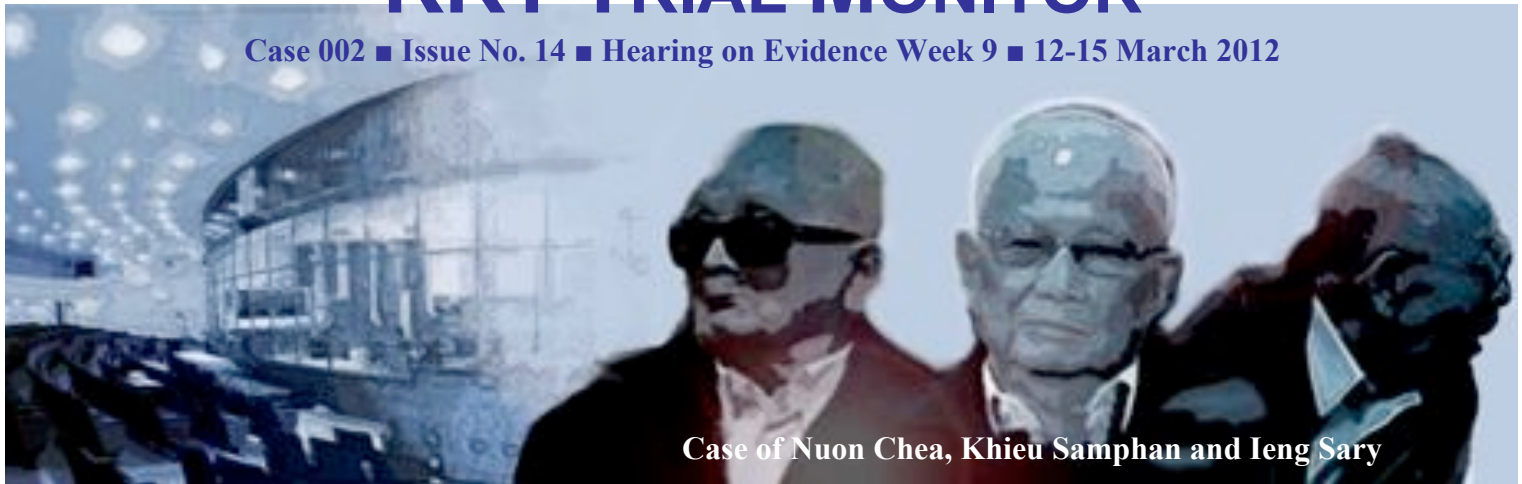


KRT TRIAL MONITOR

Case 002 ■ Issue No. 14 ■ Hearing on Evidence Week 9 ■ 12-15 March 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

These documents are living, breathing documents of the Democratic Kampuchea regime that are relevant merely by the fact that they have been written.

- Dale Lysak, International Co-Prosecutor

I. OVERVIEW

This week's proceedings marked the beginning of the second segment of trial 1 (Case 002/1 segment 2), concerning the administrative and communication structures of the Democratic Kampuchea regime.

In lieu of requiring Parties to file written submissions, the Trial Chamber devoted a substantial amount of time to hearing the Parties' arguments on the admissibility of documents.¹ The Chamber also heard arguments on issues relating to the right of the Accused to be physically present in court during the proceedings, regardless of the option to participate remotely at the holding cell.

Another issue discussed this week was the propriety of hearing an important expert witness, Professor Ben Kiernan² via video link, instead of summoning him to appear in court. Kiernan, a history professor at Yale University, has written extensively on Democratic Kampuchea and the Khmer Rouge regime. The Defense Teams expressed concern that examining Kiernan through video link would be less effective, because if Kiernan testified remotely, they would be unable to adequately judge Kiernan's demeanor and whether he is telling the truth. They submitted that if the Chamber decides to permit testimony to be given via video link, the Chamber should give less weight to such testimony. A ruling on this issue will impact the rest of the proceedings on the issues of giving testimony via video link, the weight to be given to such testimony, and the balance between the need to ensure efficiency of proceedings and the need for witnesses to appear in court when giving testimony.

II. LEGAL AND PROCEDURAL ISSUES

This week's legal and procedural issues revolved around balancing the right of the Accused to be present in the proceedings, his right to an expeditious trial, as well as the right of the Accused to confront witnesses against him and the possible recourse to the use of video link to hear witness testimony. The Parties also raised several issues related to admissibility of documents.

