

# KRT TRIAL MONITOR

Case 002 ■ Issue No. 40 ■ Hearing on Evidence Week 35 ■ 18-19 October 2012



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

*[Y]ou amended rules governing these hearings,  
we were not prepared for that... we are not in a trial,  
we are in a process in which the rights of the Accused are not respected.*

- Mr. Arthur Vercken, International Counsel  
for Khieu Samphan, to President Nil Nonn

## I. OVERVIEW

Returning from the break for the Pchum Ben Festival, the Trial Chamber held scheduled document hearings on Thursday and Friday. The Prosecution continued their presentation of documents from the previous week, and was followed by the Civil Parties. Although only the Nuon Chea Defense elected to present documents, all Defense Teams participated in the proceedings through vigorous objections and submissions, mostly relating to the parameters and purpose of the document hearing.

With the document hearing ending sooner than anticipated, the Chamber called Civil Party Yim Sovann to the stand on Friday afternoon. She testified on her experience of the years leading to and during the DK, particularly focusing on her family's evacuation from Phnom Penh in 1975 and from Kandal Province in 1976.

## II. Yim Sovann's Testimony

Civil Party, Yim Sovann, offered the first testimony on evacuation in Case 002/1/3 on Friday.<sup>1</sup> She testified mainly on her family's evacuation from Phnom Penh to Kandal Province and, later on, to Pursat Province. Yim Sovann was also examined on her knowledge of executions and the condition of the populace during the DK.

### A. Background of Civil Party

Yim Sovann was born in 1960 at Preah Traeng Village in S'ang District, Kandal Province. She fled to Phnom Penh with her family in 1972 because of the fighting between Khmer Rouge and Lon Nol soldiers in her home village. Yim Sovann led a difficult life in Phnom Penh, where she could not afford to attend school.

## **B. Evacuation from Phnom Penh**

According to Yim Sovann, when Khmer Rouge soldiers arrived in Phnom Penh on 17 April 1975, there was no fighting because Lon Nol soldiers had already surrendered. Nevertheless, Yim Sovann maintained that Khmer Rouge soldiers “violated” Lon Nol soldiers and the people by beating them with rifles. At approximately three o’clock in the afternoon on that same day, individuals dressed in black uniforms and red scarves, who referred to themselves as “comrade brothers,” arrived at her house with rifles, and demanded that she and her family, who they accused of being enemies and Lon Nol soldiers, evacuate their home. Though her father initially protested, the soldiers explained how upper Angkar had ordered them to leave, and that, if they stayed, the Americans would drop a bomb on Phnom Penh. The Civil Party was told that she would only be required to leave for three days to avoid the bombardment, and was given 15 minutes to pack. Yim Sovann also described how soldiers would “enforce the measure,” or shoot to death, residents who refused to leave.<sup>2</sup> Ultimately, Yim Sovann concluded: “we had no choice as we received a serial threat so we had to prepare and pack our things and leave.”

According to Yim Sovann, the Khmer Rouge soldiers abused and neglected those in the hospital or in need of special care. She recounted how Khmer Rouge soldiers pushed the wounded soldiers to the ground and left the others to die in the Borei Keila hospital, which according to Yim Sovann, belonged to the Lon Non army. Overall, she said that the Khmer Rouge soldiers did not provide care for the sick or the elderly:

The sick and the elderly people were not treated by any Khmer Rouge at all during the 17 April 1975, so they had to leave on their own. Anyone who can leave, it's okay for them to leave. If you could not, you had to enjoy the fate as you were.

The Civil Party’s journey from Phnom Penh to Steung Kampong Tuol (phonetic) was chaotic and traumatizing. She witnessed corpses of soldiers and fellow evacuees strewn along the roadside, people flooded the streets, families were separated, and sometimes there were even stampedes where people died. In general, conditions were very difficult along the journey as there was “no money, no food, no water along the road.” Yim Sovann stayed at Steung Kampong Tuol for about a week before journeying on to Pouthi Ban Village, Kaoh Thum District, Kandal Province. It took around one month for Yim Sovann to reach the Village.

## **C. Treatment of “17 April People” at Pouthi Ban Village**

Yim Sovann described in detail the tension and hostility between the “17 April people” and the “base people” upon their arrival at Commune Five at Pouthi Ban Village in May 1975.<sup>3</sup> She stayed at Commune Five for around six months. Though the base people were her uncle’s friends, they still caused trouble for Yim Sovann and her family:

They tried to ask for our clothing and any valuables they wanted. They disliked us. They searched us for anything of value and they expressed hatred against us. They made us work without providing any tools and they blamed us for being 17 April people – for being bad people... I tried to work until I fell sick and when I fell sick, they forced me to lie down in the sun and insulted me by saying I was having a kind of ideological fever; not a real fever.

