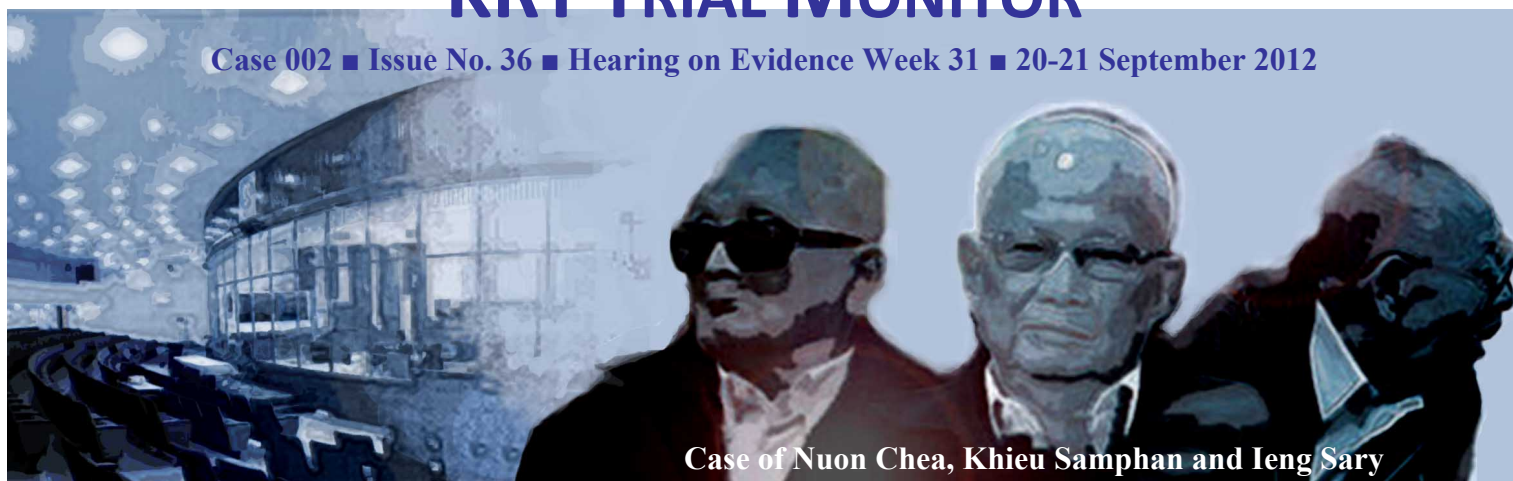


KRT TRIAL MONITOR

Case 002 ■ Issue No. 36 ■ Hearing on Evidence Week 31 ■ 20-21 September 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

*My position at that time was nothing but a worker.
I was a person who was tasked with repairing the cars.
If I were the cadre I could have been executed or disappeared already.*

- Witness Chea Say

I. OVERVIEW

Since Accused, Ieng Sary, remained confined in the Khmer-Soviet Friendship Hospital, the Court held sessions on only two days this week. Chea Say (TCW-91), an automotive repair mechanic during the Democratic Kampuchea, testified before the Chamber on Thursday, upon waiver by Ieng Sary of his right to be present at the hearing.¹

On Friday morning, Dr. Lim Sivutha and Professor Ky Bousour, Ieng Sary's physicians, testified about the state of health of the Accused. In light of Ieng Sary's current health condition and its effect on his right as an accused to be present during trial, the Chamber dedicated Friday afternoon to hearing the positions of Parties in regards to the scheduled hearing of Expert Witness Philip Short.

II. SUMMARY OF WITNESS TESTIMONIES

The Witness Chea Say testified about his role in DK, the evacuation of Phnom Penh, political study sessions, and disappearances of persons.² As in the previous hearings, the Ieng Sary Defense again called attention to the manner by which the Witness' OCIJ statement was taken during the investigative phase of the Case.³

Ieng Sary's physicians, Dr. Lim Sivutha and Professor Ky Bousour,⁴ reported about the medical condition of the Accused. They revealed that Ieng Sary is suffering from restricted blood circulation due to constriction of blood vessels around his neck, which results in dizziness and numbness of his extremities.

