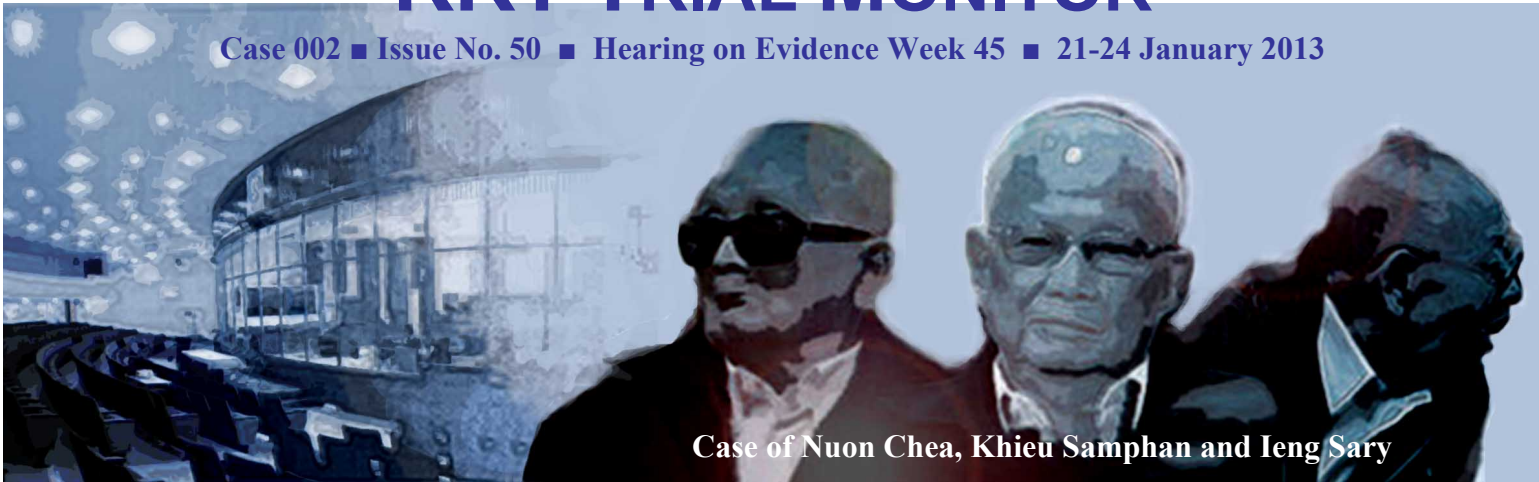


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 50 ■ Hearing on Evidence Week 45 ■ 21-24 January 2013



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

*In fact, the theory and the application of  
“If you dig the grass, you need to clean the roots”  
turned out to be true.<sup>1</sup>*

- CPLCL Pich Ang, presenting  
Civil Party Application D22/3129

## I. OVERVIEW

Following an unexpected break in the previous week, due to the sudden hospitalization of Nuon Chea and Khieu Samphan,<sup>2</sup> proceedings resumed this week in accordance with the revised schedule determined by the Trial Chamber. President Nil Nonn explained that, due to the Chamber’s inability to hear oral testimony,<sup>3</sup> the hearing of the documents originally scheduled for 18 February 2013, would take place during the week of 21 January 2013. The OCP and Civil Parties presented documents related to military structures, the first and second phases of forced evacuation, and Tuol Po Chrey execution site. The Defense had multiple opportunities to submit responses to the documents presented by the OCP and Civil Parties. Another issue raised this week concerned the ongoing matter of Ieng Sary’s health and fitness.

## II. DOCUMENTARY HEARINGS

The proceedings this week dealt solely with the presentation of documents. This section of the report is structured in accordance with the schedule rendered in the Trial Chamber memorandum issued on 17 January 2013.<sup>4</sup> In the first two days of hearings this week, it was unclear exactly how the Trial Chamber wished for the documentary presentations and other submissions to proceed. Nonetheless, the OCP presented a wide range of documents. The Defense Teams raised objections that largely resembled their arguments in the most recent documentary hearings of last year,<sup>5</sup> and the Prosecutors and Civil Party Co-Lawyers referred to prior decisions on the issues in order to rebut them.

### A. The First Phase of the Documentary Hearings

In the “first phase” of this week’s proceedings, the Court heard the presentation of all remaining documents in Case 002/01 yet to undergo adversarial debate since the original April 2011 list of documentary evidence. The 17 January memorandum stated that the Court would hear documents cited in the Closing Order paragraphs relevant to population

movements and the Tuol Po Chrey execution site,<sup>6</sup> as well as the 94 additional documents on population movements and Tuol Po Chrey that the OCP placed before the Chamber prior to the final deadline for submissions.<sup>7</sup> The OCP identified 48 documents that it believed still required adversarial argument and did not fall within the Trial Chamber's exceptions for witness and Civil Party statements subject to a later hearing.<sup>8</sup> In the "first phase" of the hearing, the Trial Chamber also afforded time for the Defense Team for Ieng Sary to present their objections to 54 documents from the original April 2011 list of documentary evidence relative to the categories set in the Trial Chamber decision of 19 October 2012.<sup>9</sup>