At Pouthi Ban, Yim Sovann and her family were instructed to prepare their biographies and were immediately put to work in the fields. Unlike the base people, who had stored rice for

themselves, the 17 April people had to scrounge for their food. When asked why 17 April people were treated differently, Yim Sovann replied:

As far as I could understand, 17 April were considered enemies of the Khmer Rouge. Base people were the people of the Revolution and the 17 April people were considered as enemies, feudalists, capitalists. I didn't understand then why we were treated in this manner. We were not capitalists or feudalists. We were also poor people in Cambodia.

Yim Sovann recalled attending several self-criticism meetings, where she was criticized “at all times for being lazy in doing the labor work.” She added that the base people would mainly criticize the “17 April people” during these meetings.

### **1. Torture and Death at Security Center 15 and Kaoh Kor**

Yim Sovann affirmed the written record of her OCIJ interview where she described people with their hands tied behind their backs being transported to Security Center 15. In her OCIJ statement, Yim Sovann explained that people accused of being “enemy elements” were taken to the Security Center, where they had “no hope for survival” and “always disappeared.” In her testimony before the Court, the Civil Party also stated that from her hut, which was located by the river, she could see people from another village with their hands tied behind their backs being transported by boat to the Security Centre.<sup>4</sup> While she frequently walked past Security Centre 15 en route to the crop fields, Yim Sovann never witnessed any executions.

The Civil Party also confirmed the existence of Kaoh Kor, an island approximately 30 kilometers from her village in S'ang district. She later learned from others that Kaoh Kor was, in fact, an execution site.

### **D. Evacuation to Pursat Province**

In early 1976, Yim Sovann and her family were evicted from Pouthi Ban Village. They did not wish to leave Pouthi Ban, but were told that if they stayed, they would be staying in Security Office 15. Yim Sovann's female unit leader informed her that this was in fact, the “second wave of evacuations” from Pouthi Ban. Only 17 April people, who were considered enemies, were forced to transfer from the village.

The Civil Party elaborated on her difficult journey from Pouthi Ban to the Kbal Chheu Puk cooperative in Commune 9 at Pursat Province. Because money had been outlawed on 17 April 1975, her family could not purchase any provisions. They drank water from the pond and only received three kilograms of rice and one loaf of bread as sustenance for their journey. Though some other families had hidden food for themselves, Yim Sovann's family was “bare-handed.” In fact, Yim Sovann's mother could not care for her younger brother because she “did not have enough breast milk to feed him because she was skinny and too exhausted at that time.” Upon arrival, she and her family members were assigned to live in small huts and eventually separated into different work units.

### **1. Death of Civil Party's Family Members at Kbal Chheu Puk**

Yim Sovann recounted details of her father's death in late 1978. Accused of being an enemy, her father was forcibly tied up and sent to Security Office 7 in Banteay Yuon.<sup>5</sup> Though she did not witness the execution herself, her sister's friend confirmed to Yim Sovann that her father had indeed been executed. Upon hearing this news, Yim Sovann

immediately “burst into tears,” but the villagers told her not to cry because if she cried, she too would be accused of being a traitor.

Yim Sovann also recounted the death of her younger sister, who was in the children’s unit attached to Security Office 7. At the time, the children working in Office 7 were only given two ladles of gruel to eat. Her sister was accused of being an enemy and was taken away after she was caught picking unripe rice from the field. Yim Sovann added that a man, who she identified as her former teacher, threatened to kill her sister if her mother did not give him her ring. After Yim Sovann’s mother refused to give the former teacher her ring, her sister was taken to Security Office 7. Her sister was later transferred to Security Office 8 and was never seen again.<sup>6</sup>

## **2. Tuol Po Chrey Execution Site**

Yim Sovann recounted that she heard Lon Nol soldiers were executed in April 1975 at Tuol Po Chrey, Pursat Province.<sup>7</sup> Yim Sovann said:

I heard from the villagers that this was the place that they killed the Lon Nol soldiers... any soldier of the former regime needed to work for the new regime and those victims followed their instructions and they were loaded into a truck and sent into that area for execution. The killing was happening during April 1975. It took about half a month as I heard from the villagers there.

While she did not know the exact number of Lon Nol soldiers who were executed there, Yim Sovann recalled that she used to walk past the location when she went to collect thatch for roofs in late 1976 and early 1977. She also recalled the villagers’ description of a “truckload of people,” including civil servants from the former regime, being sent there for execution.

