

# KRT TRIAL MONITOR

Case 002 ■ Issue No. 70 ■ Hearing on Closing Statements Week 1 ■ 16-18 October 2013

## Case of Nuon Chea and Khieu Samphan

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

*When the Civil Parties appear to be questioned... they also provide lively evidence which are key to establishing the facts of the crimes committed during the Democratic Kampuchea as well as the suffering sustained by the People.<sup>1</sup>*

- Pich Ang, National Lead Co Lawyer

*When you torture someone to death, you have to get close enough to your victims to inflict pain ... Nuon Chea and Khieu Samphan chose not to see the eyes of their victim. They chose not to see their own humanity.<sup>2</sup>*

- William Smith, International Deputy Co Prosecutor

### I. OVERVIEW

On 16 October 2013, nine days of oral presentations of closing statements and rebuttals of the opposing counsels presentations were initiated, pursuant to Internal Rule 94.1.<sup>3</sup> This week marked the conclusion of the closing statements from the Civil Parties and the first two days of the Co-Prosecutors' statements. The Civil Party lawyers provided an overview of the case, which arguably went beyond the scope of Case 002/01 at times, and presented the projects proposed for collective and moral reparations in the event of guilty verdict against the accused pursuant to Internal Rule 23.1. The OCP started their closing statements on 17 October 2013 and presented arguments on CPK's policies, particularly those related to Forced Evacuations I and II, the Party's communication structure, and the accused's role in the Party. The closing statements will resume on 21 October 2013 with the final day OCP's closing statements and the first day for the defense.

### II. SUMMARY OF CLOSING STATEMENTS

Using testimony from Civil Parties and expert witnesses, as well as documentary evidence, the Civil Party lawyers and Prosecution took the three days this week to demonstrate that the charges in the Closing Order applicable to Case 002/01 had been substantiated by the evidence presented throughout the previous week of evidentiary hearing.

#### A. Civil Party Closing Statements and Request for Reparations

Each of six Civil Party lawyers presented arguments based on their clients' accounts of Forced Evacuations I and II, as well as the targeting of Lon Nol officials and how these crimes were conducted as part of CPK's grand policy. They also rebutted the claims made by the Co-Accused in their written closing statements. CPLCLs Pich Ang and Elisabeth Simmoneau-Fort highlighted the contributions their clients made through stories and testimony as well as the important effect participating in the proceedings had on their clients. It should be noted that many of the points made seem to fall outside of the scope of Case 002/01, and the Civil Party statements were mostly cited anonymously.

## 1. Joint Criminal Enterprise and CPK's Five Policies

Civil Party lawyer Hong Kimsuon initiated discussions on the CPK's Five Policies and aimed to establish joint criminal enterprise (JCE) of the accused. Under this pretext, Civil Party lawyers discussed crimes that are not within the scope of the trial<sup>4</sup>, but were deemed necessary to show the CPK's common purpose and policy. Hong Kimsuon emphasized the point that the common purpose of CPK leaders was to implement a rapid socialist revolution -- the so-called "great leap forward" -- and to defend this revolution as well as the Party's principles at any cost. He attested that the common criminal purpose came into being prior to the victory of the Khmer Rouge and lasted throughout the DK era with the following five policies: (i) the repeated movement of the population from towns and cities to rural areas and from one rural area to another; (ii) the establishment and operation of cooperatives and worksites; (iii) the reeducation of "bad elements" and killing of enemies, both inside and outside the Party Ranks; (iv) the targeting of specific groups, in particular the Cham, Vietnamese, Buddhists and former Khmer Republic officials, including both civil servants and former military personnel and their families; and (v) the regulation of marriage.<sup>5</sup>

These five policies carried out by the CPK leaders, including the Co-Accused, were aimed at a "common purpose to create an agricultural society order through revolution"<sup>6</sup> -- the implied basis for JCE. Hong Kimsuon asserted that the Civil Party Lawyers aim to find evidence of these policies and JCE from their clients' statements.

The Civil Party lawyers argued that forced population movements ensured a steady labor supply to the cooperatives, forcing Cambodia's population into a peasant class and protecting the integrity of the revolution by preventing intermingling between "enemies" and the general population. The cooperatives served a similar function in reforming the population's mentality and destroying family ties. Hong Kimsuon characterized the establishment of cooperatives as a dehumanizing process, emphasizing that this practice existed across the country as evidenced in the Civil Parties' accounts. Moreover, the Civil Party lawyers insisted that the Co-Accused were aware of the conditions in the cooperatives, citing evidence presented at the ECCC that showed Khieu Samphan had travelled with Preah Norodom Sihanouk to different parts of the country, including Trapeang Dam, and that Nuon Chea had conducted inspections and meetings with heads of cooperatives.

Hong Kimsuon also spent significant time discussing the policy and practice of forced marriage during DK period. The policy, which the CPL asserted was aimed at increasing the population and preventing inter-class marriages, had caused violations to the Civil Parties rights, including those who had been monks being forced to marry upon defrocking. Forced marriage was also a tool to destroy the Chams' culture by forcing them to marry Khmers, Hong Kimsuon exclaimed, quoting a civil party's account of such incident.