## **1. Adversarial Arguments on the Admissibility of Annex 1**

International Prosecutor Vincent de Wilde d'Estmael opened the week's proceedings with the presentation of Annex 1,<sup>10</sup> a list of 48 documents from all the Parties that the OCP identified in a 23 November 2012 submission as documents that still required adversarial argument.<sup>11</sup>

### **a. Presentation of Annex 1 and Objections by the Prosecution**

De Wilde d'Estmael began his part in the proceedings by introducing Annex 1, the remaining documents filed by all the Parties that, according to the OCP, have yet to undergo arguments on their admissibility. Out of the 48 documents in the Annex, the Trial Chamber or the Parties introduced 46 of them between July 2011 and November 2012,<sup>12</sup> among which the Co-Prosecutors filed 6; the Civil Party Lead Co-Lawyers, 3; Khieu Samphan's Defense Team, 22; and Nuon Chea's Defense Team, 11.

De Wilde d'Estmael then presented the OCP's objections to four of Khieu Samphan's documents, and four of Nuon Chea's documents. He read out the reference numbers of four letters that different individuals sent to Khieu Samphan to present his role in the DK in a favorable light.<sup>13</sup> The Prosecution objected to the collection of these "testimonies" after the investigative phase, in a "unilateral procedure [that] has not been authorized by the Chamber."<sup>14</sup> De Wilde d'Estmael closed with the Prosecution's objections to four of the Nuon Chea Defense's documents.<sup>15</sup> The objection rested on the documents' apparent irrelevance, such as matters concerning current Prime Minister Hun Sen.

### **b. Responses to Annex 1 Presentation and OCP Objections by Defense Teams**

Victor Koppe, international counsel for Nuon Chea, declined to comment on the objection. He did not have any further objections to the remaining documents in Annex 1. Anta Guissé, international counsel for Khieu Samphan, addressed de Wilde d'Estmael's objections to the four letters, recalling that the authors of the letters were already proposed to the Trial Chamber as witnesses.<sup>16</sup> She stressed that these possible witnesses offered exculpatory material, as they knew her client and could better contextualize his life and work.

The international counsel for Ieng Sary, Michael Karnavas, then took the floor and reiterated general objections against the documents, echoing the ones he had expressed in the previous documentary hearings.<sup>17</sup> He again questioned the evidentiary value of OCIJ's rogatory completion reports, which he referred to as "summary of a summary."<sup>18</sup> He asked that filmographic materials on the Case File include any and all of the raw clips previously edited out.<sup>19</sup> With regard to reports from foreign governments or international organizations, academic or journalistic articles, and other similar documents, the defense counsel again emphasized that the authors must come before the Court for examination to verify the authenticity of the information contained within such documents.<sup>20</sup> Karnavas also objected to the use of tortured-tainted confessions as evidence, utilizing the argument that any relevant details were the "fruit of the poisonous tree."<sup>21</sup>

### **c. Responses to Defense Comments by the Prosecution and the Civil Parties**

In his responses to the Defense's objections, de Wilde d'Estmael pointed out that the Trial Chamber already decided on most of Karnavas' objections in three separate decisions, including the acceptable use of evidence obtained from torture.<sup>22</sup> He also responded that the Trial Chamber already determined that documents did not have to be entered into evidence only during the examination of witnesses, although, with regard to books, films, media, and press articles, the Chamber would decide the appropriate probative value.<sup>23</sup> Specifically regarding Thet Sambath's video interviews with Khieu Samphan, de Wilde d'Estmael opined that the circumstances surrounding the interview were related to the matter of probative value, not admissibility. Returning to the matter of the four letters to Khieu Samphan, de Wilde d'Estmael agreed that their authors were on witness lists, but he requested that the Chamber restate the conditions in which counsels may contact witnesses.

National CPLCL Pich Ang supported de Wilde d'Estmael's response on the video interviews, adding that Nuon Chea and Khieu Samphan clearly had the full freedom to speak at the time. International CPLCL Elisabeth Simonneau-Fort then took the floor, emphasizing again that the Trial Chamber already addressed the objections raised by the Defense Teams in prior decisions. She further asserted that the Chamber should reject general objections and the written objections related to the documents under discussion. Both Karnavas and Guissé responded to these assertions and explained their understanding of the purpose of the documentary hearings (see III.1).

## **2. Submission of Documents on Forced Population Movements and Tuol Po Chrey**

Prosecutor Vincent de Wilde d'Estmael then moved to present Annexes 2(A-C),<sup>24</sup> which included a total of 94 documents, respectively relating to the population movement phases one and two, and Tuol Po Chrey, that OCP wished to add to the Case File.<sup>25</sup> As the Parties already received the lists, de Wilde d'Estmael suggested that he refrain from reading the documents out. The Chamber accepted this proposal, and the proceedings moved immediately to the responses of the other Parties to the documents.

### **a. Objections by the Defense Teams**

The Defense Team for Nuon Chea again declined to make comments, as they had not yet consulted with their client. Karnavas announced that he would not read out from the 65-page written submission that his team already prepared, but would give oral observations related to categories of documents he had not covered in relation to Annex 1.<sup>26</sup> He then proceeded to comment on the use of photographs and again stated that their admissibility depends on the provision of oral testimony that could indicate the photograph's content and context.<sup>27</sup> Karnavas also objected to the documents generated from Tram Kak district records.<sup>28</sup> He reminded the Court that the director of the Documentation Center of Cambodia (**DC-Cam**), Youk Chhang, was unable to attest to the chain of custody for these documents and that Ben Kiernan explained to the OCIJ that he once held the originals and made copies of them, but the originals then went missing. Thus, he explained that no "independent indicia of reliability and authenticity can be shown."<sup>29</sup> Guissé also questioned the admissibility of the Tram Kak district records, especially those without identifiable authors,<sup>30</sup> asserting that any documents without identifiable authors should receive little probative weight.