## **III. LEGAL AND PROCEDURAL ISSUES**

This week, the Parties continued presenting documentary evidence that they intend to use in the course of the third segment of Case 002/1. After the Prosecution concluded its presentation of documentary evidence, the Civil Parties presented additional evidence regarding the military and communications structures of the CPK and the DK.<sup>8</sup> Only the Nuon Chea Defense Team opted to present documents. Nonetheless, all defense teams raised various objections and sought clarifications on what types of documents can be read in Court and the purpose of the document hearing.

### **A. Documents Presented by Office of the Co-Prosecutors and Defense Objections**

In the previous week, the Prosecution began presenting documents meant to show the structure, communication, and operation of the DK government, as well as ground-level implementation of CPK policies. On Thursday morning, international Prosecutor Vincent de Wilde d’Estmael presented documents from the Ministry of Commerce, Ministry of Social Affairs, and Ministry of Propaganda. The documents described their composition, work, and relationship with the rest of the DK government.

Specifically, he resumed his presentation of 28 Ministry of Commerce reports addressed to Brother Hem, or the Accused, Mr. Khieu Samphan. These various documents included references to shipment of military equipment and import of rice,<sup>9</sup> as well as the identification, detention, and elimination of “enemies from within” the Ministry.<sup>10</sup> De Wilde d’Estmael then turned to documents relating to the Ministry of Social Affairs, including minutes of meetings that talked about diseases, which Pol Pol alleged were carried by evacuated Phnom Penh

residents to the countryside, and the distinction between peasants and revolutionaries. Other meeting summaries described criticism sessions led by the CPK and information about actions of the Vietnamese enemy that required counter-attack.<sup>11</sup> De Wilde d'Estmael concluded by presenting minutes of an 11 January 1976 meeting at the Ministry of Propaganda, where attendees, including Pol Pot, Ieng Sary, Khieu Samphan, and Minister of Propaganda Hu Nim, discussed the content and production of radio broadcasts.

National Prosecutor Song Chorvoin then presented documents describing the regime communication structures for relaying instructions and decisions both between zones and the Center, and between a zone and its districts. These documents concerned the use of radio and telegrams during wartime to discuss activities of "internal enemies." The OCP highlighted minutes of Standing Committee meetings that showed attendance of the Accused Nuon Chea, Ieng Sary, and/or Khieu Samphan, as well as Party Secretary Pol Pot.<sup>12</sup> Additionally, Song Chorvoin utilized issues of *Revolutionary Flag* to demonstrate the upper echelon's ability to "make propaganda to educate the popular masses." She then went over documents containing orders from the Standing Committee and Office 870 that required proper relay of instructions.<sup>13</sup> She closed by referring to a number of telegrams between either Office 870 or the CPK Central Committee and the New North Zone, as they sought to resolve internal and external military threats.<sup>14</sup>

International Prosecutor Keith Raynor concluded the OCP presentation by providing documents related to communications structures within each zone, explaining how orders or information passed from sector to zone and on to upper command levels. He began by describing communications related to the Northeast and East Zones, specifically using telegrams confirming a "stance to have an internal cleanup and struggle against the Yuon (referring to the Vietnamese) day and night."<sup>15</sup> Raynor continually referred to telegrams reporting information to "the Party Center," until Mr. Arthur Vercken, international Defense Counsel for Khieu Samphan, raised an objection, stating that, "for some time now," Raynor had been "talking about the Center of the Party," when this term "does not figure into any of the documents." In response, Raynor admitted Vercken's point was valid and offered not to use such phrasing.

The Prosecutor then continued with communications from the Southwest, West, and Northwest Zones to Angkar, with one specifically listing investigations and confessions of enemies within cadre-level forces.<sup>16</sup> The documents tended to show that communication between zones had to pass through Pol Pot, "the organization," or Office 870.<sup>17</sup> Raynor then presented documents of sectors reporting incidents to the zones, and the zones thereafter sending the information further up the reporting chain.<sup>18</sup> The Prosecutor also showed reports from cooperatives to the district level.

## **B. Documents Presented by the Civil Parties and Defense Objections**

Aside from presenting documents they intend to use in the third segment of Case 002/1, the Civil Parties had to address procedural issues related to giving timely notice to Parties regarding the content of their document list.

### **1. Providing Sufficient Notice to Parties**

The scheduled documentary presentation by the Civil Parties was preceded by a submission by national defense counsel for Ieng Sary, Mr. Ang Udom, regarding their document list. He informed the Trial Chamber that the 11 October list of documents included statements from witnesses whom Accused Ieng Sary never had the opportunity to confront; for this reason, he requested that international CPLCL Elizabeth Simonneau-Fort not be allowed to present ten related documents.<sup>19</sup> Simonneau-Fort responded that they have a more recent, shorter list of



13 documents, which included only Civil Parties applications and interviews and none of which were related to the acts of Ieng Sary. She further stated that there were two documents that could “eventually pose a problem” for the Chamber; however, even though in her view these documents did not refer to the conduct of Ieng Sary, she was willing to exclude them if the Chamber wished.