National Civil Party Lawyer Sam Sokon focused on the CPK's policy to: (i) reeducate bad elements, (ii) eliminate enemies and (iii) target specific groups. He explained that this policy is an extension to the principle to defend the revolution and the country at all cost, by eliminating oppressive classes and enemies of the party. The CPL outlined that anyone who

violated the CPK's party policies would be considered bad elements or even enemies. Bad elements were then to be reeducated and enemies were eliminated.

In order to show the definitive policy to purge internally, Sam Sokon brought out the Party's order from 1976 on the purge of Koy Thuon and East Zone Cadres. He also highlighted that the reporting structure within the regime would mean that the Co Accused would have known about the implementation of this policy. The Lawyer also reminded the Chamber that Nuon Chea was the Deputy Secretary of CPK, a role that included policy making in the Party.

On the targeting of specific groups, Sam Sokon asserted that CPK cadres were instructed to systematically find out the population's affiliation to the Khmer Republic regime upon 17 April 1975 victory. Those identified were either considered to be "bad elements" needing reeducation in prison camps or smashed. In order to bolster his argument on the existence of such policy, Sam Sokon brought civil party and witness accounts on the arrest of Khmer Republic soldiers and officials as well as their elimination.

Sam Sokon also discussed about the targeting of Khmer Krom because of the belief that "they were the Khmer bodies with Vietnamese heads"<sup>7</sup> and were spies for the neighboring country. In 1977 and 1978, the Khmer were subjected to a forced evacuation, explained the CPL. The fear of Vietnam also triggered discriminatory behavior against Vietnamese, including their killings and the prohibition for Khmers from having Vietnamese spies. The Civil Party Lawyers also outlined ill treatments against other religious and ethnic groups including Christians, Buddhists, Jarais, Tumpouns, and Chams.

The focus on forced movement phase one and two were brought by National Civil Party Lawyer Ty Srinna, reminding the Chamber of the testimonies of 32 Civil Parties in Case 002/01 that showed the use of threats and coercion for evacuation after the KR gained power "by force- by revenge"<sup>8</sup> plus the ensuing trauma suffered by the victims.

## **2. Civil Party Rebuttal to Defense Arguments**

Civil Party Lawyers Ty Srinna and Christine Martineau rebutted a number of arguments made by the Defense teams throughout the course of Case 002/01. Drawing on a number of accounts from Civil Parties and Witnesses that contradicted the arguments put by the Defense, Ty Srinna claimed that the arguments were "utterly unreasonable." Focusing on the first phase of the evacuation, she addressed Defense arguments, which claimed that the evacuation of Phnom Penh had been necessary due to food shortages and the "imminent bombardment" of the city by the United States military forces. The Civil Party Lawyer also raised further points to counter the Defense arguments, including the lack of planning and use of force during the evacuation, and discrimination against "new" people.

### **a. Food Shortages as a Reason for the Evacuation**

Although she conceded that the situation in Phnom Penh had been the result of the preceding war, Ty Srinna stated that up until April 1975, food had been supplied on a regular basis and the people did have sufficient food to eat. Drawing on the testimony of Sydney Schanberg<sup>9</sup> she added that it was the KR who had prevented humanitarian assistance and food from being supplied to the capital. She argued that the evacuation reflected the implementation of a policy "at any cost." In support of her argument, Ty Srinna emphasized that all people, including those in hospitals, had been forced to evacuate in less than one week under threats of violence. She expressed her belief that if the reason for the evacuation were truly due to a food shortage, the evacuation would have been planned better and would not have needed to rely on such coercive measures to implement. There would have been measures in place for the evacuation, and the KR leaders would have

made food and medicine available in the new locations. However, this had not been the case, and according to research done by historian Ben Kiernan - up to 10,000 people had died during the evacuation of Phnom Penh.

**b. “Imminent” American Bombardment**

Addressing the “looming bombardment” by the United States as a reason for the evacuation, Ty Srinna stated that there was no evidence to suggest that the bombardment was a legitimate threat. She argued that the pretext of an imminent American bombardment was in fact a strategy to force people to leave the city as part of the plan, as the KR would surely have known if the Americans were going to attack.

**c. Discrimination Against “New” People**

The Civil Party Lawyer strongly argued that the differential treatment of “old” and “new” people had been planned. Ty Srinna deemed the Defense argument - that discrimination against “new” people was a consequence of their inability to adapt to agricultural life, unacceptable. In support of her argument, she highlighted the testimony of many Civil Parties, who had revealed that “new” people were forced to live separately from “old” people and were never trained in agricultural methods. This would have made it wholly impossible for them to complete the tasks that were demanded of them. Accordingly, they were more inclined to make mistakes than “old people.” As the Civil Parties had testified, even trivial mistakes like breaking a needle could result in serious punishment or execution.

