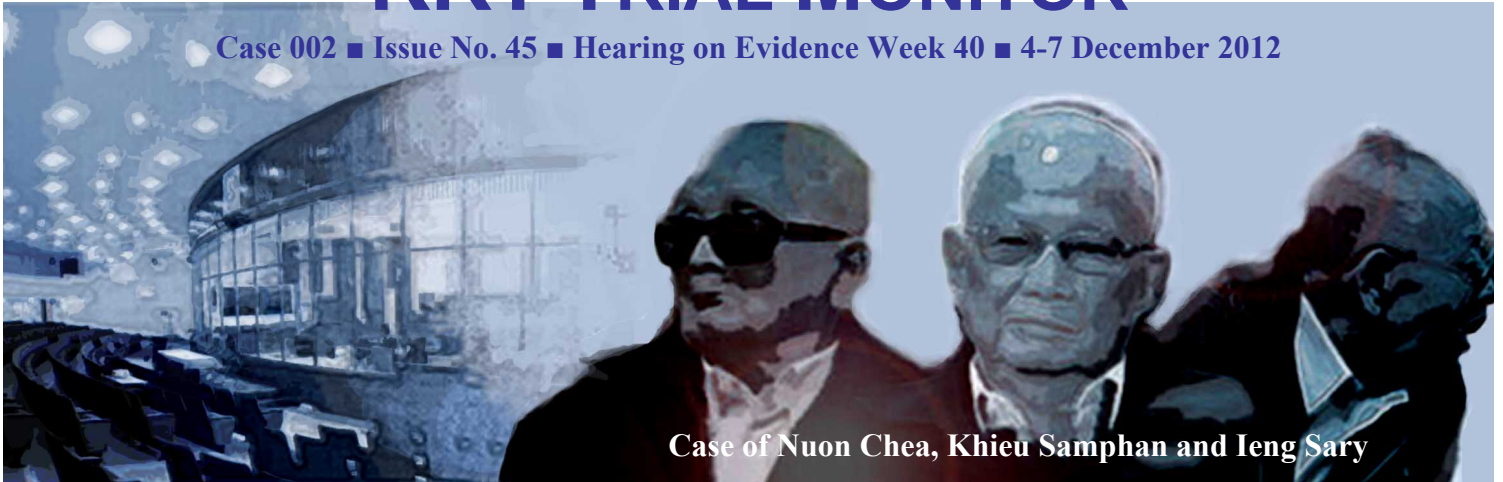


KRT TRIAL MONITOR

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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

*Every time I think of what happened,
it seems so vivid, living in front of my eyes
and it makes me so angry.¹*

- Kim Vanndy, Civil Party

I. OVERVIEW

This week, the Trial Chamber heard the testimonies of three Civil Parties and one witness. Civil Parties Toeng Sokha, Pech Srey Phal, and Kim Vanndy were all in Phnom Penh at the time the Khmer Rouge took over the city. Thus, they testified on the situation in the city before, during, and immediately after the victory of the Khmer Rouge. All Civil Parties had been evacuated from the city, and they detailed the suffering they endured from this experience. Witness Hun Chhunly, on the other hand, lived in Battambang Province at the time of the Khmer Rouge victory. He related some of his observations about the transfer of people to his province. The Witness, a medical practitioner, gave more detailed testimony about the situation in the provincial hospitals, including the conditions of medical personnel and patients.

Significant legal and procedural issues, particularly relating to Accused Ieng Sary's effective participation in the proceedings, the manner of putting questions during examination, the appropriate role of counsel, and proper judicial conduct, were also raised this week.

II. SUMMARY OF CIVIL PARTY AND WITNESS TESTIMONIES

All three Civil Parties this week testified on the living conditions in Phnom Penh immediately before and during the fall of the city. They also testified on the conditions they and their families faced during their evacuation from the city. Witness Hun Chhunly mainly testified on his experience as a physician in Battambang Province during the Khmer Rouge regime.

A. Toeng Sokha's Testimony

Civil Party Toeng Sokha (TCCP 188) was a schoolteacher who was evacuated from Phnom Penh. She testified before the Chamber for most of Tuesday, giving detailed accounts on phases one and two of the evacuation during the DK period.

1. Events Prior to 17 April 1975

According to Toeng Sokha, before 1975, living conditions in Phnom Penh were decent, with people having enough food and finances. However, on the days leading to 16 April 1975, the situation became chaotic. Toeng Sokha heard fighting, gunfire and bombardments; prices of goods soared. At that time, the villages of her relatives in Kampong Speu were destroyed by aerial bombardment, causing the death of four members of the family. Many people from other provinces, including her relatives, came to take refuge in Phnom Penh.

2. Evacuation from Phnom Penh

According to Toeng Sokha, there was “sporadic shelling” in the morning of 17 April 1975. By afternoon, she saw Khmer Rouge soldiers instructing people to leave Phnom Penh by five o’clock in the afternoon. The Khmer Rouge told them there was no need to bring belongings since they would return after three days. Thus, Toeng Sokha left with her children, husband, father-in-law, younger siblings, and other relatives. At that time, the Civil Party’s children were aged 6 and 3 years old. Toeng Sokha and her group of 14 people followed other people towards Monivong Boulevard, saying that there were “pretty young” Khmer Rouge soldiers carrying guns scattered along the way.

The next morning, Toeng Sokha found out that she had slept next to some dead bodies at Kroh Bay. She also saw a decapitated body at the riverbank, which she believed belonged to a former Lon Nol soldier because of the khaki military uniform. Without any target destination, Toeng Sokha continued to follow the mass of people on National Road 2.

It took them 11 days and nights to reach Thnal Dach Village, Bati District, Takeo Province. The Civil Party estimated that she stayed in Bati District for around five months. Upon reaching Takeo Province, the Khmer Rouge confiscated her radio, saying that it belonged to “Angkar”. However, Toeng Sokha was able to keep some gold and jewelry to exchange with some food, other necessary things, and ferry tickets. In Thnal Dach Village, she was able to reunite with her father’s relatives and she was allowed to live in their residence.

At the village, they were referred to as the “17 April people” or “new people,” while the native villagers were known as “the base people.” Cooperatives were not set up yet, and people were allowed to stay together and move freely. Later, they were separated from each other and their movements confined. Toeng Sokha said the Khmer Rouge asked people to register their names, including previous occupations and residences. She also said that the educated people were sent to live in a long house built for them at Trapang Ang Village, while the Chinese or the peasants were asked to live 50 meters away. In addition, Toeng Sokha saw Lon Nol soldiers, who had come to live at Krang Leav, however they were later relocated and she did not see them again.

During her stay at Knal Dach Village, Toeng Sokha said she attended two meetings. The first meeting was convened at Komar Reachea Village and was attended by only 17 April people. They discussed Party policies. The second meeting was “a big meeting,” held at Thnal Dach Village. Here, they discussed the victory of the Khmer Rouge and the defeat of the “imperialists” and Lon Nol. Attendees were assured that the revolution was strong, even though they did not have many things to eat. Toeng Sokha testified that the meeting also addressed KR efforts to identify “infiltrating enemies” and “cleanse” them. She recalled that one female Khmer Rouge soldier asked about her biography during this meeting. Afterward, there was a dancing session, with artists dressed in black uniforms.

