

# KRT TRIAL MONITOR

Case 002 ■ Issue No. 39 ■ Hearing on Evidence Week 34 ■ 8-10 October 2012



Case of Nuon Chea, Khieu Samphan and Ieng Sary

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

*We can all formulate ideas and it doesn't need to be put in a document  
to have any weight, any value, any existence for that matter, before this Chamber...  
Now we have a live witness, let's ask the witness questions  
and see what the witness has to say.*

- Andrew Ianuzzi,  
International Defense Counsel for Nuon Chea

## I. OVERVIEW

In honor of the Pchum Ben festival, the Chamber held sessions on only three days this week. Monday and Tuesday were devoted to continued questioning of the Witness, Meas Voeun, a soldier and later Deputy Division Commander during the Democratic Kampuchea. In addition to the sections of the Closing Order relevant to Segment Three of Case 002/1 that were read out the previous week,<sup>1</sup> on Tuesday afternoon, the Chamber instructed the Greffier to read out paragraphs pertaining to the Toul Po Chrey Execution Center. At the end of the week, the Prosecution began to introduce documents relating to Segment Three.

Throughout the three days of proceedings this week, the Chamber also took time to address a number of legal and procedural issues that arose, including: (a) the use of documents obtained by torture, (b) the procedure on the “removal” of statements from the OCIJ’s written record, (c) questioning without referring to documents or previous statements, (d) the reliability of written records of OCIJ Interviews, and (e) questions that tend to lead the Witness. Additionally, Nuon Chea was given the opportunity to speak in court, in order to address portions of the Closing Order that have been read out by the Chamber.

## II. TESTIMONY OF WITNESS MEAS VOEUN

This week, Parties continued to question Meas Voeun, alias “Svay Voeun” (TCW-428). The Civil Party Lawyers, Judge Jean-Marc Lavergne, and the Defense Teams questioned the Witness on content covered during last week’s proceedings in order to glean more specific information, particularly on the following: personal knowledge of the Accused, the evacuation of Phnom Penh, interactions with Thai and Vietnamese along the coast, and general Khmer Rouge policies, including treatment of prisoners and forced marriage.

## **A. Role of the Witness During the DK**

As the Witness testified last week, under the DK regime, he rose to the level of the position of Deputy Commander of Division One. International defense counsel for Nuon Chea, Mr. Andrew Ianuzzi, asked the Witness how he accounts for his rapid rise in the military ranks. Meas Voeun replied that he really did not rise very rapidly and his role was quite limited, even though he held a high-level title. He got injured and was thus reassigned to the position of Deputy Commander of Division One and put in charge of Koh Kong. Initially, however, he was simply assisting the Deputy Commander, who was hospitalized at that time.

## **B. Personal Knowledge of the Accused and other High-Ranking Officials**

As in the previous week, Meas Voeun did not mention the Accused, Ieng Sary, at any time in his testimony. The Witness also confirmed that he did not personally meet Nuon Chea, nor did he have first hand knowledge of Nuon Chea's position in the regime. He only heard of Nuon Chea's membership in the General Staff Committee through others. Contrary to his statement to the OCIJ, the Witness clarified that he only heard about Nuon Chea after the liberation of Phnom Penh. National defense lawyer for Nuon Chea, Mr. Son Arun, therefore asked the Witness if he would like to strike from the OCIJ record his statement that he knew Nuon Chea's position during the war. Meas Voeun confirmed that he wanted that statement removed. (See III.B.)

Consistent with his statement the previous week, the Witness indicated that he knew Khieu Samphan personally. The Witness recalled that, at the point in time when he became a member of the Patriotic Youth League in 1968, Khieu Samphan had fled Phnom Penh to the safety of the jungle. Meas Voeun was one of the members of the Patriotic Youth League assigned to protect Khieu Samphan. National counsel for Khieu Samphan, Mr. Kong Sam Onn, noted that, in 1968, Samdach Sihanouk offered a generous reward for anyone who gave information leading to the location of Khieu Samphan. Kong Sam Onn asked Meas Voeun why he did not respond to this offer. The Witness replied that there would have been a thorough investigation within the movement, so he did not dare or care to report Khieu Samphan.

