

KRT TRIAL MONITOR

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Case of Ieng Thirith, 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

*Nothing was bigger than Angkar. We could not escape.
Even living with the fish in the pond, we could not escape.
Even flying like birds in the sky, we could never escape.
So we had just to obey orders.*

– Civil Party Klan Fit

I. OVERVIEW

This week's proceedings marked the beginning of the reception of evidence for Case 002. Pursuant to the Trial Chamber's Severance Order dated 22 September 2011, Case 002 has been divided up by subject matter into a series of trials, rather than one large trial. The first trial of Case 002 will, according to the Severance Order, be limited to the reception of evidence on the history of Democratic Kampuchea, the roles of the Accused prior to and during DK, the first and second phase of forced movement as alleged in the Indictment and the crimes related thereto.¹ Under "exceptional circumstances," the Chamber may agree to allow questioning on aspects of Case 002 beyond the scope of the first trial.²

The proceedings started with the two greffiers reading the paragraphs of the Closing Order relating to the history of the Communist Party of Kampuchea and Democratic Kampuchea, and the personal background of the Accused persons. This was followed by testimonies from Nuon Chea, two Civil Parties and one ordinary witness.

This first week of substantive hearings revealed a great deal of confusion with regard to procedural issues that are fundamental to the fair and efficient management of the trial. These included questions raised by the Prosecution and the Defense teams about the proper examination of the witnesses and Civil Parties – the scope of queries permitted under the Severance Order, the precise evidentiary value of Civil Party testimony, and the permissibility of leading questions, among others. While objections and queries figured prominently into the week's proceedings, the Trial Chamber's response was often vague or inconsistent, and failed to provide clear resolution of these matters. One can expect that, unless the Trial Chamber alters its approach to trial management, unresolved debates over ambiguous procedural norms will lead to protracted proceedings and unnecessary confusion.

II. SUMMARY OF TESTIMONIES BEFORE THE CHAMBER

Nuon Chea took the stand as the first witness on Monday morning and testified for most of the first day. In the afternoon, he requested to defer the questioning to the next day due to his “heart condition.” The Chamber declined and continued its inquiries. Subsequently, Nuon Chea said he was exhausted and asked to be excused. The Chamber acceded to Nuon Chea’s request and adjourned the hearing around 3:20 pm. On the second day, Nuon Chea continued his testimony during the first quarter of the hearing, but thereafter adamantly maintained that he would not be able to continue giving precise answers because he was too tired. The Trial Chamber acquiesced after weighing the validity of Nuon Chea’s health concerns and his cooperation in answering question. As Nuon Chea needed a break from testifying, the Chamber called Mr. Klan Fit, a Civil Party in the afternoon. On Wednesday, an ordinary witness, Mr. Long Norin, and another Civil Party, Mr. Romam Yun, testified. The former, who testified through videoconference, continued answering questions the whole day on Thursday.

Long Norin’s testimony focused on his work as a communist revolutionary in Beijing and Hanoi before 1975. He also answered questions regarding his involvement from April 1975 until January 1979 with the Ministry of Foreign Affairs, which Ieng Sary headed.

The two Civil Parties gave similar testimonies on their experiences as members of the Khmer Rouge in the 1970s. Both testified in Khmer, although neither of them is a native speaker. In the absence of a professional interpreter for their native Kachok dialect, staff from WESU repeated and explained the questions to them. This gave rise to some communication difficulties during their testimony. The advanced age, limited literacy, and apparent poor health of the civil party witnesses also presented challenges as the Court questioned them about the details of events from 40 years ago. At times, their answers were non-responsive to the questions.

A. Nuon Chea’s Testimony

After Trial Chamber President, Nil Nonn, briefly recounted the rights of the Accused and the charges against them, the Chamber initiated the substantive proceedings by questioning one of the Accused, Noun Chea, about his personal background, and the history of this revolutionary struggle. Judge Silvia Cartwright asked specific questions about Nuon Chea’s activities with the communist movement. Throughout his testimony, Nuon Chea blamed Vietnam for the killings in Cambodia and accused the Vietnamese government of plotting to annex Cambodian territory.

1. Personal Background

Nuon Chea confirmed that his name at birth was Lao Kim Lorn, and that his revolutionary name was Nuon Chea. He was born on 7 July 1926 in Voat Kor Village, Voat Kor Subdistrict, Sangke District, Battambang Province. He is the third of nine children. His father was Chinese-Cambodian, but he clarified that his mother was purely Cambodian, contrary to the information in the Closing Order that his mother was part Chinese.³ He is married to Ly Kimseng. Before his arrest, he lived in Pailin District.

After completing primary school in Cambodia, Nuon Chea attended secondary school in Battambang. During that time, the province was occupied by Thailand. Upon graduation, he studied at Thamassat University (University for Moral and Political Science) in Thailand, and worked as a part-time clerk in the Thai Ministry of Finance. Later, he worked in the Thai Ministry of Foreign Affairs. Nuon Chea stated that in 1950 and 1951, he started the resistance movement to help his countrymen after coming across reports of French elements shooting Cambodians to death.

2. Nuon Chea's Political Beliefs

According to Nuon Chea, his motivation to join the resistance stemmed from the oppression of the Cambodian people by the French colonial government and rich landowners, which he personally witnessed. He studied in Thailand because he wanted to experience life in an independent country, but he soon discovered that injustice was everywhere. Nuon Chea testified that even in Thailand, powerful people oppressed the weak. His search for an answer led him to communist literature, and soon after, he became convinced that communism was the key to liberate the people from colonialism and oppression.

Nuon Chea explained that initially, he did not fully understand what communism was, but he gradually learned more with the help of progressive professors in his university. He joined the Democratic Youth Organization of Thailand and the Thai Communist Party in 1950. He then returned to Cambodia and worked in propaganda to rally the people to fight injustice in Cambodia. At that time, Nuon Chea noted, the Issarak independence movement was already active. However, the Accused was not interested in the Issarak movement, because it was reportedly created and controlled by Vietnam.

Despite his self-professed mistrust of the Vietnamese, Nuon Chea recounted that he did study in North Vietnam. While there, he saw a report indicating that, after independence from France, Cambodia and Laos were to be part of the Indochinese Federation under Vietnam's control. This disappointed Nuon Chea, as his aim was Cambodia's independence. He claimed that after the Geneva Accords in 1954, he witnessed how Vietnam began implementing its own colonialist intentions by infiltrating the Issarak, a Khmer anti-French nationalist movement. Cambodians were allowed to be cooks and soldiers, but the commanders were Vietnamese.