3. Evacuation from Takeo Province

Toeng Sokha could not recall the precise year of the second wave of evacuation she experienced, but she testified that it occurred before the rainy season, likely in July or August. The Khmer Rouge reportedly held a meeting to inform the people that they would be relocated to a new village where there was plenty of rice in close proximity. Hoping to find better food, Toeng Sokha decided to follow “Angkar.” She recalled how people were loaded and squeezed into a truck without seats, without knowing where they would be sent. The truck reached Pursat Province at night. While being transferred to a train, Toeng Sokha heard gunfire. She was told that it was directed at someone who tried to escape. The train stopped at Kouk Trom station, but there was nowhere for them to live. She testified that her group had stayed in a forest in this area for a few months, surviving on worms. Later on, she was taken to Srae Ou village, Moung Ruessei district, Battambang Province. According to Toeng Sokha, she underwent more difficulties during the second evacuation than during the first evacuation:

I had to eat worm... worms that were not edible and we were reduced to no human beings but monkeys... we ate the sour leaves and it taste sweet already by then because we were so hungry.²

Toeng Sokha lost her daughter, shortly after they reached Battambang, due to lack of food. The child’s body had become swollen, and she had experienced severe diarrhea. Without proper medical service, she died by early 1976. Two of the Civil Party’s younger siblings also died at around the same time. In 1978, her husband, who she described as “very exhausted,” a “deep thinker” who did not “express himself” to others, “could not take it anymore” and committed suicide.

4. Civil Party Statement of Suffering, Demeanor, and Credibility

Toeng Sokha appeared passionate and eager to provide detailed testimony. She got emotional when she recounted the death of her three-year old daughter and the suicide of her husband. In her statement of suffering, she summarized the dreadful hardship she endured during the two phases of evacuation. She described her condition during the second evacuation as living in a “prison without wall,” saying she underwent “the greatest sorrow.”

And when I lost my daughter, it was the saddest time in my life that I could hardly survive and became mad and crazy... She was put into a hammock together with other seven dead bodies. And I was so shocked when my husband committed suicide. I saw him hanging in the air inside a house. I cried. I cried without tear.³

After the regime, Toeng Sokha said that she lost her capacity to work and suffered from insomnia, saying: “[S]uch suffering cannot disappear... we cannot compare to the erasing of the voice on a tape. I still sleep with my tears coming from my eyes.”⁴

B. Pech Srey Phal’s Testimony

On Wednesday morning, Civil Party Pech Srey Phal (TCCP 108) commenced her testimony. Like Toeng Sokha, she described two phases of evacuation. She also testified about the killing of Lon Nol soldiers and officials, as well as about Party policies.

1. Situation Before 17 April 1975

According to Pech Srey Phal, the situation in Phnom Penh leading to 17 April 1975 was “chaotic.” A mass of evacuees entered Phnom Penh. The price of medicine, food and other items escalated, and people could not afford to buy them. Near Pech Srey Phal’s house in Khleang Rumsev area, Daeum Kor market was set on fire and people started looting for food. Shelling and bombs were heard from various places. Her father, a spy for Lon Nol and the CIA, advised her to stay inside the home due to the bombings. A lot of wounded and sick patients flooded the hospitals, and medical personnel, including her husband,⁵ became too busy to come home.

2. Evacuation from Phnom Penh

According to Pech Srey Phal, at around 10 o’clock in the morning of 17 April 1975, she saw Khmer Rouge soldiers in black clothes and sandals carrying B-40 rocket launchers and rifles. There were also jeeps filled with soldiers in khaki clothes on the road. The Khmer Rouge announced their victory, and said that peace would be restored. Waving white cloth, people were overjoyed and welcomed the victory. Soon after, the Khmer Rouge made another announcement through loudspeakers to ask people to leave the city for three days for the purpose of reorganizing Phnom Penh, and also in anticipation of an American bombardment. Pech Srey Phal left with her elderly grandmother and younger sibling. Her husband, however, was still at the hospital. After reaching Stoeung Mean Chey, on the outskirts of the city, they waited for her husband, father, and other siblings, but none appeared.

According to Pech Srey Phal, at about three o’clock in the afternoon, the Khmer Rouge appealed to former Lon Nol soldiers to drop their weapons and surrender. She recalled that a lot of weapons were thrown and piled up on the roads. Those who wore military uniforms were asked to remove them, leaving them clothed in short pants.

The Civil Party said that, along the road, people who refused to move were beaten. A lot of people, including elderly and sick people with intravenous drip still attached, walked away from the “Russian Hospital.” Some patients died on hospital beds unattended, and the Khmer Rouge instructed people to leave behind the sick. The Khmer Rouge did not allow them to go to any other direction other than Stoeung Mean Chey Bridge. She also recalled that soldiers fired into the air to warn people not to return, otherwise they would be shot dead. During the evacuation, the soldiers gave no medicine, food, water or shelter. People slept on the roadside wherever they happened to be at nightfall. Pech Srey Phal testified that her newborn son died during this evacuation, because she had no breast milk to feed him.

Upon reaching Chamkar DOUNG, Pech Srey Phal reunited with her father and husband and they traveled to Prey Trab Village. Pech Srey Phal testified that she heard a loudspeaker announcement that former officials, teachers, and doctors could resume their posts in Phnom Penh, provided they registered. A lot of public servants of the former regime went to register their names, and she observed that they were taken away, leaving their family to proceed without them. According to the Civil Party, her father did not register because he was sick.

After leaving Chamkar DOUNG, the Khmer Rouge confiscated her belongings at a checkpoint, telling her that she needed to abandon her property, otherwise she would be accused of being a feudalist and an enemy of Angkar. She also apparently heard about how money was collected and burned by the Khmer Rouge.

3. Prey Trab Village and the Killing of Lon Nol officials

When the Civil Party arrived at Prey Trab Village in late 1975 or early 1976, the chief of the cooperative instructed the evacuees to divide themselves into groups and live at various houses. One week later, the Khmer Rouge called all “17 April people” to a meeting to register their occupations. The Khmer Rouge also asked those who had light skin if they were Chinese or Vietnamese. Sixty people registered as former public servants, including her uncle and cousin, who told the Khmer Rouge that they had been soldiers. However, her father and husband did not register their names because they did not want to live separately. Two days later, those people who registered were told to board military trucks to resume their work in Phnom Penh. After finding out that her father had a radio, her family was asked to return to Phnom Penh, even though their names were not registered. On the way back, a man on an oxcart told her to flee because the other people were not sent to Phnom Penh, but rather were being executed. The family immediately fled to the jungle. They walked across the forest for seven nights to meet her father-in-law in Prey Kralanh village, Kong Pisei district, Kampong Speu Province. However, they only stayed there for five days because her father-in-law could not hide them any longer. Eventually, the Civil Party testified, her family showed themselves to Angkar and agreed to follow Angkar.

4. Refashioning and Tempering at Sgnok Mountain

According to Pech Srey Phal, after submitting themselves to the Khmer Rouge, her family, along with around 50 other 17 April people, was sent Sgnok Mountain in Kampong Speu to be tempered and refashioned. She explained that, at that time, the “new people” were perceived as traitors, capitalist or feudalists who had tendencies toward Lon Nol or the CIA. On the mountain, there was no shelter, food, water, or medicine. They survived on water collected from the morning dew, and ate leaves and wild boar. Those who had relatives living in the village secretly received some rice. There were a few people who came down from the mountain to look for food, and the Khmer Rouge shot them dead. After two months, only 20 emaciated people were left. Pech Srey Phal said:

The surviving 20 people were emaciated. We had stiffed long hair because there was no water for us to bath. We could hardly find water to drink, and our knees were even bigger than our head. We did not have anything to eat but only leaves from wild trees.⁶

Pech Srey Phal said that there was then an announcement by Angkar which said, “You, all Comrades, had refashioned yourself so that now you could go down the mountain to work elsewhere.”⁷ When they came down from the mountain, they were boarded on two trucks to Phnom Penh together with other “new people.” All in all, there were around 60 of them.

