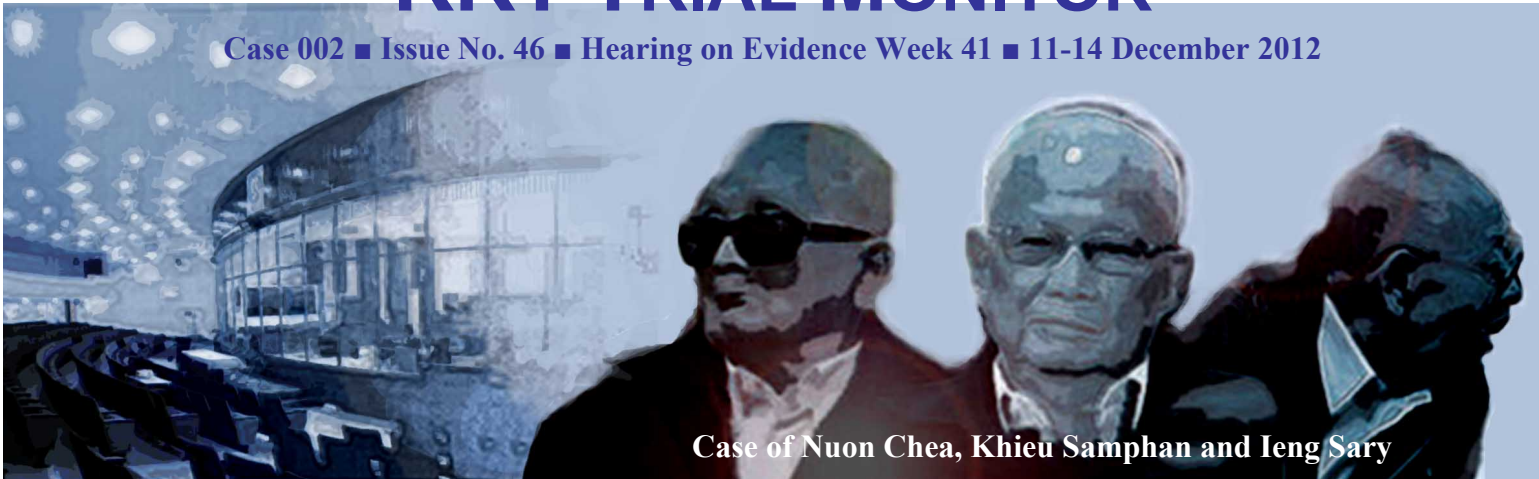


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 46 ■ Hearing on Evidence Week 41 ■ 11-14 December 2012



Case of Nuon Chea, Khieu Samphan and Ieng Sary

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

*My husband believed and was totally convinced  
that the communist regime would not harm unto its people;  
therefore, we stayed and remained stuck in hell.*

- Civil Party Denise Affonço

## I. OVERVIEW

This week, the Court finished hearing the testimony of Mr. Hun Chhunly and heard the complete testimonies of Witness Phan Van and Civil Party Denise Affonço. The Court also began hearing the testimony of Mr. Suon Kanil on Friday, who will resume his testimony next week. The examination of Witnesses Phan Van and Suon Kanil, who both served as telegram decoders in the DK period, offered a glimpse into the communication structures of the regime, especially telegram communication. The Civil Party offered a captivating and at times heart-wrenching description of her experience under the Khmer Rouge, especially during the first and second phases of evacuation.

This week was also filled with unprecedented courtroom drama. First, international counsel for Nuon Chea, Mr. Andrew Ianuzzi, objected to Judge Jean-Marc Lavergne's questions to the Witness Phan Van, prompting a ruling that counsel may not object to questions posed by members of the bench. In what became the defining moment of this week's proceedings, Ianuzzi was expelled and escorted from the courtroom for repeatedly ignoring the Trial Chamber's warnings about his conduct throughout his examination of Phan Van. This was the first and only time since the ECCC began operating that a lawyer was physically removed from the courtroom.

## II. SUMMARY OF WITNESS TESTIMONIES

On Tuesday morning, Hun Chhunly who had written a book about his experience as a physician at the Battambang military hospital during the DK regime, concluded his testimony before the ECCC. The next witness to take the stand was Phan Van, who served as a telegram decoder in Office K-17 and as a driver to Ieng Thirith (the co-Accused whose charges were severed from Case 002), during the Khmer Rouge. The third witness this week, Suon Kanil, was a 59-year-old peasant originally from Kampong Thom Province, who worked as a telegram operator for the Central Zone.

## **A. Hun Chhunly's Testimony**

Witness Hun Chhunly (TCW-247) resumed his testimony before the Trial Chamber on Tuesday morning.<sup>1</sup> Hun Chhunly faced aggressive questioning from International Defense Counsel for Ieng Sary, Mr. Michael Karnavas, who sought to undermine the Witness' credibility, as well as the reliability of the book he had written, documenting his experiences during the DK regime.

Karnavas began by challenging the witness' capacity to have given a firsthand account of certain facts and events. For instance, he asked the Witness about his rank at the Battambang hospital, and the implications of his rank for his actual access to information at the time. Hun Chhunly confirmed that he was never a senior doctor at the Battambang military hospital and therefore never attended high-level policy meetings during the DK regime. Accordingly, he conceded that he was not in a very good position to testify about Khmer Rouge policies.<sup>2</sup> Mr. Karnavas then turned the Witness' attention to the book he published in 2006. According to Hun Chhunly, he published his book based solely on his own memory of historical events. Karnavas expressed skepticism as to how a self-proclaimed "intellectual," who could read and understand English and French, could publish a book 25 years after the fact without conducting any archival research, having read only two books on the Khmer Rouge.<sup>3</sup> Karnavas also questioned how the Witness was able to provide such specific details in his book, based solely on his memory. The Witness explained: "The experience I lived through the Khmer Rouge still lives with me, and I never forget it... I can recollect every detail of the event." Counsel challenged this claim, by referencing the Witness' inability to recall his statements before the Court in the previous week as a sign of his weak memory.

In a further effort to diminish the Witness' credibility, Karnavas repeatedly asked the Witness how he managed to conceal something as large as a shoebox-sized radio, while a small notebook containing his written observations reportedly did not survive. The Witness claimed that he burned his notes because the Khmer Rouge soldiers were conducting searches. Skeptical of this response, Counsel suggested the witness was misleading the Court: "You can tell us all about the tricks when I get to why you then used trickery to maintain your notebooks that you claim you destroyed." At that point, Judge Jean-Marc Lavergne intervened and rebuked Karnavas for his "entirely inappropriate" tone in putting questions to the Witness.

Finally, Karnavas attempted to ask the Witness about his six-month brainwashing session in Vietnam. Counsel suggested that this session may have affected Hun Chhunly's views and memory of the DK regime. Karnavas also tried to establish that there was a legitimate and pervasive fear of the Vietnamese and their territorial ambitions amongst ordinary citizens, even before the Khmer Rouge assumed control of the country. This, he argued, would support the position that Khmer Rouge cadres acted upon legitimate suspicions over Vietnamese territorial ambitions. Neither lines of questioning went very far, as the Trial Chamber prohibited Karnavas from pursuing these matters with the Witness.<sup>4</sup>

## **B. Phan Van's Testimony**

Mr. Phan Van (TCW-307) began his testimony on Tuesday afternoon, accompanied by duty counsel, Mom Rithya.<sup>5</sup> His testimony lasted until Friday morning, because it had to be periodically interrupted to accommodate scheduling requirements for the video-link testimony of Civil Party Denise Affonço. Before the DK regime, Phan Van (born Kham Phan), served as a messenger for the Khmer Rouge leaders at Office B-20 and a telegram decoder for his father at Office K-17 in Sector 105. Phan Van later worked as a driver for Ieng Thirith.

## 1. Life Before 17 April 1975

Phan Van's father Laing (*aliases* "Ham," "Chhan,"<sup>6</sup> and "Horm") was a member of King Sihanouk's National United Front of Kampuchea. Laing and his family took refuge in a forest in Rattanakiri Province in the late 1960s. In 1970, Phan Van and his family relocated to Office B-20 in Steung Treng District, Kampong Cham Province, because his father had been summoned to study there. At Kampong Cham, Phan Van attended telegram decoding training sessions for a month, as well as political training sessions. He also worked as a messenger for the "uncles" at the office, including Nuon Chea, Hu Nim, Hou Yun, Khieu Samphan, and Pol Pot.<sup>7</sup> The Witness maintained that, although he met the leaders at Office B-20, he did not know their roles and functions at the time. Phan Van and his family stayed at Office B-20 until 1973, when his father was appointed as Secretary of Sector 105 and was relocated to Office K-17, in Phnom Kraol, to manage the general assembly, military training, economic updates, and transportation and medical affairs for the sector.<sup>8</sup> Phan Van worked as a telegram decoder for his father at Office K-17 until a year after the fall of Phnom Penh.

