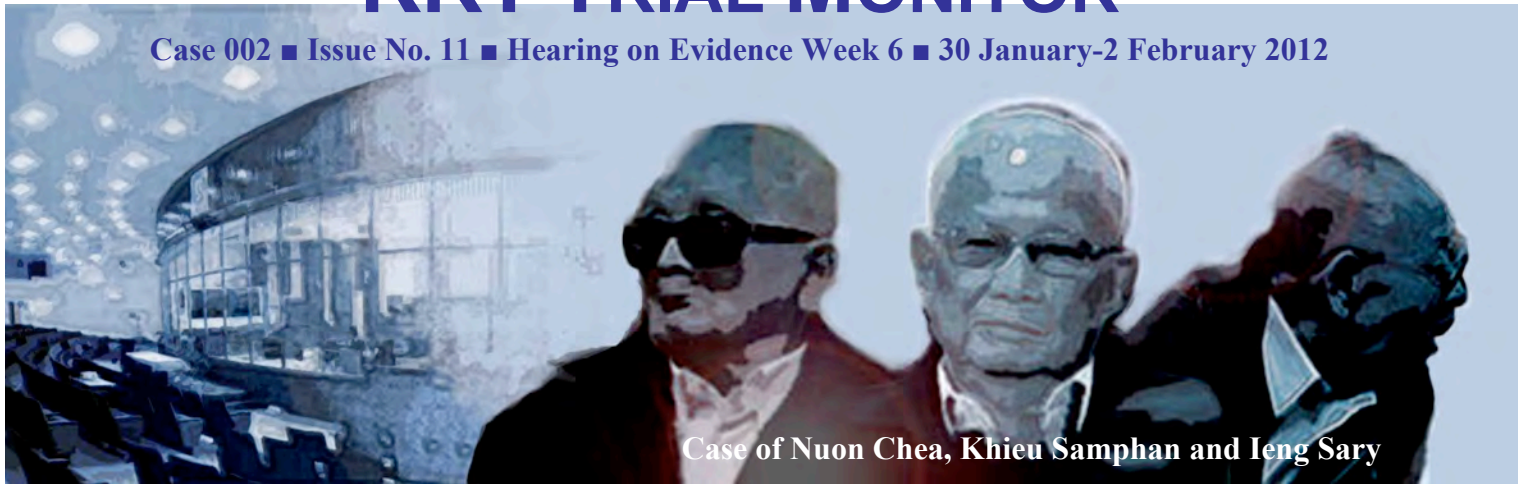


KRT TRIAL MONITOR

Case 002 ■ Issue No. 11 ■ Hearing on Evidence Week 6 ■ 30 January-2 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

*I am of the view that it is wrong when people are forced to work.
It is wrong because people were forced to work very hard during that time.
People were forced. However, I believed that we had to follow
the plan put in place by the upper echelon.*

- Witness Prak Yut

I. OVERVIEW

From 30 January 2012 to 2 February 2012, the Parties questioned Accused Nuon Chea, Witness Ms. Prak Yut, a low-level Khmer Rouge official, and Witness Mr. Youk Chhang, Director of the Documentation Center of Cambodia (**DC-Cam**).

On Monday morning, the Prosecution concluded their examination of Nuon Chea, who was thereafter allowed to retire to his holding cell. Civil Party lawyers and Defense counsels concluded their questioning of Prak Yut on Monday afternoon. On Tuesday, Nuon Chea answered questions from Civil Party Lawyers and his own international counsel, Mr. Michiel Pestman. The Prosecution, followed by the Civil Party lawyers, and the Khieu Samphan and the Nuon Chea Defense, proceeded to question Youk Chhang. The Parties will conclude Youk Chhang's examination on Monday, 6 February.

This week, the Trial Chamber continued to face various procedural issues involving translation of documents and the criteria for selecting documents included in the Case File and the process of authenticating them. There were also persistent objections to questions put on witnesses for being outside the scope of Case 002/1. In addition, the substantive issue of political interference alleged by the Nuon Chea Defense once again cast concern on whether or not a witness has been unduly influenced.

There was a decidedly confrontational tone in the courtroom throughout the week between witnesses and counsels, and counsels and the Chamber. In terms of courtroom etiquette, the comportment of some individuals left something to be desired during these pointed interactions.

II. SUMMARY OF WITNESS TESTIMONY

Nuon Chea testified on the CPK's policy and its implementation, particularly regarding the abolition of currency, the establishment of cooperatives, the evacuation of Phnom Penh, the definition of "bad elements," armed struggle, and the party leadership. Throughout his testimony, Nuon Chea often emphasized that he wanted to clarify the record for the benefit of future generations.

Prak Yut, a former cadre, concluded her testimony, while Youk Chhang commenced his examination as regards chain of custody of documents in the Case File sourced from DC-Cam, and the process by which the organization authenticated these documents.

A. Nuon Chea's Examination Continued

Returning to the witness stand again this week, Nuon Chea testified about what led him down the road to CPK membership. He recounted that he had wanted to struggle and fight oppression since he was young. At that time, his family was in debt and he saw that Cambodia was "half colonialist, half under the status of slavery."³ He narrated how the oppression of his people under the French colonialists awoke pity in him and a desire to help his country. Soon after, he became a novice monk.