A. The Right of the Accused to be Present in Court

The Nuon Chea Defense raised the issue of their client's right to be present in court when he gives a statement and when Kaing Guek Eav alias "Duch"³ testifies next week. Nuon Chea's international counsel, Mr. Michiel Pestman argued that it was necessary to adjust the schedule, because his client would be unable to deliver his statement to the Chamber and be physically present for Duch's testimony in the afternoon. Pestman explained that Duch was a very important witness – perhaps the only witness who may be able to provide incriminating evidence against their client⁴ – so it was important for Nuon Chea to be physically present to confront Duch. Counsel further argued that while changing the schedule would not pose significant difficulties to the Chamber, it is crucial to give due respect to the rights of the Accused.

Pestman acknowledged efforts to accommodate the health conditions of the Accused, such as installing devices to enable the Accused to access the proceedings from their holding cells through video link, and providing them with phones to allow them to contact their lawyers. He emphasized, however, that these measures do not compare to participating in the proceedings in person. He then urged the Trial Chamber to respect Nuon Chea's desire to be physically present during the hearings and adjust the schedule. Ieng Sary's international counsel, Mr. Michael Karnavas, supported these arguments and noted that this issue could have future implications for his own client as well. Karnavas added that, if the Chamber does not recognize a difference between being present in court in person and being connected via video link from the holding cell, then the Accused should not be required to provide waivers when they request to follow the proceedings at the holding cells. Similarly, the Chamber should not have prevented Ieng Sary from moving to the holding cell while the greffier was reading out the accusations against him. Karnavas argued that, by preventing Ieng Sary from following the proceedings remotely, the Chamber demonstrated that it recognized that there were parts of the proceedings that were more important than others, and that there was a difference between the Accused being physically present at the courtroom and participating by means of video link.

In response, international Prosecutor, Mr. Dale Lysak, stated that a change in schedule to satisfy Nuon Chea's alleged health issues would unduly burden the Chamber and result in more inefficiency in current and future proceedings. Lysak stated that the medical examiner, Professor John Campbell, has certified that Nuon Chea is fit to stand trial and be present in court; in fact, Nuon Chea scored a 30/30 on a mental capacity test, comparable to the mental awareness of a 25-year old. Lysak thus argued that, unless and until a medical expert certifies that Nuon Chea is not physically able to be present in court, it is unnecessary and inappropriate to delay proceedings at Nuon Chea's mere claim that he was too tired. Lysak argued that the Chamber has been sufficiently accommodating of the health conditions of the Accused by providing them with the option of viewing the proceedings through video link. Consequently, absent a medical expert's certification that Nuon Chea is unable to sit in court all day, the Chamber should proceed as planned, whether Nuon Chea makes the personal decision to be present in court or not.

The Chamber did not directly rule on these issues. However, it announced that it will hear Nuon Chea's testimony on Monday and Wednesday morning of next week, and Duch's testimony all day on Tuesday and Thursday. Consequently, the Chamber will not be in session on Monday and Wednesday afternoons. Since the Chamber did not express whether this decision was a result of a policy it has adopted, or if it applies only to these specific circumstances, it leaves open the possibility that these issues will continue to be raised and argued anew, as similar circumstances arise in trial.⁵

B. Objections to Professor Ben Kiernan Testifying via Video Link

In October 2011, the Trial Chamber announced its intention to hear the testimony of Professor Ben Kiernan (**TCE-38**). However, since the Chamber was “unable to confirm the availability of TCE-38” until February 2012, the Chamber requested the OCP (the Party that included Kiernan in the Witness List) “to report back to the Chamber and the other parties within 3 weeks of the present date with recommendations for the timing and modalities of the hearing of...”⁶ Kiernan’s testimony. The OCP complied and informed the Chamber that Kiernan would be unable to come to the ECCC in 2012 but may be able to do so in 2013. Thus, the Prosecution requested the Chamber to allow Kiernan to testify by video link so that he can be heard as scheduled. The Defense responded that as Kiernan is an important witness, his testimony must be heard in court, even if it means hearing his testimony a year later in 2013.