At this point, international counsel for Nuon Chea, Mr. Andrew Ianuzzi, asked for clarification on the value attributed to statements by the Civil Parties, if any. Simonneau-Fort expressed surprise at these comments, saying:

I am shocked that at this stage in the proceedings we are still questioning the probative value of Civil Party testimonies... I must say that I find what counsel has said so unpleasant and lacking in respect. To hear counsel say that they do not have any probative value, we are going to call a number of Civil Parties to give testimony and the probative value of those testimonies will be assessed by the Chamber in due course.

Ianuzzi replied that he did not intend his request to come across as disrespectful and that he merely wanted to know the probative value the Chamber attached to statements of the Civil Parties and the Accused alike. (See III.C.1.) The Judges did not address his request for clarification and returned to the matter raised by Ang Udom concerning the CPLCL list of documents.

After explaining that the most recent Civil Parties list was sent only a few minutes before the debate that day, Ang Udom challenged two Civil Party interview records on the ground that Ieng Sary could not respond to them. Simonneau-Fort opposed this challenge and suggested that the Court should not waste further time, stating that Ang Udom should simply object when a problematic document was presented. After two separate deliberations, Judge Jean-Marc Lavergne reminded the Civil Party Lawyers that they must provide all Parties with sufficient notice, and he stated that the Trial Chamber would only refer to the original list of 15 documents from 11 October, although it would remove two written records of witness interviews that the CPLCL withdrew. Simonneau-Fort then clarified that “[t]hese 13 documents are, in fact, the same documents of the 15-document list minus two documents that we have withdrawn.”

## **2. Presentation of Documents by Civil Parties**

Following the afternoon break, the Civil Parties began their presentation of documents. National CPLCL, Pich Ang, presented a number of video clips from two documentaries, *Enemies of the People* and *Survive: In the Heart of the Khmer Rouge Madness*, which respectively showed interviews with Nuon Chea and Khieu Samphan as they described their interactions and rapports with Pol Pot.<sup>20</sup> Pich Ang clarified that Nuon Chea and Pol Pot sought to work together and in close consultation “for efficiency’s sake.” Ianuzzi objected to Pich Ang’s characterization of the clips and Pich Ang thus offered not to draw any further characterizations or conclusions on the subsequent video clips. In the remaining clips, Nuon Chea referred to his discussions with Pol Pot about undisciplined cadres within the CPK and the need “to smash the nature, not the person.” Pich Ang also presented a clip where Nuon Chea stated his belief that Pol Pot was not a killer:

He is not a killer. A killer is someone who murders innocent people without any reason... Pol Pot was not a killer. He killed, sorted out those who betrayed the nation and the people, those who sold the land to foreigner.

Following this clip, Vercken objected and asked for the link between the video interviews and communication structures in the DK. The counsel, however, was overruled after Pich Ang explained that the clips showed the “information structure” between Nuon Chea and Pol Pot.

Pich Ang then turned to video interviews with Khieu Samphan from the second documentary film. In the first clip, Khieu Samphan said that he did not know of Pol Pot’s high rank when they met the first time. Vercken objected to this clip, asking the Chamber to “put an end” to the use of these clips which held “absolutely no relevance to administrative structures or communication structures.” Pich Ang explained that Khieu Samphan had left the meeting with a new idea of what “path to take,” and the clips showed “information sharing” within the Central Committee. The Trial Chamber permitted the CPLCL to continue. In the next clip, Khieu Samphan stated he was happy to learn of the victory in Phnom Penh on 17 April 1975, but “was surprised and later learned that the order had been given from the leaders” to evacuate the city.

When Pich Ang presented a thesis by Khieu Samphan that related to cooperatives,<sup>21</sup> Vercken asserted these were presently irrelevant statements better suited for closing arguments. Pich Ang explained that the Central Committee mandated cooperative activity and the Trial Chamber supported his continued line of presentation. However, following further objection from national counsel for Khieu Samphan, Mr. Kong Sam Onn, the Court reminded Parties to focus on relevant communications for now. The national CPLCL closed his presentation by reading a large portion of the CPK Statute regarding party organization in the districts, sectors, zones, and at the upper level.