According to the Accused, after Cambodia ceded control over Battambang and Siosophon to Thailand, he became interested in learning how Thailand used communism to its benefit. He then went to study law at Thammasat University in Bangkok, where he stayed for three years. However, he left without taking the exit exam because he believed it was more important to join the struggle. In 1946, Nuon Chea said he joined the Thai Youth Democratic Organization under the Thai Communist Party. He conducted research on party lines and how the Thai were helping the poor through communism. Nuon Chea further related that in 1950, he transitioned to the Indo-Chinese Party, where he claimed he held no significant role. He admitted however, that he was a candidate in charge of education and as such, he traveled to villages, wrote for the party's paper, and prepared propaganda. Subsequently, Nuon Chea reportedly went back to Cambodia alone to continue the struggle in his home country. He clarified that at that time, he had already severed his ties with the Thai Communist Party and was only associated by the Indo-Chinese Party, which was controlled by the Vietnamese.

Nuon Chea said that after the 1954 Geneva Accord, he organized the communist movement in Cambodia with three to four others (presumably Saloth Sar, Tou Samouth, Mei Manh and his uncle, Su Heng).⁴ They started in the countryside, particularly Aoral, Roleak Kang Cheung, and Prambei Mom, and proceeded to the lowlands. The Accused further explained that they started from the poor peasant class and based their support in the rural mountainous area. There were only a handful of them and they did not assign specific roles among themselves.

As regards the pseudonyms he had used through the years, he said he used "Runglert Laodi" in Thailand because Khmer students like himself were required to translate their names into Thai.⁵ He reportedly went by several aliases, but settled on "Nuon Chea" when he returned to Cambodia from Thailand. The name of the Accused as indicated in his birth certificate is Lao Kim Lorn.

1. Criteria for CPK Membership

Nuon Chea testified that membership to the CPK was by invitation, and one's qualifications had to be vouched for by three people. Apart from adhering to party discipline, one must also exhibit patriotism, love for the people, strong morals, and willingness to sacrifice personal interests for the common good to be a member. Moreover, a party hopeful is required to take an oath committing to the nation, the people, the party discipline, and sacrificing personal interests.

In order to rise within the party's ranks, a member must show sincerity, diligence, and commitment to the struggle. The Accused stated that a member who possessed these qualifications advanced from the village to the commune level, and then to the district and section levels before advancing as a zone representative. He further indicated that a member who was better educated had a higher chance of making headway in the party. The period for advancement took longer (one to two years) for those who were less educated or active in party endeavors.

2. Defining His Role in the CPK

Upon inquiry by national Prosecutor Mr. Seng Bunkheang, Nuon Chea clarified that he was not part of the Central Committee in 1951, as no such committee had existed yet at that time. The Accused stated that since he was in-charge of propaganda and education, he was involved in editing the party's paper and "Issarak News," and indoctrinating party members in the village and grassroots level. Nuon Chea further admitted that he designed the party's political line with Tou Samouth and Pol Pot.

International Civil Party lawyer Mr. Barnabé Nekuie pressed Nuon Chea on his leadership tasks in 1968 when the Communist Party was divided into two parts: one based in Rattanakiri with Pol Pot as secretary, and another in Phnom Penh with Nuon Chea as the "deputy secretary in charge." Nuon Chea explained that he was the "deputy secretary in charge of education"⁶ and did not supervise military affairs, which was sole responsibility of each zone secretary. Nekuie then questioned the Accused regarding King Sihanouk's visit in 1973, for which purpose, Pol Pot reportedly appointed him to prepare the Kampong Krom route near Preah Vihear to Angkor Wat. The Civil Party lawyer asserted that such a task could not have been put into effect without Nuon Chea exercising control over the whole defense system in the area assigned to him, especially as this event took place at the height of the war. Nuon Chea countered that while military personnel were indeed deployed along the road because military protection had made the mission possible, his role was limited to education. Pol Pot, he said, was in-charge of the military committee.

3. Armed Struggle

Nuon Chea testified that during the Second Party Congress in 1962, the party decided to initiate political and armed struggle in the Northwest zone. Armed struggle, however, merely meant the use of sticks and knives for self-defense. He, Tou Samouth and Pol Pot (who was then known by his real name, Saloth Sar), led the movement. They begged for food from the local people and hunted animals to feed themselves. Nuon Chea insisted that, at that time, he held no specific role, but that he educated the people on basic things, such as avoiding alcoholism.

4. Exposing the CPK to the International Arena

The Accused traveled to Tay Ninh province in Vietnam in the 1960s to explain the CPK's political, strategic and tactical lines. He also told the Vietnamese about their commitment to political and armed struggle. Notwithstanding the Vietnamese Communist Party's disapproval of the CPK's armed struggle, Nuon Chea reportedly asserted the CPK's independence and conviction to stand by its political line.

Nuon Chea further testified that Pol Pot went to Beijing in 1965, to inform the leadership of the Communist Party of China of the CPK's political and strategic lines. The CPK was then a very small movement, so they needed to expose the party to the international arena. Pol Pot made several visits to China for this purpose.

5. Strained Relationship with Vietnam

Nuon Chea maintained that China had sent arms to the CPK, but in 1968, Vietnam had stolen the supplies, and refused to provide them to Cambodia. Although he believed that the munitions rightfully belonged to the CPK, he refrained from instructing Sao Phim to loot any Vietnamese armory. The Accused further contended that the CPK never received any financial support or money from Vietnam.