Karnavas proposed that either Professor Kiernan gives his “prosecution” evidence via video link now, and then come for examination in 2013, or provide the entirety of his testimony in 2013. However, if the Chamber insists on hearing Professor Kiernan by means of video link, then the Nuon Chea and the Ieng Sary Defense Teams should be allowed to go to the United States to examine him in person. Karnavas also asked the Chamber to attach less weight to Kiernan’s testimony if his testimony would be heard via video link.

The Defense Teams pointed out that it is usually possible to temporarily take some time away from one’s obligations when summoned by a court, especially so when asked to testify on matters that directly cover one’s decades-long research. The Defense Teams also argued that questioning such an important expert via video link is inconsistent with an Accused’ right to be present in court to confront witnesses against him.⁷ This is because the witness would not be impressed by the solemn court surroundings, his comportment cannot be observed as keenly as if he were present in court in person, and the examiner cannot stand in front of the witness and look him in the eye. To further support his argument that Kiernan should not be heard via videolink, Karnavas referred to cases from the ICTY⁸ and ICTR.⁹

In response, the OCP argued that jurisprudence of the ICTY and ICTR shows that a witness may give testimony through video link. The OCP further argued that the ICC allows testimony by video link, and that the ECCC should look to the practice at the ICC, which has a more similar system to the ECCC compared to the ICTY and the ICTR. National Co-Prosecutor, Mr. Darasrasmey Chan averred that, based on Rule 26(1) and precedents from the ICC, the Chamber should allow the use of video link to give testimony. He moreover stated that the use of video link is compliant with Internal Rule 26(1) because it allows the Chamber and the Parties to examine witnesses in real-time. The OCP also pointed out that in Case 001 and Case 002, the Chamber had heard testimonies from individuals in Cambodia and overseas via video link.¹⁰

In their submissions, the OCP made extensive reference to Internal Rule 26 (1), which provides the Chamber with wide discretion to hear a witness via video link:

The testimony of a witness or expert during a judicial investigation or at trial shall be given in person, whenever possible. However, the Co-Investigating Judges and the Chambers may allow a witness to give testimony by means of audio or video technology, provided that such technology permits the witness to be interviewed by the Co-Investigating Judges or the Chambers, and the parties, at the time the witness so testifies. Such technologies shall not be used if they would be seriously prejudicial to, or inconsistent with defence rights.

Karnavas raised other arguments: Professor Kiernan was a *de facto* expert for the OCP and the OCP had not discharged the burden of proof to show the need for and legality of Kiernan giving testimony via video link. The OCP replied that Kiernan was, in fact, an expert of the Chamber, which had requested the OCP to contact him. As such, Internal Rule 26 (1) does not impose on the OCP such a burden of proof.

A side issue also arose with regards to the disclosure of documents. Karnavas requested access to the communications between Kiernan and the OCP to verify Professor Kiernan's claim that he will only be able to come to the ECCC next year. As a result, the OCP provided copies of its correspondence with Kiernan to the Defense Teams during the break. For the purpose of preparing their examination of Kiernan, the Ieng Sary Defense also submitted a written request to obtain the Professor's handwritten notes and recordings, which he used to write his books and articles. Apart from filing a written reply opposing this request, the OCP made oral objections, calling the request excessive, vague and lacking due diligence, pointing out that Kiernan cannot be forced to hand over his personal notes. Karnavas responded that they were not asking the Chamber to compel Kiernan to surrender his notes; rather, there was a chance he would be willing to do so and that "it doesn't hurt to ask."¹¹

C. Other Rights of the Accused

Two other issues arose concerning other rights of the Accused. First, the Trial Chamber required Ieng Sary to stay in the courtroom to hear the charges made against him in the Closing Orders before he was allowed to go to his holding cell. Second, the Chamber denied the Nuon Chea Defense's request to submit written objections to documents.

1. Trial Chamber Denied Ieng Sary's Request to Follow Proceedings from the Holding Cell

Just before the morning break on Monday, Ieng Sary's national counsel, Mr. Ang Udom, conveyed his client's request to be excused from being present in the courtroom and instead, participate remotely from the holding cell via video link. Since January, Ieng Sary has made this request almost every day just before the morning break. On these occasions, he would sign or affix his thumbprint on a waiver of his right to be present in the courtroom. On this occasion, however, the Chamber denied his request to go to the holding cell, on the ground that it was important for him to be present in court to hear the charges against him. Accordingly, Ieng Sary moved to the holding cell only after lunch, after the greffiers had finished reading the relevant portions of the Closing Order for the second segment of the first trial.