According to Nuon Chea's account, the Khmer Communist Party did not originate from the Khmer resistance, because everything was under Hanoi's control. He further maintained that the Cambodian people are not responsible for genocide and the crimes against humanity. Rather, it was the Vietnamese who killed Cambodians. Nuon Chea stressed that he "does not want the next generation to misunderstand history, that the Khmer Rouge are criminals, bad people." He then proceeded to repeat his warning that Vietnam still persists in its plan to this day, and if the people do not try to protect the country, Cambodia will be swallowed up by Vietnam.

3. Nuon Chea's Early Involvement in the CPK

In response to specific questioning from Judge Cartwright, Nuon Chea admitted that when he arrived in Cambodia from his studies in Thailand, he first joined the Indo-Chinese Communist Party. However, he explained that he did so because a

Vietnamese person advised him that he had to join this party in order to conduct revolutionary activities in Cambodia. He reiterated that the Indo-Chinese Communist Party was divided into three parties, including the Khmer People's Revolutionary Party in Cambodia. According to Nuon Chea, none of the three parties was independent from Vietnam. Interested in creating an independent political party, Nuon Chea joined with Tou Samouth and Saloth Sar (who later used the pseudonym "Pol Pot") to create the Khmer Workers Party without the approval of Vietnam. Tou Samouth became the party's Secretary with Nuon Chea as Deputy Secretary. This party was later renamed as Communist Party of Kampuchea to avoid confusion with other parties. After Tou Samouth's disappearance, Pol Pot succeeded him as party Secretary and Nuon Chea remained Deputy Secretary.

Nuon Chea emphasized that he never received military training in Vietnam as alleged in the Indictment. He also denied that he was part of the Military Committee. He asserted instead that he was in charge of propaganda and education for all levels of the CPK. After staying in Vietnam from 1951 to 1953, Nuon Chea returned to Phnom Penh. During his courtroom testimony, Nuon Chea described the hardships he faced in conducting revolutionary activities after his return to Cambodia. He further explained the strategic and tactical lines of the communist party he created with Pol Pot. According to the Accused, the core policy was to rescue the poor and the peasants from upper-class oppression and to eliminate the system of mid-feudalism and mid-colonialism. He noted that China supported their party line, but Vietnam opposed it and tried to derail the course of their revolution.

B. Klan Fit's Testimony

The first Civil Party to testify, Mr. Klan Fit, provided testimony about the senior leadership of the Khmer Rouge, based on his firsthand knowledge as a former cadre.

Klan Fit is a 65 year-old member of the Kachok hill tribe minority from Rattanakiri Province.⁴ In accented Khmer, he related how a simple man was bound by the turmoil of his time and compelled to join a revolution he did not fully understand. He recalled that Laotians persuaded him to join. They warned that if he did not join, they "will not survive," and that "the revolution was needed to liberate the country from enemies and feudalists." On the stand, he recounted how he was persuaded to join at the time, but he declared that, in retrospect, he believes the Khmer Rouge took advantage of people from ethnic minorities who are ignorant and uneducated.

At the start, Klan Fit worked as a messenger, mail courier and as a liaison. He recalled that he attended meetings presided by Ieng Sary twice. Before 1970, he and other villagers built bunker houses for Pol Pot and Ieng Sary. The houses were in a camp named K-5 located in a secure place in the jungle. They did not know at that time that these men were leaders of the revolution, but later in his testimony, Klan Fit identified Pol Pot and Ieng Sary as the revolution's main leaders. He likewise said that Ieng Sary's revolutionary name was "Van."

Based on Klan Fit's account, he was appointed as village chief and was in charge of implementing the farming production quota set by the Khmer Rouge in their village. Soon after, he was appointed as chief of Talao Commune, Bokeo District, Andong Meas. After the "liberation" of Phnom Penh, he twice attended political trainings presided by Nuon Chea in the city. In 1976, he was appointed as deputy secretary of

his district. He disclosed that he suffered a lot of difficulty in this position, as people were relocated, gathered in one place for farming, and had to look for land to till. He lamented thus, "I was intimidated, threatened, but I had to obey orders: leave no piece of land unused." Fearful, they also obeyed the ban against practicing their religion.

At the end of Klan Fit's testimony, a Civil Party Co-Lawyer asked him to talk about the harm or suffering he experienced under the Khmer Rouge, presumably in reference to his claim for reparations. Klan Fit appeared to misunderstand the purpose of the question. Rather than give specific testimony about harms he suffered that justify his claim for Civil Party recognition by the Court, Klan Fit gave a general answer, saying that he underwent many difficulties and a number of people he knew were killed. The next day, Klan Fit became ill and was unable to proceed. He will continue giving his testimony in January 2012.

C. Romam Yun's Testimony

Mr. Romam Yun, the second Civil Party to testify, gave a similar account of his experience during the Khmer Rouge regime. Like Klan Fit, he was a former cadre, with firsthand knowledge of Khmer Rouge command structure and Party operations.

Romam Yun is a 70-year old Kachok from Andong Meas District, Rattanakiri. Civil Party Co-Lawyer, Mr. Kim Mengkhy, advised other parties to keep their questions short and simple, because the witness is illiterate, has failing health, and experiences problems with his memory. These facts became very apparent when Romam Yun began to testify. He was generally unable to remember dates or time periods relating to the events in his testimony. He likewise supplied answers that were non-responsive to the questions asked.

Romam Yun declared that he did not remember when the Khmer Rouge arrived in his region. He said that he was forced to join the revolution. Those who enlisted him in the Party reportedly told him that membership was required "to serve the nation, to liberate the nation, to build the country, to develop the countryside and the next generation." Romam Yun testified that he had not understood how these objectives were to be achieved, but he had joined nonetheless. In the beginning, he was tasked as a messenger for senior cadres.