Ianuzzi asked whether the Witness experienced American bombing in Cambodia between 1969 and 1973. The Witness replied, "Yes, I did. I think everyone did... I could hear bombs being dropped on -- almost on a daily basis."<sup>9</sup> The Witness also confirmed that American bombs destroyed entire rice fields in his area.<sup>10</sup>

## 2. Communication in Sector 105

As an autonomous sector, Sector 105 had the authority to communicate directly with the Centre (Office 870). The Witness estimated that he worked as a telegram decoder at Office K-17 between 1974 and early 1975 or late 1976, at which point his sister came to take his place. As regards the content of the telegrams, the Witness explained that they were more about the "day-to-day situation and with some brief instructions," because at that time the country was at war. The Witness said there were two encryption codes: one 10-digit code and another more complicated code. He was only familiar with the 10-digit coding system and was thus only able to decode certain portions of his father's communications with Nuon Chea. He also noted that during the DK regime, parents and children were not allowed to address each other as father, mother, son, or daughter. Children were referred to as "nephews" and "nieces" instead.

The Witness recalled sending telegrams to the "uncles," including Nuon Chea, Pol Pot, and Khieu Samphan. While Sector 105 never received telegrams directly from Pol Pot, the Witness remembered his father receiving telegrams from Nuon Chea regarding security matters. Nuon Chea's telegrams contained instructions on maintaining vigilance of the "enemies" -- both the Vietnamese enemies fighting along the border and the "infiltrated enemies," or those who deviated from the instructions of the organization. According to the Witness, Nuon Chea also sent non-coded typewritten letters to specific cadres and district chiefs inviting them to attend study sessions in Phnom Penh.<sup>11</sup> The Witness revealed that the cadres Nuon Chea summoned never returned to Sector 105. Phan Van said that neither he nor his siblings or father communicated with or decoded telegrams from Nuon Chea regarding the first or second phases of population movements.

According to Phan Van, Khieu Samphan *alias* "Hem" sent "non-confidential" (non-coded) telegrams to Sector 105 regarding equipment, healthcare, and social affairs.

### **3. Enemies, Disappearances, and Evacuations in Sector 105**

The Witness described the criteria for identifying enemies within Sector 105. He explained that the situation at the time was “very fragile.” At the slightest suspicion, a person was considered an enemy. People adhered to a 12-point moral code out of fear of being labeled an enemy.<sup>12</sup> Those who did not respect orders were considered pacifists and enemies. Furthermore, those who were teachers or officials during the Lon Nol regime were targeted for removal. According to Phan Van, only the Center had the authority to arrest enemies.<sup>13</sup> Finally, those who disappeared were publicly denounced as traitors, CIA members, or Vietnamese enemies.

#### **a. Purges at Division 920**

The Witness confirmed that many people from Division 920, including Division 920 Secretary Chhin, disappeared between May and June 1977. International Prosecutor, Vincent de Wilde d’Estmael, buttressed the Witness’ observation by citing two lists of S-21 prisoners from June 1977, which contained the names of approximately 170 individuals from Division 920.

#### **b. Evacuations of Sector 105 Residents**

The Witness recollected the evacuation and relocation of Mondulkiri residents from mountainous areas to farming plots in the lowland areas between 1975 and 1979. However, he did not know who ordered these evacuations, and he could not say whether people evacuated voluntarily or not.

### **4. Meetings in Phnom Penh and Sector 105**

In addition to serving as his father’s telegram decoder, Phan Van also served as his father’s security guard during meetings in Phnom Penh. Phan Van’s father visited the city frequently between 1975 and 1977, including for annual commemorative assemblies for the 17<sup>th</sup> of April and the 30<sup>th</sup> of September. Phan Van only attended one of these major assemblies, recalling that Pol Pot took the floor during the event.

Following the meetings in Phnom Penh, upon his return to Office K-17, Phan Van’s father convened sector-wide meetings to relay the instructions from the Center. In addition to these sector-wide meetings, there were also frequent self-criticism sessions for cadres at all levels. Finally, the Witness confirmed that cadres in Sector 105 were required to write their own personal biographies.

### **5. Death of Phan Van’s Father and Uncle**

According to the Witness, in 1977, Nuon Chea sent a letter to his father and his uncle, sector deputy chief Ta Kham Phuon, instructing them to come to Phnom Penh for a study session.<sup>14</sup> Phan Van accompanied his father and uncle on their trip. While his father and uncle went to work, Phan Van toured the city. When he returned home in the evening, he found his father and uncle lying dead in the house. The Witness never received proper information about his father’s death other than that an enemy killed him. The Witness recalled that his uncle was holding a handgun, and there was a metal bar at the scene of the crime.

During his examination of the Witness, Judge Lavergne asked Phan Van what, in his opinion, was the most plausible explanation for his father’s mysterious death. (See IV.B.) Phan Van could not surmise why his father and uncle were killed. He dismissed Judge Lavergne’s proposal that perhaps there was a dispute that came to a sorry end; the Witness reasoned

that his father and uncle were siblings and were quite close to one another. Furthermore, the Witness expressed doubt that the weapons belonged to his father and uncle because they had both been prohibited from bringing any belongings with them to Phnom Penh.

Following Phan Van's father death in 1977, Ta Sarun became Secretary of Sector 105. The Witness said that Ta Sarun was a much stricter Secretary than his father. He noted that during his father's tenure, there were no killings, but during Ta Sarun's tenure, whole families were arrested and killed. Having confirmed the Witness' familiarity with Ta Sarun, Ianuzzi then confronted Phan Van with Ta Sarun's testimony before the Court, in which Ta Sarun explicitly denied increased killings under his leadership of Sector 105.<sup>15</sup> Asked whether he understood why Ta Sarun would reject these allegations and "minimize his responsibility" before the Trial Chamber, the Witness replied that he did not know the answer to this question.

## **6. Driver for leng Thirith**

Phan Van was examined on his experience working for leng Thirith. (See IV.A.) Following his father's death, Phan Van was assigned to work as a driver for leng Thirith at the Ministry of Social Affairs, code named Office K-2. Phan Van drove leng Thirith to numerous meetings in Phnom Penh, including meetings with Nuon Chea at Office K-3 two to three times per month. The Witness maintained that he was never permitted inside the meetings, and therefore did not know who the other attendees were or what was discussed. In addition to attending meetings at the capital, leng Thirith also convened a number of meetings at the Ministry of Social Affairs. The Witness said she held a quarterly assembly where people criticized each other, as well as regular self-criticism sessions.

According to Phan Van, leng Thirith had the authority to have anyone removed.<sup>16</sup> He could not confirm how much authority she enjoyed, but he was certain that she was not able to challenge any instructions or orders rendered by the upper echelon. He also mentioned that leng Thirith observed the medical staff's working policy to uncover the "enemy burrowing from within." Just as in Sector 105, those who disappeared from K-2 were first summoned to study sessions. The Witness did not know who issued these summons, but he did confirm a large shortage of workers in K-2 during his time there, especially medical staff from the Khmer-Soviet Friendship Hospital.

As regards his impressions of Phnom Penh in 1978, the Witness described the city as empty and very quiet, where "people did not dare walk about." Only ministry workers and soldiers occupied the city at that time.

## **7. Observations about the Accused**

Having lived and studied at B-20, Phan Van regularly interacted with the Accused Nuon Chea and Khieu Sampan. Asked specifically by national counsel for Nuon Chea, Mr. Son Arun, about Nuon Chea's character, the Witness replied, "He would implicate people for being enemies, those he didn't like. I do not think he would be the person best described as someone who loved his own country very much."<sup>17</sup>

## **8. Witness Demeanor and Credibility**

Phan Van could not recall many important details from his life during the DK regime, such as the year his father died. He also repeatedly emphasized that he never personally sat in on his father's or leng Thirith's meetings with the top leadership. Asserting that he kept to himself and that he did not speak with other drivers about who they brought to the meeting

grounds, he thus could not provide a reliable account of what went on during those meetings or who attended them.