2. Nuon Chea may not Submit Written Objections to Documents

On Monday, Nuon Chea's international counsel, Mr. Andrew Ianuzzi informed the Chamber that they would present their general objections to documents in court on that day, and that they would file their specific objections in writing the next day. While the Chamber allowed the Nuon Chea Defense to raise oral objections, it ruled that it would not accept their pleadings containing specific objections because they did not use all of their allotted time (the whole of Monday afternoon) to state their objections.

It is within the Chamber's discretion to allow or disallow written submissions to clarify oral arguments. Moreover, the Scheduling Memorandum did specify that these hearings on documents were "intended as an alternative to the filing of written submissions."¹² However, it may be prejudicial to the Nuon Chea Defense's ability to prepare an effective defense,¹³ if they were only informed *after* they could no longer choose to clarify their arguments orally that their intended written submissions (which would presumably have been meant to complement and support their oral arguments) would not be allowed. .

D. Admissibility of Categories of Documents

This week, the Chamber heard objections and arguments from the Parties on the admissibility of documentary evidence. Since the Prosecutors and the Civil Party lawyers did not object to the Defense's documents, the proceedings focused on documents the OCP and the Civil Party lawyers intended to use. While the discussions were largely similar to previous evidentiary hearings, three issues were covered for the first time: (i) relevance of documents; (ii) evidence tainted by torture; and (iii) the admissibility of Case 001 transcripts.

1. Are Documents Relevant only when they relate to the First Segment of Case 002/1?

The Defense Teams argued that documents, to be admissible, should strictly pertain only to Case 002/1 (i.e., on the historical background, administrative structure of the DK regime, and the roles of the Accused). They pointed out that since the OCP did not amend their Documents List to cover only matters that pertain to the first trial, the OCP undermined the purpose of the Severance Order.¹⁴ Consequently, each Defense Team objected to individual documents or categories of documents that they considered irrelevant and requested the Chamber to exclude those documents from consideration for the first segment.

Ianuzzi argued that many documents from Annexes 6 through 20, Annexes 7, 8, 9, 14, as well as some documents contained in Annexes 13, 15, 17, 18, 19 were not relevant to the scope of the first segment. Karnavas supported this objection, and pointed to a number of specific documents he considered irrelevant, including maps, photos, a book on Cambodian ethnic Vietnamese, and the interview of Ieng Thirith, whose trial has been severed from Case 002. Khieu Samphan's national defense counsel, Mr. Kong Sam Onn, agreed with Karnavas on the issue concerning Ieng Thirith, and further argued that documents relating to the allegations of crimes against humanity and grave breaches of the Geneva Convention were immaterial to this segment of the trial and thus, should not be examined. Kong Sam Onn's international counterpart Ms. Anta Guissé, argued that the OCP's Annexes 6, 8, 14, and 15, as well as 9 out of 10 documents from the Civil Party lawyers were outside this trial segment.

The Prosecutors argued in favor of the admissibility of the documents in question, on the ground that they provide context for the crimes that is necessary for the Chamber to make an informed judgment. Therefore, it would be inappropriate to limit what is admissible to only those that are considered to be most strictly pertaining to the specific issues of that segment. To support this argument, national Senior Assistant Prosecutor Mr. Veng Huot cited Rule 87(3),¹⁵ which delineates the grounds on which the Chamber may reject evidence. International Prosecutor, Mr. Tarik Abdulhak, then responded to the Defense's objections to specific documents by showing how these documents were reliable or relevant. He argued that the nature of the Severance Order does not reduce the scope of the case but simply organizes the order in which the charges are to be heard to make the case more manageable. Abdulhak also emphasized that in order to prove the alleged joint criminal enterprise, the OCP has to show ties between the administrative positions and communications between the Accused, and the widespread and systematic attacks on certain groups.

