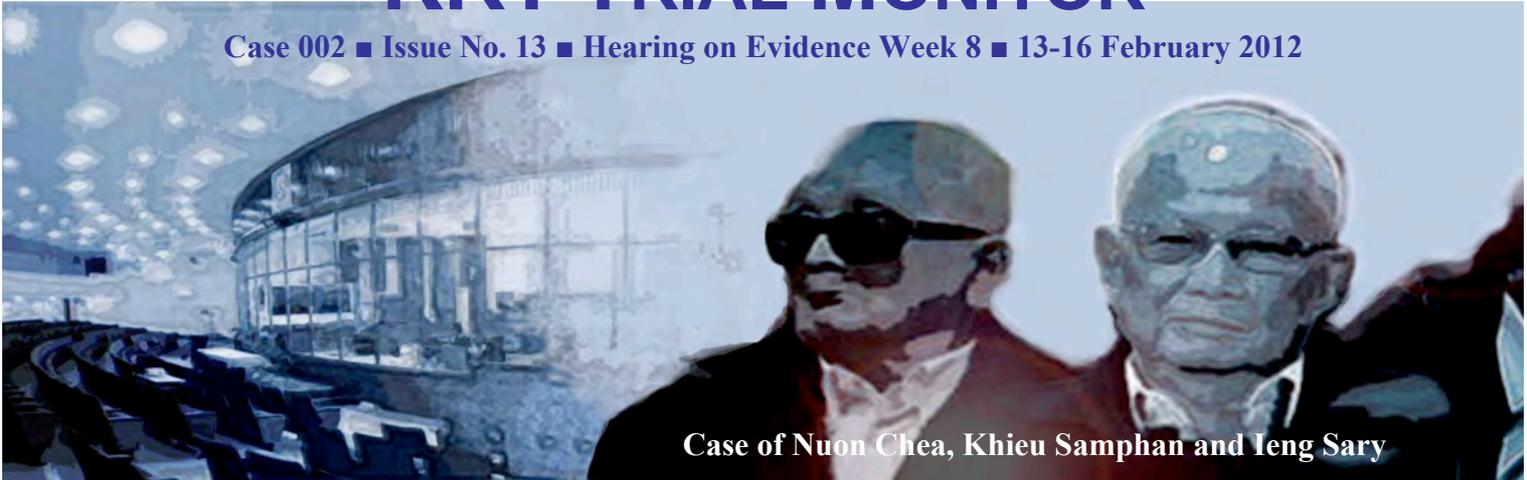


KRT TRIAL MONITOR

Case 002 ■ Issue No. 13 ■ Hearing on Evidence Week 8 ■ 13-16 February 2012



Case of Nuon Chea, Khieu Samphan and Ieng Sary

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

We only got the head of the crocodile, not the whole body, and we failed to discuss the policy of the Americans who dropped bombs on Cambodia.¹

- Accused Nuon Chea

I. OVERVIEW

From 13 to 16 February 2012, the Trial Chamber held hearings for the Parties to present documentary evidence relevant to this segment of the trial. The Co-Prosecutors proffered evidence on the historical background of the CPK and its policies before and after 17 April 1975, as well as documents allegedly showing the role of each of the Accused in the regime. The Civil Party Co-Lawyers presented evidence of Khieu Samphan's long-standing economic policies and highlighted the impact of those policies on the Civil Parties living under the regime. The Nuon Chea Defense, on the other hand, was scheduled to present six documents, but they were limited to two documents due to a pending objection against the others. Nuon Chea also took the opportunity to comment on a number of documents the other Parties presented.

The Chamber faced several legal and procedural issues this week relating to documentary evidence being used in the proceedings, the right of the Accused to have all substantive evidence considered by the Chamber, and the right to confront persons who have made statements being used as evidence.

II. Evidence and Objections

This week, the Trial Chamber scheduled discussions on documentary evidence: first, it allowed the parties "to highlight for the Chamber key documents considered to be particularly important to the historical background segment of Case 002/01 from their perspective."² Second, the Chamber heard objections to documents pertaining to administrative and communications structures of the CPK referenced in the footnotes of the Closing Order.³

A. Important Documents Pertaining to the Historical Background

The Trial Chamber allowed the Parties to present and describe the documents that they intend to use in the course of the first segment (the historical background) of the first trial, as well as their objections to particular documents.

1. Documents Presented by the OCP

The Prosecution presented a set of documents meant to demonstrate the continuity of CPK policy and leadership between the periods before and after 17 April 1975. During the first two days of hearings, they presented evidence of party propaganda and evidence specific to each of the Accused.