### **b. Response from the Prosecution**

De Wilde d'Estmael focused his response exclusively on the categories of documents not yet discussed in the previous debate, namely photographs and the Tram Kak district reports. He again underlined that the admissibility of photographs does not necessarily depend on

whether or not the photographer appears in Court. He defended the inclusion of the photographs specifically as well: for example, he explained that the two photographs from Annex 2(A) were taken at the time of the evacuation of Phnom Penh around 17 April 1975, and they were relevant because they were “contemporaneous documents of the DK era.”<sup>31</sup>

With regard to the Tram Kak district records, de Wilde d’Estmael pointed out that, in March 2012, a number of documents from the same DC-Cam Archives were similarly debated as regards the relevance and reliability of the documents.<sup>32</sup> De Wilde d’Estmael cited a 3 December 2012 Trial Chamber decision that already accepted the admissibility of 57 documents,<sup>33</sup> of which the 49 Tram Kak district records in question were “part of the same batch.” The Prosecutor nonetheless reiterated the relevance of the documents, explaining that they demonstrate the communications and administrative structures in District 105. He further asserted that the records demonstrated the district’s implementation of CPK policies, specifically referring to the reeducation of “bad elements,” the elimination of “enemies,” and the specific measures against former senior officers of the Khmer Republic.<sup>34</sup> In a rebuttal to Karnavas’ reference to the loss of the original documents, de Wilde d’Estmael again recalled that Youk Chhang had already testified on this matter. Although the Prosecutor acknowledged that the documents were handwritten, he noted that their language was consistent with other records from the DK period and that many OCIJ witness interviews have corroborated their authenticity. Lastly, he dismissed Guissé’s objection to the lack of authorship for some of the records as insufficient reason to find them inadmissible.

### **3. Objections to 54 Documents by the Defense Team for Ieng Sary**

In the final portion of the “first phase” of documentary hearings, the Trial Chamber gave the floor to the Defense Team for Ieng Sary to present submissions on 54 of the documents already tendered in the previous stages of the proceedings that related to the segments on military structures, the population movement phases one and two, and Tuol Po Chrey.<sup>35</sup> De Wilde d’Estmael interjected before Karnavas began his presentation, indicating that 24 of the documents were the subjects of previous debate and even decisions of the Chamber, including 12 addressed during proceedings the day before, and others discussed in 2012. Therefore, de Wilde d’Estmael asked the Chamber’s leave to explain why the Chamber ought to limit the Defense’s list of 54 to 30.

Karnavas responded to the objection with a reminder that the specific objections to the 54 documents would come in the form of written submissions. He then proceeded to raise his general objections on topics and document types. The Counsel for Ieng Sary conceded that he repeated some of the objections he raised in regards to the Prosecution’s previous presentation of Annexes 1 and 2(A-C) (see II.1.b and II.2.a), but he also asserted that certain documents should not be admissible, based on the standards of Internal Rule 87(3).<sup>36</sup> Karnavas mentioned some types of document included in his list of 54, such as telegrams, letters, documents from France, the United States, UNICEF, and WHO, media articles,<sup>37</sup> CPK publications and minutes of meetings, as well as a video entitled “What happened to Cambodia,” by Ronnie Yimsut. He also stated that the Defense Team for Ieng Sary objected to any document that preceded the temporal jurisdiction of the Tribunal. The counsel again made specific objection to documents produced by Stephen Heder.<sup>38</sup>

Thus, the defense counsel completed his presentation instead of responding to the Prosecutor’s original objection, and after his complaints on this matter received little sympathy from the President, de Wilde d’Estmael proceeded to list the 24 documents that the OCP viewed as having been previously debated. With regard to the rest of the documents, de Wilde d’Estmael reminded the court that some witness statements included in the defense team’s list were subject to debate in a hearing at a later date as already decided by the Chamber in its prior decision. Karnavas subsequently took the floor and responded to



the Prosecutor, acknowledging that perhaps there was some overlap in the documents included in the list of 54, due to the rushed manner in which it was prepared, but he again emphasized that his team would continue to present objections based on topics.

## **B. “The Second Phase” of Documentary Hearings**

The 17 January 2013 Trial Chamber memorandum intended the “second phase” of the document hearings to allow the Parties to present documents they consider to be most relevant to ascertaining the truth in Case 002/01. The memorandum specifically listed the remaining factual segments of the trial as the population movement phases one and two, Tuol Po Chrey, military structures, joint criminal enterprise (**JCE**), and the roles of the Accused.<sup>39</sup> The Prosecutors presented documents related to the first four segments, and the Civil Parties followed with documents of their own, before the Defense Teams received time to submit oral responses. International Prosecutor Keith Raynor clarified, however, that the OCP was not yet prepared to present documents on JCE policies or on the roles of the Accused.