A. Chea Say's Testimony

The Witness confirmed that he worked for the truck repair unit in K-12 at Khan Chamkar Mon, Phnom Penh, from around the fall of Phnom Penh in 1975 until the arrival of the Vietnamese in 1979. K-12, the automotive service station of Office 870,⁵ was supervised by Ta Mil and had two sections: one for cars and another for trucks. The Witness worked in the truck repair unit with around 30 people. Apart from his role as truck repairman, he was

sometimes requested to drive around Phnom Penh to transport utilities, food, and garbage. The Witness clarified that he was merely “a person to be used by others. [He] did not hold position as cadre of the regime.” At K-12, Witness indicated that they were told to work hard and were “criticized” or “refashioned” in livelihood meetings whenever they failed to do so.

1. Interaction with the Leaders of the CPK

According to Witness, the persons in his unit at K-12 took turns in attending political study sessions that took place at the Soviet Technological School and Borei Keila.⁶ Chea Say testified that the sessions lasted from three to ten days. Nuon Chea and Khieu Samphan provided presentations, which he described as follows:

Nuon Chea and Khieu Samphan taught us during the political study session, focusing on those things that I said: on the economization and on strengthening or working hard. They did not teach us on doing anything bad at all, as I can recall it clearly, that we shall strive to work hard in order to build the country.

He added that since Nuon Chea and Khieu Samphan were from the same “family” or party, they conveyed similar messages. Chea Say also recalled hearing Khieu Samphan’s speeches on the radio about the need to strive hard to build the country and increase production.

Chea Say further stated that he saw Khieu Samphan at K-12 when the Accused came to see his children, who were then two to four years old. Khieu Samphan’s children, along with some other children, were looked after by nannies at K-12. However, the Witness could provide no further details – not even on the sexes of Khieu Samphan’s children. According to Chea Say, he was occupied with his own work and did not pay attention to the activities of the Accused. The Witness stated that, after the fall of the regime, he learned, through unspecified persons, that Pol Pot, Nuon Chea, Ieng Sary, Khieu Samphan, and Son Sen were the people who led the country during the DK. The Witness merely saw the leaders from afar and never “face to face” in DK.

2. Enemies and Disappearances

According to Chea Say, during study sessions at K-12, his superior Ta Mil instructed them to be vigilant of people who might engage in “chaotic activity” at their workplace. The Witness also stated that they had to be cautious of “unpredictable matters” at all times because they could not see or know where the enemies were hidden.

The Witness confirmed that, of the 30 people working in the truck repair unit in 1975, no more than 10 were still working at the unit by 1979. In 1978, his superior, Ta Mil, was among those who disappeared; “I did not know what he did wrong. I just learned that he disappeared,” Chea Say said. Aside from Ta Mil, Pang, who worked at Office 870, also disappeared and was replaced by Lin. Witness could not recall who, between Ta Mil and Pang, “disappeared” first.⁷ The Witness recounted that cadres from the north and east zones were removed. He explained that “removal” could mean that a person was transferred to work somewhere else. Coming from the east zone himself, the Witness was concerned for his own safety.

At the east, Sao Phim,⁸ who was the head of the zone, was accused of being a traitor and, as a man who was from the same east zone, I was implicated as an element... I was afraid that I would be killed; I was very worried that I would end up of being executed.

Chea Say testified that people disappeared and he did not know where they were taken. Had he known they were sent to a particular location, his fears could have been allayed. According to the Witness, he never asked KR leaders during the meetings or trainings about the disappearance of his colleagues because he was just an ordinary person and “could not have been close to such senior people like these uncles.” He maintained that he was merely a worker.

4. Evacuation of Phnom Penh

In 1975, while Chea Say was still working as a soldier, his superior⁹ instructed him to accompany around 30 persons who were evacuated from Phnom Penh on a ship to Kampong Cham Province. According to the Witness, this was done in order to protect the evacuees. Witness could not recall whether or not the soldiers were armed, but stated “most of the time, they were not armed.” He clarified that he did not take part in removing people from their homes, but merely joined the ship that took them to Kampong Cham. He recalled that people on the ship were of different ages – even as young as three months old. He stated that he had “normal” conversations with the evacuated persons, “I was not in a situation where I was angry with them or they were angry with us. It was normal.” Once the ship arrived at Kampong Cham, the local authorities took the evacuated people to an unknown location.