Starting on Monday morning, international Co-Prosecutor, Mr. Vincent de Wilde D'Estmael, and national Co-Prosecutor, Mr. Dararasmey Chan, read from 12 party propaganda documents. Among them were *Revolutionary Flag* magazines from the 1970s. The propaganda documents mainly focused on the history of the revolutionary movement of the CPK: its creation, armed struggle, and military and political victory. These documents also presented a picture of the pre-revolution class society, identified enemies of the revolution and offered ways to overcome both, including political education, collectivization of agriculture, evacuation of cities, closing of markets and general strengthening of control over the people. De Wilde argued that the CPK evacuated Phnom Penh to carry out its policy of creating a classless society. He emphasized that political education also served this purpose.

In the afternoon, national Co-Prosecutor, Mr. Veng Huot, and international Co-Prosecutor, Mr. Tarik Abdulhak, presented around 20 more documents to illustrate Khieu Samphan's role in the revolutionary movement before 17 April 1975. They aimed to demonstrate Khieu Samphan's longstanding membership and leadership role within the CPK, particularly that he knew about and influenced key developments in DK, including the alleged crimes. First, Veng Huot led the Chamber through media articles and broadcast surveillance documents reporting on the speeches, warnings and appeals that Khieu Samphan made as GRUNK's spokesman until April 1975. In his 14 January 1975 speech to KR forces, Khieu Samphan called for the death of "seven traitors"⁴ and described in detail the situation at the military front and the food shortage in Phnom Penh. Abdulhak followed-up by quoting from Khieu Samphan's books, interviews, and speeches, as well as other media articles, and depicted an image of a man who knew the CPK leaders since the 1950s, joined them in the late 1960s out of political conviction, and supported their nationalistic struggle and collectivization efforts, regardless of the sacrifices these entailed and notwithstanding his concern that, at times, the demands of sovereignty contradicted human rights principles.⁵ A 1982 *New York Times* interview quotes Khieu Samphan admitting that he was involved in the decision to evacuate Phnom Penh.⁶ Abdulhak ended his presentation on Tuesday morning with video clips showing Khieu Samphan in the 1970s, visiting and welcoming foreign officials, and another clip from shortly before his arrest in 2007, saying he thought Pol Pot was a "patriot"⁷ who tried to save his country and lead the people out of poverty.

Dararasmey Chan and international Co-Prosecutor, Mr. William Smith, presented documents relating to Ieng Sary on Tuesday morning. First, the national Co-Prosecutor addressed the relevance of the list of agreed facts that Ieng Sary professed last year. These facts related to pre-1975 CPK policy, ideology, formation and structure, and Ieng Sary's role in the CPK. Second, Dararasmey Chan quoted from interviews Ieng Sary gave in the 1970s, especially from the one he gave the U.S. communist Daniel Burstein during his visit to Cambodia in 1977. The OCP claimed that these interviews gave a candid account of Ieng Sary's role and awareness of CPK policy, which was then still "untouched by revisionism that can occur later in the face of international criticism".⁸ In these interviews, Ieng Sary explained how he joined the communist movement and helped establish the CPK to instigate armed political struggle. The interviews also showed the progression of Ieng Sary's roles as recruiter and advertiser for the CPK and his later position as the foreign minister of the regime. They also showed his long-term support for CPK policies such as evacuation and collectivization. Smith played an audio recording of Ieng Sary's interview with historian Stephen Heder in which the

Accused said that, in 1974, he and Pol Pot discussed how to manage Phnom Penh after its “liberation”, and that Pol Pot told him that the capital would be evacuated. Smith contrasted these admissions with an interview Ieng Sary gave in 1998, after defecting to the Cambodian government, in which he denied being a part of decision-making or knowing about the evacuation of Phnom Penh. Smith asked the Chamber to be aware of Ieng Sary’s motives when considering such later interviews.

On Tuesday afternoon, national Co-Prosecutor, Mr. Seng Bunkheang, and international Co-Prosecutor, Mr. Dale Lysak, presented documents relating to Nuon Chea. They pointed out discrepancies between the statements Nuon Chea made before the OCIJ and those he made before the Trial Chamber. They emphasized that Nuon Chea was more forthright about the other Accused, Ieng Sary and Khieu Samphan during his interviews with the OCIJ. Lysak also showed four photographs taken at the 1971 CPK congress and identified some of the central CPK cadres, amongst them Pol Pot, Nuon Chea, and Khieu Samphan.