Meas Voeun also communicated directly with Khieu Samphan between August 1978 and January 1979, when Khieu Samphan directed the Witness to check on the well-being of Khieu Samphan's elderly parents, and to investigate the production and distribution of supplies in the North Zone. At this time, Meas Voeun only knew that Khieu Samphan was in charge of Autonomous Sector 103. He did not know anything about Khieu Samphan's larger role in the regime. Furthermore, the Witness only exchanged telegrams with the Accused in August and September of 1978 because the Vietnamese were quite close at that time and they cut off communication between the Preah Vihear region and the Center.

The Witness also had direct knowledge of, and interacted with other high-level officials. In the early days in the jungle, the Witness learned about the ideals of the war, *i.e.*, nationalism, and the fight against French colonialism and imperialism, from "intellectuals and other senior people, including Hu Nim and Ta Kroen." The Witness stated that Hu Nim was later arrested and killed for airing different ideas from Angkar's about distribution of money.

In response to a direct question from Ianuzzi, the Witness said Ta Mok, who was head of the West Zone and a member of the General Staff, "had high authority and absolute power and could make any decision on his own, and I had to follow any of his orders without condition." Meas Voeun testified that he knew Ta Mok from the beginning. Ta Mok recruited the Witness into the Patriotic Youth League and assigned him to protect the cadres. The Witness stated, "he went everywhere and everywhere I went I saw him."

### **C. Evacuation of Phnom Penh**

The Witness recalled that, around the time of the evacuation from Phnom Penh, he went to a hospital because people had broken into the drugstore to try to get medicine. He prevented them from hurting themselves on the broken glass, and removed the people from the drug store. He stated that he did not see any patients because he only saw the drug store and not the area where patients were received. The Witness also expanded on his testimony from the previous week relating to his activities after the “liberation” of Phnom Penh, and said that when he and his regiment were removed to Kampong Trach in Kampong Province, they were responsible for defense, military action, and rice production.

### **D. Interactions with the Thai and Vietnamese on Coastal Areas**

The Witness elaborated on his Division’s treatment of Thai and Vietnamese fishing vessels found encroaching on Cambodian waters. He affirmed that his orders were to capture such boats and his men were successful in capturing them about half of the time that these boats were spotted. He did not know what happened to the people after they were captured, or whether these activities were reported to the General Staff or stayed within the Division level.

The Witness also clarified which specific islands were under his control and which were under the control of neighboring Division Three, under Commander Meas Mut. Meas Voeun, the Witness, was in charge of the Koh Kong area, including the main island, Koh Kong, the smaller islands Koh Son Dek, Kro Pi, Yor, Por, Salao, San Chara and Chhlarm, and the coastal area of Krosourk. Division Three was in charge of the neighboring islands Troul, Arch Seh, Boulavai and Prean. The Witness also described how the Vietnamese took Boulavai Island, which was under control of Meas Mut and Division Three. He heard the details of this attack from his soldiers. He further stated that the Vietnamese residing on these neighboring islands were only military people, not civilians.

Ianuzzi also went to specific lengths to establish that the Witness had detailed knowledge of the Thai-Cambodian border. At his prompting, the Witness confirmed that he knows that border region well, including the regions and towns of Battambang, Banteay Meanchey, Kang Wa refugee camp, Thmor Pouk, Ta Ngok refugee camp, Chhat mountain, and Malai town. However, Counsel did not follow up further on this line of questioning.

### **E. Familiarity with Khmer Rouge Policies**

The Witness heard of the plan to smash enemies within the army, particularly those who were affiliated with the Vietnamese, CIA, and Chinese. In relation to this, Meas Voeun said around 550 people were executed, but he also stated that he did not know if the plan was completed.