5. Phase Two of Evacuation to Kampong Chhnang Province and Pursat Province

The Civil Party recounted that, at Phnom Penh, they stayed for two nights at the train station. A locomotive then arrived and people were ordered to board the train. There were at least three armed Khmer Rouge soldiers in each wagon. Some people died due to severe exhaustion, and a person was shot dead after he relieved himself in the wagon. The train took them to Kampong Chhnang, where the evacuees worked in the rice fields and built dikes. Pech Srey Phal said that after staying in Kampong Chhnang for about one year, she and some 17 April people were again transferred to Pursat Province. She was in the first batch of people taken to Pursat, although she did not know how many trips were made. On the day she traveled, “there were three vehicles all together... there were at least 2,000 people travelling to Pursat.”⁸

6. Wat Loung Cooperative, Pursat Province

At Pursat, Pech Srey Phal was assigned to the unit that transplanted seedlings at Wat Loung cooperative. She was separated from her husband, who was placed in the plowing unit. Her parents were transferred to another location. According to Pech Srey Phal, Ta Sen, Yeay Kob, Ta Mean and Ta Phuon were in charge of Wat Loung cooperative. As regards other leaders, she said, "I heard of Ta Mok, Ieng Sary, Khieu Samphan, and Nuon Chea. I never met them. I have heard of -- about them."⁹

The Civil Party recalled that they were told to enhance production and, while they worked, two militiamen held metal ropes, which they lifted whenever a whistle was blown. If they transplanted seedlings too slowly, the metal ropes were raised and could hit their eyes. As regards food conditions, she said that only a can of rice was given for 30 people and they could only make very thin gruel out of it. Regarding sick people, Pech Srey Phal recalled suffering from blisters on her legs and she was told that sick people were not allowed to have food because they could not work. Those who recovered from sickness had to return to work, otherwise they would be smashed, saying "'Smashed' meant 'to kill'."¹⁰

The Civil Party described various instances where persons were punished. In late 1977 or early 1978, Pech Srey Phal was caught stealing rice and was "tortured by way of carrying dirt -- like 200 times."¹¹ She became unconscious due to fatigue, and was woken up by a splash of water. Then, she was taken to be executed. However, as she vaguely explained, an elderly man managed to save her by "clarifying that the matter was already resolved."¹² She also saw some women from the East with blue-checked scarves who were tied up, and were being walked in a line to the dam; she was advised by a cook to disassociate with them because these women's husbands were killed and the women themselves were to be executed. Moreover, the militia punished a couple, Som and Ny, for committing a "moral offense." The Civil Party said, "What I witnessed was when Comrade Som's stomach was cut open and the tobacco cutting knife was pressed against comrade Ny's neck. I witnessed this by myself. Nobody told me of what happened."¹³

7. Civil Party Statement of Suffering, Demeanor, and Credibility

Civil Party Pech Srey Phal appeared candid and confident when providing her testimony, although there were instances during the examination when she could not recall dates precisely.

Pech Srey Phal read out her statement of suffering from a prepared note. She said, "I lost everything, and instead I was terrified, emotionally and physically, and it still remains with me today: the crimes that devastated myself and my family and my entire nation and people."¹⁴ She briefly listed the loss of her family, including a 14-year-old younger brother, who was executed for stealing pumpkin. Additionally, her father and elder siblings died as a result of hard work and lack of medicines. She is also haunted by the miserable experience of her best friend, who was one of the 19 women raped by the chief of the cooperative or chief of the sector. She specifically asked the Court to consider collective reparations, possibly in the form of a stupa or a medical center to support the victims and Civil Parties.

C. Kim Vanndy's Testimony

Civil Party Kim Vanndy (TCCP 59) was born in Angkor Chey District, Kampot Province. During the Lon Nol regime, he lived in Chrouy Changva, Mukh Kampul district, which is adjacent to Phnom Penh. On the 16th of April, Kim Vanndy and his family entered Phnom Penh and went to his uncle's house in Santhor Mok suburb. Like the other Civil Parties

testifying this week, Kim Vandy shared his firsthand account of the situation in Phnom Penh during the capture of the city and the difficulties his family endured after. Only the Civil Party Lawyers and the Prosecution had questions for this Civil Party.

1. The Fall of Phnom Penh

Kim Vandy recalled that, prior to 17 April 1975, Lon Nol soldiers engaged in persistent fighting with KR soldiers. The fierce fighting during the evening of the 16th of April could be heard all across the city. None of his family members were injured, because they took refuge in bunkers.

When he woke up in the morning of 17 April 1975, he heard people shouting excitedly, saying that the KR soldiers had liberated Phnom Penh. He also recalled that a lot of KR soldiers marched on the road into Phnom Penh city. He explained that he did not really understand the situation, because he was very young at the time it was happening, but he thought it was joyful and fun seeing people waving white flags or white fabrics as they cheered the arrival of the KR. He also joined them by taking off his school shirt and waving it. According to Kim Vandy, a KR soldier momentarily left the group marching on the road, and suddenly shot his uncle, who had just arrived in his jeep and was wearing a military uniform (presumably of the Lon Nol army). The KR soldier allegedly said, “that’s what happened to a traitor.” From this incident, the Civil Party testified that he concluded that the Khmer Rouge believed that “all traitors had to be smashed.”¹⁵

2. Evacuation from Phnom Penh

According to Kim Vandy’s recollection, at around 9 o’clock in the morning of 17 April 1975, KR soldiers announced in loudspeakers that everybody had to leave the city for three days to avoid aerial bombardment by the Americans. He and his family left Phnom Penh. Along the way to Chrouy Changva Bridge, Kim Vandy saw swollen dead bodies, and assumed they were casualties of the fighting. He also saw wounded people, some with bandages, others still with intravenous drip. However, he did not pay much attention to them, as he did not want to be separated from his family and had to rush along with other people. Everyone traveled in one direction. The Civil Party explained that when he left his uncle’s house, he noticed signs directing people on which way to take. Furthermore, armed KR soldiers stood along the road at around 10-meter intervals. Although their guns were pointed to the ground, they shouted at the people to move quickly. The Civil Party witnessed a man walking in the opposite direction and appealing to the KR soldiers to be allowed to return to find his children. One soldier shouted at him to move ahead, otherwise he would be killed. While the man was begging on his knees, the KR soldier hit his back with a rifle.

Believing that they would be away for only three days, Kim Vandy’s family did not pack many necessary things. They had to borrow pots for cooking, they only brought enough noodles for three days, and, at night, they used small branches to make an improvised mattress. After the third night, people were not allowed to go back to the city. They were instead instructed to proceed to their native villages. After some time, Kim Vandy’s family reached Batheay District, Kampong Cham Province, where they stayed for two weeks. They survived by trading their clothes for rice. At this location, Kim Vandy noticed that people from Phnom Penh were called “17 April people,” while the people at the base were called “18 April people”.

3. Kampot Province

The Civil Party and his family did not stay in Kampong Cham. They traveled on to Kampot Province. Although Kim Vandy’s parents came from Angkor Chey district, they were sent to

Palelai district, where they were told to clear 10 squares of land for each person in the family in exchange for a can of rice. Although the base and the new people performed the same task, the food rations were different. Each of the base people who worked received a can of rice, while his family only got one can of rice for the whole group. Because this was inadequate, people were forced to steal food and to supplement the rations with fruit and other edible plants. According to Kim Vandy, they were told that Angkar wanted everybody to give all personal belongings for communal use, and everyone would eat communally as well.