### **C. Suon Kanil's Testimony**

Suon Kanil (TCW-695) took the stand on Friday morning upon the completion of Witness Phan Van's testimony.<sup>18</sup> Suon Kanil joined the revolution on 11 November 1971 at the Chi Kraeng District of Siem Reap Province. Immediately after joining the revolution, he attended propaganda meetings at Krabei Riel Commune, which "successfully" converted him and fellow participants to the cause of national liberation. Six months later, at age 18, the Witness was selected to attend telegram-training sessions at "Tor-8"<sup>19</sup> on behalf of Sector 35 of the former North Zone (later renamed the Central Zone). After a short stint working at a printing house in Kampong Cham,<sup>20</sup> the Witness went to Kampong Thom in 1973 to work for Ke Pauk in the Telegram Section. In 1974, the Witness was sent as a reinforcement to the battlefield in Siem Reap. Between 1975 and 1979, the Witness worked as a Morse code typist for the Telegram Unit in the Central Zone.

#### **1. Telegram Communication Before 17 April 1975**

In 1973, the Witness began work as a Morse code typist in Kampong Thom. He worked under the supervision of Ke Pauk, who at the time was in charge of the General Staff of the Zone. According to the Witness, telegrams were used primarily for military communication, as fighting was particularly fierce in Kampong Thom in 1973. Telegrams were sent from the zone to the sector and to the commanders of the battlefields; only later were telegrams used to communicate with the upper echelon in Office 870. Ke Pauk frequently sent telegrams on the military situation to the Zone Secretary, but he only sent telegrams reporting battlefield victories to Office 870.

Aside from telegrams, written letters were used to communicate longer messages between the sector and zone and between the zone and Center. However, most communication was done through telegrams because they were more efficient and effective.

Telegrams are more or less like the blood vessels in the whole body of a human being, and that means that if there was no telegram, there was no blood flowed to different parts of the body; it means the whole body will be malfunctioned.<sup>21</sup>

#### **2. Telegram Communication After 17 April 1975**

A few months after the "liberation" of Phnom Penh, Ke Pauk was appointed as Secretary of the Central Zone (including Kampong Cham). At that point, the Witness was reassigned to work within the Central Zone's Telegram Unit. With regard to evacuations from Kampong Cham, the Witness remarked that the city had already been "organized" when he arrived, so he did not see any dead bodies on the street. He also noted that there were still Cham Muslims living in Kampong Cham at that time.

International Prosecutor Keith Raynor asked the Witness to elaborate on the protocol for sending and receiving telegrams. The Witness explained that there was a specific schedule for contacting the Center and the sector. He added that every telegram sent to or from the zone was meticulously recorded in a logbook, and shown to Ke Pauk.<sup>22</sup> All telegrams had to go through the Center; zone-to-zone communication was strictly forbidden. The Witness noted that telegram communication with the sectors and the Center increased dramatically after 1978.

### **3. Disappearances, Arrests and Re-education in the Central Zone**

The Central Zone (formerly the North Zone) was under the leadership of Ke Pauk between 1975 and 1979. The Central Zone contained three sectors: 41, 42, and 43. According to the Witness, the Secretaries of Sectors 41, 42, and 43 all disappeared and were replaced during the DK regime.<sup>23</sup> The Witness learned of these disappearances after he noticed that the contacts for the sector secretaries were changed in his telegram contact book. He also noted that once a secretary disappeared, so did his personal messenger.

As time progressed and the political situation worsened, an increasing number of individuals disappeared from the Central Zone. Suon Kanil clarified that those who “disappeared” were in fact “arrested” after being implicated in confessions. He recalled the disappearance of personnel from the Security Unit, the Guest Reception Unit, and the Military Logistics Unit. Only the Center could order arrests and such orders had to be carried out with no exception. Ke Pauk did not have the authority to forgive and release arrested individuals.<sup>24</sup>

Instead of using the word “arrest,” the Khmer Rouge instead used the phrase “re-education.” The Center summoned individuals for re-education, either through telegrams or individual letters. Those summoned by the Center immediately surrendered out of fear. Once the persons summoned were physically arrested, they were loaded on trucks and taken to Phnom Penh. Suon Kanil specifically recalled the arrests of two individuals: Yin, Ke Pauk’s brother-in-law, and Im, the chief of the Central Zone Security Office.<sup>25</sup>

### **4. Witness Demeanor and Credibility**

Suon Kanil was verbose and recalled many details from his experience during the DK regime. Though his answers were not always responsive to the Prosecution’s questions, he was eager to volunteer as much information as possible. Overall, the Witness’ testimony before the Trial Chamber on Friday seemed to correspond with and complement the written statement of his interview with the OCIJ investigators.

## **III. SUMMARY OF CIVIL PARTY DENISE AFFONÇO’S TESTIMONY**

Civil Party Denise Affonço, a French national who worked for the French Embassy prior to the fall of Phnom Penh, testified on her experience during the forced evacuation from the city. She spoke in great detail of her difficult life in the countryside, the arrest of her husband, and the loss of her daughter and nieces due to starvation in the cooperatives.

Her testimony through video-link began on Tuesday afternoon and was completed during Wednesday’s afternoon session.<sup>26</sup>

### **A. Life in Phnom Penh before 17 April 1975**

Born in Phnom Penh in November 1944 to a French father and a Vietnamese mother, Affonço held French citizenship and had a French passport. Prior to April 1975, she lived in the southern part of the city near the Chinese Hospital and worked as a secretary for a condensed milk company. In 1973, she began working as a secretary with the cultural attaché at the Embassy of France. Affonço recalled people living in constant fear following the 1970 *coup d’état* and the outbreak of civil war between the Lon Nol forces and the Khmer Rouge rebels.

According to the Civil Party, the city’s population grew by more than a million between 1970 and 1975 as “crowds of people” flocked to Phnom Penh, the only place in the war-torn country with “a certain level of safety.” While many refugees moved in with relatives, others

had to camp “in a ramshackle way” out on the city’s main streets and boulevards. Food was in short supply in Phnom Penh prior to 1975. As Affonço had explained in a book she authored, which was referenced during her testimony, there was “an astronomical rise in the cost of raw materials, including rice, condensed milk, gas, and so forth.”<sup>27</sup> Though not technically a famine, the food situation was dire, as many refugees struggled to afford even basic food. The Civil Party noted that the American government aided the Lon Nol regime in providing basic necessities to poor refugees.

The Civil Party said that the Lon Nol regime attempted to repatriate ethnically Vietnamese citizens from Phnom Penh. However, she noted that “a considerable majority were massacred along the way... there was a definite witch hunt.” Affonço learned of the Vietnamese deaths from her Vietnamese mother, whose friends were killed during the alleged witch-hunt. In her book, the Civil Party had described the experience as “authentic pogroms... a radical cleansing operation.” The Civil Party also recalled an incident in Kampong Speu where a Vietnamese pagoda was burned down and the nuns, two of whom were her mother’s friends, were massacred.

As a secretary in the French Embassy, Affonço received news dispatches about the movements of communist soldiers across the country and the resulting population displacements. She recalled discussing the matter with her husband,<sup>28</sup> a staunch communist of Chinese ethnicity, who received his information from Peking radio broadcasts. Affonço’s husband dismissed the accusations against the Khmer Rouge as mere propaganda and insisted on staying in Cambodia despite the French Embassy’s warnings to leave. In fact, a month before the Khmer Rouge’s arrival in Phnom Penh, the French government sent planes to repatriate its citizens due to its fears about the political situation in Cambodia.

## **B. The Evacuation of Phnom Penh and Relocation to Kaoh Tuok Veal**

While preparing to go to work in the morning of 17 April 1975, Affonço heard cheering in the streets and gunfire everywhere. She saw a “deliriously happy crowd” welcoming the black-clad Khmer Rouge troops, who she described as having “callous expressions in their faces and red eyes.” Due to roadblocks throughout the center of the city, Affonço was unable to move her family from their home in the southern part of the city to the Embassy in the north.<sup>29</sup> The following day, the Khmer Rouge soldiers came to her home and instructed Affonço and her family to leave in order to avoid an imminent American bombardment. Affonço was told not to pack too much since she would only be gone for two or three days. The family left in their car and attempted to drive north but could not due to roadblocks. They also tried to retrieve Affonço’s mother from the western part of the city, but were once again stopped. Finally, the Affonço family drove south, picking up three Khmer Rouge soldiers along the way who offered them petrol in exchange for a ride on the rooftop. The Civil Party described the scene as she left the city: “It was indescribable chaos... people moved in stretchers out of the hospital... inferno.”