The Witness maintained that he did not know how captured escapees or captured Thai and Vietnamese were treated, aside from that they were sent to the “rear.” The Witness also said he did not know about the brutal treatment, torture, and killings of escapees in his zone that were described in several documents that International Civil Party Lawyer, Elisabeth Simonneau Fort, read out.

The Witness also indicated that he did not learn about purges or planned purges in the North when he visited a security center in Siem Reap to secure the release of Khieu Samphan’s sister-in-law. However, Meas Voeun noted that people in the North were fearful of arrests and that food and resources like salt, mosquito nets, and blankets went to waste instead of being given to the people. He did not report these poor conditions to his superior, Khieu Samphan, because this information was not directly related to his instructions for the region.

In relation to marriages, the Witness said he only approved voluntary marriages within his regiment and he did not hear of any of the suicides in his zones relating to forced marriages. He said that “marriages did not include flowers or music,” but people could chose their partners in his zones.

#### **F. Witness Demeanor and Credibility**

The Witness appeared very calm, confident, and clear when making his statements. However, defense counsel for Ieng Sary, Mr. Michael Karnavas, questioned the credibility of the Witness’ statement to the OCIJ. Karnavas said the investigator’s summary noted that questions began at 10:20 in the morning and ended at 5:30 in the evening, for a total of about seven noted hours of questioning; however, the defense was only provided with two and a half hours of tape recording. Furthermore, Meas Voeun’s wife was present during his OCIJ interview “to help him remember.” (See III.D.)

### **III. LEGAL AND PROCEDURAL ISSUES**

Although there were only three days of proceedings, a number of the legal and procedural issues arose this week. The Parties contested: (a) the use of documents obtained by torture, (b) the procedure on the “removal” of statements from the OCIJ’s written record, (c) questioning without referring to documents or previous statements, (d) the reliability of written records of OCIJ Interviews, and (e) questions that tend to lead the Witness. The Chamber continued to read out portions of the Closing Order that pertain to Case 002/1/3 and the Prosecution began presentation of relevant documents. Additionally, Nuon Chea was given the opportunity to address portions of the Closing Order that have been read out by the Chamber.

#### **A. Concerns Related To The Use of Documents Obtained By Torture**

Once again, Parties challenged the use of confessions obtained through torture.<sup>2</sup> On Monday, when Judge Lavergne was questioning the Witness, Meas Voeun, he referred to the confession of a prisoner who was detained in S-21. Karnavas objected to this approach, arguing that:

It would appear that a Judge from the bench is commenting about the contents in a confession. There is a double standard. I don’t know what the rulings are. I certainly would like clarification.

The Nuon Chea Defense Team, through Ianuzzi, supported the objection of the Ieng Sary Defense. In response, Judge Lavergne said, “... I’m only asking the Witness if he knows these people in this confession... and furthermore there is a separate list,” suggesting that there was a list of relevant Khmer Rouge leaders from a source other than the confession. Judge Lavergne then proceeded to further question the Witness. The Trial Chamber did not rule or comment on this issue. In the previous week, the Chamber, through Judge Silvia Cartwright, stated that the Chamber would not allow confessions obtained in violation of the Convention Against Torture to be used in putting questions. It appears, however, that there is a need for consistent and faithful application of this ruling.

#### **B. Procedure on the “Removal” of Statements from the OCIJ’s Written Record**

When Son Arun sought clarification from the Witness as to whether or not he wished to strike his statement from the OCIJ record where he indicated that he knew Nuon Chea’s position during the war (see II.B), Prosecutor Tarik Abdulhak challenged this request, arguing that

there was no applicable rule on the removal of statements from the written record. Abdulhak asserted that counsel should only be allowed to ask if a prior statement was correct or incorrect. Son Arun countered that the Prosecution and Parties had used the statements and that the Witness had the right to comment on whether or not he wanted to remove statements from the written record.