**d. Nuon Chea and Khieu Samphan’s Denial of Knowledge**

On Wednesday afternoon, Martineau addressed claims made by the accused in their closing briefs that they did not hold any power under the regime and did know that crimes were being committed. The Civil Party Lawyer attacked Khieu Samphan’s claims to have been a mere “puppet president,” and asked the Co-Accused:

Both of you, Nuon Chea and Khieu Samphan, you followed Pol Pot up until his last days. You two were trusted by him. Nuon Chea, you were his alter ego. You never distanced yourself from him. Who do you think would be convinced by avoiding your true responsibilities?<sup>10</sup>

Martineau also rejected Nuon Chea’s claim not to have had any executive power, and expressed doubt that a separation of powers had ever existed during the DK period.

**5. Civil Party Request for Reparation and Announcement of Approved Projects**

CPLCLs presented requests for reparations before the Trial Chamber, emphasizing the critical importance of reparations for victims, particularly for those Civil Parties who suffered mentally and physically at the hands of the KR regime.

**a. Civil Party Request for Reparation**

Simonneau-Fort first addressed the basis, meaning, and process of reparations to establish legal recognition from the Chamber. She emphasized the dignity and moral character of Civil Parties in offering a first-hand glimpse into the horror they had experienced during the DK, and that their testimony brought the truth to light. Moreover, Simonneau-Fort stated that reparations were recognized as the right of victims in the judicial process.

Secondly, Simmonneau-Fort highlighted the suffering of Civil Parties, particularly children, women, and other exiled persons who were treated as slaves -- forced to work without sufficient food while their family members were killed -- and left to feel ashamed and isolated.

Finally, Simmonneau-Fort acknowledged that funding for reparations was received by NGOs, the Cambodian Government, and foreign governments; however, Civil Parties wanted the accused to bear the burden of cost. As such, they requested the OCIJ to investigate the accused's finances.

**b. Announcement of Approved Projects**

Pich Ang went on to outline 13 projects within three broad categories requested by Civil Parties.

**1. Remembrance and Memorialization**

- (i) "Remembrance Day," to be commemorated by the Government of Cambodia on 20 May, will honor the victims of the regime while encouraging remembrance and reminding young generation not to commit similar crimes.
- (ii) Public Memorials, where the remains of those killed during the KR regime, will be established for the public to honor the victims. Funding for this project is not yet secured, but the Civil Party Lawyers asked to leave the issue open while they seek the requisite financing.
- (iii) A memorial for the victims of Khmer Rouge symbolizing their forced evacuation from Phnom Penh will be voluntarily erected by Sera, an acclaimed Cambodian-French artist, in a roundabout near the French Embassy with their support.
- (iv) A memorial for victims of Khmer Rouge around Vincennes Quartier, a suburb of Paris, France. This project is to be implemented by several human rights groups.

**2. Rehabilitation**

- (v) and (vi) "Testimonial therapy" and "Self-Help Group" to be implemented by the Transcultural Psychosocial Organisation Cambodia will provide short-term trauma treatment, and psychological and mental health treatment. These projects are supported by the Economic Ministry of the Government of Germany and Stiftung Kriegstrauma-Therapie.

**3. Documentation and Education**

- (vii) Through collaboration between DC-Cam and the Ministry of Fine Arts and Culture, a permanent exhibition will draw together historical documents from across the country.
- (viii) A "Mobile Exhibition Project" will compile documents and historical evidence, including on the forced transfer of the Civil Parties and other victims. The project will be implemented by Kdei-Karuna and Youth for Peace organizations, and supported by BMZ. The Civil Party lawyers are seeking funds to provide a year-long extension for the project's implementation.
- (ix) A "Compilation of Documents on Forced Transfer and Execution at Tuol Po Chrey" aims to have the Democratic Kampuchea period recognized as part of Cambodian history with a chapter on this period student textbooks. DC-Cam will secure funds and implement this project, which also includes teacher trainings.
- (x) The establishment of the Peace Study Center in Samraung will create opportunities to discuss the history of the KR regime in Battambang and

Pursat. " The Center will be run by Youth for Peace in collaboration with the local community with support from the Swiss Development Agency.

(xi) A summary of the judgment of Case 002/01 will be published as a booklet using simple language and imagery easily digestible by laypeople. The project will be implemented by the Cambodian Human Rights Action Committee (CHRAC) with \$5,000 in funding from GIZ.

(xii) The full and summary versions of the verdict in Case 002/01 will be published and delivered to Civil Parties and legal practitioners throughout Cambodia.

(xiii) The publication of Civil Parties' Names on the ECCC website in both Khmer and English.

In relation to the above mentioned projects, Pich Ang requested the Chamber to acknowledge the harm sustained by the Civil Parties as a consequence of crimes committed by the Co-Accused and to order those found guilty to fund reparations. In the case the convicted are considered indigent, then the reward should be granted by the third party. Furthermore, the CPLCL assured the Chamber that the Civil Parties will endeavor to work with other partners and the international community to secure funding for the proposed projects, which also represent reparations requested by the public.