At the first checkpoint out of the city, Khmer Rouge soldiers confiscated the children’s schoolbooks and ripped up Affonço’s French passport and identity card, stating, “From now on there is no French or Vietnamese, only Khmer... Go forward, Angkar is waiting for you.” It was at this checkpoint that Affonço first heard the term ‘Angkar.’ Soon thereafter, Affonço and her family arrived at the Tuok Veal island in the Mekong River. They slept in a pagoda and were forced to work, even as they suffered from malnourishment and dehydration. The Civil Party considered the island “an open prison,” where local villagers monitored her and completely deprived her of her freedom.<sup>30</sup> In July 1975, armed Khmer Rouge soldiers arrived at the village and arrested Affonço’s “talkative” husband along with two neighbors. The soldiers explained that “Angkar needed information.” They told Affonço not to worry, that her



husband “just needed to be reeducated by Angkar.” Affonço never saw her husband again after that day.

The Civil Party recalled a meeting at the village pagoda, where Khmer Rouge cadres asked, “For you foreigners, before the victory, we told you to get out of the country. Why didn’t you do so? And as for you, Khmers living in Phnom Penh, you were told to join the front line. Why didn’t you do so?”<sup>31</sup> Attendees of the meeting were instructed to write confessions. Initially under the impression that full disclosure would allow her to return to Phnom Penh, Affonço confessed everything. However, she later realized that the written confessions were a “trap” intended to “weed out the intellectuals.”

### **C. Relocation to Phnom Lieb in the Northwest Zone**

Soon after her husband was arrested, Affonço and her family received orders from the village chief to leave the island. The chief explained that their names were on a list prepared by “Angkar Leu.”<sup>32</sup> The next morning, she and other people on Angkar Leu’s list boarded military trucks and drove until nightfall to somewhere near Pursat. The deportees did not receive any assistance on their journey, even though many were sick, and one person died. Upon arriving, each family received a can of rice, which they cooked with swamp water that they only later realized was filled with human excrement. They stayed along a railway for three days until a train arrived and transported them to Phnom Lieb near Sisophon, then to Phnum Tralach, where they were immediately put to work. Affonço was made to work at what the chief called the “Dyke of the Widows.” It was then that she realized her husband had been killed. Affonço described the conditions in Phnom Tralach as follows:

We were in purgatory in Kaoh Tuok Veal, but at that last phase, it was genuine hell. We had no water anymore... We had no medicines either... There were no doctors.... Even when I had malaria and even when I couldn’t leave the house, they pulled me out, kicked me, and said to me, “Old Fonço, stop pretending to be sick. There’s nothing wrong with you at all. You’re going to go out and work.”<sup>33</sup>

The “base people” at Phnum Tralach constantly harassed Affonço for being French and a “new person,” or “17 April person.” The base people were afforded preferential treatment; they were given twice as much rice as the “new people” and ate meat and fish, while the “new” had to eat frogs, grasshoppers, and scorpions.

She described seeing her son with bruises from being beaten. She saw corpses of people who died from hunger, malnutrition, and illness on a daily basis. When her sister-in-law died, the authorities allegedly said: “Here’s one less mouth that we have to feed.”<sup>34</sup> The Civil Party was particularly emotional when recounting how she had to bury the bodies of her daughter and niece herself, who died of starvation the same day. Affonço’s two remaining nieces also died of weakness and starvation, while her young nephew was killed by the KR for stealing food from the village chief’s wife.

Affonço insisted that the Khmer Rouge planned and organized both the evacuation to Phnum Tralach and the appalling conditions within the village. With respect to the evacuation, she explained, “It had been planned in advance. As far as I was concerned, it was their way to very slowly kill us. It was programmed.”<sup>35</sup> And as for the living conditions, Affonço believed that “Angkar wanted to eliminate the entire social class of intellectuals... They were intentionally letting us die of hunger... It was carefully premeditated and organized from A to Z.”<sup>36</sup>

Ultimately, Affonço was transferred to Loti Batran, a camp in the Northwest under the leadership of a chief named “Ta Man,” who she called a “despot” for initiating purges in the

cooperative. When international counsel for Nuon Chea, Mr. Jasper Pauw, inquired whether or not cooperative or district chiefs could decide on issues of life or death, Affonço replied, “He [the chief] certainly wielded discretionary power and he implemented all the orders of Angkar.”<sup>37</sup>

#### **D. Participation as a Witness in the 1979 Trial of Ieng Sary**

Civil Party Lawyer Emmanuel Jacomy noted that this was not the first time Ms. Affonço had testified before a court on her experiences under the Khmer Rouge. In fact, Affonço participated in the 1979 Vietnamese trial against the Khmer Rouge leaders. She maintained that everything she said during the 1979 trial was truthful and was stated freely, without any prior instruction or preparation. The only caveat was that a Vietnamese writer asked her to leave out information that her husband was a Communist because, at that time, all communists would have been judged guilty. While illiterate victims from the countryside received help writing their witness statements, the Civil Party insisted that she did not. However, Affonço admitted that she never heard the names “Pol Pot” or “Ieng Sary” until after the January 1979 Vietnamese invasion, but she included them in her testimony because a Vietnamese doctor listed them as the cause of her misfortune.

During his examination, Pauw focused on the Civil Party’s description of “Angkar” during her 1979 testimony: “Anyone empowered to direct the village or the work team can always speak in the name of Angkar. Angkar is everywhere.”<sup>38</sup> Affonço affirmed her earlier statement, adding the following: “When they came to collect the remaining stock of rice, they said that it was because Angkar needed it. When they wanted to send our children away, it was because Angkar had decided it.”<sup>39</sup>

#### **E. Civil Party Statement of Suffering, Demeanor, and Credibility**

In her statement of suffering, Affonço provided a moving and deeply emotional description of both her physical and moral suffering. She and her family did not receive proper medical care, even as she suffered from tuberculosis, hepatitis B, and malaria. These illnesses still affect her to this day. She discussed her struggles as a displaced individual, and the abuse she endured in the name of Angkar. As she recounted the fate of her children, Affonço became visibly and audibly emotional. She repeated her daughter’s final words: “Mommy, can I have a bowl of rice?” She also discussed the enduring trauma that continues to plague her surviving son to this day. She spoke of the utter dehumanization of the Khmer Rouge’s victims and repeated her claim that the famine was “organized and programmed.” As she explained:

It was a way for the system to eliminate us while feeling they had washed their hands of the problem, but they could say, “We didn’t kill those people; they died because they’ve been eating rubbish.” Is that not a technique to assassinate somebody without getting your hands dirty?<sup>40</sup>

In conclusion, she explained how she still suffers from nightmares after more than thirty years. “That’s why I no longer wish to set foot in that country, which I do love,” she stated, through tears. She begged the Court to fulfill its duty; to punish those responsible for her suffering. Finally, she emphasized that she was speaking on behalf of all Cambodian victims who died at the hands of the Khmer Rouge: “I wasn’t alone. There were another two million Cambodians who suffered this physically and morally. Now that they can speak, I hope they are liberated.”

In terms of the Civil Party’s demeanor and credibility, Affonço provided vivid, poetic, and often emotionally charged responses to most questions. She also seemed to respond rather

aggressively to several of Pauw's questions. Overall, however, her responses were always informative, articulate, and precise.

The video-link testimony made proceedings slightly more difficult, as it was not always clear to the Civil Party when it was her turn to respond. The video-link testimony also made it more difficult for the Parties to voice objections.

#### **IV. LEGAL AND PROCEDURAL ISSUES**

This week, the Defense Team for Ieng Sary objected to questions posed by the Prosecutors and Civil Parties about Ieng Thirith, which, Defense argued, fell beyond the scope of Case 002/01. Additionally, the Court ruled that the Parties may not object to questions put by the Judges to the witnesses. In a dramatic turn of events, Ianuzzi was ejected from the courtroom after disregarding repeated warnings from the Trial Chamber about his style of questioning and his off-hand remarks.

##### **A. Questions Beyond the Scope of the Trial**

National counsel for Ieng Sary, Mr. Ang Udom, objected to de Wilde d'Estmael's questions for Witness Phan Van concerning Ieng Thirith's role in the CPK and the meetings she attended in Phnom Penh. Ang Udom argued that Ieng Thirith's case had already been severed from Case 002. Therefore, questions about her actions or responsibilities were no longer relevant as she is no longer one of the accused in this case. However, the President cut Ang Udom off, and notified him that he was not allowed to make such comments.

