN:

24 Judge Milart, I heard you mentioned about the instruction of the  
25 Chamber. But I must comply with the statute of the Bar

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1 Association of the Kingdom of Cambodia, Article 58: Lawyers will  
2 have to rely on our conscience and will have to comply with the  
3 instruction of one's client. So I will need time to consult with  
4 my client because I am representing my client. I understand -- I  
5 respect the Chamber; however, I have to listen and respect my  
6 client as well. And it is very clear from the statute of the Bar  
7 Association of the Kingdom of Cambodia. Lawyers need to receive  
8 agreement of the client whom the lawyer is representing. So I  
9 humbly request Your Honours to consider the statutes of the Bar  
10 Association of the Kingdom of Cambodia. And it is my obligation  
11 to comply with that statute as well. Thank you, Your Honours.

12 MR. PRESIDENT:

13 You have the floor now, International Co-Prosecutor.

14 [09.55.07]

15 MR. KOUMJIAN:

16 Your Honour, we would like to be heard on the issue of Nuon Chea  
17 attending these proceedings. These proceedings, as everyone  
18 knows, are extremely serious, dealing with some of the most  
19 serious crimes imaginable. He's been here not because of an  
20 invitation to something like a cocktail party that you can  
21 decline to attend. He's here because he's facing extremely  
22 serious charges that involves suffering and victims from around  
23 Cambodia. It's also not his role in these proceedings to decide  
24 how they would be run; that, of course, is up to Your Honours.  
25 Counsel also cannot take instructions to do things that are



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1 against the rules of the Court. Under the way Counsel is  
2 interpreting his Bar Association rules, a lawyer would have to  
3 follow the instructions of his client to insult witnesses or  
4 Judges to disclose confidential information that could endanger  
5 witnesses because it's his client's instructions. That of course  
6 is not the law anywhere. Counsels are here to vigorously defend  
7 their clients as they've done throughout the trial and the  
8 appeal, but they're not here to obstruct the proceedings. We urge  
9 you to require Nuon Chea to be here for the majority of these  
10 proceedings, absent a medical reason for him not to be present.  
11 And thank you for listening to our submissions.

12 [09.56.23]

13 MR. PRESIDENT:

14 You have the floor now, Kong Sam Onn.

15 MR. KONG SAM ONN:

16 Thank you very much, Mr. President. Good morning, Your Honours,  
17 everyone in and around the courtroom. Let me voice my  
18 intervention on the matter which have just arise out of this in  
19 the course of proceeding.

20 I have listened attentively to Judge Milart and I -- from  
21 understanding, it is a threat to the profession of a lawyer. Mr.  
22 Son Arun made it clear already in his position that he receives  
23 an instruction from his client to walk out or leave the  
24 courtroom, and he is also instructed not to respond to any  
25 question or comments before the Chamber. So it is clear and

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1 sufficient that the lawyer can make a decision to walk out and  
2 leave the courtroom. And if the Court consider that the walkout  
3 is a contempt of the Court, I believe it is a threat by the  
4 Chamber here. Lawyers enjoy freedom of profession.

5 [09.57.55]

6 Mr. President mentioned Article 301 of the Cambodian Criminal  
7 Procedural Code. I understand that we need to comply with that  
8 article. However, it is not an absolute article that we lawyers  
9 need to comply with. And the Chamber can find another lawyer to  
10 represent a client if it thinks of it. So we have to consider  
11 every point -- every point here, so the defence counsels here are  
12 selected and -- are selected by the clients. They are not  
13 appointed by the Chamber, and specifically the Supreme Court  
14 Chamber. And I understand that the lawyers are appointed by the  
15 Court. Sometimes, have to respect with the instruction of the  
16 courtroom. But here, it is a different case. We are representing  
17 the client. We need to follow the instruction of the client. This  
18 matter arise before the Trial Chamber a few months ago, so it's  
19 the same case here. Thank you very much.

