

Right	Legal Instruments Applicable to the ECCC	Issues at the ECCC – Case 002/01	For KRT Monitor Information
<p>Right to be Present: The right of the Accused to be tried in their own presence and to defend themselves in person or with the assistance of counsels of their own choosing</p>	<p>Article 35 of ECCC law (d) and Internal Rules IR 81 (1). See also Art. 14.3 (d) of the International Covenant on Civil and Political Rights</p>	<p>The effective participation of the Accused during Case 002/01 was a recurring issue, particularly given the relatively small number of days that Accused Nuon Chea and Ieng Sary were physically present in the courtroom during the proceedings.</p> <p>The Ieng Sary defense team emphasized the importance of the physical presence of an Accused in the courtroom, adding that limiting the ability of the Accused to confront important witnesses and experts only via audio-video link was inconsistent with the Accused’s right to be present in court.</p> <p>The Chamber’s effort to both accommodate the health requirements of the Accused while ensuring their participation in trial included providing facilities in the holding cell and allowed the Accused, when their health status deemed it necessary so they could observe the proceedings through video link from the cell. This measure was subject to criticism by the Defense.</p>	<p>Issue 14, Issue 32, Issue 49, Issue 38, Issue 36, Issue 67, Issue 65, Issue 52, Issue 23.</p>
<p>Fitness to Stand Trial: A number of separate hearings were conducted on the fitness to stand trial in reference to</p>	<p>ECCC IR 32 and IR 89ter. Cambodian Constitution (1993), Art. 31. [3] ECCC Internal Rules (IR), Rule</p>	<p>The Accused of Case 002 initially were Mrs. Ieng Thirith (81), Mr. Ieng Sary (87), Mr. Nuon Chea (86) and Mr. Khieu Samphan (82), raising serious concerns for their fitness to stand</p>	<p>AIJI special report in November and December 2012, Issue 2, Issue 4,</p>

health and age of the accused of Case 002.	81. [4] IR 81 (5),	<p>trial given age and health. Ieng Thirith was the first Accused who was found unfit to stand trial due to her mental condition.</p> <p>Ieng Sary was found fit to stand trial based on expert geriatrician's findings. The issue of Ieng Sary's effective participation in the proceedings was discussed as the Accused's health deteriorated, but was as yet unresolved when he passed away on 14 March 2013.</p>	Issue 42, Issue 43, 44, 45, and 50, Issue 49 and 51.
<p>Right to a Reasoned Judgment: The Supreme Court Chamber defined the Right to Reasoned Judgment stating, "A court's decision must display indicia of an authoritative judicial act. In this respect, it is necessary for a judicial decision to dispose of a legal matter before it in a definite manner." The Chamber further specified that the right to receive a reasoned decision "form part of the right to be heard."</p>	ECCC IR 66 , International Covenant on Civil and Political Rights Article 14 (3),	<p>The Trial Chamber often failed to provide reasoned judgments, rather opting for case-by-case rulings. This was evident when the Trial Chamber failed to definitively rule on whether parties might ask Witnesses to comment on statements made by future potential witnesses.</p> <p>Defense Teams maintained that no witnesses, including Expert Witnesses Philip Short and Elizabeth Becker, should be called until the Trial Chamber issues a full and reasoned decision on the scope of the trial.</p> <p>In the face of the continued lack of a reasoned judgment from the Trial Chamber, International Counsel for Khieu Samphan, Arthur Vercken objected to the continuation of proceedings in the absence of the written decision on the severance of Case 002/01 from the Trial Chamber.</p>	Issue 24, Issue 36, Issue 53, Issue 56.
Right to Remain Silent: The right of the Accused to refuse to comment or answer when	ECCC IR 1 (d) , International Covenant on Civil and Political	Khieu Samphan clarified that he was not prepared to answer questions regarding the historical background of the Khmer Rouge	Issue 5, Issue 6, Issue 7, Issue 8, Issue 9, Issue

questioned	Rights Article 14 (3), Rome Statue of the International Criminal Court Article 55	<p>regime. Despite initially saying he would testify at the conclusion of the hearing once all evidence had been presented, KS informed the Court that he had decided to exercise his right to remain silent, citing violations of his right to a fair trial.</p> <p>Throughout the course of Case 002/01, Nuon Chea responded to a range of questions posed by the Civil Parties and the Trial Chamber Judges, but ultimately decided on 17 July 2013 that given his lack of confidence in the Court's ability to respect fair trial principles, he would no longer respond to question from Civil Parties and OCP.</p> <p>Given the Accused's fluctuation between responding to questions and claiming their right to silence, the OCP asked the Chamber to draw adverse inferences (or inferences drawn from silence) against the Accused. This was strongly contested by the defense teams, who argued that to do so would render the right meaningless and requested the Chamber to consider the issue as part of its final deliberation.</p>	11, Issue 12, Issue 13, Issue 15, Issue 19, Issue 39, Issue 44, Issue 60, Issue 67, Issue 68
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