Later in the proceedings, Civil Party Lawyer Isabelle Durand questioned Phan Van on Ieng Thirith's efforts to replace medical staff who had disappeared from the Khmer-Soviet Friendship Hospital towards the end of the regime. Ang Udom once again objected to this line of questioning, calling it irrelevant and "a waste of time." Durand argued that her questions related to the administrative structures of hospitals during the DK regime. After some deliberation, the Trial Chamber instructed the Witness not to respond to Durand's questions.

Objections on the ground that questions fell outside the scope of trial were also raised throughout the Prosecution's examination of Soun Kanil, with the Khieu Samphan Defense Team objecting to questions about orders for arrests. The President also repeatedly reminded the Prosecution to limit its examination to questions related to the first and second phases of evacuation. Raynor argued that the Prosecution's questions were indeed relevant because they went to the authority and communication structures in the DK regime, which is an "overarching principle" in Case 002/01. At that point, Mr. Ianuzzi stood up and stated that Raynor's submissions hinged on whether the Court accepts the "fiction" that there will be further "mini-trials" in Case 002.

##### **B. Ability to Object to Questions by Judges**

During his questioning of Phan Van, Judge Lavergne asked the Witness which is the "most plausible" version of his father's death: that he engaged in a sibling dispute that ended badly, or someone from the outside came and murdered him. Ianuzzi objected to Judge Lavergne's question, arguing that it was irrelevant because it did not concern administrative or communication structures and therefore fell beyond the scope of Case 002/01. After a brief deliberation, the President proclaimed that the objection was "not well-founded and thus not sustained." Soon after, Judge Lavergne asked the witness whether he was aware of any other purges of individuals who, like his father, were summoned to attend work sessions in Phnom Penh. Once again, Ianuzzi objected to Lavergne's question, stating that, "alleged

purges are not a part of this case... the crime bases are population transfers.” He conceded that the correspondence leading up to such purges was relevant to DK communication structures, but he doubted that Judge Lavergne’s examination “route” would stay within the confines of the trial’s crime base. Ianuzzi also commented on the Trial Chamber’s inherent conflict of interest in ruling upon his objection: “I know it seems strange to object to a question from a person who will decide on that question, but I want it for the record.” In an effort to seek clarification on this matter, Prosecutor de Wilde d’Estmael suggested that the Chamber decide if the Parties could object to questions put by Judges.

Following deliberations, the President rejected Ianuzzi’s objection, and advised the Parties “that they not object against the questions posed by members of the Bench.” The President did not cite any basis for the ruling. The next morning, as Judge Lavergne resumed questioning Phan Van about purges, Ianuzzi stood up to speak but was stopped by the President, who reminded him that the Trial Chamber had already issued its ruling. Ianuzzi attempted to instead “make an observation,” but his microphone was disabled.

Later that morning, when Ianuzzi took the floor to examine the witness, he continuously made references to the parameters and scope of the current trial and its crime base, making it very clear that he did not agree with the Trial Chamber’s ruling concerning the relevance of Judge Lavergne’s questions.

### **C. OCIJ Investigation Procedure**

Questions relating to the OCIJ’s interview practices continued this week. During the examination of Phan Van by Karnavas, the Witness revealed that the investigators gave him the opportunity to correct his statements:

But for example, when I talked something which is not about the truth, and -- I would be given the opportunity play back the tape and make sure that the version of the event is corrected so that we get the truth.<sup>41</sup>

Karnavas pursued this point, and tried to clarify whether there were unrecorded portions of the exchange between the Witness and the investigators. The International Counsel inquired:

... as you're giving your version, at some point, the investigator would think that you're not telling the truth, he would stop the tape-recording, you would listen to it, perhaps there would be an exchange, and then you would be given an opportunity to correct the version that you had previously given; is that what happened?<sup>42</sup>

The Witness responded affirmatively, saying: “Yes, it is. We correct something that is not true.”<sup>43</sup> However, the Witness denied that the investigators showed him any document to refresh his memory

### **D. Ieng Sary’s Fitness to Stand Trial**

On Tuesday, before the examination of witnesses, Judge Silvia Cartwright announced the Trial Chamber’s decision denying the Ieng Sary Defense Team’s request for an oral hearing on the permissibility of audio recording the Accused and his treating physician in the holding cell. Citing Internal Rule 92,<sup>44</sup> the Trial Chamber said that it had already requested written submissions from the Party,<sup>45</sup> as the 11 June 2010 Pre-Trial Chamber decision did not provide guidance on the issue at hand.<sup>46</sup> In response to the Chamber’s oral decision, Karnavas requested leave to audiotape what transpired in the holding cell between his client

and the doctors in the interim period before a final decision is rendered on this issue. He impressed upon the Chamber that written submissions would take a considerable amount of time before a final decision could be made. The Counsel assured the Chamber that the tape recording would be treated as confidential information, to be put under the Trial Chamber's custody at the end of each day until a decision on this matter is made. He ended his submission by saying:

It doesn't prejudice anyone, it assures us of a record, and it allows you, Your Honors, to then destroy such tape recordings if, in the event, you find it is in the interest of justice not to have something rather transparent, verifiable, objective that may support the Defense's position, at some point, that our client is not able to follow the proceedings and, therefore, cannot, and is not, and will not be enjoying all of his fair trial rights.<sup>47</sup>

International Prosecutor Tarik Abdulhak stated that recording conversations exceeded the limited authorization granted in the 11 June 2010 Pre-Trial Chamber decision. He however submitted that the Prosecution took no position on the ad-interim application for recording, noting the willingness of the Defense to submit the recordings to the Chamber to be dealt with in accordance to the Chamber's final decision. The President ultimately denied the application of the Defense after conferring with the other Judges, saying that the Chamber did not wish to reconsider its position.

#### **E. Use of Speculative Questions**

During the testimony of Witness Phan Van, de Wilde d'Estmael objected to lanuzzi's questions regarding Ta Sarun's practices while the witness stayed in Phnom Penh. The Prosecutor said that the question asked the Witness to speculate on a subject he was not present to observe. lanuzzi responded by pointing out that witnesses regularly give hearsay evidence, which is "widely used" in the Court. Nevertheless, he offered to rephrase his question.

lanuzzi then inquired why, in his testimony, Ta Sarun denied that he issued orders of arrest. Both de Wilde d'Estmael and Civil Party Lawyer Pich Ang objected, saying that lanuzzi was inviting Phan Van to speculate once more. At this point, Karnavas, supporting lanuzzi, said that the framing of lanuzzi's question was no different from the one Judge Lavergne previously posed, which the Witness had been asked to answer based on his personal observation and experience. When the Chamber instructed him to rephrase his question, lanuzzi specifically asked Phan Van for his "personal knowledge" as to why Sao Sarun would "minimize responsibility." The President intervened, instructing the Witness not to respond and asking lanuzzi to move on.

#### **F. Decision to Allow Civil Party Denise Affonco to Testify via Video-Link**

On Tuesday afternoon, the President issued an oral ruling maintaining the Chamber's position to allow Civil Party Denise Affonco to testify via video-link from France.

The Trial Chamber notes that it has broad discretion to permit evidence by video-link whenever necessary so long as such measures are not seriously prejudicial to or inconsistent with defense rights.<sup>48</sup>

The ruling was rendered as a response to a submission filed by Ieng Sary's Defense Team, which objected to the Chamber's earlier decision to allow the Civil Party to testify via video-link.<sup>49</sup> The Defense noted that the Trial Chamber did not provide its reason for allowing the

victim to testify without physically appearing before the Court.<sup>50</sup> The Trial Chamber also noted in the oral ruling that the Defense Team for Ieng Sary submitted for the Civil Party to testify before the Court in person, because her testimony may have been inculpatory during Ieng Sary's 1979 trials, and video-link testimony would not permit the Accused or his lawyers to fully access the Civil Party testimony.

The Chamber noted that the Defense had previously acknowledged that Denise Affonco's testimony is not vital to establishing the guilt of the Accused. Moreover, the Defense Team had never objected to Affonco's Civil Party application. The Court further took notice of the fact that the Accused had waived his right to be present during the Civil Party's testimony, after having full access to documents detailing the loss she suffered during the DK regime (although this waiver was later withdrawn). In its decision, the Chamber concurred with the Prosecution's position that video-link testimony is justified in the interest of witness protection, as long as the fundamental principles of fair trial are maintained.<sup>51</sup> The Chamber referred to the ICC's decision on the Bemba Case on 3 February 2012<sup>52</sup> and Internal Rule 26.<sup>53</sup> The Trial Chamber further noted that it received a medical certification that attested to Denise Affonco's inability to travel due to health reasons.