20 (Short pause)

21 [10.00.11]

22 MR. PRESIDENT:

23 You have the floor now, International Lead Co-Lawyer. I will  
24 first give the floor to International Lead Co-Lawyer the Accused  
25 (sic).

1 MS. GUIRAUD:

2 Thank you, Mr. President; and good morning to all of you. We have  
3 a simple, short observation linked to Nuon Chea's presence in  
4 this courtroom. Nuon Chea has been summoned and we explained  
5 several times how important the physical presence of the Accused  
6 is important. Rule 81 of the Internal Rules obliges the Accused  
7 to be present. So two things: either Nuon Chea can file a  
8 submission to leave for medical reasons or -- and he can leave  
9 the courtroom, or he does not file such instructions to be absent  
10 for specific medical reasons. And therefore, his presence in the  
11 courtroom is required and compulsory in view of the Internal  
12 Rules of this tribunal.

13 [10.02.14]

14 MR. PRESIDENT:

15 You have the floor now, Mr. Accused.

16 MR. SON ARUN:

17 Mr. President, my client is unwell and he requests to take a  
18 rest. He signalled to the Bench to seek your permission to rest  
19 as he can no longer sit in the courtroom due to his poor health.

20 MR. PRESIDENT:

21 The Bench has discussed the problem before us. The Internal Rules  
22 and the Cambodian law specifies the absolute presence of the  
23 Accused during the hearing except in the case of poor health, for  
24 instance. If there is a medical report informing the Chamber that  
25 he can no longer be present in the courtroom due to health

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1 condition, then he may be granted to follow the proceedings from  
2 the holding cell downstairs. And indeed, we do have a copy of the  
3 medical report dated 17 November 2015, which specifies that he  
4 has severe backache, and that he cannot sit in the courtroom. And  
5 based on this medical report, the Accused is granted to follow  
6 the proceedings from the holding cell downstairs.

7 And security personnel, you are instructed to take the Accused  
8 Nuon Chea to the room downstairs.

9 And the AV Unit is instructed to link the proceedings to the room  
10 downstairs, so that the Accused can follow it.

11 And I noted the National Co-Prosecutor on her feet. You may  
12 proceed.

13 [10.04.30]

14 MS. CHEA LEANG:

15 Good morning, Mr. President, Your Honours; and good morning  
16 everyone in and around the courtroom. It is my understanding that  
17 before the Chamber (sic) is granted to follow the proceedings  
18 from the room downstairs, I have two questions that I would like  
19 to put to the Chamber. However, the Chamber has already made its  
20 decision to allow him to follow the proceedings from the room  
21 downstairs. I'd like to clarify on the waiver of his right to  
22 participate in the hearing. And second, in relation to his appeal  
23 hearing, he already made his statement, but I want to know for  
24 certain whether he still maintain his appeal against the  
25 Judgment. And of course, the International Lead Co-Lawyer for

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1 civil parties rightly said so that it is important to have the  
2 presence of the Accused during the hearing against him. And I  
3 urge that the Chamber has to make clear on this issue, although  
4 you decide already to have the Accused follow the proceedings  
5 remotely.

6 I'd like to give the floor to Judge Milart.

7 [10.05.55]

8 JUDGE MILART:

9 In this Chamber's opinion, the Accused stated very clearly that  
10 he stopped short of withdrawing the appeal, meaning he did not  
11 withdraw an appeal, although certain representations had the  
12 effect of declaring his passive attitude during the appellate  
13 proceedings. Meanwhile as you noticed, we already ruled that he  
14 can go follow the proceedings from downstairs upon the medical  
15 report, which we have no grounds to question. Now I am told by  
16 the President that we should move on.