### **1. Presentation of Documents on Military Structures by the OCP**

Seng Bunkheang, representing the OCP, firstly presented documents on military structures and military deployment by the leadership of Democratic Kampuchea. He began with an August 1975 issue of the *Revolutionary Flag* that published speeches from a 22 July 1975 event establishing the Revolutionary Army of Kampuchea (**RAK**), which explained the need for the Army to both defend and build the nation, and asserted, “The Party must lead the people in the use of violence, in the use of acts to repay in blood, whether politically or militarily.”<sup>40</sup> The presentation continued with documents relevant to the reporting system within the RAK and the authority of the CPK Standing Committee.<sup>41</sup> Seng Bunkheang then put before the Chamber documents depicting the working structure of the military from the base up to the Center.<sup>42</sup> The final focus of the national Prosecutor’s presentation, concerned the role of the CPK within the military structure.<sup>43</sup> He utilized separate interviews with Kampong Som Standing Committee members fleeing to Thailand and with Ieng Sary to determine the authority of the most senior leaders over security matters.<sup>44</sup> For example, the Prosecutor presented a 1996 communiqué from Ieng Sary’s group that referred to a “gang of four” – Pol Pot, Nuon Chea, Son Sen, and Yun Yat – “who decided on all the killings and massacres.”<sup>45</sup>

Prosecutor Dale Lysak took the floor for the remainder of the presentation on military structures, firstly raising documents from the General Staff and Central Military Division of the RAK to show the hierarchical chain of command in Democratic Kampuchea. The international Prosecutor presented the documents chronologically to show that the chain of command remained intact throughout the time the regime held power. Lysak started with a document from the months after the fall of Phnom Penh that “the Party” ordered 17 specific “traitors” of the Lon Nol military eliminated.<sup>46</sup> The Prosecutor then presented documents from the first half of 1976 that exhibited communication up the chain of command and how the Party’s decisions and policies were implemented at the division-level.<sup>47</sup> On the second day of the hearings, Lysak continued to present key documents dated from the second half of 1976, outlining how they showed the communication of CPK policies to all levels.<sup>48</sup> He utilized a document, “The Decisions of the Party Committee Conference of All Divisions” from July 1976, that ensured the RAK stay vigilant to enemies’ infiltration, screen the ranks of soldiers, and build the Party through dissemination of CPK statutes.<sup>49</sup>

Lysak then spent a large amount of time detailing documents related to the situation of internal enemies and the communication structure between varied levels on matters of arrests, enemies, and internal threats.<sup>50</sup> The Prosecutor specifically utilized internal

discussions regarding Chan Chakrey, former head of Division 170, who attempted to build a network to undermine the DK regime.<sup>51</sup> Lysak then contextualized a specific meeting, which discussed the delay of a 1976 Party anniversary ceremony from September to October, in order to clarify the connections between decisions made at the upper echelon and lower-level investigations.<sup>52</sup> In the same meeting, Son Sen notably defended the forced population movement from urban areas, asserting that, without the evacuation, “We would not have the peace and quiet we enjoy today. If we had not been absolute about making cooperatives, not been absolute about making socialism, we would not have been victorious.” Lysak then presented samples of division reports sent to Son Sen, but forwarded to other Party leaders, in this case Nuon Chea, for approval.<sup>53</sup>

The Prosecutor continued his presentation with military documents from 1977. They largely consisted of division reports and meetings with the upper echelon that detailed the purges, arrests, and investigations of “treasonous” networks.<sup>54</sup> He also submitted documents that demonstrated how division reports were forwarded to “Angkar” and referred to Tuol Sleng, just as orders from the Center were forwarded to the divisions in response to S-21 confessions.<sup>55</sup> Lysak concluded his presentation with a telegram about the stance towards Vietnam that was directly addressed to Committee 870 and copied to “Brother Nuon.”<sup>56</sup>

#### **a. Comments from the Defense Teams and Responses by the Prosecution**

Son Arun, national counsel for Nuon Chea, took the floor first, reminding the Court of Nuon Chea’s previously expressed objection to the authenticity of *Revolutionary Flag* issues as evidence, alleging that the Vietnamese may have manufactured false versions in order to prosecute Khmer Rouge leaders.<sup>57</sup> The defense counsel further requested that the Chamber summon the authors of all books, media reports, and articles on Democratic Kampuchea that the OCP used to build the case against his client.

Karnavas remarked that the OCP documentary presentation resembled the presentation of closing arguments, as they built a specific narrative in connection with the allegations against the Accused. Although he acknowledged that the Civil Law system considers all kinds of evidence as admissible, he emphasized that documentary evidence be admitted “with great reservation,” suggesting that opportunities to examine relevant witnesses on the content and production of documents were key to prove authenticity and reliability. Guissé echoed Karnavas’ position that the admissibility of documentary evidence in the Court was very broad, yet there was no opportunity to argue over probative value. She did not address the specific documents, but she questioned the Chamber about the purpose of this portion of the hearing (see III.1 below).