In March 1975, Nuon Chea met with the leaders of the Vietnamese communist movement, including Mr. Nguyen Van Linh. The Accused spoke favorably of the Vietnamese revolutionary and described the latter as a good person who was nonetheless indoctrinated by his political line. Nuon Chea reportedly maintained the link between the CPK and the Vietnamese Communist Party through Nguyen Van Linh, with whom he had a good relationship. He believed that he and the Vietnamese leader were able to resolve issues between CPK and Vietnamese soldiers. Despite efforts to overcome the long-standing enmity between the two nations, such as Pol Pot's directive not to call the Vietnamese a "life-and-death enemy,"⁷ Nuon Chea nevertheless regarded Vietnam as a worse enemy than America. He accused Vietnam of wanting to swallow them whole and attempting to establish its administrative structure in Cambodia. In further commentary, of no apparent relevance to the facts at issue in this trial, Nuon Chea voiced his general ongoing concern about the current influx of Vietnamese into Cambodia and the fate of the next generation.

6. The CPK Leadership

When asked about the roles of other CPK leaders, Nuon Chea said he could not recall Son Sen's exact position in the military from 1973 to 1975. However, the Accused stated that Son Sen was a member of the Standing Committee and that he chaired the committee that implemented the evacuation of urban areas. As regards his co-Accused, Ieng Sary, Nuon Chea intimated that he was in Beijing in 1973 and 1974, and returned to Cambodia only once or twice at that time. One of those instances was when Ieng Sary accompanied the King Sihanouk to Siem Reap Province. In reference to Khieu Samphan, Nuon Chea testified that the phrase "supreme power of the President of the State Presidium" did in fact denote that the President of the State Presidium was the most powerful authority in the country. He explained that this was how everyone in the country understood this position to mean. However, Nuon Chea did not elaborate on the matter further and instead referred the OCP to Khieu Samphan for more information because it was within his area responsibility.

7. Cessation of Use of Currency

According to Nuon Chea, the CPK did not intend to totally abolish currency when the use of money ceased in DK. He claimed that the U.S. bombardment of Cambodia resulted in such insufficient production of material goods in the country, that the use of money ceased because money was, in fact, no longer required. Instead, bartering became the mode of exchange in Cambodia. In response to this, the CPK decided to establish the Rice Association and Mutual Assistance Association. Nuon Chea testified that, in certain areas money was still in circulation, but this was only because American and Vietnamese spies used money to lure cadres. Temporarily stopping the use of money allowed the CPK to control the situation and expand their liberated zones, according to Nuon Chea.

8. Creation of Cooperatives

Nuon Chea insisted that people were not forced to establish cooperatives but the benefits of having cooperatives were explained to them, thus: without cooperatives, oppressive landlords would impose high interest rates on loans and land rent, and Vietnamese soldiers, who were widespread across Cambodia, would confiscate the people's produce. Thus, Nuon Chea asserted, the leadership of the CPK established cooperatives as means for people to have

stocks to feed themselves. Cooperatives, however, were not immediately organized throughout the country; instead, they gradually formed as associations expanded.

When asked by Nekuie if it can be said that the cooperative system or collectivization of land was a vital part of the CPK's political strategy, Nuon Chea clarified that the CPK's political, tactical, and strategic lines were the essence of the party, and the cooperative system was only an element of that.

9. Decision to Evacuate Phnom Penh

Nuon Chea confirmed that there was an Extraordinary Meeting of the Central Committee along the Chinit River in June 1974. Pol Pot, Nuon Chea, Ta Mok, Sao Phim, Koy Thuon, Son Sen, zone representatives, as well as others Nuon Chea could not recall attended the meeting. It was at that meeting that the Central Committee decided to evacuate Phnom Penh and liberate the whole country. Nuon Chea further admitted that he was in Phnom Penh from January to April 1975.

The temporary evacuation of Phnom Penh, Nuon Chea recounted, was also a response to the bill passed by the U.S. Congress to stop financing the bombing of Cambodia. He reiterated that Phnom Penh was evacuated to save its residents from the severe food shortage in the capital. He confirmed that all residents were expected to leave, and those who were healthy were meant to help those who were too sick or weak to travel by themselves. The evacuees were transferred to cooperatives to cultivate rice and feed themselves.

Nuon Chea also argued that, at that time, Vietnamese forces had already infiltrated Phnom Penh, and so many would have died if there had been a war in Phnom Penh on top of the existing food shortage. Furthermore, he said that the urgency of the situation prevented them from considering the practicalities of evacuation for those in hospitals.

10. Base People, New People, and Bad Elements

In answer to questions of national Civil Party Lawyer Ms. Sin Soworn relating to the CPK's enemies, Nuon Chea clarified that when he was a member of resistance under the People's Revolutionary Party of Kampuchea (a precursor of the CPK), "enemies" referred to foreigners who greedily wanted to swallow the territory of Cambodia, henchmen of the imperialists, feudalists who oppressed the people, and traitors of the country. When asked to distinguish people of the Communist Party of Kampuchea, Nuon Chea described them as the "pure class." He then clarified that the term "pure class" was a theoretical concept because in reality, there were "bad elements" even within the ranks of the CPK. He admitted that not all candidates or members of the CPK were good, but emphasized that majority of them were good people.

The Accused proceeded to define "new people" as evacuees, and "base people" as local people or peasants, but clarified that there was no distinction between the new and base people. He claimed that the Standing Committee taught people not to discriminate between new and base people: they were all Khmer and should share what they had, including food. Nuon Chea further testified that good people were moral, showed solidarity with their fellow Khmer, and were not cruel. Nuon Chea claimed that only "bad elements" discriminated against "new people."