17 [10.06.46]

18 MR. PRESIDENT:

19 Allow me to add to this matter. Regarding the National Counsel  
20 for the Defence, the Bench deliberated the issue and in our view  
21 that the National Defence Counsel needs to follow the  
22 instructions of his client, and he is expressly clear that he is  
23 banned or prohibited per instructions of the client to respond or  
24 to make any statement during this appeal hearing. Despite all  
25 that, the National Defence Counsel must be present in the

1 courtroom during the appeal hearing. And it is your right whether  
2 you wish to respond or to make any statement or otherwise.  
3 National Defence Counsel, you may be seated. Do you wish to make  
4 any other points, Defence Counsel? In fact, the Chamber has ruled  
5 that you must be present in the courtroom. And whether you wish  
6 to exercise your right to respond to any issues raised during the  
7 appeal proceeding or you wish to respect the instructions of your  
8 client, however, your presence is required in the courtroom. And  
9 I'd like to invite the co-rapporteurs to read the report for the  
10 sessions on the grounds of appeal relating to fairness of  
11 proceedings and constitutionality of the Internal Rules.

12 [10.09.15]

13 JUDGE MONG MONYCHARIYA:

14 Thank you, Mr. President. And on behalf of the co-rapporteurs and  
15 myself and Judge Nihal Jayasinghe, I'd like to read the  
16 co-rapporteurs' report in relation to the grounds of appeal  
17 relating to fairness of proceedings and constitutionality of the  
18 Internal Rules.

19 Nuon Chea and Khieu Samphan submit that in the course of the  
20 proceedings before the Trial Chamber, there were various  
21 violations of their rights to a fair trial. Their arguments fall  
22 into four broad categories. First, they submit that their right  
23 to an independent tribunal was violated. They submit that the  
24 Trial Chamber was deeply biased against them and incapable of  
25 impartially assessing the evidence. The lack of independence and

1 impartiality was, in their submission, evidenced by the facts  
2 that the Trial Chamber did not call certain witnesses. The  
3 defence for Nuon Chea had requested to appear, notably Heng  
4 Samrin.

5 [10.09.55]

6 Reference is also made to statements of Judge Cartwright, who was  
7 one of the Judges of the Trial Chamber at a conference which, in  
8 the submissions of the Defence, disclosed bias, as well as  
9 alleged general shortcomings of the Cambodian judiciary.

10 Second, Nuon Chea and Khieu Samphan raised a number of arguments  
11 alleging that their rights to an effective defence has been  
12 violated. In that regard, they submit, inter alia, that the Trial  
13 Chamber did not give sufficient time to the Defence, did not give  
14 an opportunity to fully question certain witnesses, and failed to  
15 call key Defence witnesses, notably Heng Samrin, Ouk Bunchhoeun  
16 and Robert Lemkin. The appellants also challenged the procedure  
17 regarding the admission of documentary evidence and certain  
18 procedural orders of the Trial Chamber.

19 [10.12.16]

20 Third, Nuon Chea and Khieu Samphan argue that the Trial Chamber  
21 failed to provide proper and comprehensive reasons for key  
22 decisions taken in the course of the proceedings. It is also  
23 argued that the Trial Chamber itself is insufficiently reasoned  
24 as it failed to address key Defence arguments raised before the  
25 Trial Chamber.

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1 Fourth, Nuon Chea and Khieu Samphan raised several arguments that  
2 relate to their right to be informed of the charges against them.  
3 Some of these arguments also challenged the scope of the Trial in  
4 Case 002/01 as the appellants argue that:

5 1) Throughout the proceedings, it was not clear which charges  
6 were actually encompassed by the Trial;

7 2) The Trial Chamber relied on facts that were actually  
8 outside the scope of the Trial. And the Trial Chamber erred when  
9 relying on those facts.