Karnavas submitted that the Prosecution's objection was incorrect, and argued that Witness was capable of commenting and clarifying whether he disavowed certain statements. He commented that the Nuon Chea team might have used the wrong terminology when they asked if the Witness would like to "strike" statements from the record, rather than "withdraw" them. Kong Sam Onn expressed his support of the arguments of the other Defense Teams. National CPLCL, Mr. Pich Ang, also commented that written records of interviews have been read out to the witnesses and they have confirmed their accuracy.<sup>3</sup> Pich Ang stated that the Chamber has discretion in considering the reliability of the statement.

The Chamber, through Judge Silvia Cartwright, said there is no applicable rule for striking a statement from an OCIJ record; nonetheless, the Chamber will consider inconsistencies when weighing the evidence provided by the Witness. This ruling appears consistent with last week's ruling when Judge Cartwright said, "the applicable legal framework that this Court operates under does not provide for striking out as a remedy."<sup>4</sup> However, as was pointed out by Ianuzzi, there seems to be a need for a clarification on what documents or records are covered by this ruling because the Chamber, in the previous week, ordered some "words" that were "improperly recorded" to be stricken from the records of proceedings before the Trial Chamber. (See IV.C.)

### **C. Questioning Without Referring to Documents or Previous Statements**

On Tuesday, Prosecutor Abdulhak objected to Ianuzzi's line of questioning when counsel asked the Witness, "[A]re you aware, Mr. Witness, that Ta Mok and Meas Mut have all been identified as having directly, directly and without any reference to the Party center, overseen executions carried out by their subordinates?"

Abdulhak argued that this question was improper because it did not refer to specific documents or to previous witness statements. Ianuzzi refuted this objection, arguing that his questions were directed at the personal knowledge of the Witness, who had firsthand experience of the regime. Counsel asserted that the Witness could comment on these matters without the need to refer to certain documents. Ianuzzi said that there will be a document hearing the following week and that may be the time to discuss documents, but "Now we have a live witness, let's ask the witness questions and see what the witness has to say."

Sustaining the OCP's objection, the Chamber, through Judge Cartwright, explained that questions that do not refer to specific documents or materials are inadmissible because, without this basis, the Chamber has nothing against which to test oral statements.

The Chamber is agreed that a question that is not based on some material or Witness Statement in this Court, that cannot be tested by the Court, is not admissible. Ideas, as you expressed them are insufficient. The Court can operate only on evidence. Consequently, if there is a prior Witness Statement that has been heard and examined in this Court, or a document that has been put before the Chamber, these are all viable basis' for putting a question to a witness.

However, the Chamber did not pinpoint the legal basis for this ruling. This ruling was met with considerable criticism from Ianuzzi. (See IV.C.)

#### **D. Reliability of Written Records of OCIJ Interviews**

This week, Karnavas again drew attention to discrepancies between the audio recording and the written record of the OCIJ interview of the Witness, Meas Voeun.<sup>5</sup> Counsel stated that, according to the written record, the interview began at 10:20 in the morning and ended at 5:30 in the afternoon, running for a total of seven hours and 10 minutes; however, the audio tape recording only lasted approximately two hours and 42 seconds. Karnavas asked the Witness what happened during the five hours of “missing tape.” Prosecutor Abdulhak objected to this question because it assumed that there was five hours of missing tape, saying:

The question makes an assumption that there are five hours of missing tape. There are a number of possible explanations as to the apparent difference between the record, or at least the time stated in the record and the tape. A missing tape may be one of the hypotheses. But in our submission, it cannot be seriously put to a witness as a fact for him to comment on.

Counsel also tried to demonstrate that the OCIJ investigation methods were inappropriate. Karnavas asked if the Witness was shown documents, including written records of testimonies of other witnesses, before he was asked questions. The Witness confirmed that the investigators read out some short documents, including the confession of Chou Chet. Furthermore, the Witness admitted that during the interview, his wife sat beside him “to help him remember.” The interview record showed that a woman sat beside him during the interview, but it was not specified whether his wife answered or prompted him in his answers.