2. Documents Presented by the Civil Party Lawyers

On Wednesday, after some discussion on whether they were allowed to present documents that were not available in all three official languages of the court (see III.B of this report), the Civil Party lawyers commenced presenting their documents. In the morning, international Civil Party lawyer, Mr. Olivier Bahougne, proffered Khieu Samphan’s statements to the OCIJ, documentary filmmakers, and passages contained in letters and the books the Accused himself wrote. Bahougne’s purpose was to demonstrate Khieu Samphan’s long standing association with the revolutionary movement, to show that he was instrumental in instigating the armed insurrection against the Lon Nol government, and that he wanted the CPK to implement the economic policies he proposed in his doctoral thesis.

In the afternoon, national Civil Party lawyer, Mr. Sam Sokong, quoted from a dozen Civil Party application forms in which the Civil Parties narrated their evacuation, malnourishment, forced labor, torture, and fear of being murdered. These highlighted sections did not include accusations against any specific Accused person.

3. Nuon Chea Defense Opts not to Present Documents

The latter part of Wednesday afternoon had been scheduled for the Nuon Chea Defense to present documents they deemed particularly important for the trial segment. However, the OCP objected to four of the Team’s six documents on the ground that they had been filed late, and to all six documents on the ground that they had not been translated into French or Khmer. The Trial Chamber allowed the presentation of two documents, even though they were not available in French or Khmer, because they could be translated simultaneously. As regards the four documents that were filed late, however, the Chamber gave the Nuon Chea Defense time to file a written reply to the objection before it would decide the admissibility of these documents. Faced with the dilemma of using only two of their six documents (Reserve Judge Claudia Fenz instructed Counsel to present them “either today or never”⁹), Nuon Chea’s international counsel, Mr. Michiel Pestman, opted not to present any document at all, saying that presenting only two would not create a coherent narrative for the Chamber or the public.

On Wednesday and Thursday, the Nuon Chea Defense attempted to address several of their requests: (i) the disqualification of Judge Silvia Cartwright; (ii) the Chamber’s condemnation of Prime Minister Hun Sen’s statements to the Vietnamese media regarding Nuon Chea, (iii) discussion by the Nuon Chea Defense of substantive matters orally before the Chamber for the benefit of the public; (iv) continuance of discussions on the historical background segment of the trial (see Section III.D).

4. Nuon Chea Comments on Documentary Evidence

On Thursday morning, Nuon Chea took 15 minutes to make some general remarks regarding the documents presented by OCP and Civil Party lawyers. He said that he needed more time to study the documents, as he is old and had not fully understood them. He went on to comment that since the Documentation Center of Cambodia (**DC-Cam**), the OCIJ, and some interviewers may be biased, he demanded to see the original documents from these sources. Finally, he claimed that, according to Cambodian law, he is allowed to put new documents before the Chamber until the end of the hearing; he argued that this may be necessary because so far, the Chamber had only seen a partial outline of the historical background of the CPK (see Section III.D).

B. Objections to Documents Pertaining to the Second Trial Segment Referenced in Closing Order Footnotes

The rest of Thursday was characterized by discussions about the documents referenced in the footnotes in the Closing Order pertaining to the second trial segment, the CPK's administrative and communications structures. These documents were presumed relevant and reliable, and were admitted before the Chamber with an "E3" designation. The Chamber heard objections from all Defense Teams and counter-arguments from the OCP and CPLCL.¹⁰

After spending a considerable amount of time clarifying which documents were the subject of the day's hearing and ensuring that the Nuon Chea Defense addresses matters only within the agenda, the Trial Chamber gave the floor to each Defense Team to present their objections to the admissibility of 95 "E3" documents. The Defense Teams raised concerns about the authenticity and reliability of these documents, and claimed that these documents, which were compiled by the OCIJ, were limited to inculpatory evidence, when the OCIJ should have been putting inculpatory as well as exculpatory evidence before the Chamber.

Noun Chea's international counsel, Mr. Andrew Ianuzzi, objected to six documents which concerned statements by Meas Mut, Ouk Bunchoeun, Sim Kha, Chea Sim and Heng Samrin. He objected particularly to the fact that none of these individuals have been put on the provisional witness list for this trial. Ianuzzi emphasized that the Nuon Chea Defense did not object to the admission of these individuals' statements in general, but that they have submitted a written application requesting the inclusion of these five persons in the witness list. Ianuzzi also expressed concern that the Chamber has not taken any action against four of these witnesses, who had ignored previous summons to appear before the court. He claimed that these witnesses had ignored their summons with the support of the government.

leng Sary's international counsel, Mr. Michael Karnavas, attempted to challenge the presumption of admissibility for certain categories of documents. To this end, he questioned the neutrality of Duch, Steven Heder, and Foreign Broadcast Information Service; he also doubted the accuracy of DK period meeting minutes and telegrams and demanded that the authors of media reports and other documents be brought to court for cross-examination. Karnavas argued that the Chamber should give little or no weight to many of the documents, because of concerns about their reliability.