B. Conclusion of Prak Yut's Testimony

International Civil Party Lawyer Ms. Philippine Sutz and Nuon Chea's counsel, Mr. Michiel Pestman concluded Prak Yut's examination, after the Ieng Sary and Khieu Samphan Defense Teams declined to question the Witness. Prak Yut repeatedly emphasized that she was telling the truth and did not fear telling what she knew.

1. Role in DK

Prak Yut testified that she was the fourth member of Sector 41. She was in charge of the security of the Kampong Siem district and the education of the local people. Sutz asked her questions about the security center in this district, allegedly located in the Angkuonh Dei Pagoda. Prak Yut said no one was in charge of that area because it was not yet fully organized at the time. The Witness further indicated that there was no execution site in Kampong Siem. When asked if she had heard of the Phnom Pros, Phnom Srei Mountains, the Witness said she had seen these mountains but did not know about any killings committed there. She did not visit the location often and worked by herself at the district office. Additionally, the Witness confirmed that when she was transferred to Sector 35, she was assigned to women's affairs. She further testified that she was not a member of the Central Zone Committee, although she did attend a meeting in the Central Zone.

Notably, Prak Yut testified that any individuals who could not be "educated," or who did not behave "properly," were taken to the district office for "re-education." She admitted that she decided this matter on her own accord, even when there was no order from the upper level.

2. Acknowledging Familiarity with Ta An and Im Chem (reportedly under Investigation in Case 004)

Prak Yut confirmed that she knew Ta An and Im Chem. She recalled that she and Ta An were both members of Sector 35 Committee. Ta An subsequently became her superior in Sector 41. She did not know if Ta An was connected with the Central Zone. Prak Yut also attested that she was unaware if Ta An was still alive because she never saw him again after they became separated upon arrival of the "Yuong" (deprecatory term for Vietnamese).

Prak Yut confirmed that when she was in charge of women's affairs in Sector 35, she saw Im Chem, who was in charge of women's affairs in Sector 13, during meetings. However, they did not contact each other regarding the work they did.

C. Youk Chhang's Testimony

During previous week's hearings, the Defense Teams adamantly requested the opportunity to examine Youk Chhang under oath, in order for the DC-Cam Director to shed light on the organization's methodology for receiving, authenticating, managing and cataloguing documents from the Khmer Rouge era that the ECCC has included in its case files. This week, the Chamber called Youk Chhang to the stand, and the parties had the opportunity to put questions to him about DC-Cam policy, procedures, and practices. During his examination, the Witness identified some documents taken from the collections of DC-Cam and explained their markings to the Chamber.

1. Establishment and Purpose of DC-Cam

Youk Chhang, Director of Documentation Center of Cambodia, testified that the organization was established in 1995 with the purpose of compiling documents from the Khmer Rouge period and encouraging reconciliation in Cambodia. DC-Cam has three main goals: (i) to advocate for an independent court to ascertain the truth; (ii) to provide accurate historical information to the younger Cambodian generations; and (iii) to establish a documentation center for research purposes.

2. Process of Receiving Documents

When asked about the organization's approach to gathering documents, the Witness gave somewhat vague answers, listing off varied sources of materials, gathered at various points in time. He explained that DC-Cam had made a public announcement years ago, requesting

individuals, institutions, and countries for documents. Part of DC-Cam's collection reportedly came from contributions in response to this call. Other portions of their collection reportedly were gathered directly from individuals around Cambodia, who shared historic documents with DC-Cam for various reasons. For instance, the Witness testified that, when the ECCC was established, some people who wished to share information with the ECCC delivered documents to DC-Cam, instead of sending them directly to the Court. Others shared information with DC-Cam when the organization's representative traveled to various places in and out of the country to collect documents. Youk Chhang enumerated several government sources, as well, including: the Ministry of Interior, the National Archives, Toul Sleng Museum, Central Education and Propaganda Office (of the Ministry of Information), and the Ministry of Education, Youth and Sport. Section C (5), below, provides further details about the type of materials received from each of these sources.

According to the Witness, DC-Cam has approximately one million "pages," which he explained, pertained to one million "documents" based on DC-Cam's definition.⁸ The large volume of documents notwithstanding, he attested that each and every document went through him for screening to decide whether or not the documents were from the DK period. As a matter of policy, after first identification, he testified, the documents are sent to his deputy director, Mr. Vanthan Peou Dara (who has also appeared before the Chamber to testify about DC-Cam procedures) for them to be processed, scanned, or archived. Vanthan Peou Dara then assigns experienced staff under his supervision to read, summarize, translate, authenticate, capture in microfilm, and register each document in DC-Cam's database. The documents are then kept in storage and only he and his deputy can allow access to the documents.

3. Authentication of Documents

National Co-Prosecutor Mr. Dararasmey Chan asked the Witness to clarify what he meant by "original documents." The Witness explained that, "...for those documents which are not available in Cambodia, they are also considered as original documents."⁹ It is not clear how many of the one million documents in the DC-Cam archives are true original documents, and how many are photocopies that fall under Youk Chhang's definition of "original." The Witness did clarify that documents the organization sent to the ECCC contained clear indications as to whether a document was a "copy from the original, or scanned from the original, or from the copy of the copy."¹⁰

When questioned on how DC-Cam determined whether a document was authentic and not a mere fabrication, Youk Chhang stated that his analysis is based on the color of the paper, date, author, content, and language used in the document. Youk Chhang further indicated that that they not only look at the document, itself, but also read it in conjunction with contextual materials. He admitted that DC-Cam does not employ any scientific or forensic examination of the documents to determine authenticity.