Dale Lysak replied that the presentation was not intended as a closing argument and counsels were only given the present opportunity to make observations with regard to the specific documents, not to debate their admissibility. In response to Son Arun’s repeated objection, Lysak reminded the Chamber that Kim Vun, who worked at the *Revolutionary Flag* printing office, already verified the authenticity of the magazine issues during his testimony.<sup>58</sup>

## **2. OCP Presentation on Population Movements Phases 1 and 2 and Tuol Po Chrey**

National Prosecutor Veng Huot introduced the OCP’s presentation of documents on forced population movement phase one (on and around 17 April 1975) and phase two (started in late 1975) and the killing site at Tuol Po Chrey, Pursat Province.<sup>59</sup> International Prosecutor Keith Raynor then took the floor and conducted the presentation until its conclusion on Thursday afternoon. Raynor presented the documents chronologically and incorporated brief video clips to construct a visual accompaniment to the descriptions in the related documents. The Defense Teams held their objections until after the Civil Parties’ presentation.

**a. Documents Related to the Fall of Phnom Penh and Forced Movement Phase 1**

Raynor began his presentation with documents from February to 16 April 1975. He presented American archival reports on the Cambodian situation, including one concerning the February 1975 Second Cambodian National Congress, which Khieu Samphan chaired and espoused the need to execute “the seven traitors.”<sup>60</sup> Other reports described the American distribution of food aid to Phnom Penh, the increasing arrival of refugees, and the continuous advancement of Khmer Rouge forces on the city.<sup>61</sup> Raynor notably included a FBIS report on U.S. President Gerald Ford’s fears of an impending “bloodbath” and denials of this from a member of the FUNK politburo, even though it also quoted Khieu Samphan’s call to “intensify [the] struggle.”<sup>62</sup> He then presented a State Department report, two more FBIS reports, and a video that discussed the growing Khmer Rouge control and the final political moves of the Khmer Republic.<sup>63</sup> The Prosecutor followed these with FBIS reports analyzing Long Boret’s unanswered attempts to negotiate and Khieu Samphan’s refusal, stating that a verdict against the seven “Super Traitors” was already determined.<sup>64</sup> Other reports from the same document related to the advancement of Khmer Rouge forces on the capital, as they took the outlying districts of Russei Keo, Tuol Kork, and Pochentong, including the airport.<sup>65</sup> Raynor read aloud a broadcast from the same document, concerning a letter from Prince Sirik Matak to U.S. President Ford and Ambassador Dean, “saying that ‘all present and future Cambodian deaths’ would be on the conscience of the American people.”<sup>66</sup>

The Prosecutor continued the documentary presentation with events that took place on 17 April 1975, utilizing the same FBIS report, which recorded broadcasts concerning the fall of the city from all directions, the request from the major Buddhist religious orders that both sides cease fire, the subsequent decision of the Khmer Republic forces to stop fighting, and an immediate response from the Khmer Rouge: “We are not coming here for negotiations. We are entering the capital through force of arms.”<sup>67</sup> Raynor then shifted to the observations of reporter Jean-Jacques Cazaux, the most notable of which referred to the order for the population of the northern part of Phnom Penh to leave the city while former Khmer Republic officials surrendered themselves.<sup>68</sup> The Prosecutor then moved to a series of telegrams sent between the French Embassy in Phnom Penh and the Ministry of Foreign Affairs (**MoFA**) in Paris on the issue of Sirik Matak and Um Bun Hor’s requests for asylum, as well as Consul Jean Dyrac’s observations of Phnom Penh’s fall and the arrival of Khmer Rouge leaders.<sup>69</sup>

Raynor proceeded to the period immediately after 17 April 1975. He quoted Cazaux’s regular reports the next day, which described the continuous movement of the evacuees to the north, the plundering and incineration of empty homes, as well as the evacuation of Calmette Hospital. Cazaux further described the announcement of an “international secure zone” at the French Embassy, where Consul Dyrac had to ensure Khmer nationals would leave the premises.<sup>70</sup> Raynor returned to the compilation of extracts from the *Times of London*, which described how, “in five years of war, this is the greatest caravan of human misery [the reporter has] ever seen... the entire city is being emptied of its people. The old, the sick, the infirm, the hungry, the orphans, without exception.”<sup>71</sup> The Prosecutor then presented documents related to events on 19 April 1975, many of which concerned the fate of the leaders of the Khmer Republic, who remained in Cambodia after the fall of Phnom Penh.<sup>72</sup> Raynor also cited a broadcast from the Voice of the FUNK, which declared its goals to “annihilate the seven traitors” and “build a new Cambodia that is genuinely independent, peaceful, neutral, sovereign, democratic, and prosperous with territorial integrity,” while it also detailed the areas most recently liberated, including the provincial cities.

On 20 April 1975, Dyrac sent the MoFA his request for an immediate general evacuation because “[the French] presence serves no further purpose. [They] have become

embarrassing witnesses.”<sup>73</sup> He also reported that refugees began to leave the Embassy compound, including Prince Sirik Matak, who intended to surrender as prisoner the next morning. Raynor continued to utilize Cazaux’s regular reporting, which described the general panic as some Cambodians were overcome with fear, while others proposed marriage to French nationals. On 21 April, he reported that many Cambodian refugees left, with some first asking Calmette Hospital’s head doctor to “euthanize them and their children.” The Prosecutor then cited a broadcast in which Khieu Samphan announced the achievement of a “great victory, [which] has opened the most brilliant and righteous path.”<sup>74</sup> Raynor notably referred to an article that described the surrender of former Khmer Republic leaders, Cambodia’s transformation into a one-party communist state, and its “zealous efforts to sweep away” old traditions, and the forced placement of its people into communes.<sup>75</sup>