Khieu Samphan's national counsel, Mr. Kong Sam Onn, echoed these arguments as he went through most of the 95 documents individually. He also reiterated his claim that DC-Cam is biased against the Accused and as such, the Chamber should not depend on documents from this organization. He also criticized many documents, on the basis that they were interviews conducted outside the judicial process. He averred that either the original

recordings of these interviews were not available, or their chain of custody was unclear. Kong Sam Onn also argued that many of the documents were irrelevant to the case at bar.

The OCP and Civil Party lawyers responded to the Defense Teams' objections. Seng Bunkheang provided an overview of more video clips of Khieu Samphan, Nuon Chea and Ieng Sary and pointed out why the OCP deemed them reliable. International Co-Prosecutor Ms. Falguni Debnath reminded the Trial Chamber that the Defense cannot ask for the authors of documents to be summoned as witnesses without showing why the evidence is, on its face, unreliable and that the evidentiary value of the documents should not be considered at this point. International CPLCL, Ms. Elisabeth Simonneau-Fort, added to the OCP's reply, noting that most of the objections had already been discussed in the first hearing on document admissibility and that the Defense had again failed to show that the documents were unreliable.

III. LEGAL AND PROCEDURAL ISSUES

The Parties raised several legal and procedural issues in this week's proceedings. The Defense Teams objected to the manner in which the OCP and the Civil Parties presented documents. The Chamber also revisited the debate on the admissibility of documents that are not available in all three official languages of the court. There was also a discussion about the procedure to be adopted to rectify errors in translation. Moreover, the Nuon Chea Defense argued that they should be permitted to raise issues orally in court instead of having to make written submissions to ensure transparency of the proceedings. Furthermore, they advanced their position that they should have the right to present exculpatory evidence until the end of the trial. The Parties further debated the issue of whether they were presenting documents to the Chamber to assist with their decision, or presenting documents to inform the public.

A. Objections to the Manner of Presenting Documents

As the OCP and the Civil Party lawyers presented documents to the Chamber, the Defense objected several times to what they characterized as presenting "closing arguments"¹¹ and "making submissions"¹² about the documents. They argued that the OCP and Civil Party lawyers were making inculpatory arguments based on the evidence, rather than simply placing the documents before the Chamber. The Defense teams argued that such arguments were premature.

Karnavas objected to the OCP's and Civil Party's presentations at least three times, arguing that the presentation of arguments should be reserved for closing submissions. He expressed concern that the Prosecution was "putting a spin"¹³ on the evidence that could prejudice the listeners against his client. Kong Sam Onn objected to the OCP and Civil Party presentations a number of times for the same reason. He argued that Seng Bunkheang and Bahougne, were "making accusations"¹⁴ and "submissions [that were] intended to exert inculpatory evidence"¹⁵ against his client, rather than simply describing the documents in detail. According to the Nuon Chea Defense, on the other hand, they did not object to "introductory submissions as to why documents are relevant, placing them in proper context,"¹⁶ but they were having trouble following the Prosecutor without references to actual documents. They argued that without the specific, clear document references, the Prosecutor's presentation "really sounds like a closing submission."¹⁷

The Prosecution responded that they may, and indeed must, submit a description of the relevance of the documents in order for the documents to be admitted. Abdulhak queried how the Prosecution was supposed to highlight the relevance of documents without giving context. He argued that, "this trial is conducted before a panel of professional judges. There

is no risk, here, of tainting a lay jury by us making comments that perhaps provide that context.”¹⁸ He further stated that if the Chamber does not permit descriptions, “all we will be doing is reading out passages which... all of us can do without this hearing.”¹⁹ The Chamber ruled to permit such descriptions, within limits.

The Chamber did not issue a detailed ruling on this issue. Rather than delineating the difference between describing relevance and making arguments on the basis of the evidence, it preferred to exercise its discretion to either sustain or overrule objections on a case-by-case basis. Judge Fenz remarked that there is a fine line between pleading and describing supposed relevance or providing limited context; however, because all parties are professionals, she trusted that they could all be aware of this line and try not to cross it. President Nil Nonn indicated that the purpose of these hearings was to “indicate a document that is of significant importance to the public and parties, and it also provides the opportunity for parties to present documents before the Chamber and to ensure a greater measure of public accessibility to the document.”²⁰ Therefore, the President indicated that Parties should be careful not to issue pleadings for their case.