The CPLCLs supported the Prosecutors' argument that contextual evidence is crucial and should be admitted. International CPLCL, Ms. Elisabeth Simonneau-Fort said that the Civil Parties' 10 documents for the first segment related specifically to forced transfer and the context of crimes.

2. Evidence Obtained under Conditions of Torture

The Defense Teams objected to all documents obtained through torture or conditions of coercion. Son Arun asserted that since “Duch stated that the documents were the confessions as a result of torture,”¹⁶ these documents cannot be used to ascertain the truth. Ianuzzi added that all the documents in Annex 6 were obtained through torture and coercion. He cited an oral reminder from President Nil Nonn from Case 001 on 20 May 2009 that the “the Parties are reminded of Article 15 of the Torture Convention.”¹⁷ He also cited Judge Sylvia Cartwright’s statement on 28 May 2009:

The Chamber wishes to emphasize the importance of the fact that the court is bound by the provisions of Article 15 of the Torture Convention... this provision is noted in Article 38 of the Cambodian Constitution, and also in Rule 21(3) of the Internal Rules.... This means that the fact that a confession had been made, and that it was made under torture, is an admissible fact. However, the contents of that confession cannot be accepted as a truthful statement.¹⁸

Similarly, Karnavas argued that documents obtained through torture are inadmissible. Guissé objected to the Annexes 9 and 10 on the same grounds. Before responding to the Defense teams, the Prosecutors quoted Article 15 of the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (to which Cambodia is a State Party), which states –

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.¹⁹

The Prosecution argued that the Defense had ignored the last clause in Article 15, which permits the use of evidence obtained through torture as evidence that the statement was made. Abdulhak pointed out that these documents were put before the Chamber to show how the documents were made, and who saw them. The Prosecution argued that they only intended to use them to show who was questioned by whom, and who reported to whom, and not to rely on the contents of the documents to assert that they are true. In response to Ianuzzi’s quotes from the transcript of Case 001, Abdulhak pointed out that notwithstanding that statement, the Chamber did nevertheless accept the use of materials obtained through torture in that case in order to examine allegations made against the perpetrators.

3. Case 001 Transcripts

The Defense also argued that the transcript from Case 001 should not be admissible as evidence before the Chamber for Case 002. Karnavas reiterated his argument from the previous hearings, pointing out that in Case 001, the Defense of Kaing Guek Eav alias “Duch” had relied on different arguments from the Defense Teams in the case at bar because Duch had admitted guilt. As a result of his admission, there may have been fewer challenges put to the witnesses or less vigorous examinations in Case 001. Therefore, Karnavas argued, the transcript from Case 001 should not be admitted as evidence. Rather, the same witnesses from Case 001 should be called and cross examined again by the current Defense Teams. Karnavas cited case law from the ICTY to support his argument. Guissé also supported his argument, arguing that the ECCC operates on an adversarial system and thus, transcripts from other trials should not be admitted as evidence.

In response, Lysak argued that the testimonies of the witnesses from Case 001 should be treated like any other witness statements in that they may supplement witness testimonies. Lysak agreed to another round of examination for these witnesses and further mentioned

that Duch will testify before the Chamber, providing an opportunity to compare his testimony with that from Case 001.

4. A Review of Recurring Arguments on the Standard of Admissibility²⁰

The arguments on the admissibility of documents were largely repetitive of those presented in previous evidentiary hearings.²¹

a. Prima Facie Indicia of Reliability

Veng Hout reiterated the OCP's definition of the *prima facie* standard for admissibility of evidence. He cited Internal Rule 87(1) on the Rules of Evidence, which states that, "unless provided otherwise in these IRs, all evidence is admissible." The Chamber had ruled on this issue in document E162, issued on 31 January 2012. The OCP has interpreted this provision to mean that, to be admissible, evidence presented to the Chamber should merely comply with the *prima facie* standard of authenticity, relevance, and reliability. If it lacks any of these qualities, it may be considered unsuitable to prove the facts it purports to prove, and thus, rendered inadmissible under Rule 87(3) (c).²² Also, if there is no indication that the document is a forgery, it enjoys a presumption of authenticity and reliability. Thus, there would be no need to present the original document or a witness to authenticate the document, or to prove the chain of custody to admit the document as evidence.