The Prosecutor also presented a 26 April FBIS report concerning a French journalist’s interviews with refugees arriving in Thailand after being evacuated. He reported having witnessed the screening and arrest of “supporters of the defeated Lon Nol regime, rich merchants, and Buddhist monks,” while others described the Cham Muslims as “the first victims of the anti-religious purge.”<sup>76</sup> Raynor then presented Cazaux’s reports from 26 and 30 April, after the city’s military command decided to evacuate all foreigners to Thailand via truck by the end of the month. Raynor followed this with a 1 May *Times* article, “We are Lost and Confused,” in which a journalist described the “bone-jarring” two-day journey, which prompted “an ever more startling realization: that outside Phnom Penh, virtually every other city, town, village, and hamlet that resisted the Communists has also been emptied out into the countryside.”<sup>77</sup>

The Prosecutor then presented a lengthy 23 June 1975 telegram from the French Embassy in Thailand to the MoFA, which reported on the 27 May 1975 testimony of Brigadier-General Sor Buon. As former high-ranking general in the Khmer Republic, he eluded capture and arrived in Thailand after allegedly walking for 39 days across Northern Cambodia. He claimed to have seen the evacuations not only of Phnom Penh, but also of all population centers along a 400-kilometer stretch of National Road 6, and expressed his opinion that the Khmer Rouge intended to punish an urban population that failed to embrace the revolution. On the subject of execution, Sor Buon classified three categories: “spur-of-the-moment executions,” of those who did not follow evacuation orders; “systematic executions,” following a round-up of former military officers; and, “executions by slow death,” as deportees were subjected to forced labor under terrible conditions and with insufficient food.<sup>78</sup>

#### **b. Documents Related to the Tuol Po Chrey Execution Site**

Raynor then proceeded to present documents related to the killing site at Tuol Po Chrey, in Pursat Province. He first read brief extracts from newspaper articles, including rumors that the Khmer Rouge was executing army officers at a rubber nursery in the suburbs of Phnom Penh. He also presented an Amnesty International press release that demanded the DK government respond to refugees’ allegations of summary executions of former soldiers and officials in 1975 and 1976.<sup>79</sup> Raynor concluded this portion of the presentation with a lengthy documentary film entitled, “One Day at Po Chrey.”<sup>80</sup> The video consisted of interviews with former soldiers and villagers who explained how victims were transported to the site under the pretense of meeting Prince Sihanouk or Angkar and were then executed. The interviewed witnesses described how the victims were bound, then shot. One former Khmer Rouge soldier stated that at least 8,000 to 9,000 people were killed there.

#### **c. Documents Related to the Forced Movement Phase 2**

With relation to the second phase of forced movement, Prosecutor Raynor largely utilized CPK Standing Committee documents for his presentation. He began with a record of the



Committee's visit to the Northwest Zone on 24-27 August 1975, which described the Zone as a fertile area with boundless agricultural potential and in need of a larger labor pool to achieve the goal of self-reliance, even as the same document also described the acute suffering of the "new" people from a lack of food and medical supplies there.<sup>81</sup> The Prosecutor then presented a CPK document that described the strife to overcome food shortages, stressed the need to build additional dykes, and listed the number of additional workers needed in various zones and districts.<sup>82</sup> Raynor later showed a June 1977 report on the population changes in each district within Sector 5 of the Northwest Zone after the second population transfer. It noted that Preah Net Preah had 150 families before 17 April 1975, after which, more than 70,000 people came from Phnom Penh, even though it suffered the worst starvation, which "last year alone killed more than 20,000 people."<sup>83</sup>

Raynor then introduced an article published in the *Far Eastern Economic Review* in January 1976, which corroborated the CPK's emphasis on necessary population movements for vigorous food production. Based on his interview with refugees in Thailand, the author wrote that the regime's main priority was rice production, as rice could form the basis to purchase other commodities. This echoed Ieng Sary's statement that "Cambodia was determined to become self-sufficient in rice," which required a second population movement.<sup>84</sup> Another article reported that, "Hundreds of thousands of Cambodians are being again moved... many of them have died during these very rigorous journeys. Most of the people are being shifted to the sparsely populated and underdeveloped province of Battambang."<sup>85</sup> Raynor again quoted from the March 1978 Amnesty International report, which also referred to people missing due to "forcible transfer to work in remote areas."

### **3. Presentation of Documents by the Civil Party Lead Co-Lawyers**

After a sequence of exchanges throughout the week, concerning their unpreparedness for the documentary presentation until the end of the OCP's portion, the Civil Party Lead Co-Lawyers offered a number of Civil Party statements as their documents. Elisabeth Simonneau-Fort covered the topic of DK military structures, while Pich Ang presented most documents on the first and second phases of forced movement and killings at Tuol Po Chrey.