## **B. Office of Co-Prosecution**

During the first two days of the OCP's Closing Statements, National Co Prosecutor Chea Leang and International Deputy Co Prosecutor William Smith took the floor to provide arguments on the historical background that showed consistency in CPK's policies. These policies served as the ground upon which crimes that are within the scope of Case 002/01 were committed, namely the first two forced evacuations and the Tuol Po Chrey killings. They also addressed the roles of the Accused and the communication structure during the DK period which should enable the Co Accused to know what happened on the ground and exert control over their subordinates.

### **1. Forced Population Transfers and The Plans Leading to Commission of Crime**

On Thursday's and Friday's hearing, National Co-Prosecutor, Chea Leang addressed the evidences presented on CPK policies regarding forced population movement out of the cities and urban centers prior to April 1975, and during the evacuation of Phnom Penh and later. She recalled victims' and witnesses' testimonies including citations from Party's publications like the Revolutionary Flag magazine in order to verify commission of crimes planned by the Co-Accused and other topic leaders of the CPK.

#### **a. Historical Background**

According to Chea Leang, the evacuation plans were developed prior to April 1975 through many key events of Party meetings which the Accused attended. They decided on implementation of forced land evacuation that drained people from enemies and put the population into cooperatives. The execution of enemies was also used by Khmer Rouge as policy during the forced movement. In order to prove the forced evacuation was a policy plan of the CPK, Chea Leang cited Stephen Heder's<sup>11</sup> interview on the movement of 50,000 people when the town of Kampong Cham was captured in September 1973. This proved that the CPK implemented forced movements whenever they captured the Khmer Republic regime controlled urban center. Another evidence of mass forced evacuation was from Udong in March 1974, which was further confirmed by Civil Parties Nu Mao<sup>12</sup> and Huy Phoun who were both present. They testified that leaders of CPK including the Accused stated that

"Udong was a good example to be followed in Phnom Penh when it is captured by Khmer Rouge" during meetings in June 1974.

Chea Leang also pointed out that after the people were evacuated out of Phnom Penh in early 1975, the Battle Committees had a meeting. Executions of Khmer Republic regime's officials and a second forced people transfer to the North and North-West regions of the country was decided at the meeting.

#### **b. Evacuation of Phnom Penh**

Chea Leang explained the evacuation was a long standing Khmer Rouge tradition whereby whenever urban centers were captured, people would be evacuated. She cited interviews with Sector 13 cadre by Heder that "I (cadre) feel the evacuation of Phnom Penh a part of general longstanding policy because that's what we have done". Pursuant to the Party publications, Chea Leang expressed the reasons as initiative for the evacuation in Phnom Penh. In the July 1975 issue of *Revolution flag*, it was stated that "CPK leadership carried out forced evacuation to deal with enemies that might have attacked party". In doing so, evacuation could break up the network among city dwellers so they were no longer in position to resist the regime. Upon the 3rd year anniversary publication of the CPK document, evacuations abolished feudal landowning class and capitalists in the cities.

In addition to forced evacuation, Chea Leang also drew attention to how inhumanely the evacuation was carried out. She referenced Philip Short, that the enormous suffering during evacuation was unexceptional and 2.5 million of people were transferred out of metropolis with short notice, no transportation and little or nothing to eat. Vulnerable persons such children, women, hospital patients were forced to leave the travel out of the city by foot or using wheelbarrows for weak or sick family members. This was confirmed by the Civil Parties: Nou Hoan<sup>13</sup>, Chau Ny<sup>14</sup>, Seng Sivutha<sup>15</sup>, Pin Yathay<sup>16</sup>, Pech Srey Phal,<sup>17</sup> Mom Sam Oeun<sup>18</sup> who saw their child, relatives and family die, be abandoned, or starved to death. National Co-Prosecutor also rebutted assertion of the Accused on the ground of humanitarian crisis in Phnom Penh. She stated that CPK leaders refused all offers of humanitarian assistance, prevented Red Cross from assisting evacuees. Chea Leang expressed that evacuees had to rely on themselves as stated by former cadre Ing Phan.<sup>19</sup> Consequently, numerous witnesses have confirmed that most vulnerable – disabled, elderly, children, sick, pregnant women- starved to death during the evacuation. Chea Leang also referenced Expert Ben Kiernan's estimate that over 20,000 died during the forced evacuation, with 10,600 dying en route to cooperatives, and another 10,000 dying from executions.

On methods used by the CPK to evacuate people out of Phnom Penh, Chea Leang stated that the Khmer Rouge soldiers used deception and violence. This was supported by testimonies of the Civil Parties and other witnesses. Moreover, Chea Leang stated that soldiers were deployed to the city to prevent people from returning, a fact that was confirmed by Sum Chea.<sup>20</sup>

#### **c. Evacuation of the North and North-West regions**

On Thursday, Chea Leang continued to address commission of crimes by the Co-Accused concerning the second forced transfer. The plan for the second evacuation was discussed amongst CPK leaders in May 1975.

She averred that CPK leaders, Pol Pot and Noun Chea, instructed all major players in the zones to implement the party throughout the country. They were determined to move 40,000

or 50, 000 people to the North in order to build dykes, dams and produce 3 tons of rice per hectare.