He remembered delivering messages to a certain "Van,"⁵ but did not specifically state that he was referring to Ieng Sary. Later, he said he was appointed to manage village and commune affairs, and then became chief of Andong Meas District. He also recalled that "Van" attended a number of meetings during the revolution. During these meetings, cadres discussed farming, proper conduct, solidarity, solving problems, and plans on the course of the revolution. Significantly, Romam Yun also explained that people who deviated from plans were "rid of or dismissed." These dissidents were accused of being enemies, imprisoned or taken to the forest. When asked to elaborate on how Angkar identified an "enemy," Romam Yun professed, "if the villages were clean, there were no enemies; if not clean, there were enemies." He admitted that he did not really understand the situation at that time.

When Mr. Chan Dararasmey, National Deputy Co-Prosecutor, asked about the forced evacuation in 17 April 1975, Romam Yun said that they only heard about this from information passed from mouth-to-mouth but he personally did not see any relocation in their area. This ended the OCP's examination of Romam Yun. The Court deferred the Defense questioning until January 2012 because they wanted to prioritize hearing testimony from an ill witness Mr. Long Norin, who was briefly available to the Chamber via video link.

D. Long Norin's Testimony

The Chamber heard evidence from one ordinary witness this week, Mr. Long Norin. Like the Civil Party witnesses, Long Norin reportedly had direct contact with some of the accused during the DK regime, and could share firsthand knowledge of internal party operations, the evacuation of Phnom Penh, and Khmer Rouge command structure. His testimony suggested that he was much more centrally involved in the DK regime than were Klan Fit and Romam Yun. Due to failing health, the elderly witness was permitted to testify via video link from his home in Banteay Meanchey province. On the screen, the witness was seen in his living room with staff from WESU, who occasionally repeated questions for him. Long Norin viewed the Party proffering questions through a screen-in-screen insert.

1. Long Norin's Background and Early Life in the CPK

Long Norin was born in 1938, in Dong Village, Malai District, Banteay Meanchey Province where he still resides. He stated that he is a farmer. From 1960-1971, he studied gymnastics in Prague, Czechoslovakia. Heeding the call of King Sihanouk to fight for his country, he subsequently went to Beijing and joined the resistance. It was in Beijing that he met Ieng Sary. Shortly after, he went to Hanoi and worked for the National United Front of Cambodia (**FUNK**) radio station headed by Ieng Thirith. Later, he went back to Cambodia via the Ho Chi Minh Trail, and worked in Steung Treng as a farmer at Office B20 and B15. Subsequently, Nuon Chea and Khieu Samphan sent him to Preah Vihear to study the people and their needs.

Following the "liberation" of Phnom Penh on 17 April 1975, he received orders to go to Phnom Penh. According to his testimony, he arrived there during the evacuation. Long Norin claimed, however, that he was not aware that people were being evacuated. He said he merely saw people walking out of the capital, but he claimed he did not know where they were heading. In Phnom Penh, Long Norin was assigned to work at Office B1, the Ministry of Foreign Affairs.

2. Life at the Ministry of Foreign Affairs

Long Norin testified that, from April 1975 until January 1979 he worked at the Ministry of Foreign Affairs, which Ieng Sary directed. In the Ministry, his tasks included typing documents, preparing passports, and listing foreigners coming to Cambodia. Long Norin's testimony included firsthand experience with Khmer Rouge paranoia about infiltration by the CIA and the KGB. According to Long Norin, around 1976 or 1977, his immediate superior instructed him to prepare a biography and asked him if he knew that he had been accused of being a member of the CIA. Long Norin said that he was not aware of these suspicions, Ieng Sary had previously inquired if he was CIA when they were in Hanoi. The witness also narrated that Ieng Sary asked him if

he knew a certain Thach Chea (who was reportedly Long Norin's schoolmate in the pedagogical school and a teammate in football). Long Norin surmised that Leng Sary asked him about Thach Chea because Leng Sary believed he was close to his former schoolmate. The witness further admitted that he knew that Thach Chea was with the CIA because he had contact with the embassies. He also explained that embassies had a tendency to have connections with CIA agents. He qualified that he, on the other hand, limited his contact to embassies of socialist countries.

At the start of the Thursday hearing, the OCP requested Long Norin to verify if the document shown to him on screen was his biography. The witness authenticated the document and confirmed that the handwriting therein was his. He further professed that his biography was an honest account of his life. Significantly, sections in Long Norin's biography referred to a number of persons, including Thach Chea, and Tep Sam An, Cambodia's Ambassador to Algeria. These references lead International Co-Prosecutor, Mr. Dale Lysak, to inquire whether Long Norin knew that at the time he wrote his biography, the CPK arrested and executed Tep Sam An. Lysak further asked Long Norin if he was aware that Thach Chea's wife and children were arrested following the evacuation of Phnom Penh, and later killed at S-21. The OCP likewise queried if the witness knew that many of the people he implicated in his biography ended up in S-21. Long Norin claimed that he did not know that these arrests and purges had occurred.

The OCP asked whether he was afraid when Leng Sary inquired if he was a CIA, or when he was instructed to prepare his biography. Long Norin answered, "I thought that one day, my turn would come." Significantly, the witness admitted that he received neither criticism nor any disciplinary action after he submitted his biography. It also appears that he was spared from the purge of many foreign-educated personnel at the Ministry despite being implicated in at three S-21 confessions, Long Norin admitted that the leadership did not order his arrest and re-education.

3. Credibility and Reluctance to Testify

Long Norin's testimony was generally coherent and responsive. However, he gave contradicting statements on a number of occasions and did not remember details clearly. This became evident when the Civil Party Co-Lawyers asked Long Norin questions similar to those previously asked by the OCP, but elicited different answers from him. For instance, while Long Norin initially said he stayed in Beijing for half a year, he later claimed he was there for one year and a half. In any case, he seemed to have remembered better when asked the second time about the circumstances surrounding his biography – he stated that it was Leng Sary who ordered his immediate supervisor to tell him to write his biography – a link to Leng Sary that he had not been able to provide an hour earlier in his testimony.