Karnavas asserted that the role of defense counsels was to check facts throughout the legal process. He reminded the Chamber that the Defense was not entitled to investigate; thus, he had to question the evidence provided by the OCIJ. His concern was that the Witness was prepared with relevant information before the start of the interview. It is worth noting that, only the previous month, Karnavas also brought to the Court’s attention that a witness, Chea Say, was assisted by his wife during his OCIJ interview.<sup>6</sup>

#### **E. Leading the Witness**

International defense counsel for Khieu Samphan, Ms. Anta Guissé, questioned the Witness on Tuesday, using a variety of documents and previous statements made by Meas Voeun and other witnesses. Prosecutor Abdulhak objected to her style of questioning, asserting that Guissé was misleading the Witness by selectively quoting the documents and statements. The Chamber permitted Guissé’s questions after she responded that she was trying to clarify specific points and therefore had to quote specifically and that the Witness had ample time to correct her if she was mistaken.

#### **F. Reading of Closing Order References to Tuol Po Chrey and Presentation of Documents**

Augmenting the portions of the Closing Order that were read out from 3-4 October, on Tuesday afternoon, the Greffier read paragraphs of the Closing Order relating to the Tuol Po Chrey Execution Center.<sup>7</sup> This was pursuant to the Trial Chamber’s Severance Order dated 22 September 2011, which lists the matters to be covered in Case 002/1,<sup>8</sup> and the Chamber’s Memorandum dated 8 October 2012 (E163/5), which expanded the scope to include the following:

1. Executions of evacuees at sites in Kampong Tralach Leu District (District 12);
2. Executions of former Lon Nol soldiers and officials at Toul Po Chrey; and

3. Security Centre S-21 and related execution site Choeung Ek.

The reading of the Closing Order was followed by hearing of documents on Wednesday, with the Prosecution presenting documents pertaining to three main issues:

1. The roles of the regime's Standing and Central committees
2. The structure of the Democratic Kampuchea government
3. Communications structure

This range of documents included copies of the Khmer Rouge propaganda magazine "Revolutionary Flag," letters and reports sent from different sector offices and ministries, and telegrams and circulars. These documents outlined how the key organizations that formed Democratic Kampuchea functioned, how information was communicated to leaders, and how orders were handed down to lower ranks.

#### **G. Nuon Chea Comments on Proceedings**

Pursuant to his request last week,<sup>9</sup> the Accused, Nuon Chea, was granted time on Wednesday morning to respond to the portions of the Closing Order relevant to Segment Three that were read out the preceding week. When Nuon Chea took the stand, President Nil Nonn reminded him that he was only permitted to comment on these portions of the Closing Order; he was not permitted to comment on any other matters. Furthermore, the Judges would put questions to him following his comments, and he could choose to respond or not. Nuon Chea then took just a minute to state that he rejected the allegations that he was involved in organizing the security centers. Specifically, he stated, "I played no role in managing the S-21 Office." Nuon Chea declined to answer questions from the Bench, citing his poor health.

#### **IV. TRIAL MANAGEMENT**

Despite the skirmish exchanged in the courtroom between the Judges and Nuon Chea defense, the Chamber was able to conduct proceedings within schedule.

#### **A. Attendance**

Ieng Sary, who has issued a limited waiver of his right to be present,<sup>10</sup> still remained in the Khmer-Soviet Friendship Hospital and was absent from the proceedings this week. As usual, Nuon Chea attended the morning sessions in the courtroom and retired to the holding cell in the afternoons due to fatigue and backache. Khieu Samphan stayed in the courtroom for all sessions throughout the week.