Between the start of the evacuation to the arrival at their destination, many people died as a result of Khmer Rouge mistreatment. People were forced to work without rest and had to share 10 cans of rice between 30 people every day - an amount that is not sufficient.

People were collected and transferred by wagons and trains forcibly without rest, food, water and comfortable facilities were nonexistent even at the destination. They had to stay in the forest without shelter. Chea Leang continued her arguments against the Accused saying the deaths were accidental, pointing that the CPK leaders knew about results of the second evacuation whereby many people as a consequence.

## **2. Policy to Kill Khmer Republic Officials and Killings at Tuol Po Chrey**

On 17 and 18 October 2013, Co-Prosecutors Chea Leang and William Smith sought to establish the existence of a policy to kill Khmer Republic officials and military officers, and specifically addressed the massacre alleged to have occurred at Tuol Po Chrey. The Prosecution argued that the purpose of CPK policy was to consolidate and continue the revolution at any cost. Moreover, the prosecution asserted that the systematic and planned execution of enemies had started as early as the 1960s and continued until the fall of the DK in 1979. Pointing to a range of testimony and documentary evidence presented during the trial, the Prosecution contended that the Co-Accused were aware of the CPK policy.

### **A. Policy of Killing Khmer Republic Officials Prior to April 1975**

Chea Leang commenced the presentation of closing arguments for the Prosecution by presenting arguments in support of the existence of a policy of killing Khmer Republic officials prior to April 1975. The Prosecutor highlighted the testimony of Philip Short, who had confirmed the systematic practice of eliminating enemies and told the Court that the CPK leaders decided how executions were carried out and who had the authority to do so. She also referred to the testimony of Duch<sup>21</sup>, the convicted person of Case 001, who confirmed that the purpose of the security centers established from 1970 onward was to send "people who were suspected as spies.... for interrogation and execution."<sup>22</sup> In contrast to arguments presented by the defense, Duch also confirmed that executions were not ordered by local leaders, but emanated from the CPK policy. Chea Leang also referred to a number of documents, including issues of the Revolutionary Flag from July 1973 that had stated, "if the spies are arrested to be executed before the people, some people would think we are cruel. The stance to kill the spies is correct but inappropriately carried out." Elaborating on this point, William Smith revisited the testimony of Stephen Heder, who told the Court how the CPK policy to abolish the "special class" led to the execution of Khmer Republic soldiers, police, monks, intellectuals, and minorities.

### **B. The Organized and Systematic Killing of Khmer Republic Officials**

Chea Leang stated that members of the Khmer Republic regime were marked for immediate smashing during the evacuation of Phnom Penh in April 1975. This included the seven senior leaders of the regime: Lon Nol, Sirik Matak, In Tam, Long Boreth, Sosthene Fernandez, Son Ngoc Thanh, and Cheng Heng. In support of the argument, the prosecutor cited journalist Sydney Schanberg's testimony before the court, which detailed how the senior leaders were handed over to the KR after the French Embassy refused political asylum and his witnessing the execution of Khmer Republic leader Long Boreth.

Building on Chea Leang's statements, Prosecutor William Smith alleged that the senior leaders of the KR had ordered the execution of Lon Nol soldiers and officers. He asserted that Khmer Republic officers had been killed both during the evacuation of Phnom Penh and upon reaching their respective destinations. Smith referred to a range of evidence presented by the defense, including an interview with filmmaker Teth Sambath wherein Nuon Chea stated that Khmer Republic officials were to be "liquidated." He also cited an interview with Ieng Sary, where the deceased had proclaimed that the, "CPK leadership [had] decided to do whatever [was] required to prevent that group to rise up and confront the revolution. And this decision was continued afterward, 17 April 1975." After reviewing accounts provided by a number of Civil Parties and witnesses who testified that they had seen soldiers executed, Smith concluded that Khmer Republic officials had been executed across Cambodia in an organized and systematic manner.

### **C. Events at Tuol Po Chrey**

Smith spoke at length about the massacre alleged to have occurred at Tuol Po Chrey. He sought to prove that the massacre was part of a chain of events ordered by the party center rather than an isolated act of revenge as the defense had argued. After revisiting the testimony provided by three witnesses on the issue, Smith told the Court how 30 - 40 trucks had transported Lon Nol personnel to the site and had returned empty. The Prosecutor also showed a clip from the film "One Day at Tuol Po Chrey," and referred to forensic evidence unearthed by the OCIJ, which suggested up to 10,000 people were killed at the site. He stated that the only reasonable conclusion was that the CPK had killed hundreds of people at Tuol Po Chrey.

## **2. Role and Character of the Co-Accused and Contribution to the Common Criminal Purpose**

The Prosecution pointed to a range of evidence including video clips, and testimonies in an attempt to prove that the Co-Accused were the top CPK leaders and had each contributed to a common criminal plan. Additionally, the Prosecution discussed the close relationship of the Co-Accused and Pol Pot, highlighting that both men had remained with him until his final days.