Additionally, it appeared that Long Norin was evasive when queried regarding purges in the Ministry of Foreign Affairs and Leng Sary's participation in these purges. When asked what happened to those who were considered "unclean" or found to be traitors, he replied that nothing happened to them. When he was further questioned about arrests of former diplomats and employees of the Ministry, he repeatedly maintained he was not sure, and that he did not know or remember. This prompted Lysak to confront the witness and ask: "(i)s there some reason you are reluctant to

testify today?” The witness then assured him that he was not reluctant, and that he would answer if he could. Lysak made the following observation:

we have seen [...] a fair reluctance to testify, I am later on going to take him through a few statements from his prior interview that are inconsistent with what he is testifying here today. And in relation to that, it is certainly relevant to know whether or not he has maintained relationships with Mr. Ieng Sary since the Democratic Kampuchea period that give him a reason to protect Mr. Ieng Sary and not to be perfectly candid about the events of that period.

The Co-Prosecutor proceeded to ask Long Norin questions about his relationship with Ieng Sary. Long Norin declared that he had no communication with Ieng Sary after 1979. However, the Prosecutor suggested that, in fact, he had established an organization named Democratic National United Movement with Ieng Sary in the 1990s, and had acted as the latter’s spokesman. Mr. Michael Karnavas, Ieng Sary’s international counsel, objected to this line of questioning on the ground that it was irrelevant. Lysak explained that since Long Norin showed “clear reluctance to testify,” he wanted to determine if said witness has maintained a relationship with Ieng Sary after the DK regime that give him a reason to protect Ieng Sary and not give candid answers regarding events that occurred during that period. The Chamber sustained Karnavas’ objection. Consequently, Lysak impeached the witness by confronting Long Norin with specific prior inconsistent statements he made to the OCIJ in December 2007. The OCP focused on topics where the witness had been more forthcoming about DK policies in prior interviews. For example, in his interview with the OCIJ, Long Norin apparently detailed Ieng Sary’s statements on traitors in the Ministry of Foreign Affairs.

The Civil Party Co-Lawyers were likewise successful in highlighting certain inconsistencies between Long Norin’s testimony and his prior statements to the OCIJ. This may have undermined the credibility of the witness. It is incumbent on the Trial Chamber to determine the evidentiary value it will afford Long Norin’s testimony.

III. LEGAL AND PROCEDURAL ISSUES

A number of legal and procedural issues bogged down this week’s proceedings. The Parties raised objections and concerns relating to (A) the propriety of allowing witnesses to be present in court prior to giving their testimony; (B) whether a Civil Party giving testimony, as well as WESU personnel providing assistance to persons in the dock, are required to take an oath; (C) what limits, if any, should be placed on communication between Civil Parties and their lawyers during breaks between session where the former is testifying; (D) whether witnesses should be permitted to review their previous written statements prior to testimony to refresh their memory; (E) the scope of permissible questioning pursuant to the Severance Order; (F) the form of questioning permitted in court when examining a witness; specifically, whether and when leading questions are allowed; and (G) the right of the Accused to waive his or her right to be present in court.

A. Presence of Witnesses in Court Prior to Testimony

Mr. Ang Udom, Ieng Sary’s national defense lawyer, raised the issue of witnesses attending hearings before they testify. He asked whether the Chamber, like domestic courts, prohibits civil parties and witnesses who have not yet given their testimony

from attending hearings or getting information on the proceedings. This is generally a precautionary measure to avoid improper influence over witness testimony. International CPLCL Ms. Elizabeth Simmoneau-Fort quickly clarified that there should be a distinction between civil parties and witnesses. She explained that civil parties have the right to attend all proceedings. Later in the day, President Nil Nonn assured that the Chamber will do its best to comply with Internal Rule 88(2). The Rule states:

The Accused shall not communicate with each other. Whenever possible, experts and witnesses shall stay in a separate room from which they cannot see or hear the proceedings. While in such room, the witnesses shall not communicate with each other.

The Chamber instructed the WESU to help address the matter, consistent with Internal Rule 88(2), but beyond that, the Chamber expressed futility in going to any further lengths to sequester witnesses from prior exposure to the proceedings. President Nil Nonn opined that, because of the nature of the ECCC, domestic law provisions cannot, practically speaking, apply in the present proceedings. Witnesses' access to modern means of communication from different media and other electronic means, he reasoned, are beyond the ECCC's control. Judge Lavergne added that there are around 500 persons in the gallery, and the ECCC cannot check everyone's identification every day. The Chamber expressed a willingness to endeavor, "in so far as possible," to ensure that no witnesses or experts are present during the hearing prior to them giving testimony, but they seemed unwilling to issue any formal admonishment to this end, or to order specific action be taken. Judge Lavergne, in fact, reminded the Parties that this is not a mandatory regulation, but rather, a general duty to be implemented by the WESU.

Certainly, it is true that the proceedings before the ECCC receive a great deal of media coverage in the Cambodian press, and it can be difficult, if not impossible, to guarantee that witnesses are not exposed to prior testimony through media outlets. Nonetheless, it is curious that the Trial Chamber would take such a hands-off approach to re-enforcement of the principle behind Rule 88(2). Because information about Case 002 is in fact easy for witnesses to access, it seems even more important that the Trial Chamber take a proactive role in communicating clear expectations about witness behavior prior to an in-court appearance. Rather than focus on the inability of the Chamber to police compliance with this rule, it might have been more helpful for the Judges to address the core principle at hand, and use their position of authority to unequivocally admonish witnesses to avoid exposure to prior testimony in order to prevent themselves from being improperly influenced.

B. Oath by Civil Parties and Courtroom Assistants

Another procedural issue raised by the Defense this week was the matter of Civil Party testimony, and how it will be treated by the Chamber in terms of evidentiary value. It is important for all the parties to have clarity on this matter, since it makes a great deal of difference in terms of how the parties approach examination of the witnesses. Unfortunately, the Chamber commenced testimony from two Civil Party witnesses without clarifying this procedural issue.

Before Klan Fit began giving his testimony, Mr. Michiel Pestman, Nuon Chea's international defense lawyer, inquired whether the witness had taken an oath. In addition, Pestman wanted to know the anticipated scope of testimony for this witness,

in particular whether he was testifying with regard to facts or to damages. This had apparently not been made known to the Parties in advance. The President answered that, in contrast to witnesses,⁶ neither the CPC nor the Internal Rules require a civil party to take an oath prior to giving testimony. Not satisfied with the answer, Pestman reiterated his query whether Klan Fit's testimony would cover facts relevant to proving charges in the indictment, or simply his individual claim for damages as a civil party. Pestman posited that Klan Fit should have to take an oath if he is to be called to testify as to facts that could be used to support a conviction of the Accused on any criminal counts.