4. Verification of Copies

Khieu Samphan's international counsel, Mr. Arthur Vercken, pressed the Witness to specify the exact location of the storage of DC-Cam's archives. The Witness claimed that he is hesitant to divulge the location of DC-Cam's hard-copy documents because of security concerns. The President told the Witness and the Parties that for the safety and security of the documents, it was not necessary to publicly reveal the place of the documents. The Bench also denied the Nuon Chea Defense's request for an *in camera* session where Youk Chhang may inform the Parties of the where this mass of case file documents was physically stored. The President then asked Youk Chhang if the documents were copied from originals, and if copies may be verified with the original documents. In response, the Witness assured the Chamber that DC-Cam would be of assistance if the Chamber wished to verify copied documents with original ones.

Vercken proceeded to inquire if any of the Parties had requested DC-Cam to produce original documents so they may examine them. It appeared that this question was unclear to the Witness, as he interpreted it to mean whether any of the Parties had asked DC-Cam to verify the documents, notwithstanding Vercken's reiteration of this question. According to Youk Chhang, the OCP and the OCIJ "have never requested verification with the original documents, but they have so far scanned those documents from the original document..."¹¹ Later in his testimony however, he explained that requests for documents from the OCP included a request for DC-Cam to issue an authentication certificate. In 2007, the Witness issued a six to seven page authentication certificate that outlined the methodology of research and documentation, as well as the authenticity of the document. He further elaborated that for each request from the OCP, DC-Cam issued a certificate indicating whether the documents DC-Cam were copies of the copies or copies from the original. This same information, the Witness said, was entered in DC-Cam's records.

5. Chain of Custody of Main Collections

As regards the chain of custody of documents, Youk Chhang discussed the main sources of documents in DC-Cam's possession and the circumstances under which the organization received the documents.

Documents from Ministry of Interior (Mol). According to Youk Chhang, DC-Cam's Mol collection comprises videos and paper documents. There are about 1,000 original documents, including photos, biographies, correspondence, and confessions. The biographies were mostly those of detainees but some belonged to cadres of DK. These materials were found in 1982 or 1983 at a house within the vicinity of the Silep market and along the street of the current American Embassy by a group of researchers who later worked for Mol.¹² DC-Cam received these documents in 1999.

Documents from National Archives and Toul Sleng Archives. DC-Cam is not in possession of original documents from the National Archives and the Tuol Sleng Museum. It has only obtained copies of the collections of these two national institutions.

To certify the authenticity of documents DC-Cam copied from the National Archives, an official from said government office authenticated the entire photocopied collection as a "copy of the original documents".¹³ The Ministry of Propaganda and Information was reportedly the repository of these documents prior to their transfer to the National Archives.

Youk Chhang compared confessions obtained from Mol and the Toul Sleng Museum in the following manner: (i) as to origin, confessions from Tuol Sleng are from detainees at that prison, while the confessions from the Mol originated from other security offices (*Santebal*);¹⁴ (ii) as regards the length of document Mol's confessions were longer than confessions from Toul Sleng Archives; (iii) finally, in relation to annotations, Mol contained annotations from more persons, while Tuol Sleng confessions were only annotated by Duch.

Documents from Sweden. This collection contains 600,000 to 700,000 pages compiled by the Committee of Laos, Vietnam, Cambodia and Sweden Friendship, which was established after 1979.

Donations from Individual Sources. Youk Chhang stated that DC-Cam also received documents from individual sources such as Prime Minister Hun Sen, Professor Laura Summers, Dr. Helen Jarvis, Mr. Craig Etcheson and Mr. David Hawk. The latter provided DC-Cam with various materials, such as photos of Toul Sleng, mass graves and pits, prisoner lists, and a number of audio recordings.

6. Alleged Threats on the Witness

Youk Chhang confirmed that in 1999, he received a letter from Ieng Thirith warning him to stop researching on the KR era. His older sister was also reportedly threatened although it was unclear who threatened her and the extent of intimidation employed. In any case, the Witness stated that these threats did not prevent him from continuing his research.

III. LEGAL AND PROCEDURAL ISSUES

Issues relating to the use of documents continue to persist during this sixth week of hearing on evidence. The first covers the authenticity of documents from DC-Cam, as well as the chain of custody of these documents. The other issue pertains to the use of victim information forms in examining witnesses.

Another legal issue revisited this week was the witness' right to be protected against self-incrimination. Ieng Sary's international counsel Mr. Michael Karnavas objected to questions being put on Prak Yut, on the basis that she might incriminate herself.

International counsel Mr. Michiel Pestman raised the issue of alleged political interference, once more, when he suggested that Witness had been influenced or threatened. In relation to prior allegations of political interference, arising out of statements the Prime Minister had made in public speeches, the Trial Chamber assured the parties that, when deciding the merits of the case at bar, the Judges would remain unbiased, and would not take into account any comments made by political figures outside the courtroom.

Lastly, there were repetitious objections to questions on the ground that they were outside the scope of the Witnesses' knowledge or the purpose of the Witnesses' testimony, or outside the coverage of this segment of the case.