The Civil Party told the Court that, aside from dying from lack of food and medicines, some people were arrested and executed. According to Kim Vandy, the KR militia searched and observed every move the 17 April people made. He recalled that the chief of the cooperative persuaded him to tell the background of everybody in his family, particularly that of his father, by promising to give food in exchange for the information. He consistently responded that his father was a rickshaw driver, even though he knew that his father was a colonel in the navy prior to 1975. When they later found a photograph of his father dressed in navy uniform while standing on a ship, the Civil Party was accused of "being a son of a traitor." His feet were then shackled and he was beaten for a week. Kim Vandy also recalled the arrest of his father. His father's hands were tied behind his back and Khmer Rouge soldiers beat his father's head and laughed as his father bled. Kim Vandy said, "I had an axe in my hand and I was holding the cows in the other hand, but I couldn't do anything... I was speechless. My tears dropped."¹⁶ He recalled that his father said to him, "Please look after yourself, son!"¹⁷

One of Kim Vandy's younger siblings died from overwork. The Civil Party testified that he thought the deaths during the regime were "pathetic," because there were no traditional ceremonies with Buddhist monks chanting dharma. Instead, when someone died, the person was buried or covered with some leaves. "They died like the dead animals."¹⁸

4. Transfer to Pursat Province

By mid-1978, the remaining 17 April people were transferred to Bakan cooperative in Pursat Province. The living conditions were not different from that in the previous cooperative in Kampot province: they needed to work very hard and were given only very thin gruel for each meal.

5. Civil Party Statement of Suffering, Demeanor and Credibility

Kim Vandy readily answered questions according to his own experience. However, he seemed somewhat unsure on some geographic details, such as the names of places he passed through after leaving Phnom Penh city. He explained that he was very young during the evacuation and the subsequent DK period. He became emotional and cried when he related the miserable conditions and the bad treatment his family experienced, especially when he spoke about his father.

In his statement of suffering, he reiterated the experience of his family, saying that they were forced to leave their home, property, and school. In the cooperatives, they were forced to engage in hard labor, became too exhausted, and were deprived of food. His younger sister and many of his relatives died of starvation, he stated. He said that his family's situation was like the rest of the people in the country, and the Khmer Rouge was responsible for their sufferings. "They killed my father; they killed my great uncle and my great aunt, as well as many of my relatives, unjustly,"¹⁹ he added. He further expressed: "Every time I think of what happened, it seems so vivid, living in front of my eyes and it makes me so angry."²⁰ Thus, he joined the army because he wanted to take revenge. However, he did not succeed in taking

revenge, and he is now a laborer. He urged the Court to find justice and to punish the responsible persons to the “harshes degree” possible, in proportion to the loss he and other Cambodians suffered.

D. Hun Chhunly’s Testimony

Witness Hun Chhunly, TCW- 247, who testified from Thursday morning until Friday,²¹ worked as a physician before and during part of the regime of the Khmer Rouge. In 1967, he was assigned to work at a civilian hospital in Battambang. He joined the army in 1973 and thereafter worked at Hospital 403, the military hospital. He lived in Battambang throughout the DK era and until 1992, when he moved to Phnom Penh.

His examination focused on his experiences during the DK era, including the treatment of medical personnel from the Lon Nol regime and conditions in the hospitals. He was also questioned about a book he wrote about his life as a doctor during that period. Hun Chhunly kept a diary during the DK, which he burned because the KR searched his house on several occasions. Because he no longer had the diary, he had to write the book based on his memory. His book was first published in January 2006,²² with a second edition made in 2010.

1. The Surrender of Lon Nol Soldiers in 1975

On April 1975, Hun Chhunly was working as a physician in the military hospital in Battambang, which he also referred to as Hospital 403. At Hospital 403, approximately 30 medical personnel treated only Lon Nol soldiers. At around 7 o’clock in the morning of 17 April 1975, he heard General Mey Sichan and Lon Non, the brother of Lon Nol, on the radio. He said:

I heard these two generals were saying that they were defeated and they accepted the defeat, and they made an appeal to all soldiers of the Khmer Republic all across the country to lay down their weapons.²³

At around 3 o’clock in the afternoon of 17 April 1975, Hun Chhunly began seeing Khmer Rouge soldiers at some public parks and gardens in Battambang. At about 1 o’clock in the morning of the following day, he heard motorcycles and people cheering “all across the city of Battambang.” He said the Khmer Rouge woke people up “so that they could get the motorcycles to march on the street, so that they could cheer and chant some slogans during the night.”²⁴ Some people, including the governor of Battambang, fled for Thailand; however, the Witness refused to go, saying, “I wanted to work and to serve the country with the progressive and clean people.”²⁵

According to Hun Chhunly, Khmer Rouge soldiers escorted Vietnamese people on boats back to their country, while five trucks gathered soldiers ranking from major-lieutenant upwards on 23 April 1975. He learned one month later, through one of the drivers, that the soldiers were brought to Thipakdei Mountain, where they were executed. Lower-ranking soldiers were reportedly assigned to do farming. He recalled that monks were all asked to leave the pagodas in 1976, and a big church in Battambang was destroyed. Although he did not witness it personally, he testified that he had heard that the bishop was killed.

2. Treatment of Medical Personnel

The Witness said that, on 21 April 1975, the Khmer Rouge called all the 13 medical staff at his hospital with the rank of major-lieutenant to board a vehicle in order to receive a group of

revolutionary medics. However, about 11 kilometers from the hospital, the medical personnel were ordered to get off the vehicle and shot dead. Hun Chhunly stated that, fortunately, he was not at the hospital when the personnel were gathered. He explained that the day before the incident, he “had a strange and unsettled feeling” and kept thinking of his two children (his wife was in Phnom Penh) and requested leave to go home. Hun Chhunly recalled seeing patients walking out of the hospital randomly, saying that he believed the patients left out of fear of the Khmer Rouge.

At the civilian hospital, the Witness said that, in a meeting he attended which was chaired by Sector 4 Chairman Khek Penn *alias* Mit Sou²⁶ on 21 April 1975, the hospital director, Dr. Khim Kimsan, was dismissed. A new director was elected from among the janitors, because they also belong to the peasant class. According to the Witness, Khek Penn said that the revolution “derives from the peasant class” and the peasant class could lead all fields, including the health sector. As for personnel at the civilian hospitals, Hun Chhunly said they were also executed beginning 1977. The Witness testified that he heard from Khek Penn that Angkar did not need seven years to train doctors, “Angkar trained doctors for one week... all doctors who were trained for the seven days would be able to appear at work all across the country immediately.”²⁷

3. Evacuation of People to Battambang

Hun Chhunly said that, sometime in August 1975, he met doctors who said that the Khmer Rouge loaded people onto trains in Phnom Penh and dropped them in Pursat and Battambang. Some of the people who were transferred settled in Damrei Slab, Hun Chhunly’s village. The evacuees were allowed to settle on “base” people’s vacant property; sometimes, the “base” people shared their houses with the evacuees.

During the evacuation, cooperatives were not yet established, and evacuees were allowed to bring food with them. By the Khmer New Year in 1976, cooperatives were set up and people were asked to live collectively. The Witness said that starvation “did not exist” in 1975. However by the end of 1976, a lot of people died. He also said that half of the Muslim population who settled in their village died. As for the sick Cham people, their rations were cut, and they were “forced” to eat pork. According to Hun Chhunly, although the KR said rice was running out, he and other villagers saw trucks come to transport rice from the warehouse in Battambang.

4. Living Conditions During the DK

Hun Chhunly said that, during the DK, there were militias who were recruited from the very poor peasants, “who could kill people without hesitation.”²⁸ There were also “undercover militiamen,” which included teenagers, who would sneak under their beds to spy on them at night.

The Witness also mentioned that, in the village, people were identified either as “old” or “base” people, or as “new” people. He opined that the Khmer Rouge intended the classification as a form of discrimination. He said:

I believe that the classification was a kind of intention of discrimination by the Khmer Rouge... people were classified into the poor peasants, the very poor peasants, and the poorest peasants. And for the New People, they were classified into New People and another subcategory... the Khmer Rouge did not like them, in particular those who have fair complexion. Khmer Rouge believed that these people were those who never exposed to the sunlight.²⁹

According to Hun Chhunly, people tried to make their new clothes look old by dipping them in mud and drying them in the sun. People did not dare wear new shoes and women wore no makeup. Because the Khmer Rouge did not approve of educated people, people did not wear eyeglasses, in order to avoid appearing educated. The Witness reportedly “abandoned” his own eyeglasses.