### **A. Role and Character of Khieu Samphan**

Prosecutor Smith explained that in 1977, Khieu Samphan had replaced Duon as the person in charge of office 870. This was confirmed by the testimony of Rochoem Ton alias Phy Phuon<sup>23</sup>, Duch, David Chandler<sup>24</sup>, and Philip Short.<sup>25</sup> All zone reports were sent to office 870, and Khieu Samphan's function was to receive the reports and to deliver letters from Pol Pot to various zones. The Prosecutor concluded that all the documents sent to office 870 were in the hands of Khieu Samphan. Smith then turned to the close relationship between Khieu Samphan and Pol Pot which was cultivated over the 28 years that they knew each other.

He showed video clips where Khieu Samphan had expressed his admiration and respect for Pol Pot and cited passages from Khieu Samphan's book where the Accused had stated, "Pol Pot was a historical leader, and he was never wrong when it came to making decisions." Contrary to Khieu Samphan's assertion that he was not a leader of the DK regime, the Prosecution highlighted that the Accused had demonstrated his willingness to be part of the KR over the close to 30 years that he had assumed the public face of the party.

### **B. Role and Character of Nuon Chea**

Smith explained that Nuon Chea, by virtue of the hierarchical command structure, exercised complete authority to control every zone, military and district. The Prosecutor cited testimonies from a number of witnesses that confirmed Nuon Chea had served within the party center at the supreme level of CPK leadership. Returning to the relationship between Nuon Chea, Khieu Samphan and Pol Pot, Smith labeled Nuon Chea's claim that he knew nothing of Khieu Samphan one of the "big lies" heard during the trial. The Prosecution claimed that the three friends became the top leaders of the KR in 1960, and maintained a close relationship over the next 28 years. They lived together, ate together and worked together "as members of the inner circle," he said.

#### **C. Contribution of the Co-Accused to Common Criminal Purpose**

Using video footage of a KR cadre who admitted to killing someone without understanding why he was doing so, the Prosecution sought to argue that through "their policies, their orders and their indoctrination," the Co-Accused are responsible for the crimes committed.<sup>26</sup> Addressing Khieu Samphan's contribution to the common purpose, Smith argued that he had participated in numerous meetings held to design CPK policy and strategy.

Notably, the Prosecutor added, Khieu Samphan had never objected to the CPK policy to execute the seven leaders of the Khmer Republic. The Prosecutor also highlighted the radio broadcast made by Khieu Samphan in 1975, where he informed the people that Khmer Republic officials could only join the FUNK if they stopped working for the "seven traitors." Smith argued that Khieu Samphan could not hide from these "murders." In relation to the claims of the Co-Accused not having had control of the military, Smith told the Court "Do not be fooled by their assertions.... the CPK leaders were aware of and controlled all the key activities of the troops."<sup>27</sup>

#### **D. The CPK Principle of Democratic Centralism and Collective Decision Making**

The Prosecution also shed light on the decision making process during the DK. Smith explained that CPK policy was based on the principle of democratic centralism which placed an emphasis on collective decision making and did not permit decision making by a single person. He explained that all CPK decisions were made by the Party Center and collective decisions were made by the Standing Committee and Central Committee.

Decisions required unanimity in order to be implemented. This was confirmed by Khieu Samphan, who admitted that "if there had been a single voice against the evacuations, there could not have been any evacuations."<sup>28</sup> The prosecutor concluded that the evidence had proved beyond reasonable doubt that both Nuon Chea and Khieu Samphan had participated in the collective decisions made by the party center after consulting a range of evidence showing the Co-Accused expressing support for decisions that were made.

Smith also raised the use of telegrams and the communication structure as a means for the lower level KR to inform the upper level about seemingly trivial issues including in one example raised, the fact that a kerosene lamp was knocked over. Referring to testimony provided by witnesses Suon Kanil<sup>29</sup>, and Kham Phan alias Phan Van<sup>30</sup>, Smith stated that the party statutes required all districts, zones, sections and district committees to report to the party center. The Prosecution concluded by stating that the party center had authority over all decisions and exercised close scrutiny across the country.

#### **4. Rebuttal to Defense Closing Briefs**

On 17 and 18 October, Co-Prosecutors Chea Leang and William Smith presented rebuttal to the arguments put forth by the defense in its closing briefs. The prosecutors refuted the

arguments made by Khieu Samphan that he did not know anything about the evacuation of Phnom Penh and, in the case that he did know something, that it was only carried out for economic reasons. In an attempt to place Khieu Samphan at the center with Pol Pot and Nuon Chea, the prosecution stressed the collective decision making of the CPK, documented in numerous episodes of the Revolutionary Flag and in party circulars. The prosecution also pointed to a number of interviews and statements made by Khieu Samphan over the radio, and minutes from a series of meetings attended by the Co-Accused that suggested both Khieu Samphan and Nuon Chea knew what was going on.