10 [10.12.30]

11 In addition, Nuon Chea submits that the ECCC's Internal Rules are  
12 unconstitutional and illegal. He submits that under the  
13 applicable law, the Judges of the ECCC did not have the power to  
14 adopt Internal Rules, and that this amounted to a breach of the  
15 Cambodian constitution. He underlines further that in accordance  
16 with the ECCC agreement, there can only be recourse to procedural  
17 rules established at the international level if there is a lacuna  
18 in Cambodian law. In other words, if there is an uncertainty  
19 about the interpretation of the applicable law or a question  
20 about its compatibility with international standards, he notes  
21 that many of the Internal Rules provide for fewer rights for the  
22 Defence than the Cambodian Code of Criminal Procedure.

23 This is a summary of the co-rapporteurs' report. Thank you.

24 [10.14.51]

25 MR. PRESIDENT:



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1 Thank you. And in accordance with the timetable, it would be now  
2 the time given to the Parties. And first, I would like to give  
3 the floor to the defence for Nuon Chea.

4 MR. SON ARUN:

5 My name is Son Arun. I am a defence counsel for Nuon Chea. My  
6 oral submission today has already been included in the statement  
7 read out by my client. For that reason, I do not have any further  
8 to add or to respond to any question by other Parties.

9 [10.15.49]

10 MR. PRESIDENT:

11 Please be reminded that this appeal hearing is the last chance  
12 for you to make your oral response in relation to your appeal  
13 against the Judgment in Case 002/01. And you just confirmed that  
14 your statement or your response or oral submission is already  
15 encompassed in your client's statement. But be clear that this  
16 first session is in relation to your appeal on the issues of the  
17 constitutionality of the Internal Rules. And if you decide not to  
18 make any oral submission, the Court shall proceed with its own  
19 timetable. And based on your confirmation, you may be seated.  
20 And we will take a 20-minute break from now. And when we return,  
21 the floor will be given to another party.

22 (Court recesses from 1016H to 1046H)

23 MR. PRESIDENT:

24 Please be seated. The Court is back in session.

25 Mr. Greffier, please report attendance of Parties.

1 THE GREFFIER:

2 Mr. President, all parties are present except the co-counsel for  
3 Mr. Nuon Chea, the International and National co-counsels are  
4 absent; and as for the Accused Nuon Chea, he waived his right to  
5 be directly present in the Court hearing as stated in document  
6 dated 17 November 2015, with his signature.

7 Thank you, Mr. President.

8 [10.48.35]

9 MR. PRESIDENT:

10 Greffier, please make mention again about the Accused's presence.

11 THE GREFFIER:

12 Mr. President, I would like to read the letter of Mr. Nuon Chea  
13 to Judges of the Supreme Court Chamber regarding the waiver of  
14 his presence in the courtroom. "Because I have back pain and I  
15 cannot sit for long and in order to effectively participate in  
16 the courtroom effectively, I would like to follow the proceeding  
17 in the holding cell downstairs on 17 November 2015. I have been  
18 informed by my counsel about the consequences of this waiver that  
19 it cannot in any account be construed as a waiver of his rights  
20 to be tried fairly or to challenge evidence presented to or  
21 admitted by this Court at any time during the trial.

22 Respectively, the Accused, Nuon Chea."

23 [10.50.02]

24 MR. PRESIDENT:

25 So the Accused Nuon Chea has waived his rights to be directly

1 present in the courtroom because of his health issue.  
2 Security personnel, please ensure that Nuon Chea is within the  
3 holding cell downstairs.  
4 Regarding the presence of counsel for the Accused Nuon Chea, the  
5 International and National counsels for the Accused are not  
6 present in the courtroom although the Chamber decides and  
7 instructs the lawyers to be here. So now, I would like to hear  
8 comments or observations from Parties regarding the absence of  
9 the defence team for Mr. Nuon Chea. You have the floor now if you  
10 want to make any comments. You have the floor, International  
11 Co-Prosecutor.  
12 [10.51.18]  
13 MR. KOUMJIAN:  
14 Thank you, Mr. President.  
15 Your Honours, we believe that the proceedings this morning made  
16 it clear that Nuon Chea does not want his counsel to present any  
17 arguments or actively participate in these hearings. Clearly  
18 also, Your Honours, ordered counsel to be present and they defied  
19 that order and I think Your Honours can deal with counsels what I  
20 believe is misconduct or obstruction. But we believe that the  
21 proceedings at this point go forward. It's not for Nuon Chea to  
22 dictate the schedule of hearings or whether the case against him,  
23 the appealed against him, can proceed. He of course has a right  
24 not to make submissions at the hearing just as during the trial.  
25 Nuon Chea had every right to testify and try to explain his side