B. Admissibility of Documents that Lack Translations

Before the Civil Party lawyers presented documents, Kong Sam Onn objected to their Document List, on the ground that the documents were available only in one language. The Civil Party lawyers also faced this issue during Week 6 proceedings.²¹ On 30 January 2012, the Trial Chamber issued an oral ruling that the Civil Party documents may not be admitted because the complete documents were only available in one language.

This week, with leave from the Chamber, Simonneau-Fort responded to Kong Sam Onn's objection and the Trial Chamber's 30 January 2012 ruling. Simonneau-Fort argued that the Civil Party applications should be admitted, even though full translations are not available in all three official court languages. She argued that the Civil Parties' rights as a Party to the proceedings will be violated if the Chamber refuses to admit the documents. She asserted that Civil Parties' rights are as important as the rights of the Accused. As such, any violation of the Civil Parties' rights would be a violation of fair trial. She noted that the Chamber's 31 January 2012 memorandum states that documents must be available in all three languages in order to be admitted, unless translations are impossible due to the workload on the Translation Unit and the relevant passages are short and may be translated during the proceedings.²² Simonneau-Fort pointed out that the Civil Parties submitted their Document Lists and requests for translations within the deadlines, but that the Translation Unit was not able to meet those requests. Therefore, the deficiency of translations was not due to any failure of the Civil Parties to comply with the established procedures. Furthermore, the Civil Parties had only designated 10-14 documents as relevant to the historical background section of the trial, and from each document, only a few sentences were relevant. Therefore, she argued that these documents should be admitted before the Chamber to be translated during proceedings, as stipulated in the 31 January memorandum.²³

Additionally, Simonneau-Fort objected to the Senior Legal Officer's e-mail that these documents may not be admitted before the Chamber due to a lack of probative value. The international CPLCL argued that the Chamber cannot disregard these documents because of their supposed lack of probative value, without first seeing the contents of the documents. Such dismissal would be arbitrary and violate the rights of the Civil Parties to present evidence as a Party to the proceedings. Finally, Simonneau-Fort argued that by dismissing these documents, the Chamber would be dismissing valuable substantive evidence that is important for a full analysis of the issues at hand.

After deliberating on this issue for several minutes, Judge Jean-Marc Lavergne remarked that the Chamber did not intend to silence any Party and stated that the Chamber will issue a definitive ruling in due course, with reference to international jurisprudence, the rights of the Accused, and the right of the Parties to challenge inculpatory evidence.

C. Substantive Translation Issues

leng Sary's national counsel, Mr. Ang Udom, and Khieu Samphan's national counsel, Mr. Kong Sam Onn, pointed out substantive errors in the translations. Ang Udom asserted that the English translation of the interview leng Sary gave Mr. Stephen Heder did not accurately reflect the true meaning of the Khmer words that leng Sary used. He requested a re-translation of the entire document. Kong Sam Onn noted that the Khmer translation of the English language spoken by the Co-Prosecutor inaccurately stated that King Norodom Sihanouk, ordered the killing of two people, Hu Nim and Hou Yun. The Trial Chamber advised that any specific challenges to translation should be submitted in writing, pursuant to the practice established by the Trial Chamber since Case 001.

D. Transparent Proceedings: Written versus Oral Submissions

Nuon Chea's international counsel, Mr. Jasper Pauw, expressed concern about a lack of transparency in proceedings if Parties are required to discuss substantive issues by written submissions instead of orally in court. Pauw particularly emphasized that written submissions hinder public awareness and understanding of an issue, because the public does not read such submissions. Therefore, the Nuon Chea Defense requested certain issues, such as their desire to continue hearings on the historical background of the CPK and to discuss the admission and scheduling of witnesses, to be discussed in open court so that the public might be fully informed about these issues (See also Section III.E.). The Chamber muted Pauw's microphone a number of times during his requests, saying that these comments were not permitted because the Chamber had ruled in favor of written submissions for these issues.

Nuon Chea's counsels briefly noted two of their written submissions for the record. Pestman announced the team's written motion requesting the disqualification of Judge Cartwright due to her statements to the press in New Zealand.²⁴ Additionally, Ianuzzi informed the Chamber of their written application pursuant to ECCC Internal Rule 35 concerning Prime Minister Hun Sen's remarks in Vietnam about Noun Chea.