Mr. Pich Ang, national CPLCL, objected to this line of inquiry, declaring that the question was inappropriate because Klan Fit is a Civil Party and not an ordinary witness. The difference between Civil Parties and ordinary witnesses lies in the fact that the former have a personal interest in the outcome of the case. They seek to prove the responsibility of the Accused for the crimes that caused them injury. Their demand for commensurate reparations is hinged on the guilt of the accused. The role of a witness, on the other hand, is to provide information – both inculpatory and exculpatory – to the Chamber to establish the guilt or innocence of the accused. Recognizing this difference, Mr. Vann Nath, one of the few survivors of S-21, opted to participate as witness rather than a civil party in Case 001, in order for his testimony to bear greater probative value as evidence meant to prove the underlying charges in the indictment.

Judge Lavergne elaborated on the President's initial response to Pestman's query. He explained that Civil Parties are parties of the proceedings, and as such, they can testify without taking an oath. Undermining the position argued by Pestman, Judge Lavergne pointed out that civil parties may testify as regards the damage they allegedly suffered, as well as to facts. It is the Chamber's responsibility to determine, at the end of the proceedings, the evidentiary weight it will accord a civil party's testimony when it relates to proving facts.

Another procedural matter that was raised about civil parties was whether or not the WESU staff assisting with testimony should be required to take an oath in accordance with Article 144 of the CPC. Mr. Kong Sam Onn, Khieu Samphan's national defense lawyer, rose during Mr. Klan Fit's testimony to argue that the WESU staff assisting ought to be required to take an oath. President Nil Nonn dismissed the concern, clarifying that the WESU staff was not acting as an official translator from Khmer to the Kachok dialect, but rather was merely assisting to ensure that Klan Fit understood the questions. Since the assistant did not provide interpretation services, and only helped facilitate Klan Fit's examination, the President concluded that he did not need to take an oath.

C. Communication between Civil Parties and Their Lawyers

Another contentious procedural matter that was raised in the course of the hearing was that of attorney-client communication during breaks in between sessions of testimony. Karnavas pointed out after one break in the proceedings that the Civil Parties testifying before the Chamber had consulted with their lawyers during the break. Karnavas called this practice "inappropriate." He argued that, as a matter of sound trial procedure, a person testifying before the Chamber, regardless of whether he is a witness or a civil party, should have no further contact with anyone once he

begins providing his testimony. This is necessary, he insisted, in order to prevent the witness or civil party from being improperly influenced. He stressed that lawyers should not coach or even give the appearance of influencing their clients' testimony.

International Co-Prosecutor, Mr. William Smith, agreed with Karnavas, insofar as witnesses are concerned. According to Smith, in order to prevent influencing witnesses, communication between counsel and witnesses should be limited. Smith, however, admitted that he was not sure of the rules on communication between civil parties and their lawyers while they are giving testimony or during breaks under French or Cambodian rules.

Ms. Elizabeth Simmoneau-Fort, international CPLCL, argued that since a civil party is not a witness but a party to the proceedings, a civil party should be allowed to consult with his lawyers, even in the midst of testimony. National CPCLC, Pich Ang, further posited that the principle of equality of arms will be violated unless civil parties were allowed freedom to communicate with their counsel at all times. Mr. Kim Mengkhy, a national Civil Party co-lawyer, agreed with Pich Ang, arguing that Karnavas' objection is incompatible with Cambodian practice, and would have the effect curtail the right of a party to communicate with counsel.

After hearing the arguments of the Parties, the Chamber ruled that, under the Internal Rules and Cambodian legal practice, Civil Parties are parties to the proceedings. Consequently, they are entitled to consult with their lawyers at all stages of the proceedings. Moreover, the Chamber clarified that IR 88(2) applies only to the Accused and witnesses.

D. Refreshing Witness Memory with Previous Testimony

To enhance the efficiency of trial proceedings, the Trial Chamber issued Memorandum E141 and E141/1, giving witnesses the opportunity, with the help of the WESU, to refresh their memories before giving testimony by reviewing the statements they made during the investigative phase.⁷ The Nuon Chea Defense strenuously objected to this practice, and asked that the Chamber temporarily stay its decision pending resolution of their objection.

The Trial Chamber, through Judge Cartwright, denied the objection of the Nuon Chea Defense. She stated that the Chamber had already indicated (in Memorandum 141/1) that witnesses would be provided copy of the statements they made to the OCIJ. Additionally, Judge Cartwright explained that providing witnesses with copies of their previous statements is the same practice followed during in the investigative stage in order to assist witnesses in refreshing their memory. She emphasized that the WESU retrieves the copy of the prior statement as soon as the witness finishes reading the document. Accordingly, witnesses are not allowed to bring a copy of their statements in court.

E. Leading Questions

Another area of procedural uncertainty between treatment of Civil Parties and ordinary witnesses came to the fore on Tuesday when the Ieng Sary Defense objected to a leading question posed by Civil Party Co-Lawyer Ms. Moch Sovannary to Civil Party Klan Fit. Karnavas objected on the grounds that her question was

meant to direct the Civil Party to the answer she wanted to elicit. The President sustained the objection. Subsequently, Karnavas made a similar objection after Moch Sovannary referred to a “policy against Vietnam,” which Klan Fit had not previously mentioned in his testimony. Karnavas described the question as “classic leading of the witness.” He further stated that the questions should be limited to “who, what, why, when, explain and describe” and not any statement leading to a desired answer. The President overruled this objection on the grounds that the question was based on facts that had been indicated in the Closing Order. Mr. Arthur Vercken, Khieu Samphan’s international lawyer, contested the ruling. He argued that the Closing Order does not establish facts. As with many of the other procedural Defense objections this week, the President Nil Nonn dismissed Vercken’s argument without addressing the substance of the objection. Instead, he simply dismissed it because it “lacks of substance,” and stated that in the absence of any specific motion, Vercken’s observation was “a mere disruption to the proceedings.”