#### **a. Documents Related to Military Structures**

Simonneau-Fort presented Civil Party statements that, as she explained, related to "security centers, insofar as they constitute part of the military structures."<sup>86</sup> Any relevance to the latter subject was not immediately clear however, as the selected statements focused more on experiences with the security apparatus and the infrastructure of detention centers, rather than the military. The international CPLCL presented one victim's statement regarding forced evacuation from Kampong Som, the arrest of his or her family, and their detention at Ta Ney Prison in Kampot Province. Another document concerned a Civil Party's arrest for his former position as a teacher, his reeducation, and his assignment to construct dikes.<sup>87</sup> Simonneau-Fort concluded her presentation on military structures by listing the various security centers around the country in which Civil Parties were detained.<sup>88</sup>

#### **b. Documents Related to Population Movements and Tuol Po Chrey**

Most Civil Party statements referred to largely similar experiences during the evacuation of Phnom Penh, as the victims left their homes under the notion that they could return within three to seven days. Some also described the screening and subsequent disappearance of Khmer Republic soldiers and officials. Aside from the commonalities of grueling work and lack of food or medicine, many of the Civil Party statements described the "base" people and KR cadres' discrimination and oversight. After detailing the stories of three Civil Parties,<sup>89</sup>

Simonneau-Fort closed her portion of the presentation by listing a number of Civil Parties and their experiences with the forced transfers.<sup>90</sup>

Pich Ang subsequently took the floor, presenting 25 Civil Party statements on the forced population transfers and Tuol Po Chrey. One Civil Party, a refugee in Phnom Penh after fleeing the advance of Khmer Rouge forces in 1975, was evacuated to Kandal Province and witnessed the shootings of those who refused to leave the capital. Another recounted that the Khmer Rouge said that Phnom Penh residents had to leave because they “needed to get rid of the enemy” and that anyone who refused to evacuate would be considered an enemy and therefore, “would be shot dead.” A third Civil Party was also evacuated Phnom Penh; following repeated background checks, her relatives were murdered consecutively, including her father, brother, sister, nieces and nephews, and the family of her husband. As she explained, “In fact, the theory and the application of ‘if you dig the grass, you need to clean the roots’ turned out to be true.”<sup>91</sup>

Pich Ang then presented Civil Party statements related to the executions at Tuol Po Chrey. Although some statements regarding Tuol Po Chrey affirmed that former Lon Nol officials and soldiers were killed there, others referred to killings within Pursat Province, but were not clearly linked to that specific execution site. The CPLCL quoted statements which testified as to how the Khmer Rouge took control of Pursat provincial town in April 1975 and, while the general population was told to evacuate, former officials, doctors, and teachers were asked to identify themselves. Another account specifically stated that this group of former officials was taken by truck and “eventually killed at Tuol Po Chrey.” A final statement discussed resettlement from Phnom Penh to Pursat Province, where the Civil Party’s parents were killed for stealing food. “All the Khmer Rouge soldiers” raped her when she was caught witnessing her father’s execution as he was first told to kneel in front of a pit before being killed.<sup>92</sup>

#### **4. Comments from the Defense Teams and Responses by the OCP and Civil Parties Related to Documents on Population Movements and Tuol Po Chrey**

When the Chamber gave the Defense Teams the opportunity to respond to the OCP and Civil Parties’ documentary presentations, the lawyers for Nuon Chea again deferred any response until they could consult their client. Karnavas first addressed the issue of Ieng Sary’s health (see III.2) and subsequently recounted his general opposition to the use of government documents and journalistic notes as unreliable forms of evidence. He, however, made specific reference to the interview with Brigadier-General Sor Buon at the French Embassy in Thailand, challenging, in particular, the Ambassador’s addendum on the veracity of the general’s statements. He categorized the interview as “hearsay of hearsay,” and he noted that neither the general nor the former ambassador were listed as potential witnesses, so the Defense could not test the document’s validity, which Karnavas suggested that the Chamber reject, or, at least, treat “with great circumspection.” He also noted that the film, “One Day at Po Chrey,” included unsworn interviews with witnesses who ought to appear before the Chamber to verify their allegations. Karnavas lastly commented on the Civil Party statements, advising the Chamber to give such “unsworn” statements “the appropriate weight.” Guissé, on behalf of Khieu Samphan, endorsed Karnavas’ objections, recalling the Trial Chamber’s decision in which it referred to the weight given to evidence produced from individuals who do not testify before the Chamber. She further noted that Raynor “very skillfully” presented documents along with video extracts whose connections to the statements were “not always entirely clear.” She acknowledged that such a “montage” did not belong in a court of law as the images were produced in unknown circumstances that leave only subjective impressions. Guissé concluded by reserving the right to file further remarks if Khieu Samphan wished to add anything.

Raynor thanked Guissé for her compliments, acknowledging that, “They weren’t Steven Spielberg but they would nevertheless inform the Chamber.”<sup>93</sup> He then responded to the objections with an emphasis on the difference between admissibility and weight. Regarding the report on Sor Buon’s interview, Raynor urged the Chamber to look to other corroborating evidence to determine if it was useful. The Prosecutor suggested that witnesses could explain some of the video clips, specifically noting photographer Al Rockoff as a possible witness who could explain his striking image of Lon Nol civil servants on 17 April 1975. Pich Ang then took the floor to suggest that the defense counsels could nominate witnesses to corroborate documents if such examination was so important to them. Elisabeth Simonneau-Fort expressed her exasperation in response to Karnavas’ propensity to raise issues previously decided by the Chamber, suggesting “some sort of rule or discipline” to avoid such tactics again. She then responded aggressively to Karnavas’ brief categorization of victim statements as “unsworn statements,” as the Trial Chamber already made a decision on this matter, and their lack of an oath did not exclude the probative value of their statements.