Hun Chhunly said that, in the villages, the Khmer Rouge selected leaders to take biographies of people within a group. Information included names, occupations, and ages. The Witness testified that he did not tell the KR that he had been a military medic, only admitting that he used to be a civilian physician at Battambang hospital. He did not know where the biographies were sent to. He only knew that his family submitted their biographies to the head of the group.

The Witness recalled that everyone attended a meeting at night, where “the same phrase kept repeating itself -- that is, about the situation of the enemies inside the country and outside the country.”³⁰ According to the Witness, during one meeting in May 1975, Sector Secretary Khek Penn said that Angkar planned “to convert the country into the checked board-like squares, so that it could be seen from the air that each paddy field would be formed into this kind of checked board squares.”³¹ Hun Chhunly also said they were asked to abandon ownership rights. In another of these meetings, he learned of the removal of Hu Nim, the Minister of Information. Although the Witness did not see the disappearance of cadres of the Northwest zone firsthand, he testified that he did see cadres from the West replace them. Additionally, in June 1975, the Witness and the villagers saw mattresses, pillows and dead corpses floating on the Sangker River towards the direction of Tonle Sap. Hun Chhunly said nobody dared to ask what happened; everyone at that time minded his or her own business.

5. Preaek Luong Hospital, P-2 Hospital, and P-1 Hospital

After a month of plowing rice fields, the Witness received a letter from Khek Penn, assigning him to work at Preaek Luong Hospital, which was a district-level hospital for treating civilians. Around July 1975, after two months in Preaek Luong Hospital, Hun Chhunly received a letter from someone named Comrade Hoeun asking him to work at P-2 Hospital, a military hospital where Khmer Rouge soldiers were treated. There also was a civilian hospital, known as P-1 Hospital. The Witness worked at the military hospital for 16 months, then he worked at the civilian hospital for two months. Hun Chhunly said he was an ordinary medical staff, a “prisoner” of the Khmer Rouge at the hospital. Both hospitals were under the control of Comrade Hoeun. Initially, they used the “leftover medicine” at the hospitals; by 1976, they had anti-malaria and antibiotics medicine from China. According to Hun Chhunly, the facilities and equipment at P-2 military hospital were very basic, thus, operations were conducted at the Battambang civilian hospital.

Patients at the civilian hospital were treated differently from those at the military hospital. Patients at the military hospital had three meals a day, while those at the civilian hospital received only two meals per day. The Khmer Rouge confiscated the properties of the patients at the civilian hospital when they died. Hun Chhunly also said that enemies were searched out at the civilian hospital.

The Witness also mentioned experimental surgeries, saying this happened in both P-1 and P-2. He recalled a mentally retarded woman who was whipped and brought to the hospital. The woman was put on a stretcher, anesthetized, and put into a vehicle. Hun Chhunly said, “It is my conclusion that she was sent for an experimental surgery, although I did not witness that experimental surgery myself, but I saw that patient under anesthetic taken away.”³² On another occasion, a woman in her late teens came to the hospital and told the Witness that

she was asked to help arrange the medicines because she spoke French. A female Khmer Rouge medic led the young woman away. Later, four Khmer Rouge soldiers carried the motionless woman on a stretcher and loaded her onto a vehicle, then the car drove away. Hun Chhunly said, "I noted immediately that the woman had been... under experimental surgery."³³ Fifteen minutes later, the people on the vehicle returned, asking for help because the car had overturned. While Hun Chhunly was treating the hospital director, Phon, a soldier came to ask what to do with the "enemy bitch." Phon allegedly told the soldier to just get rid of her. According to the Witness, later that day, a medical staff said that the young woman, still under the influence of anesthetic, was placed into a crematorium alive.

On the 30th of January 1977, the head of the hospital ordered all medical personnel to clean the hospital and close all the windows. No patient or medical personnel was allowed to leave the hospital. Hun Chhunly recalled that, at 10 o'clock in the morning, a vehicle loaded with Chinese delegation came to the hospital and stayed there for around an hour. In the late afternoon, Hun Chhunly said he was told that Angkar would like for them to go back to the cooperative. Thus, on 31 January 1977, he returned to the cooperative and became a farmer.

Hun Chhunly testified that Khim Kimsan, a doctor at the Preaek Luong district hospital, and Pung Kimsea, a doctor at Som Mnoas (phonetic) Pagoda, disappeared after the 1977 Khmer New Year. In 1980, Hun Chhunly saw Khim Kimsan's picture in Tuol Sleng. When Prosecutor Abdulhak showed him a Tuol Sleng prisoner list, Hun Chhunly confirmed that the entry "Khim Kimsan, Northwest Zone, doctor" referred to the person he had described. Further, he also said that the Pung Kimsea listed on the page was the person he knew during the DK. As regards other doctors in Battambang, the Witness confirmed that, as he had written in his book, only two doctors survived: himself and Dr. Uon Sy, a civilian doctor. He also confirmed that only over 30 medical staff from the civilian hospital in Battambang survived, and more than half of them were widows.

6. Familiarity with the Accused

The Witness reported some knowledge of several of the Accused from the KR era.

a. Knowledge on Khieu Samphan

According to Hun Chhunly, although he did not have "good contact or close relations" with Khieu Samphan, he knew him to be the head of *L'Observateur* newspaper. After the Khmer New Year in 1976, the Witness recalled listening to a radio broadcast where Prince Norodom Sihanouk announced he was resigning from his position as the head of state. Thereafter, it was announced that Khieu Samphan had been appointed President of the State Presidium. Khieu Samphan then read the Constitution, including articles relating to the right to choose one's religion and equal access to employment opportunities. The Witness expressed that he had a high regard for Khieu Samphan, and stated that he felt disappointed with the events that later occurred, saying:

At that time, some Cambodian people, particularly the youth, had a strong belief in Khieu Samphan, Hu Nim and Hou Yun as they were considered clean people. I did not believe whatever truth that my mother told me. So, later on, I became so disappointed with what happened.³⁴

b. The Family of Accused Nuon Chea

The Witness said that he was familiar with Nuon Chea's family, who resided at Wat Kor commune. Hun Chhunly worked at Wat Kor village, Battambang, in 1967. He described the

villagers as of “a wealthy class,” and said that some intellectuals and government officials came from Wat Kor. He referred to Nuon Chea’s family as a “good family,” saying that he used to provide treatment to them. However, he also said, “ I never knew or had contact with Nuon Chea.” He recalled that, under the Khmer Rouge regime, one of Nuon Chea’s younger siblings “was not taken anywhere.” Instead, he became a driver under the regime. According to the Witness, the food ration in Wat Kor village did not change. However, he also said that Nuon Chea’s uncle, Mr. Sieu Heng, was “taken away” and executed.

c. Knowledge on Ieng Sary

According to the Witness, when he was working for the military hospital P-2, the head of the hospital announced that the whole city would be closed for one day. At noon, he saw a Mercedes escorted by a group of people. A military staff at the hospital told Hun Chhunly that among those in the convoy was Ieng Sary, who was inspecting the farmers in the paddy field. The Witness said that he knew Ieng Sary was the Minister of Foreign Affairs of Democratic Kampuchea.

7. Witness Demeanor and Credibility

Hun Chhunly generally answered questions posed to him without hesitation. However, his testimony was interrupted a number of times by challenges from the defense teams, objecting to accounts of events that he did not witness personally, including his account that five truckloads of Lon Nol soldiers were executed and that a female was burned alive in a crematorium. They also objected to his suppositions about experimental surgeries, since the Witness admitted that he never personally witnessed or participated in an experimental surgery.