The prosecutors deemed the Nuon Chea defense's argument that the evacuation had been lawful, reasonable and necessary a lie. Chea Leang argued that the evidence presented by the prosecution had established that the crimes perpetrated were committed with knowledge by the accused as members of the DK leadership. She added that if Nuon Chea truly believed the purpose of the evacuation was an "economic policy ... under the extraordinary circumstances in which Cambodia found itself in 1975" and was in the best interests of the country, he should have explained this before the court.<sup>31</sup>

The prosecution implied that the Co-Accused had selectively and purposefully exercised their right to remain silent throughout Case 002/01, providing explanations for their actions only in their closing briefs, which are not subject to cross-examination. Echoing the sentiments of his colleague, Prosecutor William Smith alleged that the Accused had told "preposterous lies," but were not willing to have their stories tested.<sup>32</sup>

### III. TRIAL MANAGEMENT

This week of the court proceedings went smoothly and efficiently as the schedule set. The Chamber however exhibited some flexibility as well, such as providing additional time to Civil Party Lawyers on Wednesday to conclude their statements. Technical issues appeared unexpectedly at the start of the Prosecutor's closing arguments also caused Thursday's proceedings to end later than usual.

#### A. Attendance

This Week of closing statement hearing, Khieu Samphan was present in the courtroom for the whole week. Nuon Chea on Wednesday was present as well, but as already informed by the President, the Accused excused himself to return to the holding cell due to his health status. On Thursday and Friday Nuon Chea observed the proceedings from the holding cell.

#### Attendance by the Public:

DATE	MORNING	AFTERNOON
Wednesday 16/10/2013	<ul style="list-style-type: none"> <li>▪ 150 students from Passerelles numériques Cambodia (PNC), Phnom Penh.</li> <li>▪ 56 monks</li> <li>▪ 31 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 30 villagers from Kampong Speu and 45 villagers from Kampong Chhnang</li> <li>▪ 36 foreign observers</li> </ul>
Thursday 17/10/2013	<ul style="list-style-type: none"> <li>▪ 30 students from Royal University of Laws and Economics, Phnom Penh.</li> <li>▪ 45 villagers from Kampong Thom</li> <li>▪ 45 villagers from Udong, Kandal.</li> <li>▪ 19 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 30 students from Rule University of Laws and Economics, Phnom Penh.</li> <li>▪ 19 foreign observers</li> </ul>

Friday 18/10/2013	<ul style="list-style-type: none"> <li>▪ 216 students from Serey Pheap High School, Kandal.</li> <li>▪ 15 villagers from various places</li> <li>▪ 28 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 56 students from Royal Academy for Judicial Professions.</li> <li>▪ 32 students from Royal University of Phnom Penh.</li> <li>▪ 14 villagers from Kampot, Kampong Thom and Kampong Cham.</li> <li>▪ 6 monks from Khemarak University, Phnom Penh.</li> <li>▪ 17 foreigner observers</li> </ul>
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## B. Time Management

The closing statement arguments for case 002/01 was properly managed and went through as scheduled despite long delay due to technical issues (see section D below). There was also an extension provided for the Civil Party Lawyers, who was provided only one day to deliver their closing statements. The time for them was extended to 17:00 instead of the usual time to conclude a day's proceedings, namely at 16:00 solitary.

## C. Courtroom Etiquette

When National CPLCL Pich Ang showed the video clips from Khmer Rouge period, the audience in the public gallery started discussing the video loudly. Additionally, there was a lack of explanation on what video it was, and the CPLCL also did not ask the leave from the Chamber to play the video.

## D. Translation and Technical Issues

On Wednesday, the Trial Chamber at the start of the proceedings gave directives on how the parties should pace themselves in speaking to facilitate the interpreters. Even with this instruction on Thursday the National Co Prosecutor Chea Leang was speaking too fast, causing minor technical issue.

The proceedings was also disrupted by microphone malfunction when the National Co Prosecutor began their closing arguments on Thursday. The issue took approximately 40 minutes to resolve. In a show of resolve not to allow this to cause any delay, the Chamber resumed the proceedings afterward and omitted the morning break to make up for the time loss.

## E. Time Table

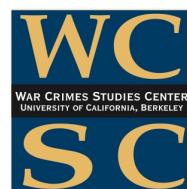
DATE	MORNING SESSION 1	MORNING SESSION 2	AFTERNOON SESSION 1	AFTERNOON SESSION 2	TOTAL HOURS IN SESSION
Wednesday 16/10/13	8:58 - 10:24	10:47 - 12:06	13:31 - 15:11	15:35 - 17:07	5 hours and 57 minutes
Thursday 17/10/13	09:02 - 09:14	09:41 - 12:02	13:19 -14:48	15:02 - 15:58	4 hours and 58 minutes
Friday 18/10/13	09:02 - 10:31	10:52 - 12:02	13:30 - 14:36	14:56 - 16:02	4 hours and 51 minutes
Average number of hours in session					5 hours 15 minutes
Total number of hours this week					15 hours 46 minutes

**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



<sup>1</sup> Trial Chamber. Transcript of Trial Proceedings (16 October 2014). E1/228.1 [hereinafter **16 OCTOBER TRANSCRIPT**]. Lines 22-25. 6.

<sup>2</sup> Trial Chamber. Transcript of Trial Proceedings (18 October 2014). E1/230.1 [hereinafter **18 OCTOBER TRANSCRIPT**]. Lines 1-2, 11-12. 58.