Karnavas responded that the Defense Team received the medical certificate only earlier that day. Had they received the document earlier, he submitted, they may have had adopted a different position with regard to this matter. He emphasized that the Defense insists that the Chamber provide sufficient information to justify any video-link testimony before it is again allowed in the future.

## **V. TRIAL MANAGEMENT**

With the exception of Iannuzzi's expulsion from the courtroom, proceedings this week went smoothly. In an attempt to speed up the trial, the Trial Chamber modified its schedule based on the availability of witnesses and Civil Parties. Further, although there were several minor translation issues during the week's proceedings, they were immediately rectified by the interpreters. This week also marked the last court appearance of one of the International Counsels for Ieng Sary, Jasper Pauw. The Counsel attempted to make a farewell remark at the end of Friday's hearing, but the President stopped him before he concluded his speech.

### **A. Attendance**

As in previous weeks, Ieng Sary participated in this week's proceedings from the holding cell due to health concerns. Nuon Chea was present in the courtroom during the morning sessions from Tuesday through Friday, but retired to the holding cell each afternoon due to health reasons. Only Khieu Samphan followed the proceedings from the courtroom every day this week.

**Attendance by Parties:** All Parties were properly represented this week, although national counsel for Ieng Sary, Mr. Ang Udom, was absent on Friday.

**Attendance by Civil Parties:** On Tuesday, approximately 50 Civil Parties were present in the public gallery and the number increased to 100 the next day.

## Attendance by the Public:

DATE	MORNING	AFTERNOON
Tuesday 11/12/12	<ul style="list-style-type: none"><li>200 villagers from Kampong Thom Province</li></ul>	<ul style="list-style-type: none"><li>50 villagers from Stoeung Treng Province</li></ul>
Wednesday 12/12/12	<ul style="list-style-type: none"><li>200 university students from Pour un Sourire d'Enfant organization</li></ul>	
Thursday 13/12/12	<ul style="list-style-type: none"><li>200 students from Kamchaimea University, Svay Rieng Province</li><li>15 foreign visitors</li></ul>	<ul style="list-style-type: none"><li>100 villagers from Kampong Chhnang Province</li></ul>
Friday 14/12/12	<ul style="list-style-type: none"><li>50 villagers from Kampong Speu Province</li><li>50 students from Royal University of Law and Economics, Phnom Penh</li></ul>	<ul style="list-style-type: none"><li>150 villagers from Prey Veng Province.</li><li>A few foreign observers</li></ul>

### B. Time Management

Trial commenced on Tuesday this week, due to the Court's observance of "International Human Rights Day" on Monday. The Court's schedule this week had to be modified in order to accommodate the testimony of Civil Party Denise Affonço, who testified via video-link from her home in France. Accordingly, on Wednesday, the Trial Chamber did not observe its customary morning and afternoon session breaks.

### C. Courtroom Etiquette

Ianuzzi's conduct proved to be a challenge to the Chamber's composure this week, with the Chamber ultimately expelling the Counsel from the courtroom.

#### 1. Removal of Counsel from Chamber

On Thursday, 13 December 2012, the Trial Chamber found Ianuzzi in contempt of Court and subsequently expelled him from the courtroom. The comment that finally triggered the Trial Chamber's decision came at the end of Ianuzzi's examination of Phan Van, when he asked the following questions regarding a play the Witness attended in Phnom Penh in 1975:

What kind of play was it? Was it in any way similar to the play that's been unfolding here, on this stage, before this Trial Chamber?<sup>54</sup>

At this point, the President instructed the Witness not to respond to this question and asked Counsel to move on to the next question, otherwise his act "amounted to a contempt of the Court." Ianuzzi immediately responded to the President:

I will move on. I'm - I'm only trying in my own boorish way, to suggest that if the Trial Chamber continues to work from a script, with cues and stage directions, these proceedings take on all the dignity of a very bad -- [judges begin deliberating] a very bad "Gilbert and Sullivan."<sup>55</sup>

Prior to these comments, Ianuzzi had repeatedly ignored the Trial Chamber's warning to keep his questions brief, and to stop providing lengthy and irrelevant prologues to his questions. Ianuzzi's prologues and questions also touched upon topics that the Trial Chamber has already ruled upon, such as the incomplete OCIJ investigation transcripts provided to the Parties,<sup>56</sup> the K-5 population movement in Northwest Cambodia in the 1980's,

and the relevance of Judge Lavergne's questions to Phan Van (see IV.B). The Prosecution also expressed concern with lanuzzi's prologues because, in their submission, his comments could potentially influence the witness.

As the Judges deliberated, lanuzzi interrupted to say that he had concluded his questioning, at which point the President firmly instructed lanuzzi to sit down. After some deliberation, the President delivered the Chamber's ruling:

The Chamber finds that lawyer has abused the proceedings and he has contempered the Court despite repeated warning by the Chamber throughout the course of the proceedings, and today it is very obvious that the lawyer is intending to obstruct the proceedings, and counsel is also abusing the proceedings. The Chamber, therefore, decides to dispel you from these proceedings.<sup>57</sup>

Immediately following the ruling, lanuzzi asked whether that meant he should leave, to which the President replied affirmatively, citing Internal Rule 38.1<sup>58</sup> and adding that the Chamber would issue its decision the following day. lanuzzi, however, did not leave the courtroom voluntarily. Instead, he insisted on staying with his client and said he would "await [his] escort." The President then instructed the Court's security guards to escort lanuzzi out of the courtroom.

The next day, on Friday, lanuzzi returned to the courtroom. Nothing was said about the previous day's events until right before the lunch adjournment, when Raynor asked whether lanuzzi wished to "purge the contempt," or apologize, as is common practice in Common Law jurisdiction. lanuzzi declined the invitation by saying, "I think there's been enough purging in this country; I will not add..." until his microphone was cut off. After some deliberation, Judge Cartwright, speaking on behalf of the Chamber, noted that Raynor's suggestion was not part of the Internal Rules but added that it was nonetheless an opportunity for lanuzzi to apologize. Judge Cartwright described lanuzzi's response as "completely unacceptable as a way of communicating with the country, people who have suffered so much." She added that lanuzzi's refusal to apologize would be noted in a further report that the Trial Chamber intends to issue to his Bar Council.<sup>59</sup>

## **2. The President's Use of the Word 'Eang'**

On Thursday, while instructing lanuzzi to sit down as the Chamber deliberated its response to his conduct, President Nil Nonn referred to lanuzzi as "Eang" (spelled phonetically) in a loud and aggressive tone. The President quickly corrected himself, but the Khmer trial transcript recorded the President's use of the word.<sup>60</sup> The word was not translated into English.

"Eang," when uttered in a loud and commanding voice, is an offensive way to refer to someone as one's inferior. It is used to degrade or diminish the stature of another individual. The Cambodian monitors considered the use of this word in a courtroom setting entirely inappropriate.

## **D. Translation and Technical Issues**

There were a number of translation issues that caused minor confusion during this week's proceedings. In particular, during Karnavas's examination of Witness Hun Chhunly, Counsel struggled to establish whether the Witness served as a medic or a physician during the Khmer Rouge. After a 15-minute exchange, it was ultimately possible to deduce that the terms "physician" and "doctor" were erroneously translated as "medic."



On Wednesday, most likely due to the lack of breaks in the morning and afternoon sessions, the quality of translation seemed to decline. On several occasions, Khmer words were mistranslated into English. For example, in one instance “Northeast Zone” was translated as “Northwest Zone,” while the year “1970” was translated as “1975.” However, these mistakes were noted and corrected during the course of the proceedings.

#### E. Time Table

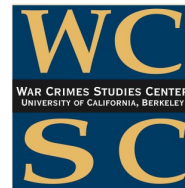
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Tuesday 11/12/12	9:03	10:40-11:00	12:05-13:32	14:40-15:02	16:08	4 hours and 56 minutes
Wednesday 12/12/12	9:05	-	11:50-14:10	-	16:35	5 hours and 10 minutes
Thursday 13/12/12	9:05	10:32-10:53	12:10-14:01	15:30-15:46	16:35	5 hours and 2 minutes
Friday 14/12/12	9:03	10:33-10:52	12:13-13:33	14:20-15:00	16:00	4 hours and 38 minutes
Average number of hours in session				4 hours 56 minutes		
Total number of hours this week				19 hours 46 minutes		
Total number of hours, days, weeks at trial				612 hours 19 minutes		
<b>138 TRIAL DAYS OVER 42 WEEKS</b>						

#### 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



\* 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> Hun Chhunly began his testimony on Thursday, 6 December 2012. See CASE 002 KRT TRIAL MONITOR. Issue No. 45. Hearing on Evidence Week 40 (4-7 December 2012). 9-13. [hereinafter **KRT TRIAL MONITOR. Issue No. 45**].