As regards his book, the Witness said that he did not rely on references other than his memory, although he admitted that he read many history books on the Khmer Rouge regime. Hun Chhunly said, “Those books had nothing to do with my writing, so I was not influenced by them.” Additionally, the Witness also said that a political “brainwashing session” with the Vietnamese that he attended in 1979 did not influence his writing. The Witness was not questioned on the contents of the brainwashing session, because he said this occurred “well after 1979.” Thus, the Chamber, through Judge Silvia Cartwright, ruled that “the subject matter of these sessions is irrelevant to the facts that we are concerned with in Case 002 001.”³⁵

III. LEGAL AND PROCEDURAL ISSUES

The principal recurring procedural issue this week concerned Ieng Sary’s ill health and his ability to effectively stand trial. Additionally, the Court also confronted objections from the Parties about courtroom management and the manner in which opposing Parties were permitted to conduct examinations.

A. Ieng Sary’s Fitness to Stand Trial

On 3 December 2012, Ieng Sary submitted a notice to the Trial Chamber withdrawing the waivers of his right to be present in the courtroom.³⁶ According to the notice, Ieng Sary intended to participate directly in all courtroom proceedings, unless he personally elects to attend the proceedings indirectly from the holding cell. Nonetheless, at the start of the proceedings on Tuesday, it was announced that Ieng Sary was participating from the holding cell and not directly in the courtroom.³⁷ Aside from making it clear that his client wanted to be present in the courtroom, Michael Karnavas, international counsel for Mr. Ieng Sary, also pointed out that, based on his personal interactions with the Accused and consultations with

the treating doctor in the holding cell prior to Tuesday's hearing,³⁸ leng Sary is unable to concentrate due to his physical ailments.

Karnavas proposed three alternative options. First, Karnavas proposed that the Court have a monitor on leng Sary at all times, so everybody, including his lawyers and the public, can see his "state of affairs." Karnavas continued:

We do not wish to participate in the proceeding where our client is downstairs; he's fatigued, he's asleep, he's semi-conscious and yet, we're pretending, we're pretending that he's actually following the proceedings and he's assisting in his own defense.³⁹

His second proposal, which was his client's preferred option, was to bring leng Sary into the courtroom. However, Karnavas anticipated opposition to this option, saying that he understood that the Trial Chamber would not wish to have the public view leng Sary, or for there to be a record of his actual state of affairs. Therefore, Karnavas proposed that one member of his team be allowed to videotape the Accused throughout the duration of the proceedings.⁴⁰ Overall, the counsel's main objective was to have a "contemporaneous" and "complete record" of his client's condition. Karnavas maintained that his function as defense counsel is to ensure that his client receives a fair trial. "[W]e're pretending that he's actually participating in the events. It's a charade," declared Counsel.⁴¹ Karnavas proclaimed that, if necessary, his team was prepared to "walk out" of the courtroom if their client's rights are not fully and fairly protected, and the Court remains unwilling to make a complete record of their client's condition.

After giving other Parties the opportunity to comment, and taking 45 minutes to deliberate, the Trial Chamber denied Karnavas's request to videotape the Accused in his holding cell and/or bring him into the courtroom. Judge Cartwright explained that the difficulties in allowing leng Sary to sit in the courtroom would substantially delay the trial. She also reminded Karnavas that the Trial Chamber could only base its judgments on professional medical opinion and evidence. Cartwright emphasized that only medical monitoring, not monitoring by the Judges, defense counsel, or by the public, is required.

Karnavas responded to this ruling by suggesting the Trial Chamber was deliberately trying to keep the Defense from making a record with which to make future applications to the Chamber or, if necessary, the Supreme Court. He argued that there is a "vast difference" between having the doctor monitor leng Sary's health, and ensuring that he is actually following the proceedings. Reassuring the Chamber that videotaping the Accused would not cost anything or delay the proceedings, Karnavas again asked that the defense be allowed to make a video recording. Ultimately, the Trial Chamber allowed the defense team to have a staff member in the holding cell to monitor leng Sary's condition. However, the Trial Chamber prohibited any videotaping of leng Sary.

1. A Recurring Issue

Despite the Trial Chamber's ruling on Tuesday, the leng Sary Defense team continued to raise concerns about the Accused's health throughout the week. At one point, after national counsel for leng Sary, Mr. Ang Udom, called attention to the fact that his client was asleep for a significant period of time, Judge Cartwright recommended that counsel have his case manager wake up leng Sary. As Cartwright said:

It is not an indication of any mental health issue as the expert made very clear and leng Sary himself has never claimed any mental health inadequacies. Moreover, falling asleep may simply indicate that leng Sary has no direct interest in the testimony of this Civil Party.

At this point, international counsel for Nuon Chea, Mr. Andrew Ianuzzi announced that he took great exception to Cartwright's speculation that Ieng Sary could be sleeping due to a lack of interest. He asked whether such statement was a "lay person's opinion" or an expert opinion. He called Judge Cartwright's conclusion "highly inappropriate," due to the fact that she is neither a doctor nor a medical expert. The following day, Ang Udom explained that it was not the responsibility of his case manager to wake Ieng Sary. He also expressed concern that such actions could startle the Accused and potentially induce a heart attack. Nonetheless, the Trial Chamber did not waver from its Tuesday ruling.

Despite the Trial Chamber's ruling that it would only consider reports from the treating doctor, the Ieng Sary Defense Team has submitted daily updates of the case manager's observations from the holding cell of the Accused's condition.⁴² The OCP has repeatedly opposed the Defense's request for daily reassessments of Ieng Sary's fitness to follow proceedings. In a 14 December 2012 submission to the Trial Chamber,⁴³ the OCP claimed that the Defense's request was based on misapplication of relevant law and was made in the absence of any legitimate change in underlying circumstances. Accordingly, only the Medical Unit's observations are relevant to an objective analysis of Ieng Sary's fitness, not the Defense Team's observations from the holding cell. Finally, the OCP took issue with the Defense recording interviews with the staff of the Medical Unit. The OCP stated that it is not the role of the Defense to carry out "parallel investigations" by seeking to record interviews with medical staff who are to report to the Chamber. The OCP fears that such recordings could interfere with potential witnesses, should the medical staff be called upon to give evidence before the Trial Chamber.⁴⁴

2. Effective Participation

According to Karnavas, being physically present, either in the courtroom or the holding cell, does not qualify as effective participation. The client must be awake and concentrating on the proceedings, Counsel argued, not in a bed dozing off due to physical discomfort.⁴⁵ The Ieng Sary Defence Team fears that, due to his physical condition, Ieng Sary will not be able to assist with his defense and advise counsels. In its 14 December 2012 submission to the Trial Chamber, the OCP maintained that Ieng Sary is fit to stand trial. It noted that international jurisprudence on fitness to stand trial requires that an accused possess the following abilities:

- (1) A rational as well as a factual understanding of the charges against him;
- (2) A rational as well as a factual understanding of the nature and object of the proceedings against him, and
- (3) A present ability to consult with his lawyer and to assist in the preparation of his defense with a reasonable degree of rational understanding.⁴⁶

The OCP interpreted this to mean that the Accused does not need to have the capacity to "fully comprehend" the course of the proceedings, nor must the accused operate at "the highest level of functioning." Rather, the test is whether the defendant satisfies certain minimum requirements without which he cannot be considered fit for trial. Furthermore, the OCP noted that, in evaluating an accused's capacity to exercise his/her fair trial rights, it is also appropriate to consider that he/she is represented by counsel who "may well adequately compensate for any deficiency of a relevant capacity."⁴⁷ The submissions from both the OCP and the Defense could indicate a need for the Trial Chamber to clarify and perhaps revisit the standards for fitness to stand trial within the context of Case 002 and Ieng Sary's medical condition.