<sup>3</sup> This issue of **KRT TRIAL MONITOR** was authored by Boranny Bon, Francisca Gilmore, Melanie Hyde, Aviva Nababan, Chhayrath Tan, and Lina Tay, as part of AIJI's KRT Trial Monitoring and Community Outreach Program. KRT TRIAL MONITOR reports on Case 002 are available at <[www.krtmonitor.org](http://www.krtmonitor.org)>, and at the websites of the [East-West Center](#) and the [War Crimes Studies Center](#). 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

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Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

<sup>4</sup> The scope of case 002/01 included Forced Population Movement I and II and the executions of Khmer Republic officials at Tuol Po Chrey. See Trial Chamber. “Decision on Severance of Case 002/01 following Supreme Court Chamber Decision of 8 February 2013.” (26 April 2013). E284.

<sup>5</sup> **16 OCTOBER TRANSCRIPT.** Lines 1-13. 16.

<sup>6</sup> **16 OCTOBER TRANSCRIPT.** Line 15. 17.

<sup>7</sup> **16 OCTOBER TRANSCRIPT.** Line 11-12. 50.

<sup>8</sup> **16 OCTOBER TRANSCRIPT.** Line12. 66

<sup>9</sup> See CASE 002 KRT TRIAL MONITOR. Issue 62, Hearing on Evidence, Week 57. (5-7 June 2013)

<sup>10</sup> **16 OCTOBER TRANSCRIPT.** Line 16-18. 78.

<sup>11</sup> See CASE 002 KRT TRIAL MONITOR. Issue 67-68, Hearing on Evidence, Weeks 62-63. (9-11 and 15-17 July 2013)

<sup>12</sup> See CASE 002 KRT TRIAL MONITOR. Issue 64, Hearing on Evidence, Week 61. (19-20 June 2013)

<sup>13</sup> See CASE 002 KRT TRIAL MONITOR. Issue 61, Hearing on Evidence, Weeks 56. (27-31 May 2013)

<sup>14</sup> See CASE 002 KRT TRIAL MONITOR. Issue 44 and Issue 60, Hearing on Evidence, Weeks 39 and 55. (25-29 November 2012 and 27-31 May 2013)

<sup>15</sup> See CASE 002 KRT TRIAL MONITOR. Issue 62, Hearing on Evidence, Week 57. (3-7 June 2013)

<sup>16</sup> See CASE 002 KRT TRIAL MONITOR. Issue 52, Hearing on Evidence, Week 47. (4-8 February 2013)

<sup>17</sup> See CASE 002 KRT TRIAL MONITOR. Issue 45, Hearing on Evidence, Week 40. (3-7 December 2012)

<sup>18</sup> See CASE 002 KRT TRIAL MONITOR. Issue 42, Hearing on Evidence, Week 37. (4-9 November 2012)

<sup>19</sup> See CASE 002 KRT TRIAL MONITOR. Issue 60, Hearing on Evidence, Week 55. (20-24 May 2013)

<sup>20</sup> See CASE 002 KRT TRIAL MONITOR. Issue 42, Hearing on Evidence, Week 37. (4-9 November 2012)

<sup>21</sup> See CASE 002 KRT TRIAL MONITOR. Issue 15-18, Hearing on Evidence, Week 10-13. (19-21 March 2012, 26-29 March 2012, 2-5 April 2012, 9-10 April 2012)

<sup>22</sup> Trial Chamber. Transcript of Trial Proceedings (17 October 2014). E1/229.1 [hereinafter **17 OCTOBER TRANSCRIPT**]. Line 11-12. 15.

<sup>23</sup> See CASE 002 KRT TRIAL MONITOR. Issue 29-30, Hearing on Evidence, Week 24-25. (23-25 July 2012 and 30 July-2 August 2012)

<sup>24</sup> See CASE 002 KRT TRIAL MONITOR. Issue 28-29, Hearing on Evidence, Week 23-24. (18-20 July 2012 and 23-25 July 2012)

<sup>25</sup> See CASE 002 KRT TRIAL MONITOR. Issue 59, Hearing on Evidence, Week 54 (6-10 May 2013)

<sup>26</sup> **18 OCTOBER TRANSCRIPT.** Lines 20-21. 60.

<sup>27</sup> **18 OCTOBER TRANSCRIPT.** Lines 20-21. 81.

<sup>28</sup> **18 OCTOBER TRANSCRIPT.** Lines 12-14. 97.

<sup>29</sup> See CASE 002 KRT TRIAL MONITOR. Issue 46-47, Hearing on Evidence, Week 41-42. (11-14 December 2012 and 17-21 December 2012)

<sup>30</sup> See CASE 002 KRT TRIAL MONITOR. Issue 46 , Hearing on Evidence, Week 41 (11-14 December 2012)

<sup>31</sup> **17 OCTOBER TRANSCRIPT.** Lines 25. 38 .and Lines 1 - 2. 39.

<sup>32</sup> **18 OCTOBER TRANSCRIPT.** Line 5. 67.