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1 of the story to the Cambodian people. He chose not to testify and  
2 undergo cross-examination. He remains with the right to testify  
3 in Case 002/02. But it's not for him here to decide or -- excuse  
4 me -- it is his right here to decide if he wants that his lawyers  
5 will remain silent. We think we should proceed as scheduled.  
6 Khieu Samphan -- Mr. Khieu Samphan's team can make their  
7 submission and the co-prosecutors will respond to all of the  
8 allegations regarding the fairness of the trial by both Khieu  
9 Samphan and Nuon Chea.

10 [10.53.10]

11 MR. PRESIDENT:

12 What about the defence team for Mr. Khieu Samphan, do you wish to  
13 make any comments?

14 MR. KONG SAM ONN:

15 Thank you, Mr. President. We have no further comments.

16 (Judges deliberate)

17 [10.53.52]

18 MR. PRESIDENT:

19 And I would like to know whether International or National Lead  
20 Co-Lawyers would like to make comment regarding the absence of  
21 counsel for Mr. Nuon Chea.

22 MS. GUIRAUD:

23 Thank you, Mr. President. What we consider important is the  
24 presence of the Accused. The Accused is not physically present in  
25 the courtroom but he is present because he is in the holding cell

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1 downstairs so we are of the view that the trial can continue, the  
2 proceedings can continue in the absence of Nuon Chea's counsel  
3 insofar as the Accused is physically present in the premises of  
4 the ECCC.

5 [10.55.05]

6 MR. PRESIDENT:

7 You have the floor now, International Co-Prosecutor.

8 MR. KOUMJIAN:

9 I just want to try to express myself again; I think I spoke too  
10 quickly last time. To make it clear, we believe Your Honours have  
11 given Nuon Chea every opportunity and he continues to have every  
12 opportunity to present oral arguments at this hearing. He has  
13 chosen apparently not to do so. That is a waiver and the Court  
14 can proceed. He's been given the right, he's been given the  
15 opportunity, he chose not to exercise that, that doesn't bring  
16 the proceedings to a halt, the proceedings should continue.

17 MR. PRESIDENT:

18 Now the counsel for Mr. Nuon Chea is not here in the courtroom,  
19 the Chamber would like to take some time to deliberate on the  
20 matter.

21 The Court is now in recess.

22 (Court recesses from 1056H to 1135H)

23 MR. PRESIDENT:

24 Please be seated.

25 The Supreme Court Chamber will need more time to consider about

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1 the participation of the defence team for Mr. Nuon Chea and due  
2 to the health issue of the Accused, SCC will adjourn its hearing  
3 now and it will resume its hearing in the afternoon at 1.30 p.m.  
4 Security personnel are instructed to bring the two Accused back  
5 to the waiting room and please return them at 1.30 p.m. in the  
6 afternoon.

7 The Court is now in recess.

8 (Court recesses from 1137H to 1406H)

9 MR. PRESIDENT:

10 Please be seated.

11 The Supreme Court Chamber will now announce its ruling on the  
12 further conduct of the proceeding in the light of the events this  
13 morning.