Veng Hout also argued that, since the ECCC primarily follows the civil law tradition, it supports the principle of free evaluation of evidence. Under this principle, the standard of admissibility has a very low threshold, allowing the professional judges to evaluate the probative value and weight of the evidence at a later stage of the proceedings. According to the OCP, the Special Court for Sierra Leone also uses this system, and even allows judges to rely on hearsay evidence. Counsel for the Prosecution further averred that the ECCC system is different from the ICTY's system and, therefore, Karnavas' references to the ICTY case law were irrelevant on this issue.

b. Originals and Copies

The Nuon Chea Defense continued to demand the presentation of original documents and not scans or copies. Son Arun objected to the entirety of Annex 7, which does not contain any original document, and which contains some copies that are of particularly poor quality, according to Counsel. He requested to see the original documents to certify the authenticity of the copies.

c. Chain of Custody

The Nuon Chea and Khieu Samphan Defense Teams reiterated their objections to documents that they consider to lack a clear chain of custody. Ianuzzi argued that documents should not be admitted unless the authors and custodians testify as to how the documents were produced, who had control of them, and how they were identified. Guissé questioned how certain documents were obtained, drafted, kept, and conserved, including documents from the Document Center of Cambodia (**DC-Cam**), as well as documents in Annexes 6, 7, and 17.

Veng Hout responded that there was no need to establish the documents' chain of custody because corroborating evidence from other documents or from witnesses is sufficient to show that a document is reliable. He argued that the witnesses Mr. Chhang Youk and Mr. Vanthan Peou Dara had already sufficiently testified regarding DC-Cam's methods, in order to permit the admission of documents from this source. Abdulhak also added that the OCIJ had directly contacted the National Archives for copies and scans of its original collection. As such, they did not rely solely on DC-Cam.

d. Lack of Translated Versions

The Nuon Chea and Ieng Sary Defense teams objected to more documents presented by the Civil Party lawyers on the ground that a number of these documents have not been translated to all the working languages of the ECCC. Simonneau-Fort pointed out that the Civil Party lawyers have submitted their request for the translation of these documents but they have not received a response from the Translation Unit. Ianuzzi and Karnavas both declared that while they did not wish to make objections to the contents of the documents presented by the Civil Party lawyers at this stage, they reserved their right to object to them once the translated documents are available.

e. Allegations of OCIJ Bias

The Defense Teams alleged that the OCIJ is biased and, as such, documents sourced from the OCIJ should not be automatically admitted as evidence. In response, international Co-Prosecutor, Mr. Vincent de Wilde D'Estmael, argued that according to standard procedure, the investigators from the OCIJ had taken oaths before performing their work to obtain both incriminating and exculpatory evidence. He also pointed out that the Defense has not presented any evidence to support their claim that the OCIJ is biased.

f. The “Appropriate” Time to Admit Documents

Karnavas once again raised the issue of what he considered the “proper time” to put documents before the Chamber. Restating what he had said in previous sessions, he argued that the Prosecution should wait until the relevant witness appears before introducing documents, rather than flooding the Chamber with these documents.

III. Trial Management

The Trial Chamber’s trial management concerns focused on next week’s schedule, on account of Nuon Chea’s request to be present during Duch’s testimony. Notwithstanding the many issues discussed this week, the Chamber and the Parties maintained proper comportment, save for some minor lapses.

A. Attendance

All of the Accused were present in the courtroom at the start of the first morning session every day this week. After the two morning sessions, Nuon Chea participated in the afternoon sessions of the proceedings via video link in his holding cell. Khieu Samphan was present during all sessions. On Monday, Ieng Sary was present at the courtroom for both the first and second morning sessions but participated in the rest of the hearings remotely from his holding cell by means of video link.

Judge Cartwright returned to the court this week after being absent last week due to health reasons. On Monday afternoon, the Trial Chamber recognized the new international lawyer for the Khieu Samphan defense, Ms. Anta Guissé, who has been present in court but was not permitted to speak in the previous week of hearings. Guissé is a member of the bar in Paris, France, and has worked as a defense counsel at the ICTR.

Public Attendance. On Monday, at least 250 students from the Preah Yukunthor High School in Phnom Penh attended the whole day session. On Tuesday, about 300 high school students from the Battambang Province attended the morning session and left after lunch; 250 high school students from Phnom Penh's Chba Ampoeu High School took their place in the afternoon session. On Wednesday, approximately 300 students from the Russei Kaev High School in Phnom Penh attended the proceedings. Finally, on Thursday, around 300 students from the Tram Kak High School in Takeo Province observed the hearing.