5. Witness Demeanor and Credibility

Throughout his testimony, the Witness claimed that he could not recall details of events that occurred nearly 40 years ago, saying that his memory does not serve him well and he had been sick a lot since 1979. Thus, he refused to answer several questions, indicating that he did not want to speculate. The Witness added, “During that time I paid greater attention to performing my task very well, so I was less interested in knowing the other things.” Observers at the gallery reacted and raised their voices when the Witness indicated that soldiers who accompanied evacuees were usually unarmed and the situation in the ship to Kampong Cham was “normal.” Chea Say also admitted that his wife was with him during his OCIJ interview and had helped him answer the investigator’s questions. (See III.3.)

B. Medical Experts’ Testimony about Ieng Sary’s Health

In addition to ordinary witness testimony, the Chamber also heard testimony from Dr. Sivutha and Professor Bousour, doctors at Khmer-Soviet Friendship Hospital, who explained the reason behind Ieng Sary’s admission and continued confinement at the hospital. The physicians gave their recommendations for treatment, and assessed the likely recovery period of the Accused. Dr. Lim Sivutha took on the task of answering almost all of the questions.

1. Current State of Health of Ieng Sary

The doctors confirmed that they submitted a written report on the medical condition of Ieng Sary to the Trial Chamber on 19 September 2012. During the session, Dr. Lim Sivutha stated that the Accused was admitted on 7 September because he was suffering from malaise and fatigue. At the time of Ieng Sary’s admission, his blood pressure and heartbeat were consistent with results from previous examinations, which gave the doctors no reason for concern. However, after the Accused complained of numbness in his limbs on 9 September, the hospital conducted additional tests. The tests revealed that Ieng Sary had cervical uncodingarthritis, which was causing pressure on blood vessels around the neck area, constricting the flow of blood to Ieng Sary’s head, and limiting motor movement.

The physician further explained that leng Sary's frequent bouts of fatigue were mainly caused by his weakening heart. This condition cannot go back to normal, but "its evolution is stable." The dizziness, however, is related to the narrowed "cervical canals" of the Accused. According to Dr. Lim Sivutha, if the Accused "lies down and does not move, then there is no problem. If he stands up, he will suffer from dizziness and feel like vomiting." Dr. Lim Sivutha said the doctors kept interviews with leng Sary short, with a maximum period of 15 minutes, as the Accused became exhausted very easily. The physician also referred to the lack of strength of leng Sary's backbone, which at times made it difficult for him to get up from bed. Dr. Lim Sivutha clarified that although they had to repeat some of their questions because of leng Sary's hearing problems, the Accused answered queries responsively.

2. Recommendations and Estimated Time of Discharge

The physicians were unable to give a definitive recommendation for treatment at the time of the hearing. They explained that they were still consulting among themselves and with experts from outside the Khmer-Soviet Friendship Hospital to determine the best treatment for leng Sary. According to Dr. Lim Sivutha, one option would be to dilate cervical canals to normalize blood flow at the neck area of the Accused. However, he maintained that he does not recommend this course of action because of the risks this surgical procedure presents, considering leng Sary's "fragile state of health," old age, "diffuse osteoporosis", heart condition, and questionable ability to withstand anesthetic administration. Dr. Lim Sivutha indicated that, if they decide not to operate and merely continue with the ongoing treatment, treatment will take "quite a long time" and it can take at least another month before Accused is released from the hospital. He further stated that leng Sary "should remain in intensive care for some time more" and will not be able to attend proceedings anytime soon.

3. Demeanor and Credibility of Witnesses

Dr. Lim Sivutha clarified that his and Professor Bousour's capacity as doctors was limited to leng Sary's physical condition, they could not comment on the mental health of the Accused and how the narrowed cervical canals affect his ability to concentrate.¹⁰ He explained that determination of the state of leng Sary's mental health requires assessment by an expert in neurology.

While being examined by international defense counsel for leng Sary, Mr. Michael Karnavas, Dr. Lim Sivutha clarified that their finding of cervical uncodiscarthrosis was based on results obtained from scanning, and was evidenced by the film produced during the test. "[W]hen it comes to the medical assessment, that is, physical assessment, faking is almost impossible," he stated.