<sup>2</sup> As the Witness stated to Mr. Karnavas, "I didn't work at [sic] a senior doctor at the hospital; I was more or less working in my capacity as a political prisoner at the hospital or a very simple employee or a medical staff among the other Khmer Rouge medics at that time. So I did not hold any senior or significant position as a doctor at that time." Trial Chamber. Transcript of Trial Proceedings (11 December 2012). E1/151.1. [hereinafter **11 DECEMBER TRANSCRIPT**]. Lines 6-9. 32. Later on, the Witness reaffirmed his low-ranking position at the hospital: "I was a prisoner and a subordinate, a low-level employee." 11 DECEMBER TRANSCRIPT. Lines 25, 1. 32-33.

<sup>3</sup> Hun Chhunly claimed to have read *Beyond the Horizon: Five Years with the Khmer Rouge* by Laurence Picq and *The Prisoner of the Khmer Rouge* by Prince Norodom Sihanouk after 1979.

<sup>4</sup> With respect to questions about brainwashing, the Trial Chamber already issued a ruling on this matter during last week's proceedings. See KRT TRIAL MONITOR. Issue No. 45.

<sup>5</sup> Witness Phan Van was examined in the following order: International Senior Assistant Co-Prosecutor Vincent de Wilde D'Estmael; Civil Party Co-Lawyer Sam Sokong; International Civil Party Co-Lawyer Ms. Isabelle Durand; Judge Jean-Marc Lavergne; International Counsel for Nuon Chea, Mr. Andrew Ianuzzi; National Counsel for Nuon Chea, Son Arun; National Counsel for Khieu Samphan, Kong Sam Onn; International Counsel for Khieu Samphan, Mr. Arthur Vercken; and finally, International Counsel for Ieng Sary, Mr. Michael Karnavas.

<sup>6</sup> The Witness was not familiar with the alias "Chhan." He acknowledged that his father could have assumed that alias when his sister replaced him as telegram decoder at Office K-17.

<sup>7</sup> The Witness also recalled seeing Ta Mok and Son Sen occasionally at Office B-20.

<sup>8</sup> "K-17 consisted of a two storey building with wooden walls and a zinc roof and functioned as both the Office of the Secretary of Sector 105 and, briefly as a detention center itself." OCIJ. "Closing Order" (15 September 2010). D427 [hereinafter, **CLOSING ORDER**]. Paragraph 626; "Phnom Kraol was a Sector 105 Security Office containing Phnom Kraol Prison and related to the nearby Sector 105 Office K-11 and to the Sector 105 Secretary, headquartered Office K-17...Phnom Kraol was located in Sector 105 also known as Mondulkiri Sector. The security center already existed in 1975." CLOSING ORDER. Paragraph 625.

<sup>9</sup> Trial Chamber. Transcript of Trial Proceedings (13 December 2012). E1/ 153.1 [hereinafter **13 DECEMBER TRANSCRIPT**]. Lines 12; 1-2. 57-58.

<sup>10</sup> While Ianuzzi was permitted to ask questions about the American bombing campaign that occurred before the temporal jurisdiction of Case 002/01, he was cut off by the President when he sought clarification from the Witness on whether Suon Keat Chhon (current Minister of Finance in the Royal Government of Cambodia) and Sar Kimlomouth (current Minister of Information who has refused to cooperate with the ECCC) worked with Ieng Sary. The President also prevented Ianuzzi from asking questions about population movements in "Kor-Pram," or K-5, in the Northwest of Cambodia.

<sup>11</sup> According to Phan Van, Nuon Chea never sent telegrams ordering arrests; he would only send telegrams ordering specific cadres to attend study sessions in Phnom Penh.

<sup>12</sup> The 12-point moral code served as a guide for moral living and included precepts such as respecting others in society and paying respect to Buddhist monks. According to the Witness, in the beginning of the regime, people followed the codes strictly. By the end, however, most people stopped following the codes.

<sup>13</sup> The Center did not come to Sector 105 to arrest individuals. Instead, Office 870 sent invitations to certain cadres inviting them to re-education sessions in Phnom Penh. Those summoned to Phnom Penh never returned.

<sup>14</sup> In his examination of Phan Van, Mr. Ianuzzi highlighted a discrepancy between the audio recording and the written record of the OCIJ interview with regard to the purpose of his father's visit to Phnom Penh. According to Ianuzzi, on the audio recording Phan Van says that his father was called to Phnom Penh to discuss the situation with Vietnam. This part, however, was not included in the written record of the interview according to counsel. Mr. Ianuzzi could not provide the Court with specific time stamps for the relevant section nor did he provide the Parties with a transcript of the audio proceedings. Instead, he explained that he could only rely upon an unofficial transcript produced by one of his Khmer team members due to a last minute decision to pursue this line of questioning after hearing Phan Van's testimony from the previous day. Ultimately, Phan Van denied that his father's visit to Phnom Penh had to do with the conflict with Vietnam.

<sup>15</sup> For a summary of Ta Sarun's testimony before the Court, see CASE 002 KRT TRIAL MONITOR. Issue No. 26, Hearing on Evidence Week 21 (11-14 June 2012). 2-8.

<sup>16</sup> Phan Van confirmed the arrests and disappearances of "Sou" and "Pak," who served as deputies to Ieng Thirith at the Ministry of Social Affairs. Ieng Thirith ordered Phan Van to drive Sou and Pak to K-7 (or the messengers' office) in Phnom Penh. Phan Van never saw the two deputy chiefs again.

<sup>17</sup> 13 DECEMBER TRANSCRIPT. Lines 23-25. 117.

<sup>18</sup> Suon Kanil was only questioned by the Prosecution on Monday, beginning with National Co-Prosecutor Song Chorvoin and continuing with International Co-Prosecutor Keith Raynor.

<sup>19</sup> The Witness could not recall the precise location of "Tor-8," but said it could either be at Tuol Sambour or Areaks Tnaot in either Kratie Province or Kampong Cham Province.

<sup>20</sup> The Witness arrived at the printing house in either late 1972 or early 1973. According to the Witness, the printing house was very small and was responsible for printing the "Reaksmei Padevath," or *Revolutionary Ray/Light* magazine. The printing house also occasionally printed slogans, banners, and permission letters. The printing house did not, however, print *Revolutionary Flag* magazines -- those came from the Center and were distributed to his office.

<sup>21</sup> 14 DECEMBER TRANSCRIPT. Lines 16-19. 67.

<sup>22</sup> The Witness recalled an incident where, due to bad weather, he neglected to receive a telegram from the Center informing Ke Pauk that Pol Pot was coming to visit the Central Zone the following day. The Witness explained how Ke Pauk warned him that he ran the risk of being imprisoned or detained for his reckless behavior. The Witness had to write a statement explaining why he failed to receive the telegram and reminding Ke Pauk what a diligent and responsible staff member he was. Ke Pauk ultimately forgave the Witness.

<sup>23</sup> In Sector 41, "Ta An" replaced "Sreng." In Sector 42, "Oeun," Ke Pauk's brother-in-law, replaced "Tol." Finally, in Sector 43, "Ta Ngim" replaced "Chhan."

<sup>24</sup> While the Witness asserted that Ke Pauk did not have the authority to forgive or release arrested individuals, he related how his father-in-law and brother-in-law were both released after being arrested.

<sup>25</sup> Yin was arrested immediately after a bomb in Kampong Cham destroyed the house of the division commander. According to the Witness, many people were arrested following Yin's arrest. Im was arrested after security officers from the Center came to inspect the prison and accused Im of being an associate of the prisoners.

<sup>26</sup> Denise Affonço testified remotely from her home in France because she did not wish to return to Cambodia and because her doctor submitted that flying to Cambodia would be difficult given her health condition. She was examined in the following order: National Civil Party Lawyer Sam Sokong; International Civil Party Lawyer Emmanuel Jacomy; International Prosecutor Vincent de Wilde d'Estmael; National Prosecutor Chan Dararasmey; and International Counsel for Nuon Chea, Jasper Pauw. The Civil Party was given the opportunity to make a statement of suffering at the conclusion of her testimony.