At this point, Simonneau-Fort began her presentation, explaining that, in 2006 and 2007, journalists took statements from Nuon Chea and Khieu Samphan that expressed their “vision of the central structure and, their role within that central structure.” Among these included notes during interviews with Khieu Samphan that explained his position in the Central Committee. Vercken objected to the use of interviewer notes alone, which may be inaccurate without supportive audio recording. When the Trial Chamber overruled the objection on the ground that the evidence had already been admitted, Ianuzzi asked for clarification. The President explained that the Defense had the right to object to documents presented by other parties, but must wait until their presentations were completed. The CPLCL continued to read from the same document, citing sections related to Nuon Chea, in which the Accused explained his position in educating and correcting comrades who were “not good.” The CPLCL also used the Civil Party application of the wife of Ouk Ket, the Ambassador to Senegal who returned to DK after 1975. Simonneau-Fort then referenced Ouk Ket’s name and number among other Cambodian expatriates killed at Tuol Sleng between April 1975 and January 1979.

### **C. Submissions and Presentation of Document by the Nuon Chea Defense**

The Nuon Chea Defense Team’s document list was narrowed down by the Chamber, giving rise to clarificatory questions and expressions of dissatisfaction from Nuon Chea’s counsel. The Defense also requested the Chamber to give some guidance on what value will be placed on comments that the Accused might make relative to the documents presented.

#### **1. Documents by the Nuon Chea Defense**

Immediately before Ianuzzi began his presentation of documents, President Nil Nonn informed him that the Chamber will not allow Ianuzzi to present two documents which were produced by Philip Short and Stephen Heder because they would later be summoned as expert witnesses. Ianuzzi asked why he was informed of this at the last minute, when he was previously told that he could submit any relevant documents, pointing out that the

documents he intended to present had long been in the case file and all had an “E number.” Ianuzzi said:

Such conditions were never placed on these documents. We were told we could present any document we felt was relevant to this stage of the proceedings. So, to be told now, at 11 a.m., two minutes before I'm about to begin my presentation, which, I might add, centered on those very two documents you just mentioned, I find that remarkable—remarkable, to say the least. And I'll leave it at that.

Judge Lavergne clarified that Ianuzzi will have the opportunity to present documents relating to Philip Short during the appearance of the expert witness “presumably at the start of next year,” and that there would be another chance to consider admission of Stephen Heder’s material should the Court decide not to summon him.

Ianuzzi then said that his single remaining document is an interview by Ben Kiernan with Chea Sim, current President of the National Assembly of Cambodia, and Heng Samrin, current Chairman of the National Assembly of Cambodia. As Ben Kiernan might also testify before the Chamber, Ianuzzi asked if “that document cannot be discussed unless and until Ben Kiernan appears for testimony” as well. Judge Lavergne replied that the Chamber only referred to the documents by Short and Heder. Thus Ianuzzi read out portions from Heng Samrin’s interview, who explained his involvement in the liberation of Phnom Penh and in receiving the plan for implementation of new internal and external policies. Ianuzzi then stated that he had intended to emphasize that there was mid- and lower-level autonomy in implementation, to which Raynor objected, saying that the counsel was seeking to present the content of the documents already ruled to be currently inadmissible. Ianuzzi confirmed this, saying,

I am certainly glad that he articulated at least what I was trying to do, what I had hoped to do during this document hearing... It certainly seems to us that many of our witnesses have been rejected. We haven't received any reasoned ruling on that issue... I told your Chamber a week ago that I intended to use those documents and again you didn't tell me until today that I wouldn't be allowed... I know this Chamber would prefer to have a trial by script... That's just not how things work, issues come up -

The President cut Ianuzzi off, informing him that the allotted time was only for document presentation. At this point, Ianuzzi informed the Chamber that he had recently learned that the Prosecution had used a document by Stephen Heder on 10 October. Prosecutor Raynor clarified that the Prosecution placed two summaries of the *Revolutionary Flag* prepared either by Stephen Heder or Professor Ben Kiernan. The Prosecutor noted that there is an “obvious difference” between a record of interview taken by Stephen Heder and a document summarized by Stephen Heder. Ianuzzi, although acknowledging that he understood Raynor’s point, maintained that Parties “would have all done well to have been notified in advance of the parameters” of the hearing.

## **2. Weight of Comments by Accused on Documents**

Prior to presentation of documents by the Prosecution on Thursday, Ianuzzi sought clarification on how much weight the Chamber would attach to any comments Nuon Chea might make on the evidence presented during the document hearings. Ianuzzi recalled that, on 9 October 2012, Judge Cartwright said: “Instructions from an accused cannot be given much weight unless the accused chooses not to exercise his right to remain silent and



makes himself available for questioning.” Thus, Ianuzzi asked whether that rule also applies to comments on documents by the Accused. Judge Lavergne clarified this issue as follows:

The Chamber points out that the specifications that have been provided by Judge Cartwright on behalf of all the Judges of the Chamber remain valid. The Chamber recalls, by the way, that the probative value of comments made by an accused person, as is the case with all evidence presented during this trial, will be assessed in light of the Internal Rules. When the Chamber will hand down its verdict, the judgment that will be rendered in that regard will be reasoned.