III. LEGAL AND PROCEDURAL ISSUES

Proceedings this week centered heavily on leng Sary's right to be present during his own trial. The Chamber devoted one full day to hear updates on leng Sary's medical condition and Parties' submissions as regards how the Chamber is to proceed in light of leng Sary's illness. Additionally, this week the leng Sary Defense challenged the manner the OCIJ conducted its interview.

1. Right of the Accused to be Present During Trial

leng Sary, who was admitted into the hospital on 7 September, waived his right to be present during the testimonies of a number of witnesses, including that of Chea Say.¹¹ Before Chea Say began his testimony on Thursday, leng Sary's national counsel, Mr. Ang Udom,

specified that the waiver was only effective so long as the Witness refrained from testifying on matters that tended to incriminate his client.

The right of an Accused to be present¹² was explored further in the afternoon of Friday when the Court heard submissions of the Parties about the scheduled hearing of expert witness, Philip Short. Ieng Sary had not waived his right to be present at the taking of the testimony from the Expert.

a. Positions of the Parties as regards the Hearing of Testimony of Philip Short and Other Witnesses

International Prosecutor William Smith argued that, in view of the uncertainty surrounding Ieng Sary's health, the Prosecution does not oppose to the postponement of Philip Short's testimony. Smith noted that Ieng Sary had indicated that he was prepared to allow the hearing of witnesses who will testify on matters that do not relate to him or to the Ministry of Foreign Affairs. The Accused had also reportedly agreed to the presentation of some documents relating to authority and communication structures, and admissibility of witness statements. Consequently, the Chamber may hear testimony and allow the presentation of documents while Ieng Sary recovers. Smith observed:

[I]t is of benefit to the Witness,¹³ it is of benefit to the Accused, and it is of benefit to the Trial Chamber that trial can continue without great legal debate on whether it should or not.

Additionally, through the defense of the Accused, Smith asked Ieng Sary to consider waiving his right to hear the testimonies of additional witnesses. Lastly, the OCP requested the appointment of international and national expert neurologists to determine the state of mental health of Ieng Sary.

CPLCL Elisabeth Simonneau-Fort indicated that the CP lawyers had "decided to fully support the position" of the OCP to defer the testimony of Philip Short. However, she also stated that they were prepared to maintain the schedule for the appearance of Philip Short.

Karnavas commended the OCP's "reasonable approach" and said that deferring Philip Short's¹⁴ testimony is the "only possible solution at this time." Counsel stressed that Ieng Sary is mentally incapable of participating in his defense, as the Accused gets dizzy and cannot concentrate: "I need more than five minutes to consult with him." Karnavas informed the Chamber that Ieng Sary will not consent to participating in the hearing of the testimony via audio-visual means as provided in IR 81.5. If Ieng Sary is not able to participate in his own defense and does not authorize his attorneys to proceed, then the Defense will not be able to represent the Accused in the courtroom. Counsel argued this would be tantamount to *trial in absentia* as far as the testimony of Philip Short is concerned. Karnavas further stated that the defense agrees with the OCP's recommendation on the appointment of neurologists to assess Ieng Sary's mental health. He moreover agreed to go over an additional list of witnesses whose testimonies the Accused might consent to waive his right to hear. Karnavas pointed out that, Ieng Sary and his Defense Team are engaging in the instant case in a "robust manner."

Nuon Chea's international counsel, Mr. Michiel Pestman, expressed his support to defer the hearing of Philip Short. Pestman said he welcomed the flexibility of the Parties and reminded the Chamber that Nuon Chea has been waiving his right to be present in the courtroom almost every afternoon. Counsel argued that the availability of a video-link to the proceedings did not mean that his client was participating effectively. National counsel for

Khieu Samphan, Mr. Kong Sam Onn, emphasized the importance of flexibility on the part of the Chamber in accommodating requests of the Parties.