B. The Role of Counsel and Judicial Ethics

Last week, after vigorously dismissing international defense counsel for Khieu Samphan Ms. Anta Guissé's attempts to speak on her client's behalf, President Nil Nonn addressed the Accused directly to ask whether he still wished to retain his right to remain silent with respect to questions posed by Civil Party Chau Ny.⁴⁸ This week, Ianuzzi commented on the incident and said that when he and his colleagues make submissions, they do so on their clients' behalf. Therefore, there was "absolutely no reason" for the President to intervene and "to drive a wedge between counsel and Parties." Ianuzzi continued:

I personally take great exception to the treatment that you handed out to Ms. Guissé last week and I would suggest that you perhaps... reacquaint yourself with the Code of Judicial Ethics, both the ECCC Code and the Cambodian Code of Judicial Ethics that applies to you... I just want to make it very clear that we're all here to do a job, to represent our counsel -- our clients, and we would appreciate it if you respected that.⁴⁹

President Nil Nonn responded to Ianuzzi's remarks by acknowledging that this would be a "lesson for the Bench in order to improve the management of the proceedings in the near future."⁵⁰

In a 7 December 2012 submission to the Trial Chamber,⁵¹ the Khieu Samphan Defense Team argued that the President's intervention amounted to a violation of their client's right to a fair trial and described the exchange between the President and the Accused as "truly surreal."

Still in relation to the incident the previous week, Ianuzzi recalled that Judge Jean-Marc Lavergne seemed open to discussing the possibility of calling back Civil Party Chau Ny for Guissé to question him. However, continued Ianuzzi, after Judge Cartwright was heard telling the President that the request should not be allowed, President Nil Nonn denied the request, without holding a "proper debate." Thus Ianuzzi said:

Are we appearing before a Trial Chamber or are we appearing before what at times seems to me, to be a Nil Nonn-Silvia Cartwright clique? ... There are five of you up there and there are five of you for a reason. We expect a debate on all the issues and we expect the Chamber -- the Chamber, not individual Judges -- to issue decisions.⁵²

In response, the President said that there are instances when he uses his own discretion as the President of the Trial Chamber, such as regarding adjournments, and others when the Bench collectively renders a decision. The President continued:

I have tried my best to adhere to the proceedings and the procedures practiced in this Court and in the domestic court. I have tried our best. Of course I acknowledge there could be a mistake made in the practice of certain discretions, and, of course, I strictly follow the procedures and the options that I have.⁵³

C. Examination Practices and Standards

Both Jasper Pauw, international counsel for Nuon Chea, and Karnavas took issue with Prosecutor Veng Huot's reluctance to question Witness Hun Chhunly on his sources of knowledge and to clarify who the Witness was referring to when he indicated that "they" or "he" gave him a particular piece of information. Pauw argued that witnesses are only allowed

to testify on what they personally heard or saw, and that it is the Prosecution's obligation to verify the Witness's sources of knowledge.

Civil law procedural structure employs an inquisitorial model, where judges play a more active role in controlling the course of proceedings. However, Karnavas argued, the Trial Chamber in Case 002 has largely "sub-contracted" this role to the Prosecution. Beyond the President's preliminary biographical questions, the Chamber rarely poses questions to witnesses before turning them over to the Parties for examination. Karnavas said:

What I find problematic is that we are not allowed to cross-examine. So, in other words, what we have adopted is the worst of both systems. You've subcontracted your obligations to the Prosecution who's supposed to ask the questions to get as close to the truth as possible, then you've tied our hands behind our back, because now you've turned them into a party, an adversarial party, and now you say, "You cannot cross-examine." ... I don't understand whether it is a clash of civilizations, of different legal traditions, but I understand both and I've worked in both, and we've adopted the worst kind.⁵⁴

In support of Prosecutor Veng Huot's manner of examination, Prosecutor Tarik Abdulhak said that, if the Defense takes issue with the Prosecution's lines of questioning, they are "perfectly capable of taking the issue up in their examination of the witness."⁵⁵ Abdulhak further said that, whether it is called "cross-examination" or simple "examination," there has been vigorous testing of evidence and very competent questioning of all witnesses.

The President overruled the objection from the Defense concerning the line of questioning, saying that "[f]or the time being, the Chamber would not be examining the probative value of the evidence before us."⁵⁶ Nevertheless, he reminded the Prosecutors to ensure that questions are "precisely framed to make sure that they are conducive to ascertaining the truth."⁵⁷

IV. TRIAL MANAGEMENT

The Chamber efficiently heard the testimonies of three Civil Parties and one witness. However, Ieng Sary's condition and unfinished issues from the previous week posted trial management challenges this week.

A. Attendance

Despite Ieng Sary's wish to observe proceedings in the courtroom (see III.A), he participated in the proceedings from the holding cell throughout the week. Nuon Chea directly participated in the courtroom only in the morning sessions, and retired to the holding cell for the afternoon sessions. Khieu Samphan was present in the courtroom during all sessions.

Civil Party Attendance: This week, approximately 20-30 Civil Parties attended the proceedings daily, either in the courtroom or in the public gallery.

Parties Attendance: All Parties were properly represented during the week, although Nuon Chea's national defense counsel, Mr. Son Arun, was absent on Friday afternoon. On Thursday, the Chamber recognized Ms. Isabelle Durand, from Lawyers Without Borders, as an international Civil Party Lawyer.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Tuesday 4/12/2012	<ul style="list-style-type: none"> ▪ 43 villagers from different provinces, organized by Documentation Center of Cambodia ▪ 370 students from Pour un Surire d'Enfant Organization ▪ 9 foreign observers 	<ul style="list-style-type: none"> ▪ 200 villagers mostly from Kandal Province, while some were from Takeo Province ▪ 4 foreigners
Wednesday 5/12/2012	<ul style="list-style-type: none"> ▪ 230 Students from University of Management and Economics, Kampong Cham Province ▪ 22 foreign observers 	<ul style="list-style-type: none"> ▪ 200 villagers from various provinces ▪ 2 foreign observers
Thursday 6/12/2012	<ul style="list-style-type: none"> ▪ 430 villagers from Prey Veng Province ▪ 1 monk ▪ 4 foreign observers 	<ul style="list-style-type: none"> ▪ 270 students from Pour un Surire d'Enfant Organization ▪ 4 foreign observers
Friday 7/12/2012	<ul style="list-style-type: none"> ▪ 370 villagers from Samroung district, Takeo Province ▪ 10 foreign observers 	<ul style="list-style-type: none"> ▪ 100 villagers from Kandal Stoeung district, Kandal Province ▪ 2 foreigner observer

B. Time Management

The Court held proceedings from Tuesday to Friday and succeeded in hearing the testimonies of three Civil Parties and one witness. The Chamber instructed Witness Hun Chhunly to return the following week after Karnavas indicated that he would need approximately an hour to question the Witness.

C. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Tuesday 04/12/12	9:06	9:40-10:26	12:12-13:39	14:34-14:56	16:03	4 hours and 22 minutes
Wednesday 05/12/12	9:05	10:32-10:54	12:15-13:35	14:43-15:12	16:05	4 hours and 49 minutes
Thursday 06/12/12	9:03	10:18-10:38	12:03-13:31	14:43-15:06	16:03	4 hours and 49 minutes
Friday 07/12/12	9:05	10:40-11:01	12:04-13:32	14:45-15:06	16-20	5 hours and 5 minutes
Average number of hours in session				4 hours 46 minutes		
Total number of hours this week				19 hours 5 minutes		
Total number of hours, days, weeks at trial				592 hours 33 minutes		
134 TRIAL DAYS OVER 41 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

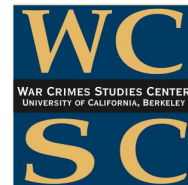
Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	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



EAST-WEST
CENTER



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.