14 This morning, the greffier of the Chamber noted that Mr. Victor  
15 Koppe, International Co-Counsel for Nuon Chea was not present in  
16 the courtroom. National Counsel for Nuon Chea, Mr. Son Arun, as  
17 well as Nuon Chea himself indicated that Nuon Chea wished to  
18 address the Chamber directly, including to explain Mr. Koppe's  
19 absence. Nuon Chea was granted leave to address the Chamber in  
20 person. In the course of his address he stated the following: He  
21 was dissatisfied with the conduct of the proceedings, including  
22 the decision of the Supreme Court Chamber not to call additional  
23 witnesses. He does not withdraw his appeal. He had instructed Mr.  
24 Koppe not to be present this morning. He wanted to leave the  
25 courtroom following his address and he also instructed Mr. Son

1 Arun to do the same.

2 [14.08.50]

3 Following Nuon Chea's address, the Supreme Court Chamber ruled  
4 that it is not for the Accused to decide whether or not to be  
5 present in the courtroom. He has not only the right to be present  
6 but also the obligation to be present subject to the leave of the  
7 Chamber.

8 Mr. Son Arun is required to be present in the courtroom even if  
9 he does not wish to make submissions on the case and if he  
10 chooses to absent himself, he will be held in contempt.

11 The Chamber subsequently granted Nuon Chea's request to follow  
12 the hearing from the holding cell based on a medical certificate  
13 presented by Nuon Chea. The Chamber then read out the  
14 co-rapporteurs report on the first section of the hearing and  
15 adjourned the hearing for a break of 20 minutes. Upon resumption  
16 of the hearing, the Chamber noted that neither National nor  
17 International Co-Counsel for Nuon Chea was present in the  
18 courtroom despite the Chamber reminding National Counsel of his  
19 obligation to remain in attendance.

20 [14.10.27]

21 The Chamber gave the Parties present in the courtroom an  
22 opportunity to make submissions as to how to proceed. The  
23 International Co-Prosecutor submitted that Nuon Chea clearly had  
24 waived his right to be represented by counsel and that the  
25 hearing should therefore continue as scheduled. Counsel for Khieu

1 Samphan did not make any further submissions. The International  
2 Civil Party Lead Co-Lawyer submitted that the most important  
3 matter was the presence of the Accused who was following the  
4 proceedings from the holding cell.

5 Following deliberations, the Chamber has decided as follows:

6 Article 301 of the Cambodian Code of Criminal Procedure provides  
7 that in cases involving a felony, the assistance of counsel is  
8 mandatory. Moreover Internal Rule 81.7 in the relevant part reads  
9 as follows: "Where no lawyer of the accused is present without  
10 justification during the hearing, the Chamber may either adjourn  
11 the hearing or if the accused requests assistance of a lawyer,  
12 request the Defence Support Section to temporarily assign him or  
13 her a lawyer from the list mentioned at Rule 11."

14 [14.12.02]

15 In the view of the Supreme Court Chamber, these provisions  
16 indicate that the presence of the counsel is mandatory at any  
17 stage of the proceedings. The appeal hearings are the last  
18 opportunity for an appellant to present his or her submissions.  
19 In the present case they are scheduled over a period of three  
20 days and they will touch upon complex matters of facts and law.  
21 Unforeseen issues may arise upon which the interest of the  
22 Accused person may require making submissions and having the  
23 counsel present is essential for the interest of justice.  
24 Therefore, this requirement cannot be waived by the Accused  
25 person.



1 The Chamber considers that the conduct of International and  
2 National Counsel for Nuon Chea may well constitute misconduct  
3 that could give rise to disciplinary sanctions. It will take its  
4 decision in this regard in due course.

5 As concerns the further conduct of the appeal hearings in these  
6 circumstances, in light of the applicable legal framework and in  
7 order to ensure the proper representation of the Accused person  
8 during the appeal hearings, the Supreme Court Chamber decides to  
9 adjourn the appeal hearing and instruct the Defence Support  
10 Section to appoint standby counsel for Nuon Chea and to report to  
11 the Chamber on the appointment as soon as possible.

12 A new scheduling order will be issued in due course.

13 The Court is now adjourned.

14 (Court adjourns at 1414H)

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