Because the Chamber was inconsistent in how it dealt with leading questions, and failed to articulate a clear procedure on what will be accepted and what will not with Civil Party witnesses versus ordinary witnesses, it seems inevitable that questions about the propriety of leading questions will recur throughout the proceedings. The same matter was raised numerous times in Case 001, without clear resolution by the Trial Chamber. Some of the confusion likely comes from the diverse legal traditions of the national systems from which different lawyers come. Unlike adversarial proceedings in many common law legal systems, all witnesses at the ECCC are witnesses of the Chamber, and not witnesses of any particular party, regardless of which party included them in their respective witness lists. Witnesses are summoned by the Chamber and not by the Parties under IR 87.4. Given the blending of adversarial and inquisitorial practices that the ECCC has adopted under IR 21.1(a), it would probably be a good idea for the Trial Chamber to identify areas of procedural confusion and clarify reasonable expectations as early as possible in the proceeding. This would help minimize inefficiencies and avoid repetitive, unresolved grounds of objection. Unfortunately, they have not done so to date. While it is foreseeable that the Chamber would rule on objections on a case-by-case basis, it would be helpful for it to provide the Parties with guidelines when this occurs or during trial management meetings.

F. Subject-matter of Questioning; Exceptions to the Scope of the First Segment of Case 002

With regard to the permissible scope of questioning for witnesses, there is a tremendous lack of clarity stemming from the Severance Order in Case 002. Once again, the Trial Chamber’s unwillingness to take a proactive role in clarifying matters has set the stage for a great deal of unnecessary confusion in Court.

In its Severance Order,⁸ the Chamber decided to separate the proceedings in Case 002 into the following of discrete cases that incorporate particular factual allegations and legal issues:

- a) The structure of Democratic Kampuchea;
- b) Roles of each Accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned;

- c) Role of each Accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines of communication throughout the temporal period with which the ECCC is concerned;
- d) Policies of Democratic Kampuchea;
- e) Factual allegations described in the Indictment as population movement phases 1 and 2; and
- f) Crimes against humanity including murder, extermination, persecution (except on religious grounds), forced transfer and enforced disappearances (insofar as they pertain to the movement of population phases 1 and 2).⁹

Accordingly, questions in the first trial must only relate to these facts. The Chamber has indicated that, in “exceptional cases,” it may allow the Parties to ask questions beyond the issues of the first trial segment, however, when CPLCL Simmoneau-Fort sought clarification of what constitutes “exceptional circumstances,” the President simply referred her to the Severance Order and reminded the Parties to limit their questions to matters related to the first segment. Unsatisfied, Simmoneau-Fort inquired if the Chamber would allow Parties to ask Klan Fit questions outside the first trial segment’s subject matter. The Chamber informed the international CPLCL that the Chamber would “most likely” reject this request. The OCP raised the same matter and asked what “exceptional reasons” means to help them prepare a request that the Chamber would consider. In response, the President referred to Court Document No. 124/7.1/Corr. 2¹⁰ and explained that if Parties want to discuss topics beyond the scope of the Severance Order, they have to submit a reasoned request in advance.

The OCP touched on this issue again when international Co-Prosecutor Mr. Vincent de Wilde D’Estmael asked if it were possible to ask Long Norin about Case 002 in its entirety and not only about the first trial segment. He argued that Long Norin’s “very precarious health” is an exceptional reason that is likely to prevent him from being available to testify at a later date. As such, OCP should be permitted to ask him about all the charges in the Closing Order. Karnavas objected to this, stating that such applications should be made well in advance and offer greater specificity. He insisted that other Parties should be allowed to respond to claims of “exceptional circumstances.” The Chamber ruled in favor of the OCP on the matter at hand, allowing them to question Long Norin in all aspects of Case 002. The Chamber did not address Karnavas’ broader procedural concern with how the Chamber will go about hearing and responding to claims of “exceptional circumstances.”

The Nuon Chea Defense raised specific objections to the scope of questioning at least twice during the Civil Party co-lawyers’ examination of Klan Fit, and the Trial Chamber’s response to the objections was not entirely consistent, nor was the rationale behind the rulings clear. Moch Sovannary asked, “After the Khmer Rouge liberated Phnom Penh in April 1975, were you invited to come to take the political training courses in Phnom Penh?” She then posed several follow-up questions on this subject. Pestman objected on the ground that these questions were irrelevant to the scope of this segment of the trial. The Chamber denied Pestman’s objection and ruled that, because Moch Sovannary’s questions related to the history of the CPK, they were therefore within the scope of the Severance Order. Subsequently, Moch Sovannary’s questioning turned to the position Klan Fit held “following the liberation of Phnom Penh.” After Klan Fit answered that he was the Deputy Secretary of District

21 in Sector 101, the Civil Party Co-Lawyer proceeded to ask questions regarding the structure and the personnel that held positions in the North and Northeast Zones. Pestman objected to this line of questioning on the same ground: irrelevance. The Chamber sustained this second objection and reminded Moch Sovannary that questions should be limited to subjects covered by the first segment of the trial.

It is unclear why the Chamber denied Pestman's objection to questions regarding political training courses held in Phnom Penh, but sustained another objection to questions relating to positions Klan Fit and other cadres held, when all these questions covered events that happened after 1975. In light of these circumstances, the permissible scope of questions that may be posed to witnesses and Civil Parties remains ambiguous. Unless the Trial Chamber takes steps to clarify these matters, we should expect Parties to continue to practice with inadequate guidelines, and therefore raise repeated requests and objections on this issue. This will unfortunately and unnecessarily occupy more of the Court's time with procedural matters, when it could be devoting that time to substantive evaluation of evidence.

G. The Right of the Accused to Waive His Right to be Present

The right of the accused to waive his right to be present in his or her trial was again put to the test during the first two days of evidence hearing. Nuon Chea asked the Chamber a number of times to allow him to go back to the detention center, citing physical fatigue and an increase in his blood pressure. In the afternoon of the first day, the President instructed Nuon Chea to continue his testimony for another 30 minutes, in an effort to maintain the smooth flow of proceedings. On the second day after the morning break, however, Nuon Chea adamantly insisted that he would be unable to continue providing precise answers due to his condition. Relying on a medical report by the doctor on duty in the courtroom, the President rejected Nuon Chea's request to go back to the detention center, and instead ordered that the Accused be brought to the holding cell so he could continue participating remotely through an audio-visual feed that serves the holding cell. The Chamber further ordered that the Accused be brought back to the courtroom after the lunch break. Mr. Andrew Ianuzzi, Nuon Chea's international counsel, argued that his client need not be compelled to participate once he has waived his right to be present. However, Ianuzzi was unsuccessful in persuading the Chamber to allow his client to go back to the detention facility.¹¹ The Chamber gave no indication as to whether this ruling will become the standard procedure when any of the Accused seeks to be excused. Only time will tell.