A. Authenticity and Reliability of Documents from DC-Cam

One of the issues that has recurred the most and has become the subject of extensive debates in this segment of Case 002 has been the integrity of documentary evidence being presented during the proceedings and the process used to authenticate and verify these documents. To help resolve this issue, the Trial Chamber summoned two representatives from DC-Cam, a major source of documents in the Case File to testify. Notwithstanding their testimonies, some factors remain ambiguous. For instance, it is unclear whether the documents in the Case File that are being admitted as evidence were copies of original documents or duplicates of copies (which according to Youk Chhang, are also "original" documents since they are reportedly replicas of original documents that are not available in Cambodia). More significantly, it remains unclear whether DC-Cam's assurance of willingness to help the Chamber verify documents would involve comparing the copies in the Chamber's possession with original documents or with "original" copies in DC-Cam's archives. Additionally, whether or not the ECCC has access to original documents – wherever they may be stored – is also open to question.

B. Permissibility of Questions Based on Victims' Information Forms

President Nil Nonn reminded parties of the Chamber's previous ruling that, when examining witnesses, they were not allowed to use records of statements or interviews of other witnesses as bases for questions. Nevertheless, international Civil Party lawyer Sutz requested permission to refer to some Civil Party victim information forms and read them to Prak Yut. Sutz justified her request by pointing out that the forms specifically referenced Prak Yut. After some deliberation, the Trial Chamber ruled that Civil Party lawyers were not allowed to refer to the victim information forms, which were available only in Khmer (although there were summaries in English). The Bench explained that it had already indicated in a memo that failure of a Party to

ensure the timely translation of a document could limit the Party's ability to utilize this document.¹⁵

CPLCL Elisabeth Simonneau-Fort remarked that the translation of the victim information forms had not been authorized, because it was not feasible to have approximately 8,000 forms translated by the understaffed ECCC translation unit. She argued that the OCIJ and the Pre-Trial Chamber, which admitted almost 4,000 civil parties, had found the forms reliable and authentic. Simonneau-Fort went on to emphasize the importance of allowing the use of these documents. In addition, for the record, she advised the Court that the Civil Party lawyers intend to put them before the Chamber moving forward. After deliberating with the other Judges, President Nil Nonn reiterated that the Chamber will not allow the documents to be used as basis for questioning because they exist in one language only. He thereafter called for the adjournment of the proceedings. It is unclear how the Chamber would have decided if the victim information forms had been available in at least two of the ECCC's working languages.

B. Right to Protection Against Self-Incrimination

After the Civil Party lawyers requested to be allowed to refer to victim information forms during their examination of Witness Prak Yut, Ieng Sary's international counsel, Mr. Michael Karnavas objected, arguing that the questions did not appear to have a clear aim, other than to provoke self-incriminating testimony from the Witness. He asked the Chamber to remind the Witness of her right to remain silent. Sutz responded that her objective was not to cause the Witness to incriminate herself but rather, to establish the chain of command and determine if she received orders to send people to execution site.

Before the Chamber could decide on the objection, Prak Yut answered that while she educated people in Kampong Siem, she did not send any people to be killed at Phnom Pros and Phnom Srei. She also stressed that her answers had nothing to do with exercising her rights as a witness, but that she was simply not aware of the alleged killings in that area. She also explained that she asked for clarification when she did not understand the Parties' questions.

The right of a witness to be protected from self-incrimination is highlighted by no less than nine sub-sections in Internal Rule 28. Notably, the Trial Chamber has shown vigilance in safeguarding rights of witnesses by not only apprising them of rights but more significantly, by endeavoring to ensure that they understand these rights. The extent of witness protection and the measures the Chamber will employ remain to be seen. In Case 001, the Chamber appointed a lawyer to assist witnesses who ran the risk of incriminating themselves.¹⁶

C. Allegations of Political Interference and Defense's Right to Adopt Strategies in Examining Witnesses

The issue of alleged political interference in Case 002 was raised twice again in this week's proceedings, first during the Nuon Chea Defense's examination of Prak Yut, and second, when the Trial Chamber ruled on the three-week old request by the same Team to condemn Prime Minister Hun Sen's statements made to the press regarding Nuon Chea.

1. Suggestions of Witness Intimidation

When Pestman took the floor to examine Prak Yut, he asked her about Ta An and Im Chem, both of whom had been unofficially named as suspects in Case 004 in media reports.¹⁷ As previously indicated, Prak Yut admitted that she worked with both of them in the DK era, but did not have any contact with them after 1979. Pestman intimated that the Witness was reluctant to testify and suggested that she may have been influenced or threatened. Prak Yut resolutely contested Pestman's allegations, and assured Chamber that she was telling all she knew and only the truth.

The Trial Chamber repeatedly instructed Pestman to keep his questions relevant to the scope of this segment of the trial. However, Pestman continued to ask the Witness if she had heard of Case 004 and whether she knew that Ta An and Im Chem were suspects in Case 004. She denied any such knowledge. He also asked Prak Tut if she had been approached by third parties regarding her appearance before the ECCC, and whether she knew that the Government is opposed to Case 004 proceeding. Pestman asserted that he believed that the Witness knew that the Government does not want Case 004 to prosper, and that she was hesitant to testify about persons being investigated in Case 004. He then described her as an unreliable witness.

This prompted the Bench to step in through Judge Silvia Cartwright, who asked the Witness about being pressured and telling the truth. In response, the Witness reiterated that she was freely saying all she knew, that she had neither been threatened nor her testimony been coached.

Pestman expressed dissatisfaction with the Chamber's intervention, insisting that the Nuon Chea Defense has the right and duty to question the credibility of a witness without the Judges coming "to the rescue of a witness who is unable to answer my questions satisfactorily."¹⁸ Pestman further called Judge Cartwright's remarks "highly inappropriate." International Co-Prosecutor Mr. Dale Lysak, who had also objected to Pestman's line of questioning, disagreed. Lysak argued that it was appropriate for the Chamber to address the matter by directly ask the Witness, particularly after the Defense had suggested that she was being intimidated.