2. Clarity of Rulings

On Thursday, Nuon Chea's international counsel, Mr. Andrew Ianuzzi, referred to a Decision of the Supreme Court Chamber (E176/2/1/4), which found that the Nuon Chea Defense did not commit any misconduct¹⁵ in filing multiple Rule 35 (Interference with the Administration of Justice) applications for summary action.¹⁶ The Supreme Court Chamber found the Team's persistence justified because of the Trial Chamber's "lack of clarity," explained Ianuzzi. In its Decision, the Supreme Court Chamber elaborated on the following tenets in issuing decisions:

[A] court's decision must display *indicia* of an authoritative judicial act. In this respect, it is necessary for a judicial decision to dispose of a legal matter before it in a definite manner. As such, a judicial decision should contain an operative part ("enacting clause" or "disposition") which resolves the substantive and/or procedural issue by creating, altering, dissolving or confirming a law-based relation concerning the parties. Moreover, it is established ECCC practice for decisions open to appeal to be released in written form. This practice, although not required by law, serves legal certainty and transparency of proceedings as required by Rule 21 and enables an effective review process. Further, as held by the Trial Chamber on a different occasion, all judicial decisions - whether oral or written - must comply with a court's obligation to provide adequate reasons as a corollary of the accused's fundamental fair trial rights. Indeed, the right to receive a reasoned decision forms part of the right to be heard.¹⁷

3. Conduct of OCIJ Interviews

Upon inquiry by Karnavas, Chea Say confirmed that, during his OCIJ interview, his wife provided answers or helped him with his answers when he had problems recalling events. Witness stated as follows:

They put questions to me and I responded to them, and at that time, my wife was also under the house because I have no secrets to keep from my wife. She is my wife. And sometimes she spoke because she had some knowledge. And that was truth. I gave my statement to the investigator the Office of the Co-investigating Judges and it was done in open together with my wife.

Indeed, care should have been taken to ensure that witnesses testified according to their personal knowledge and that statements contain only the accounts of persons who had, prior to the interview, duly taken an oath to state only the truth (IR 24.1).¹⁸ This issue is particularly significant in this instance, as the Witness repeatedly claimed that he has a weak memory.

IV. TRIAL MANAGEMENT

This week's abbreviated hearings proceeded smoothly, with the Court adjourning by the third session on both days. Only minor issues on court etiquette and technical difficulties occurred.

Proceedings were suspended upon Ieng Sary's confinement at the Khmer-Soviet Friendship Hospital on 7 September. Therefore, Ieng Sary's waiver of his right to hear testimonies that he determined had no implication in establishing his involvement in the charges before the ECCC gives the Chamber latitude in scheduling proceedings in the weeks to come.

A. Attendance

Ieng Sary was absent from the Court throughout the week as he remained confined at the Khmer-Soviet Friendship Hospital. In the Thursday morning session, Nuon Chea participated in the proceedings in the courtroom, but retired to the holding cell for the afternoon sessions. Khieu Samphan stayed in the courtroom for all sessions on Thursday. Both Nuon Chea and Khieu Samphan waived their right to be present on Friday.

Civil Party Attendance: As in previous weeks, all seats in the courtroom reserved for Civil Parties were occupied throughout the week. Additionally, 10-20 Civil Parties participated from the main gallery.

Parties Attendance: This week, at the request of national CPLCL Pich Ang,¹⁹ the Chamber recognized a new Civil Party Lawyer, Ms. Francoise Gautry from Advocates Without Borders. Although Nuon Chea and Khieu Samphan waived their right to be present at the sessions on Friday, their counsels attended the proceedings. Mr. Arthur Vercken, international defense counsel of Khieu Samphan, was absent throughout the week.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Thursday 20/09/12	<ul style="list-style-type: none"> ▪ 450 villagers from Kampong Chhnang Province ▪ Around 5 foreign observers 	<ul style="list-style-type: none"> ▪ 150 villagers from Mok Kampool district, Kandal Province ▪ 6 visitors from various countries bearing VIP cards ▪ A few foreign observers
Friday 21/09/12	<ul style="list-style-type: none"> ▪ 400 villagers from Ponhea Krek and Tbong Kmom Districts, Kampong Cham Province. ▪ A few foreign observers 	<ul style="list-style-type: none"> ▪ 200 villagers Siem Reap District, Siem Reap Province ▪ A few foreign observers

B. Time Management

Observing the right of the Accused Ieng Sary to be present during his trial, the Trial Chamber did not hear any testimony from 10 to 19 September. Moreover, the Chamber had to determine how to conduct hearings in the following weeks and, thus, held non-evidentiary hearings on Friday to hear reports on the health condition of Ieng Sary and the submissions of the Parties.