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¹ Trial Chamber. Transcript of Trial Proceedings (6 December 2012). E1/149.1 [hereinafter **6 DECEMBER TRANSCRIPT**]. Lines 16-17. 28.

² Trial Chamber. Transcript of Trial Proceedings (4 December 2012). E1/147.1 [hereinafter **4 DECEMBER TRANSCRIPT**]. Lines 17-21. 52.

³ Ibid, lines 23-25; 1-7. 99-100.

⁴ Ibid, lines 23-25; 1. 100-101.

⁵ The Civil Party said that her husband was a “military medic” for the Lon Nol regime.

⁶ Trial Chamber. Transcript of Trial Proceedings (5 December 2012). E1/148.1 [hereinafter **5 DECEMBER TRANSCRIPT**]. Lines 20-24. 43.

⁷ Ibid, lines 15-17. 42.

⁸ Ibid, lines 8-10. 48.

⁹ Ibid, lines 9-12. 54.

¹⁰ Ibid, line 6. 51.

¹¹ Ibid, line 20. 52.

¹² The Civil Party said: “That old man, who worked for the commerce for the location, asked that I could be kept there for a while before being executed. And later on he came back with another militia -- I mean, the old man - and said that the matter was already resolved and that I should be left with that old man. So, luckily, I was saved.” Ibid, lines 4-8. 53.

¹³ Ibid, lines 14-29. 71.

¹⁴ Ibid, lines 4-7. 75.

¹⁵ Ibid, lines 20-21. 84.

¹⁶ Ibid, lines 3-8. 107.

¹⁷ Ibid, line 6. 107.

¹⁸ 6 DECEMBER TRANSCRIPT. Line 18. 12.

¹⁹ Ibid, lines 13-14. 28.

²⁰ Ibid, lines 16-17. 28.

²¹ Witness Hun Chhunly was examined in the following order: national Prosecutor Veng Huot; international Prosecutor Tarik Abdulhak; Civil Party Lawyer Ven Pov; Civil Party Lawyer Elisabeth Simonneau-Fort; counsels for Nuon Chea, Son Arun and Jasper Pauw; counsels for Khieu Samphan, Anta Guissé and Kong Sam Onn.

²² The Witness said he started writing his book in 2004, but the memories from the regime made it difficult for him to sleep, so he had to stop writing for a while.

²³ Trial Chamber. Transcript of Trial Proceedings (7 December 2012). E1/150.1 [hereinafter **7 DECEMBER TRANSCRIPT**]. Lines 16-20. 42.

²⁴ Ibid, lines 6-8. 16.

²⁵ 6 DECEMBER TRANSCRIPT. Lines 19-20. 70.

²⁶ The Witness stated that he did not know the ultimate fate of Khek Pen, saying that “it was a period of screening or purging,” so he did not know what happened to him.

²⁷ 6 DECEMBER TRANSCRIPT. Lines 1-4. 84.

²⁸ Ibid, line 11. 74.

²⁹ Ibid, lines 10-19. 75.

³⁰ Ibid, lines 16-18. 108.

³¹ Ibid, lines 20-23. 83.

³² Ibid, lines 12-14. 102.

³³ Ibid, lines 7-8. 95.

³⁴ Ibid, lines 1-5. 69.

³⁵ 7 DECEMBER TRANSCRIPT. Lines 6-7. 87.

³⁶ See The Defence for Ieng Sary. “Ieng Sary’s Withdrawal of Waivers of Right to be Present” (3 December 2012). E237/2.

³⁷ According to the Internal Rules, the Trial Chamber can order an Accused to participate in the proceedings through appropriate audio-visual means: “Where, due to health reasons or other serious concerns, the Accused cannot attend in person before the Chamber but is otherwise physically and mentally fit to participate, the Chamber may either continue the proceedings in the Accused’s absence with his or her consent or, where the Accused’s absence reaches a level that causes substantial delay and, where the interests of justice so require, order that the Accused’s participation before the Chamber shall be by appropriate audio-visual means.” (Internal Rules (Rev. 8). Rule 85 (1). (3 August 2011).

³⁸ According to Karnavas, when he asked the holding cell doctor whether Ieng Sary was capable of following the proceedings all day long, the holding cell doctor simply laughed in response.

³⁹ 4 DECEMBER TRANSCRIPT. Lines 1-5. 4.

⁴⁰ Karnavas claimed that he had made a similar request in the past, and in response, the Trial Chamber held a “secret meeting,” which included the Trial Chamber, the Prosecution, the Defence Support Section, and the administration (but not the Defence) to discuss something “completely different” related to the Court’s facilities.

⁴¹ 4 DECEMBER TRANSCRIPT. Lines 11-14. 5.

⁴² See e.g., The Defence for Ieng Sary. “Ieng Sary’s Submission Of His Defence Team’s Daily Observations From The Holding Cell Concerning Mr. Ieng Sary’s Condition For 6 December 2012” (7 December 2012), E248/1.

⁴³ See The Office of the Co-Prosecutors. “Co-Prosecutors’ Response to “Ieng Sary’s Supplemental Request For A Qualified Expert To Make Daily Medical Examinations Related To Mr. Ieng Sary’s Capacity To Assist In His Own Defence Or, In The Alternative, Request For The Trial Chamber To Order The ECCC Doctors To Make Specific Observations Relevant to Mr. Ieng Sary’s Capacity To Assist In His Own Defence” (14 December 2012), E255/1 [hereinafter **14 DECEMBER 2012 SUBMISSION**].

⁴⁴ In the conclusion of its submission, it suggested that the following categories of information be included in the Medical Unit's daily reports to the Trial Chamber:

- (a) A summary of Ieng Sary's overall physical and mental condition on the day;
- (b) Observations as to whether Ieng Sary is generally able to follow the proceedings (understand what is being said, and by whom) when he is awake;
- (c) Observations as to whether Ieng Sary is able to communicate with those around him (express his requests, and understand the responses of those he is communicating with); and
- (d) A recommendation whether Ieng Sary would be accommodated better in the holding cell or in the courtroom, in light of Ieng Sary's health needs and comfort.

⁴⁵ For more information on Fitness Standards, See CASE 002 KRT TRIAL MONITOR. Special Report: Ieng Thirith's Fitness to Stand Trial (November 2012).

⁴⁶ *Deputy General Prosecutor for Serious Crimes v. Josep Nahak*, Findings and Order on Defendant Nahak's Competence to Stand Trial, 1 March 2005, para. 54. See also *Prosecutor v. Vladimir Kovacevic*. Case No. IT-01-42/2-I, Public Version of the Decision on Accused's Fitness to Enter a Plea and Stand Trial, 12 April 2006, para 5.

⁴⁷ *Ibid*, para. 23, in 14 DECEMBER 2012 SUBMISSION.

⁴⁸ See CASE 002 KRT TRIAL MONITOR. Issue No. 44, Hearing on Evidence Week 39 (22-23 November 2012). 11-12.

⁴⁹ 4 DECEMBER TRANSCRIPT. Lines 20-25; 4-7. 30-31.

⁵⁰ *Ibid*, lines 1-2. 32.

⁵¹ See The Defence for Khieu Samphan. "Application for Reconsideration of the Decision Not to Recall Civil Party TCCP-187, and for Review of the Procedure for Hearing Civil Parties" (7 December 2012), E250.

⁵² 4 DECEMBER TRANSCRIPT. Lines 7-13. 33.

⁵³ *Ibid*, lines 1-6. 34.

⁵⁴ 6 DECEMBER TRANSCRIPT. Lines 12-25; 1-6. 52-53.

⁵⁵ *Ibid*, lines 23-24. 55.

⁵⁶ *Ibid*, lines 23-24. 56.

⁵⁷ *Ibid*, lines 1-2. 57.



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