#### **Attendance by the Public:**

DATE	MORNING	AFTERNOON
Monday 08/10/12	<ul style="list-style-type: none"><li>▪ 250 students from Battambang</li><li>▪ 10 foreign visitors</li></ul>	<ul style="list-style-type: none"><li>▪ 100 people from Kampong Cham</li><li>▪ 10 foreign visitors</li></ul>
Tuesday 09/10/12	<ul style="list-style-type: none"><li>▪ 400 students from Sihanoukville</li><li>▪ 20 foreign visitors</li></ul>	<ul style="list-style-type: none"><li>▪ 100 people from Kampong Cham</li></ul>
Wednesday 10/10/2012	<ul style="list-style-type: none"><li>▪ 250 people from Kampong Cham, Kompong Chhnang and Kampot</li></ul>	<ul style="list-style-type: none"><li>▪ 50 people from Kampong Cham</li><li>▪ 10 foreign visitors</li></ul>

## B. Time Management

The Trial Chamber concluded Meas Voeun's testimony earlier than anticipated, around 3:35 o'clock on Tuesday afternoon. The Chamber filled the remaining time by instructing the greffier to read out relevant paragraphs in the Closing Order regarding the alleged killing of former Lon Nol soldiers at Tuol Po Chrey. The next morning, following the read-out, Nuon Chea was allowed to comment on paragraphs of the Closing Order that have been read out so far. However, Nuon Chea's comments lasted only a few minutes. Accordingly, document hearing began on Wednesday with the Prosecution presenting documents the whole day. Due to the Pchum Ben festival, the Chamber did not conduct proceedings on Thursday, 11 October, and took a short break until 18 October 2012.

## C. Court Etiquette

This week, a constant war of words between the Judges and Ianuzzi dominated courtroom proceedings. At the end of Monday's morning session, when Ianuzzi sought permission to make submissions, President Nil Nonn required the counsel to identify the subject matter for the Chamber to have a basis to decide whether or not to permit it, saying, "The Chamber has noted that you sometimes do not comply with the instructions and the rules enforced in this Chamber." Ianuzzi ignored this direction and successfully "rehabilitated the record" by quoting a statement he made last week and which was later "stricken":

This is an oral application that I've made. I think in fairness we need to hear from my colleagues on this side of the stage, from the Prosecution, and that you'll need to make an oral ruling. Now, I see that you're all getting up and walking out of here, but you're judges and you need to be able to deal with this matter when it comes up in Court. Walking away doesn't solve the problem.

Consequently, President Nil Nonn cut off his microphone and asked if Ianuzzi had other matters to present. Ianuzzi then sought clarification on "striking" statements from the records. In the previous week, Judge Cartwright stated that the legal framework of the ECCC "does not provide for striking out as a remedy," and therefore denied Ianuzzi's application to strike out portions of Meas Voeun's OCIJ statement where, according to the counsel, the investigator had referred to torture-tainted evidence. However, Ianuzzi continued, on 5 October, Judge Cartwright "signed what has been styled an Order to Strike Words from the Record."<sup>11</sup> So I'm very confused. I'm very confused."

Ianuzzi then quoted Judge David Hunt of the ICTY (who, in turn, was quoting from Lewis Carroll's *Through the Looking Glass*), who said as follows in relation to the use of judicial language:

I know of only one authority, which might justify the suggested method of construction. 'When I use a word', Humpty Dumpty said in a rather scornful tone, 'it means just what I choose it to mean, neither more, neither less'. 'The question is', said Alice, 'whether you make words mean so many different things'. 'The question is', said Humpty Dumpty, 'which is to be master, that is all.'

President Nil Nonn cut off Ianuzzi's microphone for the second time and said, "It is already on the record and in the transcript that I, as the President of this Chamber, do not allow you to speak on this matter again." Later, Ianuzzi's microphone was cut off again when he attempted to complete his quote from the morning session.



During Ianuzzi's examination of the Witness on Tuesday, the Chamber refused to allow him to question the Witness based on "ideas" without reference to specific documents or statements. (See III.C.) Ianuzzi expressed his opposition, saying, "I know this Chamber favors legal fictions" but "ideas exist separate and apart from documents." Ianuzzi also said, "We might as well have this trial on paper. We might as well have it on paper. Where on earth, Judge Cartwright, did you find the legal support for the ruling?"