Right after Ianuzzi presented his documents on Friday, however, Ianuzzi informed the Chamber: “[B]ased on what has transpired, he (Nuon Chea) will not be taking you up on your offer to comment on documents.”

#### **D. Submissions by the Ieng Sary Defense**

When prompted by the President, Ang Udom informed the Chamber that the Ieng Sary Defense had no documents to present nor specific comments on the documents presented. The counsel, however, noted the need for the Chamber to clarify what kinds of documents are allowed to be read in Court. Ang Udom said that on 10 October, the Prosecution read out a portion of Stephen Heder’s interview with Ieng Sary and he was unsure if he could object as it had an ‘E3’ classification. Ang Udom then asked why certain documents were allowed to be read, but not others, pointing out that Simonneau-Fort was able to read documents without ‘E3’ classification in court. President Nil Nonn tried to clarify the issues raised as follows:

[T]he document in relation to the application to join as a civil party, the Chamber has admitted, and was subject to adversarial hearing... And we have classified certain documents with the E3 classification... the annexes to those documents may be used in certain cases, particularly the document relating to the application to join as the Civil Parties.

The President continued that there are documents “relating to the experts, and the other relating to the documents that Parties are supposed to put before the Chamber.” He then stated, “Parties are allowed to put this document at appropriate time in the proceeding. That is meant to facilitate the flow of the hearing.”

#### **E. Submissions by the Khieu Samphan Defense**

When given the floor to present documents, Vercken criticized the Chamber for vague rulings and untimely notification of its amended rulings to the Parties on the purpose of the document hearings.

The problem, as far as Mr. Khieu Samphan's defense is concerned, is that for the past two days, we have been expelled from the proceedings. In fact, Mr. President, what we have before us over the past two days has been a press conference, and that is why the defense for Khieu Samphan refuses to participate in this press conference.

He went on to explain his unwillingness to participate: “We are not in a trial, we are in a process in which rights of the accused are not respected, so we do not intend to participate.” Vercken explained he was initially informed that they “would not be allowed to react,” and

that they “would not have to discuss the admissibility of documents or their probative value.” However, Vercken continued, the Chamber then changed the rulings: “[Y]ou amended rules governing these hearings, we were not prepared for that, and so we were not expecting to be asked to react to documents presented by the Parties.” Agreeing with the observation of Vercken, Ianuzzi said the “use of the word ‘press conference’ is quite accurate. It was simply to show document, without comment, without debate.” Ianuzzi then concluded:

For you, Mr. President, to tell us this morning, again at a very late hour, that all of a sudden it's an adversarial hearing, I find it remarkable - remarkable. You are a remarkable Presiding Judge - truly.

In response, Raynor and Pich Ang joined in defining the purpose of document hearings as the time to put admissible relevant documents before the Chamber. Vercken responded that Ms. Susan Lamb, Trial Chamber Senior Legal Officer, had previously announced that the “documents presentation hearing neither had to do with the submission of documents nor the discussion of the probative value of those documents... The purpose of this hearing was to enable the Cambodian public to better understand the documents used before the Chamber.” President Nil Nonn reaffirmed that Parties may “make observation on certain documents presented... The Parties were not supposed to assess the probative value or weight of the evidence because this is not at the closing stage of the proceedings.”

#### **IV. TRIAL MANAGEMENT**

This week, the Trial Chamber faced considerable challenges due to legal and procedural issues raised during the document hearing. The Chamber strove to keep proceedings expeditious by insisting that Parties keep their comments relevant and as short and specific as possible, so that the Chamber could efficiently decide on matters raised. The Chamber also denied Son Arun’s request on Thursday to make remarks about Samdech Norodom Sihanouk, the King Father who passed away on 16 October 2012, with the President indicating that it was not the appropriate time to do so. Additionally, the Chamber had the foresight of having a Civil Party, Yim Sovann, available and ready to testify when the document hearing finished early on Friday.

##### **A. Attendance**

Ieng Sary remained hospitalized at the Khmer-Soviet Friendship Hospital throughout the week; hearings were conducted in his absence pursuant to a limited waiver of the right to be present issued by the Accused.<sup>22</sup> Nuon Chea maintained his usual request to retire to the holding cell for remote participation in the afternoon sessions due to frail health, while Khieu Samphan stayed involved in the courtroom for all sessions of the week.

**Civil Party Attendance:** On each day of the week, there were around 10 Civil Parties, including parties of Cham ethnicity, who observed the proceedings in the courtroom.

**Parties Attendance:** All Parties were represented during the week; however, international counsel for Ieng Sary, Mr. Michael Karnavas, was absent this week. International counsel for Nuon Chea, Mr. Son Arun, was also absent from the courtroom on Friday afternoon.