B. Courtroom Etiquette

On Monday, Karnavas alleged that the OCP was trying to “sneak”²³ documents for use as evidence in the proceedings by listing documents in the wrong files or mislabeling them. Additionally, Karnavas stated one has to question the motives and professional ethics of the OCP. This led to objections throughout the week by three different Co-Prosecutors, who stated that the examples given by Karnavas were wrong and the accusations inappropriate. Karnavas then admitted to having been mistaken and apologized to the Prosecution.

Further adding to the charged atmosphere in the courtroom, Karnavas also stated that the Civil Party lawyers merely echoed the OCP’s position. Simonneau-Fort interpreted this statement as a challenge to the role of Civil Parties in these proceedings. On a related note, at one point Pestman apologized for rising to his feet too early, stating that he had forgotten about the existence of the Civil Parties for a moment.

Use of the Term “Mini-Trial.” On Tuesday, after Guissé had used the term “mini-trial” several times, Abdulhak urged the Parties to avoid using this term to refer to the first trial of Case 002, as it is offensive to the victims. On Thursday, Ianuzzi disagreed, stating that all Parties and the media have used the term without meaning any offense, but simply because having to say “Case 002/1” was inconvenient. Moreover, Ianuzzi pointed out that the trial was in fact smaller than the originally conceived trial of the whole Case 002. The Defense Teams thus continued referring to the first trial as a “mini-trial.”

On Thursday afternoon, the Trial Chamber instructed Parties to refrain from using “mini-trial” because it is inappropriate and is not reflective of the actual length, gravity and importance of the first trial.

C. Time Table

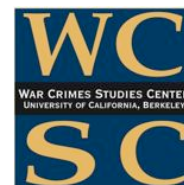
DATE	START	BREAK	LUNCH	BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 12/03/12	9.09	10.32-10.57	12.02-13.31	14.36-15.03	15.52	4 hours 22 minutes
Tuesday 13/03/12	9.05	10.12-10.33	12.04-13.32	14.28-14.53	16.14	4 hours 55 minutes
Wednesday 14/03/11	9.02	10.26-10.50	12.01-13.30	14.31-14.54	15.56	4 hours 38 minutes
Thursday 15/03/11	9.01	10.29-10.49	12.18-13.41	14.20-14.48	16.14	5 hours 2 minutes
Average number of hours in session:				4 hours and 44 minutes		
Total number of hours this week:				18 hours and 57 minutes		
Total number of hours, days, and weeks at trial:				156 hours and 20 minutes		
36 TRIAL DAYS OVER 10 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)
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)
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
OCF	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, Samantha Lee, Sovanna Sek, Penelope Van Tuyl and Alvin Yap 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. “Updated memorandum for next document hearing (12-19 March 2012)” (2 March 2012). E172/5. [hereinafter, SCHEDULE.] par. 2. 1.

² See <http://www.yale.edu/history/faculty/kiernan.html>

³ Duch was the Secretary of S-21, a security center in Democratic Kampuchea where at least 12,000 were imprisoned, tortured and executed. He was the first case prosecuted at the ECCC. He was found guilty of war crimes and crimes against humanity, and was sentenced to life imprisonment. See Case 001. Supreme Court Chamber. “Appeal Judgment” (3 February 2012). F28. 320.

⁴ Trial Chamber. Transcript of Trial Proceedings (15 March 2012). E1/49.1. lines 1-3. 47.

⁵ A ruling on this issue could have many implications for future proceedings and the Chamber's perceived ability to administer justice. First, the Chamber's ruling could determine its policy on the need for the Accused to be physically present in court, weighed against the need to maintain efficiency of the proceedings. This may be dependent on the Chamber's interpretation of the balance of competing rights of the Accused under Article 35 (c) and Article 35 (d) of the ECCC Law.⁵ Article 35 (c) demands that the trial be conducted without undue delay while Article 35 (d) requires that the Accused be present in court to answer the charges made against him. Second, as the Accused get older and perhaps face more medical problems, this could be a recurring issue before the Chamber, calling for a clear and fair policy and position from the Chamber to ensure consistency. Third, a ruling could also indicate the degree of the Chamber's reliance on medical certifications as opposed to an Accused' interpretation of his or her capabilities when deciding if the Accused can indeed be physically and mentally present in court. Fourth, a ruling could clarify the Chamber's position regarding the difference, if any, between being present in person versus being connected via video link. Finally, the Chamber's ruling could decide if it considers a waiver from the Accused necessary for the Chamber to continue proceedings without the Accused being physically present in court.