2. Trial Chamber Responds to Pestman's Application concerning the Prime Minister's Alleged Statements against Nuon Chea

On 10 January, the Nuon Chea Defense raised the matter of alleged statements Prime Minister Hun Sen made to Vietnamese media, where he was quoted to have called Nuon Chea "deceitful," a "killer," and a "[perpetrator] of genocide." Pestman asked the Chamber to "condemn the statement and ask the Prime Minister to refrain from further comments like this." Pestman followed up on this request on 19 January but the Trial Chamber said it would not comment on what he said and forbade him to raise the issue again. However, on Thursday this week, the Chamber responded briefly to Pestman's application. Citing Article 38 of the Constitution of the Kingdom of Cambodia, which provides for the presumption of innocence of accused persons, the Chamber assured the Parties that it is solely responsible for determining the guilt or innocence of the accused. The Chamber emphasized that, in doing so, it will take into account relevant facts, evidence, submissions, and applicable laws. It further guaranteed that it will not take into account comments made by the public in deciding the case at bar.

Throughout the hearings, the Nuon Chea Defense repeatedly raised alleged instances of political interference. The team has also filed a suit in Phnom Penh Municipal Court against high-ranking government officials for alleged political interference. However, they did not have the opportunity to clarify their position during the proceedings, presumably because the allegations of interference relate to Case 003 and Case 004.

D. Objections to Questions Outside of the Scope of the Trial

This week saw recurring objections to questions posed in court that went beyond the scope of either the Witnesses' knowledge, or the purpose of the Witnesses' testimony, or fell outside the coverage of this segment of the case at bar. On Monday alone, there were at least two such instances. First, Karnvas objected to questions Sutz asked Prak Yut because they were outside the parameters of the trial. Subsequently, the Trial Chamber raised the same ground when it reminded Pestman to refrain from asking questions on alleged suspects in Case 004.

On Thursday morning, Vercken asked Youk Chhang whether, when conducting an investigation, it was better practice to rely on original documents or copies. International Co-Prosecutor Mr. Tarik Abdulhak objected to Vercken's question on the ground that this question was outside the purpose for which the witness was called to testify. It was also outside the witness's expertise, he argued, because it called for a legal conclusion, which would be the job of a judge, not a witness. Vercken responded that he was asking about non-judicial investigations, since the Witness had used the word "investigation" to describe DC-Cam's work. The Trial Chamber sustained the OCP's objection and ruled that Vercken's question was unwarranted because DC-Cam did not deal with the judicial process. Vercken argued that these questions were important, because a high percentage of the documents in the Case File were collected by DC-Cam, and the OCP had taken for granted the value of those documents, without any further verification.

A disagreement about the purpose for which the Trial Chamber had decided to summon Youk Chhang to testify also seemed to underlie a number of Abdulhak's objections to Mr. Jasper Pauw's questions. While Abdulhak argued that the Witness had come only to testify on the method for obtaining, cataloguing and treating DC-Cam documents, and more specifically documents that are on the Court's Case File, Pauw countered that Youk Chhang must also be asked about the objectives of an organization so important for the Case, as well try to understand the criteria the organization uses when determining which document to include in its collections. Through his questions, Pauw tried to show that DC-Cam was not neutral in collecting documents, but has actually been building a case against specific individuals, including client. The Trial Chamber stopped Pauw from continuing his line of questioning. Judge Cartwright explained that while the Chamber understood the reason for Pauw's questions and his skepticism about DC-Cam's methodology, the Chamber had heard enough on the topic.

IV. TRIAL MANAGEMENT

The Trial Chamber struggled with persistent trial management issues this week, particularly with maintaining good courtroom etiquette from the Parties during the proceedings, and with overcoming challenges in interpretation facilities.

A. Attendance

All the Accused were present throughout the week. However, each day Ieng Sary would request to participate remotely from the holding cell after the end of the first session, and Nuon Chea would do the same after the end of the second session. Khieu Samphan was present for all hearings of the week.

In previous hearings, Khieu Samphan has had no representative from his international lawyers present in court, but this week, one of his international counsels, Mr. Arthur Vercken, was present the entire time.

Attendance by the Public. The average number of visitors this week was fairly high. These visitors primarily consisted of high school students (16 to 18 years old). On Monday, around 200 students from Intarak Tevy High School, Phnom Penh, attended the whole day of proceedings. On Tuesday, around 300 students from Wat Phnom High School, Phnom Penh, attended the morning sessions. On Wednesday, there were approximately 300 students from Jayavarman VII High School, Kandal province followed the whole day of the trial. Finally, on Thursday, there were around 300 people from Takeo province.