As a general rule, there is a basic requirement that an accused be present in his own trial. If the accused is unable to attend on account of a physical or mental condition, the court needs to be provided with expert evidence to justify the absence of the accused.¹² A number of domestic jurisdictions, among them Cambodia,¹³ France¹⁴ and the United States,¹⁵ require the accused to be present during his trial but may waive his right to be present under circumstances, particularly when he has health concerns.

The ECCC's IR 81.1 confirms the requirement that the Accused be tried in his or her presence. IR 81.5, on the other hand, provides for exceptions on account of health reasons or other serious concerns. Under this rule, the Chamber may continue the proceedings in the absence of the accused with his consent. For an Accused to

waive his right to be present, the Chamber mandates that he submit a formal request to the Chamber in advance. This process is meant to allow the Chamber to make an informed decision on the matter.¹⁶ When the absence of the accused causes substantial delay in the proceedings, and where the interest of justice so requires, Rule 81.5 allows the Chamber to order the participation of the accused by appropriate audio-visual means. In addition, Rule 81.4 provides that proceedings may continue in the absence of an accused who, following an initial hearing, continues to refuse or fails to attend proceedings or is expelled from them. In these cases, the accused may be defended in the proceedings by his counsel. From these provisions, it appears that although the general rule requires the presence of the accused in the proceedings, his absence is nevertheless not entirely proscribed, as long as his counsel represents him in the proceedings.

IV. Civil Party Participation and Civil Party and Witness Protection and Support

Throughout the week, at least 10 Civil Parties participated in the proceedings inside the courtroom. Other Civil Parties were also in attendance in the public gallery.

a. Civil Party Co-Lawyers take the Lead in Questioning Civil Parties

In order to facilitate questioning, the Trial Chamber instructed the CPLCL to take the lead in questioning the two Civil Parties who testified in this week's proceedings. This allowed the Civil Party co-lawyers to take a more proactive role in directing the examination of the Civil Parties. It also afforded some measure of acknowledgement of the importance of the participation of Civil Parties in the present proceedings.

b. Repetitive and Irrelevant Questions

The monitor co-authors of this report observed that in the course of the testimony of the Civil Parties, some questions posed by the Civil Party co-lawyers to their clients tended to be repetitive or irrelevant to the scope of this segment of the trial. The Trial Chamber commented that Moch Sovannary did not appear to have used her time allotment wisely in asking questions. This had repercussions for the other Parties, as it prompted the Chamber to be stricter in allocating time between the Parties for questioning throughout the rest of the week.

c. Victim and Witness Support

Despite the absence of professional interpreters for the two Civil Parties who testified this week, the Chamber endeavored to provide adequate support by allowing WESU staff to accompany the witnesses, and assist them during their testimony. These WESU personnel repeated and clarified questions to the Civil Parties in instances when they were unable to understand the questions asked.

In the same vein, Long Norin, testifying remotely via video link, also appeared to receive adequate support from WESU. A WESU officer supported the witness throughout his testimony, reading him the statements he gave the OCIJ to help refresh his memory prior to testifying, ensuring that he heard and understood the questions posed by the lawyer and judges in court, repeating questions when necessary, and anticipating the witness' requests to relieve himself.

V. TRIAL MANAGEMENT

Notwithstanding the Trial Chamber's inconsistent and opaque responses to procedural concerns and objections from the parties this week, the Trial Chamber continued to profess an unwavering resolve to maintain a smooth, efficient flow of proceedings. To this end, the primary tool they appear to rely upon has been the setting of strict time limits to Parties' examination of the witness and Civil Parties. The logical ordering of witnesses called by the Chamber, and the overall narrative arc of testimony sought remains unfortunately unclear to outside observers. Of course, one must recognize the Chamber's need to respond flexibly to health concerns of the Accused and the witnesses, despite the impact this might have on scheduling and the flow of trial. Nonetheless, the Chamber's approach to trial management thus far has been somewhat bewildering from the perspective of the public gallery, and apparently frustrating for the lawyers representing the various parties in court.

a. Health Concerns, Time Allocation and Schedule

Health concerns of the Accused, the Civil Parties and witness largely dictated the progress of this week's trial, and prompted the Chamber to revise the schedule several times. In one instance, taking into consideration possible technical glitches that might occur during Long Norin's testimony through videoconference, and the additional likelihood of encountering age or health-related challenges, President Nil Nonn indicated that the Chamber "may have to really resort to Plan B." Ianuzzi, seeking clarification regarding what "Plan B" was, and whether it meant calling to the dock Romam Yun, Klan Fit or Nuon Chea, Judge Cartwright replied that there is no Plan B. She then reminded the Parties that the Court has to be flexible and that counsel must also be flexible, given the circumstances.

It is understandable that it is still early in the trial and the Chamber may need some time to get into the cadence of its trial management strategy. Moreover, flexibility from the Chamber and the Parties is indeed required, considering the numerous factors that may cause delay in the proceedings and changes in the schedule. However, more transparency and foresight from the Chamber and the Parties will certainly make the trial run in more efficiently.

While the Judges have emphasized the need for flexibility when arranging and re-scheduling witness testimony, they have been quite rigid when it comes to observation of strictly limited time allotments for Parties questioning witnesses. Total time allotments appear to have been calculated at the outset by the Trial Chamber without any consideration of the needs or desires of the Parties, although counsel conducting the questioning is entitled to request additional time if the assigned amount is insufficient. However, the Trial Chamber has continued to impress upon the Parties a sense of urgency, even in instances where they granted additional time, this week. At one point, before granting the OCP and extra 15 minutes to question Romam Yun, President Nil Nonn highlighted the need for the Parties to use their allocated time efficiently, exclaiming, "[t]ime flies and never waits." The Chamber granted this particular extension to allow the OCP to ask this Civil Party regarding forced evacuations, but the Court framed the reprieve as an exceptional grant of supplementary time. The Chamber reminded the Parties to be more aware of their time allocations in the future. Challenges in organizing the proceedings are to be

expected in a complex trial such as this. However, it is incumbent on the Chamber to ensure respect for the procedural rights of the Parties, while ensuring effective trial management.

b. Translation Issues

Klan Fit and Romam Yun, the two Civil Parties who testified this week, are not native Khmer speakers. It is unfortunate that there was no professional interpreter in the Civil Parties’ Kachok dialect to ensure accurate communication. Nonetheless, it is laudable that the Chamber ensured that these witnesses did receive assistance from WESU to facilitate their examination. The Court did its best to cope with the less than ideal circumstances by directing the Parties to keep their questions as short and simple as practicable.