Additionally, on Tuesday, Ianuzzi referenced current events in Cambodia by asking the Witness regarding his opinion on Mam Sonado's case. The President cut off his microphone and prevented the counsel from continuing on this issue on the ground that it was irrelevant. Perhaps in response to his argument with Judge Cartwright earlier in the day regarding questions based on documents or ideas,<sup>12</sup> Ianuzzi, at this point, ended his examination with a curious comment, saying, "perhaps I could just end by registering my agreement with Mr. Richard Rogers, and I'm referring to the famous musician, not the famous lawyer, 'There's nothing like a dame.'"

At the end of Tuesday's proceedings, the Chamber issued a warning against Ianuzzi regarding his "insolent" and "personally insulting" comments.<sup>13</sup> It is to be recalled that the Trial Chamber had, on 29 June 2012, also issued a warning to Ianuzzi and fellow international counsel for Nuon Chea, Mr. Michael Pestman.<sup>14</sup> In its ruling this week, the Chamber indicated that Ianuzzi's actions constituted "misconduct." IR 38(1) provides as follows:

The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement.

The Chamber, moreover, stated that these acts would be brought to the attention of Ianuzzi's bar association, along with a previous ruling. The next day, despite the Trial Chamber's warning, Ianuzzi offered to hand-deliver "a formal written complaint" to the New York Bar Association, as he would be there at the end of the month. The President responded that the Chamber had all the necessary means to communicate its message.

#### **D. Spelling and Technical Issues**

Before the commencement of Tuesday's proceedings, Guissé drew attention to an error that she said was reflected in the 8 October draft court transcript, where Judge Lavergne referred to the record of a meeting that convened on 18 March 1976. Guissé submitted that Judge Lavergne said that Koy Thuon was present in the meeting; however, when she looked at the list of participants in the record, it was Phouk Chhay alias "Touch" and not Koy Thuon alias "Thuch" who attended the meeting. Guissé stressed the importance of accuracy of pronunciation and spelling in the transcript to prevent confusion. Judge Lavergne then asked the counsel to check the spelling both in Khmer and French. Guissé confirmed the inconsistency.

As for technical issues, the audio translation was, on one occasion, not circulated and the Trial Chamber was informed that it might take some time to resolve. Around five minutes later, it was fixed and operated without incident.

## E. Time Table

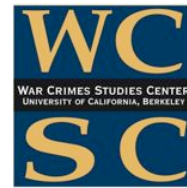
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 08/10/2012	9:03	10:33-10:53	12:06-13:30	14:42-15:02	16:04	4 hours and 57 minutes
Tuesday 09/10/2012	9:02	10:38-11:02	12:13-13:33	14:42-15:10	16:13	4 hours and 59 minutes
Wednesday 10/10/2012	9:09	10:36-10:59	12:05-13:32	14:39-15:01	16:02	4 hours and 41 minutes
Average number of hours in session				4 hours 52 minutes		
Total number of hours this week				14 hours 37 minutes		
Total number of hours, days, weeks at trial				514 hours 19 minutes		
117 TRIAL DAYS OVER 35 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 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.

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<sup>1</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 38, Hearing on Evidence Week 33 (1-4 October 2012). 9.

<sup>2</sup> Ibid, 10.

<sup>3</sup> IR 55 (7) states: A written record shall be made of every interview. Each page of the written record shall be signed or fingerprinted after the interviewee reads it. If necessary, the Greffier of the Co- Investigating Judges, with the assistance of the interpreter, shall read the record back. If the interviewee refuses to sign or fingerprint the record, the Greffier of the Co-Investigating Judges shall note this on the record.

<sup>4</sup> CASE 002 KRT TRIAL MONITOR. Issue No. 38, Hearing on Evidence Week 33 (1-4 October 2012). 10.