E. Addressing the Chamber versus Addressing the Public

Throughout the week, the Parties debated the issue of whether they were presenting documents to the Chamber to assist with their decision, or presenting documents to inform the public. Once, Judge Fenz reminded the Parties to highlight the relevance but not to make arguments so as to inform but not unduly bias the public. On another instance, President Nil Nonn reminded Kong Sam Onn that he was addressing the Chamber, not the public, and Kong Sam Onn responded that he believed he was addressing both at once. The Scheduling Order suggests that the hearings are meant to address both the Chamber and the public: "The purpose of this hearing is to ensure a greater measure of public accessibility to the documentary aspect of the trial, and to provide an opportunity (for those parties who seek it) to highlight for the Chamber key documents considered to be particularly important to the historical background segment of Case 002/01 from their perspective."²⁵

F. Rights of the Accused

The Nuon Chea Defense argued that they are allowed to put new documents before the Chamber until the end of trial, in response to the OCP's 31 January 2012 objection that they should be disallowed from doing so because they submitted their Document List late (despite clear directions from the Trial Chamber). Nuon Chea asserted that, under Cambodian law, he is entitled to present new documents until the end of trial.²⁶ Pestman further asserted that, if he were not permitted to present certain documents during the course of the trial, he would present them during his closing arguments. The Trial Chamber said they would rule on this issue in due course, and welcomed a written response from the defense to the OCP's objection.

Noun Chea's lawyers also requested further discussion of the historical background, claiming that the Co-Prosecutors and witnesses who had testified thus far had provided an incomplete account of the history of the CPK and KR. Nuon Chea said, "there are still holes, or gaps in the context of the historical background of the Democratic Kampuchea and the general public has not been informed of what happened back then. [...] We only got the head of the crocodile, not the whole body, and we failed to discuss the policy of the Americans who dropped bombs on Cambodia."²⁷ As indicated in the previous section, the Accused asserted that the OCIJ is biased and only investigated inculpatory evidence against him. Consequently, he argued that he must be permitted to present additional evidence to present a complete picture of the events.

Nuon Chea further asserted that the witnesses that the Chamber had heard thus far had not provided any substantive evidence, while the witnesses in his list would. He claimed that none of the witnesses on his list had been called. To understand the complete history and for the sake of the truth and justice, Noun Chea requested that the Chamber summon his witnesses.

Kong Sam Onn again asserted the Accused's right to confront people who have made statements or published materials that provide substantive evidence against him in the courtroom.

Under the Internal Rules, the Accused has an absolute right to confront the sources of evidence used in the course of the proceedings.²⁸ However, which evidence is largely dependent on the discretion of the Chamber.

IV. TRIAL MANAGEMENT

This week's sessions frequently began late and ended early. For example, on Wednesday, hearings did not resume until 13:50, 20 minutes after the scheduled time. Proceedings were also hampered by technical difficulties and confusion as to which documents were to be used as basis for proceedings on Thursday.

A. Challenges in the Presentation of Documents

On Thursday, the Chamber heard objections to documents referenced in the footnotes of the Closing Order and admitted before the Chamber as "E3" documents. However, there was some confusion among Parties as to which specific documents were under discussion and even the Chamber was unclear on this issue. Apparently, several lists of documents were circulated in preparation for this hearing. The final list reduced the number of documents from 120 to 95 in response to the Ieng Sary Defense's indication that some documents were duplicated on the list. Ianuzzi, Karnavas, Kong Sam Onn, and Lysak each presented a different list that they believed the Chamber was using for the day. The judges conversed

several times on this issue, and eventually decided that they themselves were unclear as to which documents were to be the basis of Thursday's discussion. The Chamber took its morning break early in order to determine the appropriate Document List. This issue resulted in a 45-minute delay in the proceedings.

B. Courtroom Etiquette

Pestman opened his remarks this week with a comment on the President's reference to him as "neak aeng" last week. Pestman asserted that while he had no knowledge of the Khmer language, he was informed after that hearing that this word had been used approximately 12 times, and that it was a rude form of the word "you" that should not be used in the courtroom. Pestman argued that the President's use of such language was inappropriate and, furthermore, could be interpreted as an attempt to intimidate the Accused. He also noted,

I may have raised issues you're not happy with, but I've never addressed the Court inappropriately, and I would like the Court to address us appropriately as well... The use of the word 'neak aeng' to address me or my client only helps to further undermine the integrity of this Court, and equally, important, it could give the appearance of bias.²⁹

Karnavas used strong language during his objections to the OCP's presentations. He said of Dararasmey Chan's presentation, "now he's simply making speeches. It's a waste of our time. Either they pose documents or he should sit down."³⁰ Smith objected to Karnavas' language, arguing that it was inappropriate for counsel to tell another party to "sit down."