B. Court Etiquette

During the course of his examination, Mr. Youk Chhang exhibited a degree of antagonism and sarcasm towards some defense counsels that prompted the President to intervene. For instance, after the Witness answered questions from Mr. Kong Sam Onn (Khieu Samphan's national lawyer) regarding DC-Cam's procedures for categorizing documents, the Witness made

the following comment: “And of course, if you study at university, either locally or at international university, everybody should be familiar with this type of process.”¹⁹ Since Kong Sam Onn took a moment to respond, the Witness followed up with, “I hope you understood my statement?”²⁰ Kong Sam Onn answered, “Of course I do but I wanted to give some time for the interpretation to finish first.”²¹ This episode prompted Counsel to request the Chamber to instruct the Witness to avoid using personal facts such as his educational background to answer questions. President Nil Nonn intervened and reminded Kong Sam Onn to ask clear and precise questions. The President further exhorted Youk Chhang to listen carefully and be responsive to the questions. The President also emphasized: “And, when it comes to personal matters, please try to avoid this issue -- for everyone in the courtroom -- so that we can uphold the respect for one another.”²²

In another instance, there was an ostensible reversal of roles during Youk Chhang’s examination by the OCP when the Witness posed questions to Chan Dararasmeay. As a result, President Nil Nonn reminded Youk Chhang of his role as a witness and informed him that he was not allowed to question the person examining him.

C. Interpretation Issues

There were a number of interpretation issues in this week’s proceedings. Parties and the Chamber mentioned difficulties in interpretation on several occasions. For example, during the Nuon Chea’s examination by Lysak on Monday, the national counsel of the Accused, Mr. Son Arun remarked that he himself could not fully understand Lysak’s question. He requested Lysak to keep his questions short and that interpretation be provided more slowly. Moreover, during Sin Soworn’s examination of Nuon Chea, the Trial Chamber reminded her to speak more slowly to allow for accurate translation and transcription. Another instance that highlighted challenges in translation was an exchange between Vercken and Youk Chhang, where the former repeated a question that the latter had already answered in Khmer. Apparently, Vercken was prompted to ask the question again because he did not hear the Witness’ answer clearly. The President intervened and stated, “Defense Counsel, you are mistaken. The witness clearly responded already.”²³ Vercken, implying that there may have been lapses in translation, responded that Youk Chhang’s answer was clear to the President because it was in Khmer.

D. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 30/01/12	9.04	10.32-10.53	12.03-13.35	14.45-15.10	15.43	4 hours and 21 minutes
Tuesday 31/01/12	9.05	10.20-10.39	-	-	11.45	2 hours and 21 minutes
Wednesday 01/02/12	9.08	10.30-10.52	12.05-13.35	14.45-15.05	16.05	4 hours and 45 minutes
Thursday 02/02/12	9.05	10.21-10.48	11.50-13.35	14.47-15.05	16.00	4 hours and 25 minutes
Average number of hours in session:				3 hours and 58 minutes		
Total number of hours this week:				15 hours and 52 minutes		
Total number of hours, days, and weeks at trial:				109 hours and 4 minutes		
25 TRIAL DAYS OVER 7 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 Extraordinary Chambers in the Courts of Cambodia;
- 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)
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, Faith Suzzette Kong, Samantha Lee, Sovanna Sek, and 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 23 (30 January 2012), Case No. 002/19-09-2007. E1/35.1. [hereinafter, **30 JANUARY TRANSCRIPT**]. Lines 22-25; 1. 86-87.

² Ibid, lines 22-24. 41.

³ Trial Chamber. Transcript of Trial Day 24 (31 January 2012), Case No. 002/19-09-2007. E1/36.1. [hereinafter, **31 JANUARY TRANSCRIPT**]. Lines 4-5. 45.

⁴ See CASE 002 KRT TRIAL MONITOR Issue No. 8, Week 3 of Evidentiary Hearings (10-12 January 2012), where Nuon Chea enumerates himself, as well as these persons as the early leaders of the CPK.

⁵ 31 JANUARY TRANSCRIPT. Lines 8-10. 6.

⁶ Ibid, lines 23-24. 34.

⁷ 31 JANUARY TRANSCRIPT. Line 10. 23.

⁸ Witness clarified that “one million documents”, under the DC-Cam definition, is the same as one million pages.

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- ⁹ Trial Chamber. Transcript of Trial Day 25 (1 February 2012), Case No. 002/19-09-2007. E1/37.1. Lines 13-14. 35.
- ¹⁰ Ibid, lines 17-18. 42.
- ¹¹ Trial Chamber. Transcript of Trial Day 26 (2 February 2012), Case No. 002/19-09-2007. [hereinafter, **2 FEBRUARY TRANSCRIPT**]. E1/38.1. Lines 18-21. 13.
- ¹² Witness stated that the list of names of this group of researchers was already submitted to the OCP.
- ¹³ The official being referred to is Mr. Van Rith. According to Witness, Van Rith was one of the comrades of the Democratic Kampuchea and worked in its Ministry of Commerce.
- ¹⁴ Witness explained that Professor Ben Kiernan noticed "Santebal" written on the left margin of the documents; thus, he annotated that the documents are from Santebal. "Santebal" in Khmer refers to the police or the security force.
- ¹⁵ Trial Chamber. "Witness lists for early trial segments, deadline for filing of admissibility challenges to documents and exhibits, and response to motion E109/5" (25 October 2011). Para. 15.
- ¹⁶ Asian International Justice Initiative. "Lessons learned from the 'Duch' Trial" (December 2009). 37. The appointed lawyer was Mr. Kong Sam Onn, who now represents Khieu Samphan in Case 002.
- ¹⁷ Case 004 is currently under investigation before the ECCC and the list of suspects has not been publicly announced.
- ¹⁸ 30 JANUARY TRANSCRIPT. Lines 8-9. 81.
- ¹⁹ 2 FEBRUARY TRANSCRIPT. Lines 11-13. 45.
- ²⁰ Ibid, line 13. 45.
- ²¹ Ibid, lines 13-14. 45.
- ²² Ibid, lines 8-10. 46.
- ²³ Ibid, lines 14-15. 24.