<sup>5</sup> See e.g. CASE 002 KRT TRIAL MONITOR. Issue No. 27. Hearing on Evidence Week 22 (19-21 June 2012). 13; and CASE 002 KRT TRIAL MONITOR. Issue No. 35, Hearing on Evidence Week 30 (3-6 September 2012). 7-8.

<sup>6</sup> CASE 002 KRT TRIAL MONITOR. Issue No. 36, Hearing on Evidence Week 31 (20-21 September 2012). 6.

<sup>7</sup> IR 89 *bis*. states: The President shall order the Greffiers to read the counts against the Accused and may order the Greffier to read the factual analysis in the Indictment.

<sup>8</sup> Paragraph 1 includes the following matters: a) The structure of Democratic Kampuchea; b) Roles of each Accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned; c) Role of each Accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines of communication throughout the temporal period with which the ECCC is concerned; and d) Policies of Democratic Kampuchea on the issues raised in the Indictment. Paragraph 5 lists the following: a) Factual allegations described in the Indictment as population movement phases 1 and 2; and b) Crimes against humanity including murder, extermination, persecution (except on religious grounds), forced transfer and enforced disappearances (insofar as they pertain to the movement of population phases 1 and 2). Trial Chamber. "Severance Order Pursuant to Internal Rule 89*ter*" (22 September 2011). E124.

<sup>9</sup> "After the reading of relevant paragraphs of the Closing Order on Wednesday, international defense counsel for Nuon Chea, Mr. Andrew Ianuzzi, informed the Chamber that the Accused, Nuon Chea, wished to make a public comment about excerpts of the Closing Order." CASE 002 KRT TRIAL MONITOR. Issue No. 38, Hearing on Evidence Week 33 (1-4 October 2012). 9.

<sup>10</sup> In accordance with Internal Rule 81 (1) and Articles 14 (1) and 14 (3) (d) of the International Covenant for Civil and Political Rights, Accused Ieng Sary issued a Limited Waiver, agreeing to waive his direct presence in the courtroom for 1 Civil Party and 7 witnesses. He explicitly stated that he is not waiving his right to be present for other witnesses. See Ieng Sary. "Limited Waiver" (18 September 2012). E229. Due to his extended stay in the hospital, he subsequently issued another Limited Waiver for 11 additional witnesses and 7 Civil Parties. See Ieng Sary. "Limited Waiver" (1 October 2012). E237.

<sup>11</sup> The document concerns the record of the hearing on 3 October and "orders the removal... of the words spoken by the Defence Counsel for Nuon Chea after the adjournment of the morning session the hearing. As the hearing was adjourned, these words were improperly recorded." Trial Chamber. "Order to Strike Words from the Record/Public" (5 October 2012). E1/129/1.

<sup>12</sup> During the first session, Judge Cartwright issued the ruling for the Chamber that Parties, must base their questions on documents or other verifiable sources against which the Chamber might test the oral evidence. Ianuzzi responded, "I haven't been a lawyer for very long, but that certainly, certainly sounds to me like an absolutely incorrect statement of what's..." Ianuzzi was then cut off and he and Judge Cartwright exchanged half sentences, speaking over each other, until the President cut them off. This was when Judge Cartwright said,

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“You have been told before, you do not comment...”, and Ianuzzi said, “...Where on earth, Judge Cartwright, did you find the legal support for the ruling...” At this point the President cut them off and encouraged Ianuzzi to move on with his questioning. See *also* previous paragraph and III.C.

<sup>13</sup> Trial Chamber. “Continuing professional misconduct of lawyer admitted to your Bar Association” (18 October 2012). E 214/2.

<sup>14</sup> Trial Chamber. “Professional misconduct of lawyer[s] admitted to your Bar Association” (29 June 2012). E214/1. See *also*, CASE 002 KRT TRIAL MONITOR. Issue No. 27. Hearing on Evidence Week 22 (19-21 June 2012). 15.



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