Another matter related to translation that arose this week was the speed of questioning by the national Civil Party co-lawyers and the national Deputy Prosecutor. They spoke too fast in a number of instances when putting questions to Civil Parties, and the interpreters were hard-pressed in translating their questions. Though there was no manifest lapse in interpretation, the interpreters had to repeatedly ask the President to remind them to slow down.

c. Technical Concerns

There were a few minor challenges with the video link from Long Norin’s house in Banteay Meanchey Province, as the audio facilities did not function well in some instances. Some external factors also caused some technical concerns in the reception of Long Norin’s testimony. First, ceremony music from a neighboring house filtered into the audio feed, disrupting the questioning a number of times. Second, Long Norin’s testimony on Thursday afternoon was cut short due to a power shortage in the witness’ house, which disconnected the video link. Despite these concerns, however, the video-linked testimony proceeded smoothly in general and provided a viable alternative to actual presence in court for elderly and frail witnesses and Civil Parties who live in areas far from the ECCC.

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 05/12/11	09.02	10.29-11.02	12.01-13.32	14.37-14.59	15.21	3 hours and 51 minutes
Tuesday 06/12/11	09.03	10.22-11.05	12.00-13.35	14.45-14.55	16.00	4 hours and 31 minutes
Wednesday 07/12/11	09.15	10.20-10.40	12.01-13.37	14.37-14.57	15.59	4 hours and 28 minutes
Thursday 08/12/11	09.12	10.41-11.03	12.04-13.34	14.46-15.00	16.07	4 hours and 49 minutes
Average number of hours in session: 4 hours and 24 minutes						
Total number of hours this week: 17 hours and 39 minutes						
Total number of hours, days, and weeks at trial: 29 hours and 54 minutes						

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* (Case No. 002/19-09-2007-ECCC) before the Extraordinary Chambers in the Courts of Cambodia;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- 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)
CIA	Central Intelligence Agency
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)
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



* This issue of KRT Trial Monitor was authored by Mary Kristerie A. Baleva, Samuel Gilg, Princess Principe, Noyel Ry, Kimsan Soy, Penelope Van Tuyl and Flavia Widmer 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://forum.eastwestcenter.org/Khmer-Rouge-Trials/>> and <<http://socrates.berkeley.edu/~warcrime/>>. AIJI is a collaborative project between the East-West Center, in Honolulu, and the University of California, Berkeley War Crimes Studies Center. 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.

¹ Trial Chamber. “Severance Order pursuant to Rule 89ter.” (22 September 2011). E124. [Hereinafter, the **SEVERANCE ORDER**].

² Trial Chamber. “Notice of Trial Chamber’s disposition of remaining pre-trial motions (E20, E132, E134, E135, E124/8, E124/10, E136 and E139) and further guidance to the Civil Party Lawyers”. (24 November 2011). E145.

³ OCIJ. “Closing Order”. (15 September 2010). D427 [hereinafter, **CLOSING ORDER**] par.1577.391.

⁴ Rattanakiri Province borders Laos on the North and Vietnam on the East. It was part of the Northeast Zone during the Khmer Rouge regime. This Zone was reportedly run directly by Pol Pot from 1968-1970, and thereafter by Ieng Sary. See Kiernan, Ben. *The Pol Pot Regime: Race Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979, 3rd Edition*. Thailand: Silksworm Books (2002) p. 81.

⁵ Ieng Sary’s revolutionary alias was reportedly “Van”. See **CLOSING ORDER**.

⁶ IR 24(1) provides: “Before being interviewed by the Co-Investigating Judges or testifying before the Chambers, witnesses shall take an oath or affirmation in accordance with their religion or beliefs to state the truth.” Similarly, Article 328(2) of the CPC states: “before answering the questions, each witness shall swear that he will tell the truth according to his belief or religion.”

⁷ Trial Chamber. "Provision of Prior Statements to Witnesses in Advance of Testimony at Trial." (24 November 2011). E141/1.1.

⁸ SEVERANCE ORDER. See footnote 1.

⁹ *Ibid.* par. 2. 2.

¹⁰ Trial Chamber. "Request for Correction on Document E124/7.1 in English version" (21 November 2011). E124/7.1/Corr-2.

¹¹ A similar scenario occurred during the preliminary hearing on the fitness to stand trial. See Transcript of Preliminary Hearing on Fitness to Stand Trial, E1/10.1 (31 August 2011), p. 42 f., lines 17-5; 25 -5. See also, AIJI. *KRT Trial Monitor Case 002 Issue No. 2* (hearing on fitness to stand trial, 29-31 August 2011). pp. 4-5

¹² ICCPR Article 14; ECCC Law Article 35 new; ICTY Statute Article 21; SCSC Statute Article 17; The Rome Statute Article 63.

¹³ In Cambodia, the accused must be present unless he is prevented from being so because of health reasons or other serious reasons. See Constitution of Cambodia Art. 31, Code of Criminal Procedure of the Kingdom of Cambodia Art. 300, 309.

¹⁴ In France, the accused is required to be present before court and if he refuses to appear, he can either be forcibly brought before court or tried in his absence; if he disrupts proceedings he may be expelled from the courtroom and tried in absentia. However, the accused cannot choose to be tried in his absence unless he is only charged with a misdemeanor. See French Code of Criminal Procedure Art. 319, 320, 322, 411, 413.

¹⁵ In the United States, the accused must be present at the beginning of the trial, but under certain circumstances may not be required to attend the other trial phases or may be able to waive his right to do so. See United States Constitution Amendment 5, 6 and 14; United States Federal Rules of Criminal Procedure Rule 43.

¹⁶ Transcript of Initial Hearing, E1/4.1 (27 June 2011), p. 75, lines 1-20.