The Chamber also cut off comments from members of the Nuon Chea Defense and Kong Sam Onn several times this week by muting their microphones. While directing the conduct of the proceedings is undoubtedly within the authority of the Chamber, restraint in the exercise of its discretion, particularly when such exercise may have the effect of undermining the rights of the Parties, would be welcome.

C. Technical Difficulties

The Chamber faced several technical difficulties this week, including issues with the audio projection, translation and transcription. On Tuesday morning, the audio in English was cut off for approximately 30 seconds, for no apparent reason. On Tuesday and Wednesday, several counsels repeated ERNs to assist the transcription; however, the ERNs were different each time in the English translation. Lastly, the technology for the transcription malfunctioned on Thursday afternoon. The Chamber took an early afternoon break in order to deal with this issue.

D. Attendance

Khieu Samphan had a new international counsel present. Ms. Anta Guissé was permitted to observe proceedings from her seat with the Khieu Samphan defense team; however, she was not permitted to speak because she has yet to swear her oath before the Appeals Chamber of the ECCC.

Each day at the end of the first session, Ieng Sary requested, through his counsel, to be excused to observe the proceedings from his holding cell downstairs. Nuon Chea issued the same request each day before lunch. These requests were all granted. Khieu Samphan was present for all sessions.

Attendance by Judges. Judge Silvia Cartwright was absent this week due to health concerns. Judge Fenz temporarily took Judge Cartwright's seat, pursuant to ECCC Internal Rule 79(4).³¹

Attendance by the Public. The public gallery had no more than 250 observers at any one session, and there were as few as 38 persons at the beginning of hearings on Wednesday. Approximately 150 students attended the first session on Wednesday morning.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 13/02/12	9.07	10.38 -11.00	12.04-13.30	14.40-15.00	16.08	4 hours and 53 minutes
Tuesday 14/03/12	9.04	10.29 -10.51	11.59-13.34	14.57-15.19	15.54	4 hours and 30 minutes
Wednesday 15/02/12	9.06	10.32 -11.01	12.07-13.50	15.01-15.20	15.42	4 hours and 5 minutes
Thursday 16/02/12	9.03	09.53- 10.39	12.03-13.31	14.22-14.44	15.43	4 hours and 4 minutes
Average number of hours in session:		4 hours and 23 minutes				
Total number of hours this week:		17 hours and 32 minutes				
Total number of hours, days, and weeks at trial:		137 hours and 23 minutes 32 TRIAL DAYS OVER 9 WEEKS				

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 ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings; 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
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



^{*} This issue of KRT Trial Monitor was authored by Mary Kristerie A. Baleva, Faith Suzzette Delos Reyes, Samuel Gilg, Ramu Nachiappan, Sovanna Sek, Samantha Leeand Penelope Van Tuyl 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. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

¹ Trial Chamber. Transcript of Trial Day 33 (16 February 2012), Case No. 002/19-09-2007. E1/45.1. [hereinafter, **16 FEBRUARY TRANSCRIPT**]. Lines 5 – 7. 9.

² Trial Chamber. "Memorandum: Scheduling of oral hearing on documents (13-16 February 2012)" (9 February 2012). E170. [hereinafter, **SCHEDULE**]. para. 2.

³ SCHEDULE. para. 2.

⁴ Trial Chamber. Transcript of Trial Day 30 (13 February 2012), Case No. 002/19-09-2007. E1/42.1. [hereinafter, **13 FEBRUARY TRANSCRIPT**]. Line 8. 88.

⁵ Prosecutor Abdulhak quoted a caption from a photograph wherein Khieu Samphan wrote, "Can one be true to the principles of respect for human rights in defense of one's homeland at the same time, when it happens that the two principles contradict each other...?" and "I still profoundly agree with my orientation of life that the defense of one's country's independence and sovereignty is always and ever legitimate and necessary." 13 FEBRUARY TRANSCRIPT. Lines 11-17. 94.

⁶ "And he acknowledged that millions of Cambodians had been sent out of Phnom Penh and into the countryside; as a result of 'a collective decision' Had he joined in the decision? Mr. Khieu Samphan chuckled dryly and replied in French, 'yes, evidently.'" 13 FEBRUARY TRANSCRIPT, Line 25. Lines 1 – 3. 103.