⁶ Trial Chamber. "Memorandum: Hearing of TCE-38 and TCE-44" (6 February 2012). E166.

⁷ SCHEDULE. par. 6.; Ieng Sary Defense. "Ieng Sary's response to the Co-Prosecutor's notice to the Trial Chamber and Parties regarding testimony of TCE-38 and TCE-44" (9 March 2012). E166/1/1.

⁸ *Prosecutor v. Tadic*. IT-94-I-T. "Decision on the Defence Motion to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link" (25 June 1996). par. 18. *Prosecutor v. Stanisic & Simatovic*. IT-03-69-T. "Decision on Prosecution Motions to Hear Witnesses by Video-Conference Link" (24 February 2010). par. 8. 11. *Prosecutor v. Karadzic*. IT-95-5/18-T. "Decision on Prosecution's Motion to Subpoena Berko Zecevic" (20 January 2011). par. 19.

⁹ *Zigiranyirazo v. Prosecutor*. ICTR-2001-73-AR73. "Decision on Interlocutory Appeal" (30 October 2006); *Prosecutor v. Bagosora et al.* ICTR-98-41-T. "Decision on prosecution request for testimony of witness BT via video-link" (8 October 2004). par. 15; *Prosecutor v. Nzabonimana*. ICTR-98-44d-T. "Decision on Defence Urgent Motion to Hear Testimony of Expert Witness Dr. Susan Thomson via Video-Link" (9 March 2011). par. 16; *Ndindiliyimana et al.* ICTR-00-56-T. "Decision on Bizimungu's Request for witness DE 4-12 to testify via Video-link" (2 November 2007); *Prosecutor v. Bagosora et al.* ICTR-98-41-T. "Decision on Prosecution Request for Testimony of Witness BT via Video-Link" (8 October 2004). par. 11.

¹⁰ Expert Justice Richard J. Goldstone testified from the United States in Case 001; expert Stephane Hessel testified from France in Case 001; witness Long Norin testified from Banteay Meanchey Province in Case 002.

¹¹ Trial Chamber, Transcript of Trial Proceedings (15 March 2012), E1/49.1. line 14. 107.

¹² SCHEDULE. par. 2, 1.

¹³ ECCC Law. Article 35.

¹⁴ ECCC. "Internal Rules (Rev. 8)" (3 August 2011). [hereinafter, INTERNAL RULES.] Rule 89 ter. "Severance: When the interest of justice so require, the Trial Chamber may at any stage order the separation of proceedings in relation to one or several accused and concerning part or the entirety of the charges contained in a Indictment. The case as separated shall be tried and adjudicated in such order as the Trial Chamber deem appropriate."

¹⁵ Internal Rules. Rule 87(3).

¹⁶ Trial Chamber. Transcript of Trial Proceedings (12 March 2012), E1/46.1. line 3. 64.

¹⁷ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (4 February 1985). [hereinafter, TORTURE CONVENTION]. Article 15.

¹⁸ Trial Footage. 12 March 2012. Part 3, 29:05-30:10.

¹⁹ Torture Convention. Article 15.

²⁰ See AIJI Case 002 KRT Trial Monitor Issue No. 9. Hearing on Evidence Week 4 (16-20 January 2012).

²¹ See Scheduling Orders E159 and E170 respectively. Trial Chamber. "Memorandum: Scheduling of oral hearing on documents (16-19 January 2012)" (11 January 2012). E159; Trial Chamber. "Memorandum: Scheduling of oral hearing on documents (13-16 February 2012)" (9 February 2012). E170.

²² Internal Rules. Rule 87(3)(c).

²³ Trial Chamber. Transcript of Trial Proceedings (12 March 2012). E1/46.1. line 14. 95.