### **Attendance by the Public:**

DATE	MORNING	AFTERNOON
Thursday 18/10/12	▪ Approximately 230 participants, including ethnic Cham, from Baray District and Tampang Chhouk District in Kampong Thom Province	▪ Ethnic Cham participants from the morning session left, leaving around 100 attendees and 7 foreigners
Friday 19/10/12	▪ Around 140 attendees from Kampot and Takeo Provinces, including monks and clergywomen	▪ About 100 people from Kampong Cham Province

### **B. Time Management**

After suspending proceedings beginning Thursday of the previous week for the Pchum Ben Festival, the Trial Chamber resumed proceedings this Thursday and held hearings until Friday. Despite the persistent objections and heated arguments, the document hearing finished earlier than anticipated because, with the exception of a single document presented by the Nuon Chea Defense, the Defense Teams presented no documents. This prompted the Trial Chamber to proceed with hearing the testimony of a Civil Party, Yim Sovann, on Friday afternoon. The Parties concluded their examination of Yim Sovann. However, due to time constraints, the Trial Chamber deferred her expression of harm and claim for reparation to next Monday, 22 October.

### **C. Courtroom Etiquette**

Intense exchanges ruffled composure in the courtroom, with Parties showing dissatisfaction through strongly worded speech. On one occasion, Vercken, seconded by Ianuzzi, dubbed the document hearing as “a press conference.” (See III.E.) In response, Pich Ang expressed that such allegations are “not appropriate.” Raynor added that the “hearing is putting evidence before the court, not a press conference... I feel sad that defense counsel feels the need to showboat and preen feathers.”

Moreover, the discord between the Bench and Ianuzzi continued this week, with the President cutting off Ianuzzi’s microphone on several occasions. For his part, Ianuzzi steadfastly tried to give his submissions, even when his microphone had been turned off or stood for quite awhile waiting to be recognized even when the President refused to give him the floor. President Nil Nonn also repeatedly advised Ianuzzi to specify the subject matters the counsel wished to bring to the Court’s attention before allowing him permission to continue “to avoid any statement from [Ianuzzi] that may insult the proceedings or criticize the President...” On Friday, Ianuzzi called the President “a remarkable judge” (see III.E), in a way that Judge Lavergne described as “disrespectful and discourteous... entirely insulting.” This led to a warning under IR 38 for professional misconduct. At one point, Ianuzzi, tried to soothe the tension between him and the Chamber by saying: “I do not intend to insult the proceedings. I apologize if it is now presumed that everything I say is insulting.”

### **D. Translation and Technical Issues**

A minor audio-visual transmission difficulty occurred when Pich Ang presented clips of Nuon Chea’s interviews. In addition, the translator was not able to keep up with Simonneau-Fort during her document presentation, prompting the translator to ask the Chamber to advise the CPLCL to repeat and slow down. These issues were, however, resolved without much delay.

## E. Time Table

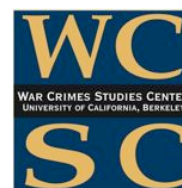
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Thursday 18/10/12	9:01	10:41-11:01	12:05-13:35	14:40-15:11	16:06	4 hours and 44 minutes
Friday 19/10/12	9:05	10:25-10:54	12:00-13:44	14:38-15:00	16:26	4 hours and 46 minutes
Average number of hours in session				4 hours 45 minutes		
Total number of hours this week				9 hours 30 minutes		
Total number of hours, days, weeks at trial				523 hours 49 minutes		
119 TRIAL DAYS OVER 36 WEEKS						

### Unless specified otherwise,

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

### Glossary of Terms

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



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

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<sup>1</sup> Yim Sovann was first examined by Civil Party Lawyer Sam Sokon, followed by International Civil Party Lead Co-Lawyer Ms. Elisabeth Simonneau-Fort. Civil Party was then questioned by Prosecutor Keith Raynor. None of the defense lawyers posed any questions to the Civil Party.

<sup>2</sup> Yim Sovann actually witnessed this "measure" by Orussey Market, where soldiers shot the lock off a door and then proceeded to shoot the residents who were hiding inside.

<sup>3</sup> Pouthi Ban Village is located in Kaoh Thum District in Kandal Province. Yim Sovann worked in a female unit in Pouthi Ban until she was evacuated again in November 1975.

<sup>4</sup> The Civil Party could only recall seeing the transport of individuals by boat once. She estimated that there were about five or six people in the boat and explained that she knew those people were accused of being enemies because "that's why their hands were tied to their backs."

<sup>5</sup> Spelled phonetically.