<sup>27</sup> The Civil Party wrote a book, *To the End of Hell*, on her experiences, which is also a document on the case file. Its document number is E9/32.2.29.

<sup>28</sup> The Civil Party preferred to refer to her husband as "the father of my children" or "Mr. Seng" during her testimony.

<sup>29</sup> Ms. Affonço's family included her husband, her son (age 10), her daughter (age 8), her sister-in-law (age 38), her three nieces (ages 17, 12, and unknown), and her nephew (age 5).

<sup>30</sup> Affonço later noted that she did not experience discrimination as a "new" person at the village on Kaoh Tuok Veal. It was not until her relocation from the island that she experienced discrimination and witnessed the separation of "new" and "base" peoples.

<sup>31</sup> 12 DECEMBER TRANSCRIPT. Lines 21-25. 82.

<sup>32</sup> Angkar Leu's list also contained the names of other Phnom Penh families with disappeared husbands/fathers.

<sup>33</sup> 12 DECEMBER TRANSCRIPT. Lines 6-8; 14; 16-17; 24-25; 1-2. 91-92.

<sup>34</sup> Ibid. Line 1. 93.

<sup>35</sup> Ibid. Lines 24-25; 1. 89-90.

<sup>36</sup> Ibid. Lines 10-12; 21-22. 98.

<sup>37</sup> 13 DECEMBER TRANSCRIPT. Lines 23-24. 91.

<sup>38</sup> *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*. Document E3/244R.

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<sup>39</sup> 13 DECEMBER TRANSCRIPT. Lines 4-6. 95.

<sup>40</sup> Ibid. Lines 19-24. 105.

<sup>41</sup> Trial Chamber. Transcript of Trial Proceedings (14 December 2012). E1/154.1 [hereinafter **14 DECEMBER TRANSCRIPT**]. Lines 6-9. 30.

<sup>42</sup> Ibid. Lines 11-17. 30.

<sup>43</sup> Ibid. Line 18. 31.

<sup>44</sup> IR 92: The parties may, up until the closing statements, make written submissions as provided in the Practice Direction on filing of documents. The Greffier of the Chamber shall sign such written submissions and indicate the date of receipt, and place them on the case file.

<sup>45</sup> See Trial Chamber. "Order for Submission" (12 December 2012). E 254. The Chamber ordered cessation of the audio recording of the Accused and the conversations with the Accused's treating physician. The Trial Chamber ordered Ieng Sary's Defense to seek leave pursuant to Rule 92 specifying the reasons why such practices are permissible under the ECCC legal framework should it wish to continue audio recording the Accused and/or his treating physician. It should be noted here that Karnavas commented that the fact that the decision was initially sent by email to the Party, without citing any authority, may have an adverse impact for future purposes.

<sup>46</sup> See Pre Trial Chamber. "Decision on Ieng Sary's Appeal against Co-investigating Judge's Order Denying Request to Allow Audio/Video Recording of Meetings with Ieng Sary at the Detention Facility" (11 June 2010). This Pre Trial Chamber decision was made with regards to the appeal filed by the Co-Lawyers for Ieng Sary over the OCIJ's rejection to allow them to conduct audio/video recording of their meetings with their client at the Detention Center. The decision supported the position of the Defense, agreeing that it is within the parameter of the exercise of the then Charged Person's fair trial rights to have access to video and audio equipment brought to the detention center to record the meetings with his defense team, but the Pre Trial Chamber provided certain restrictions, namely: 1) all Authorized persons (the Co-Lawyers, members of Legal Team including the translators and interpreters) may bring audio/video recording to the Detention Facility, but the equipment are to be subject to inspection deemed necessary by the Chief of the Detention facility and recording may only take place in the designated interview room unless directed otherwise by the Chief, 2) the recordings may only be used to prepare the defense of the then-Charged Person and to communicate with counsel, and should not be shared to other parties other than the Authorized persons without leave of one of the Chambers of the ECCC and 3) All recordings will be classified as confidential, with the restrictions applicable to confidential information.

<sup>47</sup> Trial Chamber. Transcript of Trial Proceedings (11 December 2012). E1/151.1 [hereinafter **11 DECEMBER TRANSCRIPT**]. Lines 10-17. 4.

<sup>48</sup> 11 DECEMBER TRANSCRIPT, lines 17-20. 68.

<sup>49</sup> Document number quoted for the Chamber's earlier decision to allow video-link testimony of TCCP-1 was E236/1/1/1. During the writing of this report the document is unavailable at the ECCC's website. It was clear from the Prosecutor's urgent response to Ieng Sary's Defense Team's request that communication with regard to this issue had been classified as confidential, and the Prosecutor's response was made available to the public after it had made a request to the Chamber to declassify the document. See The Office of Co Prosecutor. "Co-Prosecutor's Urgent Response to Ieng Sary's Request Concerning Video-Link Testimony for TCCP-1" (11 December 2012) E236/1/1/3 [hereinafter **OCP RESPONSE TO IENG SARY REQUEST CONCERNING VIDEO-LINK TESTIMONY**].

<sup>50</sup> When the President made the oral decision, he quoted document number E236/1/1/2 when indicating Ieng Sary's Defense Team's position on the earlier decision to allow video-link testimony of TCCP-1.

<sup>51</sup> The Trial Chamber concurred with the Prosecution on the relevance of the ICC's decision on the use of video link for a witness to give evidence via video-link in Lubanga Case, with specific references to paragraphs 15, 9, and 16 of the decision. See OCP RESPONSE TO IENG SARY REQUEST CONCERNING VIDEO-LINK TESTIMONY; *Prosecutor v Lubanga*. ICC-01/04-01/06. ICC Trial Chamber I. "Redacted Decision on the Defense Request for A Witness to Give Evidence via Video-Link," 9 February 2010.

<sup>52</sup> *Prosecutor v. Bemba*. ICC-01/05-01/08. ICC Trial Chamber III. "Public Redacted Decision on the Prosecution Request to Hear Witness CAR-OTP-PPP-0036's Testimony via Video-Link," 3 February 2012. The Trial Chamber referred to paragraph 5: "The term "given in person" used in Article 69(2) of the Statute, does not imply that witness testimony shall necessarily, under any circumstances, be given by way of live testimony in court. Instead, the Statute and the Rules give the Court broad discretion, subject to the provisions of Rule 67 of the Rules, to permit evidence to be given viva voce (orally) by means of video or audio technology whenever necessary, provided that the Statute and the Rules are respected and that such measures are not prejudicial to, or inconsistent with, the rights of the accused 2004."

<sup>53</sup> IR 26 states: (1) The testimony of a witness or expert during a judicial investigation or at trial shall be given in person, whenever possible. However, the Co-Investigating Judges and the Chambers may allow a witness to give testimony by means of audio or video technology, provided that such technology permits the witness to be interviewed by the Co-Investigating Judges or the Chambers, and the parties, at the time the witness so testifies. Such technologies shall not be used if they would be seriously prejudicial to, or inconsistent with defense rights. (2) The interview of a witness under this Rule shall otherwise be conducted in accordance with these IRs.

<sup>54</sup> Ibid. Lines 16-18. 63.

<sup>55</sup> Ibid. Lines 2-8. 64.

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<sup>56</sup> Ianuzzi directly criticized the Trial Chamber for neglecting to address the issue of OCIJ written statements: “And unfortunately, as we’ve seen over the course of this trial, often, far too often, the written records don’t reflect what actually transpired... Now, the judges don’t seem too concerned about this... they haven’t taken an interest in these problems at all.” 13 DECEMBER TRANSCRIPT. Lines 13-20. 40.

<sup>57</sup> 13 DECEMBER TRANSCRIPT. Lines 24-25; 1-3. 64-65.

<sup>58</sup> IR 38.1 states: “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.” While the Trial Chamber has cited this rule in the past to address other instances of misconduct [See CASE 002 KRT TRIAL MONITOR. Issue No. 29. Hearing on Evidence Week 24 (23-26 July 2012)], this marks the first instance when the rule was used to physically expel counsel from the courtroom.

<sup>59</sup> This is not the Court’s first letter of complaint to Ianuzzi’s Bar Association. See *e.g.*, Trial Chamber. “Professional misconduct of lawyer[s] admitted to your Bar Association” (29 June 2012). E214/1.

<sup>60</sup> Trial Chamber. Khmer Transcript of Trial Proceedings (13 December 2012). E1/153.1. Line 7. 45.



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