C. Courtroom Etiquette

On Thursday, Pestman inquired with President Nil Nonn about the latter's biography on the ECCC website. Counsel observed that references to publications in international or criminal law that had previously been on the site had since been "redacted." Pestman was concerned that, if such references were deleted because the President had not, in fact, published those articles, this would reflect "a creative approach to facts unbecoming a judge." Although indicating that this matter was outside the scope of the hearing, President Nil Nonn

responded and said that he had written “summary reports” for the internal use of the national court and the school for judges. He further elaborated that since these articles were not on par with other publications (*i.e.* they did not contain references with carefully cited sources in the footnotes), reference to these publications had been removed from the ECCC website.²⁰ The President maintained that the articles are available at the school of judges.

As was previously observed,²¹ on Friday, the Trial Chamber once again gave the leng Sary Defense the courtesy of inquiring whether or not the Accused objected to the public disclosure of his medical condition. Karnavas indicated that leng Sary had no such objections; thus, the hearing on Friday morning was open to the public.

D. Translation and Technical Issues

Understandably, a few difficulties in the translation of highly technical medical terms occurred during the testimony of leng Sary’s physicians. This prompted international Prosecutor Dale Lysak to comment that according to the translation, leng Sary’s “collarbone” was restricting leng Sary’s veins, and that the problem is with the cervical disc of the Accused. Indeed, before explaining, Dr. Lim Sivutha admitted that leng Sary’s condition was “rather difficult” to describe in laymen’s terms.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Thursday 20/09/12	9:01	10:32-10:52	12:06-13:32	14:33	-	3 hours and 46 minutes
Friday 21/09/12	9:08	10:42-11:04	12:11-13:31	14:16	-	3 hours and 26 minutes
Average number of hours in session				3 hours 36 minutes		
Total number of hours this week				7 hours 12 minutes		
Total number of hours, days, weeks at trial				475 hours 21 minutes		
109 TRIAL DAYS OVER 32 WEEKS						

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



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AIJI TRIAL MONITORING



* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

This issue of **KRT TRIAL MONITOR** was authored by Mary Kristerie A. Baleva, Faith Suzzette Delos Reyes, Noyel Ry, 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>, and at the websites of the [East-West Center](http://www.eastwestcenter.org) and the [War Crimes Studies Center](http://www.warcrimesstudiescenter.org).

¹ See IR 81(5).

² The Witness was questioned in the following order: National Prosecutor Veng Huot, International Prosecutor Keith Raynor, CPL Beini Ye, Judge Jean-Marc Lavergne, international counsel for Nuon Chea Michiel Pestman, international counsel for Ieng Sary Michael Karnavas, and national counsel for Khieu Samphan Kong Sam Onn.

³ See CASE 002 KRT TRIAL MONITOR. Issue No. 35, Hearing on Evidence Week 30 (3-6 September 2012).

⁴ At the beginning of the session, the President informed the witnesses that any of them may respond to the questions by the Chamber and the Parties. The witnesses were questioned in the following order: President Nil Nonn, Judge Silvia Cartwright, Judge Jean-Marc Lavergne, international counsel for Ieng Sary Michael Karnavas, OCP Seng Bunkheang, OCP Dale Lysak, CPL Pich Ang, CPL Elisabeth Simonneau-Fort.

⁵ According to the Closing Order, the term "Office 870" or "Organization's Office" was used to refer to Political Office 870 and, Office S-71, including other entities associated with these two offices. Political Office 870 was headed by Seua Vasi alias "Doeun" and was tasked with matters of policy; Office S-71 or Government Office was headed by Chhim Sam Aok alias Pang and was responsible for administrative and support tasks. The Closing Order also indicates that Khieu Samphan was also assigned to work in Political Office 870. OCIJ. "Closing Order" (15 September 2010). D427 [hereinafter **CLOSING ORDER**]. Paragraphs 50-51.

⁶ The Closing Order describes Borei Keila as a meeting place, also referred to as K-6. At Borei Keila, Nuon Chea was said to have conducted several mass political trainings where he taught the policies of the CPK to Party cadres and workers in Phnom Penh. CLOSING ORDER. Paragraphs 59 and 886.

⁷ According to the witness Saloth Ban, Pang disappeared shortly before the Vietnamese arrived in January 1979. CASE 002 KRT TRIAL MONITOR. Issue No. 20, Hearing on Evidence Week 15 (23-26 April 2012). 3.