⁷ Trial Chamber. Transcript of Trial Day 31 (14 February 2012), Case No. 002/19-09-2007. E1/43.1. [hereinafter, **14 FEBRUARY TRANSCRIPT**]. Line 23. 8.

⁸ 14 FEBRUARY TRANSCRIPT. Lines 11 – 12. 13.

⁹ Trial Chamber. Transcript of Trial Day 32 (15 February 2012), Case No. 002/19-09-2007. E1/44.1. [hereinafter, **15 FEBRUARY TRANSCRIPT**]. Line 22. 81.

¹⁰ SCHEDULE. para. 5, 6.

¹¹ 14 FEBRUARY TRANSCRIPT. Line 11. 54.

¹² 13 FEBRUARY TRANSCRIPT. Line 20. 82.

¹³ *Ibid*, at line 1. 65.

¹⁴ 15 FEBRUARY TRANSCRIPT. Line 4. 11.

¹⁵ 13 FEBRUARY TRANSCRIPT. Line 21. 82.

¹⁶ 14 FEBRUARY TRANSCRIPT. Lines 24 – 25. 89. Line 1. 90.

¹⁷ *Ibid*, at line 23. 23.

¹⁸ 13 FEBRUARY TRANSCRIPT. Lines 24 – 25. 84. Line 1. 85.

¹⁹ *Ibid*, at line 24-25. 85. Line 1. 86.

²⁰ 14 FEBRUARY TRANSCRIPT. Lines 16 – 21. 19.

²¹ See KRT TRIAL MONITOR Issue No. 11, Hearing on Evidence Week 6 (30 January 2012 – 2 February 2012). 9-10.

²² "The Trial Chamber has previously indicated that parties seeking the introduction of documents at trial bear the burden of ensuring their timely availability in all three official languages (E 13111). Some latitude will be granted by the Chamber where parties are precluded from doing so due to workload constraints of the ITU and when the relevant portions of the documents the parties intend to put before the Chamber and to use as the basis to question a witness or an Accused are available in at least one language that the Accused or the witness can understand. Alternatively, and where the relevant portion of a document in question is brief and can be easily translated in court, the Chamber may allow that portion of the document in question to be put to an accused or

witness.” Trial Chamber. “Memorandum: Trial Chamber response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158” (31 January 2012) [hereinafter, **MEMO (31 January 2012)**]. E162. Par. 8. 2

²³ “[W]here the relevant portion of a document in question is brief and can be easily translated in court, the Chamber may allow that portion of the document in question to be put to an accused or witness.” MEMO (31 January 2012).

²⁴ In the motion, the Nuon Chea Defense took particular issue with the following quote by Judge Cartwright: “The Defense Counsel ‘put more emphasis on disruption than representing their clients,’ she says.” Nuon Chea Defense. “Third application for disqualification of Judge Cartwright” (14 February 2012). E171. [hereinafter, **MOTION FOR DISQUALIFICATION**]. Para. 2. 1.

²⁵ SCHEDULE, para. 2.

²⁶ Code of Criminal Procedure of the Kingdom of Cambodia, [hereinafter, **CCP**], Article 334, provides that all documents can be admitted until the end of the hearing. “Until the end of the trial hearing, the accused, the civil party, and civil defendants may make written statements and submit all documents and evidence that they think will be conducive to ascertain the truth. The written submissions shall be stamped by the presiding judge and the court clerk and be attached to the case file. See also, Extraordinary Chambers in the Courts of Cambodia Internal Rules (Rev. 8), as revised on 3 August 2011 [hereinafter, **INTERNAL RULES**]. Rule 87(4). “During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial.”

²⁷ 16 FEBRUARY TRANSCRIPT. Lines 20–23; 1-7. 8-9.

²⁸ See INTERNAL RULES, 84(1) and 87, and CCP, Article 133.

²⁹ 13 FEBRUARY TRANSCRIPT. Lines 11 – 18. 5.

³⁰ 14 FEBRUARY TRANSCRIPT. Lines 15 – 16. 16.

³¹ “In case of absence of a sitting Judge, the President of the Chamber may, after consultation with the remaining judges, decide to adjourn the proceedings or designate a Reserve Judge to sit in place of the absent Judge for the remainder of the proceedings in question. Where, however, the replaced sitting Judge is able to return, the Chamber may, after taking into consideration all factors relevant to the case and being satisfied that the returning Judge has been fully informed of the evolution of the case during his/her absence, decide to replace the Reserve Judge by that sitting Judge.” INTERNAL RULES, Rule 79(4).