<sup>6</sup> According to the Civil Party, those at Security Center 7 were placed under close surveillance but were still allowed to work. Sometimes they were arrested for reeducation and, if they improved, they were released. However, people who did not improve or committed some other offense were sent to Security Center 8, where treatment was miserable and prisoners were "handcuffed, shackled, and severely tortured." The Civil Party also recalled witnessing an incident right before the liberation by the Vietnamese when individuals from Svay Rieng Province, with their hands tied behind their backs, marched to Security Center 8, where they were ultimately executed.

<sup>7</sup> On 8 October 2012, the Trial Chamber issued a memorandum approving the inclusion of the killings of Lon Nol soldiers at Toul Po Chrey immediately after the evacuation of Phnom Penh within the scope of trial in Case 002/01. See Trial Chamber. "Notification of Decision on Co-Prosecutor's Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163) and deadline for submission of applicable law portion of Closing Briefs," (8 Oct. 2012). E163/5. Paragraph 3.

<sup>8</sup> Prosecutors Dale Lysak and Seng Bunkheang initiated the OCP presentation of documents last Wednesday, 10 October 2012. Lysak outlined the presentation; Seng Bunkheang spoke about documents related to the Standing Committee and the Central Committee. Lysak returned to focus on communication and implementation of Standing and Central Committee policies. At the end of 10 October, Vincent de Wilde d'Estmael began his part of the presentation, related to the formation and composition of the DK government and its ministries. On Thursday, 18 October, de Wilde d'Estmael continued with this line of presentation. National Prosecutor Song Chorvoin provided further documentary evidence, and Prosecutor Keith Raynor followed and concluded the OCP presentation. National CPLCL Pich Ang then began presenting documents for the Civil Parties and was subsequently followed by International CPLCL Elisabeth Simonneau-Fort.

<sup>9</sup> The prosecutor referred to documents D366/7.1.351, dated 7 January 1978; D366/7.1.487, dated 7 March 1977; and IS 18.68, dated 4 November 1978.

<sup>10</sup> Regarding the elimination of internal enemies, the Prosecutor referred to documents E3/1159, E3/522, E3/808, and E3/153.

<sup>11</sup> In regards the Ministry of Social Affairs, the Prosecutor referred to E3/226 and E3/808.

<sup>12</sup> Ms. Song Chorvoin referred to three records of Standing Committee meetings in documents E3/182; E3/232; E3/216. She also referenced a "speech by Mr. Khieu Samphan during Anniversary of 16 April 1977," in document E3/200.

<sup>13</sup> The issue of *Revolutionary Flag* referenced was dated Feb/March 1976 (E3/166). The Prosecutor also referred to a decision by the Standing Committee dated 30 March 1976 (E3/12), and an instruction by Office 870 (E3/160).

<sup>14</sup> In reference to this subject, Ms. Song Chorvoin referred to documents E3/727; E3/1150; E3/241; E3/1091; E3/1144; E3/1073; E3/801.

<sup>15</sup> This quote comes from a telegram from Vi, Northeast Zone Secretary, to "respected Brother," document E3/319. Additionally, Raynor referred to other telegrams sent to the "Party Center" in documents from the Northeast and East Zones in E3/1122; E3/943; E3/1191; E3/1192; E3/257; E3/879; E3/871; E3/892.

<sup>16</sup> Specifically, document E3/1092, but Raynor also presented E3/769; E3/1094, E3/1179; E3/951.

<sup>17</sup> The prosecutor was referring to documents E3/1096, E3/1679, E3/956, E3/501, respectively.

<sup>18</sup> Mr. Raynor referred to documents dated May 1977, E3/179 and E3/180.



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<sup>19</sup> Mr. Ang Udom cited an email from the Trial Chamber's Senior Legal Officer on 10 October, 2012, in which the Chamber reminded the Civil Parties of a previous decision, found in document E96/7, which stated that written statements, when presented instead of oral ones, would be inadmissible if they went to the acts and conduct of the accused, thus Parties should present documents with attributable probative value and weight.

<sup>20</sup> These two documentary films had document numbers E166/8R and E109/2.3R, respectively

<sup>21</sup> The thesis referenced by Pich Ang bears document number E3/123.

<sup>22</sup> In accordance with Internal Rule 81 (1) and Articles 14 (1) and 14 (3) (d) of the International Covenant for Civil and Political Rights, Accused Ieng Sary issued a Limited Waiver, agreeing to waive his direct presence in the courtroom for 1 Civil Party and 7 witnesses. He explicitly stated that he is not waiving his right to be present for other witnesses. See Ieng Sary. "Limited Waiver" (18 September 2012). E229. Due to his extended stay in the hospital, he subsequently issued another Limited Waiver for 11 additional witnesses and 7 Civil Parties. See Ieng Sary. "Limited Waiver" (1 October 2012). E237.