⁸ According to the Closing Order, Sao Yann alias Sao Phim was a member of the Standing Committee who committed suicide in 1978. CLOSING ORDER. Paragraph 43.

⁹ Witness could not recall the name of his superior but said that he was in Regiment 52; Chea Say could not remember whether or not his regiment was part of a bigger division. However, Witness recalled that his commander was first a certain Ta Mut and, later on, a person named Ta Sim. Witness does not know if Ta Mut and Ta Sim are still alive.

¹⁰ Lim Sivutha, however, said that the report of psychologist showed that Ieng Sary is not suffering any psychological impact from the disease.

¹¹ The Chamber informed the Parties that the waiver of Ieng Sary's right to be present during the taking of the testimony of Chea Say is contained in a letter of waiver dated 18 September 2012. See Case 002. Ieng Sary. "Ieng Sary's Limited Waiver of Right to be Present during Court Proceedings" (18 September 2012). E229.

¹² Article 14.3(d) of the International Covenant on Civil and Political Rights states that everyone is entitled "[t]o be tried in his presence, and to defend himself in person or through legal assistance of his own choosing..." Further, IR 81 (1) states: "The Accused shall be tried in his or her presence, except as provided in this Rule."

¹³ Philip Short had informed the Witness and Experts Support Unit (WESU) that he would prefer to appear before the Chamber in mid-January to mid-February 2013. Case 002. WESU. "Expert Witness Philip Short (TCE-65) update" (20 September 2012). E226/3.

¹⁴ Counsel also stated that if Ieng Sary is not capable of assisting his defense relative to the testimony of Philip Short, it follows that Accused will not be able to assist in regard to the testimony of Witness Elizabeth Becker.

¹⁵ Ianuzzi inquired if the Trial Chamber intended to forward the Decision to the respective Bar Associations of the defense to which the Trial Chamber had referred the members of the team to on the basis of a "pattern of professional misconduct". The President informed Ianuzzi that the Trial Chamber had not forwarded the Decision, but the counsels concerned may do so.

¹⁶ The Nuon Chea defense made a first oral application on 10 January 2012 requesting the Trial Chamber to officially condemn statements attributed to Prime Minister Hun Sen and to ask him to refrain from similar remarks in the future. In response, the Trial Chamber issued an oral decision on 2 February 2012 stating that it would not consider any public comment on the guilt of the accused in reaching its final verdict. On 22 February 2012, the defense filed a written application before the Trial Chamber on the same issue. The Trial Chamber issued a decision on 11 May 2012 elaborating on its 2 February oral decision and, at the same time, addressing a second oral application that the defense made on 12 March 2012. Supreme Court Chamber. "Decision on Nuon Chea's Appeal Against the Trial Chamber's Decision on Rule 35 Application for Summary Action" (14 September 2012), E176/2/1/4. Paragraphs 1-4.

¹⁷ Ibid, paragraph 25.

¹⁸ IR 24.1 provides that: "Before being interviewed by the Co-Investigating Judges or testifying before the Chambers, witnesses shall take an oath or affirmation in accordance with their religion or beliefs to state the truth."

¹⁹ This is in accordance with IR 22, which provides: "The national lawyer shall request recognition of any foreign lawyer, the first time such lawyer appears before each judicial body of the ECCC. Once recognized, such foreign lawyer shall enjoy the same rights and privileges before the ECCC as a national lawyer."

²⁰ President Nil Nonn said: "And as I observe that, here, the standard of writing is much higher. In particular, in reference to the footnotes, which is an international standard, is much higher than my writing or article, and based on that, I consulted with the legal officers as that, there could be controversy coming out of the inclusion of that portion in my biography, because such writing of article should not be included in the biography as, in compared to some other biographies before the ECCC, and that is all."

²¹ CASE 002 KRT TRIAL MONITOR. Issue No. 23, Hearing on Evidence Week 18 (21, 23 May 2012).



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This publication was originally produced pursuant to a project supported by the War Crimes Studies Center (WCSC), which was founded at the University of California, Berkeley in 2000. In 2014, the WCSC re-located to Stanford University and adopted a new name: the WSD Handa Center for Human Rights and International Justice. The Handa Center succeeds and carries on all the work of the WCSC, including all trial monitoring programs, as well as partnerships such as the Asian International Justice Initiative (AIJI).

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