Karnavas first responded to Pich Ang, explaining that the Defense Teams did not have the burden of proof, thus they did not have the obligation to summon witnesses, but he suggested that the Civil Party Lawyers could summon relevant Civil Parties for cross-examination in order to make a stronger case. In response to Raynor, he conceded that there was a difference between admissibility and probative value, and, in response to Simonneau-Fort, Karnavas reminded her that he was asked to make comments, and he was merely reiterating the “fact of life,” namely that the Chamber should give less probative value to unsworn statements than to ones made under oath. The Counsel clarified, however, that he never accused the Civil Parties of lying, but the lack of their presence for examination puts the Defense “at an even greater disadvantage.” The Judges then conferred, and Judge Cartwright stated that the issue of Civil Parties making unsworn statements was already previously discussed, and the Chamber was fully aware of its responsibilities with regards to assigning probative value without having the matter discussed “*ad nauseum*.”

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

Aside from presenting documents and hearing corresponding comments from the Parties, proceedings this week also touched upon the appropriate procedure in regards documentary evidence and Ieng Sary’s health condition.

#### **1. Confusion Over the Applicable Procedure**

The first signs of confusion on the hearings’ applicable procedure were already evident in the initial stages of the week, when Prosecutor de Wilde d’Estmael proposed a plan on how to conduct the document presentation that week, in particular about documents in the Annex 1 of the OCP’s earlier submission.<sup>94</sup> The Chamber conferred prior to finally conceding to the proposal. Karnavas, expressed surprise that the Trial Chamber accepted the OCP proposal on the applicable procedure, as he was under the impression, from “a dozen email exchanges,” that Parties were expected to file written submissions on all of the documents.

When Karnavas first raised the issue of written submissions, de Wilde d’Estmael objected that it would draw out the proceedings, a view supported by Simonneau-Fort. Karnavas responded swiftly, demanding the Trial Chamber clarify the procedure, especially as written submissions never faced opposition before. Counsels for Khieu Samphan and Nuon Chea supported their colleague, citing the Trial Chamber’s 16 January memorandum, which allowed their teams to “make additional submissions on documents following later consultation with their clients.” Judge Silvia Cartwright then explained that the Trial Chamber would later advise the two teams on the timing and method of such submissions. However, the Ieng Sary team’s use of written submissions remained unresolved until Simonneau-Fort

and Karnavas each asked for clarification on the matter. Following an extended afternoon break on Tuesday, Judge Cartwright explained that written submissions were acceptable, as long as they met the determined deadline. She also gave the Khieu Samphan and Nuon Chea teams until the end of the following week to file any objections related to the admissibility of Annex 1 documents, and asked all Parties to provide responses to their submissions by 22 February 2013, after which the Chamber would render a decision on the documents' admissibility.

Guissé also questioned why the Defense Teams were asked to raise the issue of admissibility, as she believed the purpose of the hearings, set out in the 16 January memorandum, was primarily to inform the public and give the Accused the opportunity to comment. Judge Cartwright clarified that the hearings' purpose related to the presentation of documents relevant to specific segments of the trial, in order to allow the Parties to emphasize those they consider important to their case and to ensure greater public accessibility to the documentary aspect of the trial. Following the Chamber's clarifications on the second day, the remaining proceedings were notably more efficient.

## **2. Ieng Sary's Health and Fitness to Stand Trial**

On Wednesday, Karnavas again raised the issue of his client's mental health, taking note of a visit he made to his client in the holding cell during the morning session. He explained that, the Accused's vital signs were acceptable, but he was nonetheless unable to follow the proceedings. He further categorized the report of the doctor in the holding cell, which seemed to equate acceptable vital signs with an ability to follow proceedings, as a "sham." However, Karnavas also explained that, when he asked whether Ieng Sary wanted to waive his right to be present in the proceedings, his client answered that he did not "mind being down there." Before continuing his presentation, Raynor responded that the OCP position on this issue was unchanged: the Trial Chamber should have sufficient information provided on this matter. Prior to the lunch adjournment, Judge Cartwright noted the waiver of Ieng Sary of his right to participate and directed the doctors to provide a medical report before the end of the recess.

Karnavas raised this issue again the next day, claiming that the duty doctor would not address Ieng Sary's case manager's inquiry on the ability of the Accused to follow the proceedings. The doctor told the case manager that he was not able to give an assessment, as he had to contact "the Board" to discuss what to put in any medical report. Karnavas categorized such a doctor, unable to make a medical observation on his own, as exhibiting "pure mendacity," and he requested doctors with the ability to do so. Pich Ang questioned the appropriateness of the Counsel's comment. The Trial Chamber, represented by Judge Cartwright, chastised Karnavas, firstly, because it was "unhelpful" for medically unqualified staff or lawyers to press the doctor when he was under instructions to report only to the Trial Chamber, and, secondly, for using the word, "mendacity," which implied that the doctor was lying, a comment that Judge Cartwright castigated as "an inappropriate statement to make in court."<sup>95</sup>

## **IV. TRIAL MANAGEMENT**

As Nuon Chea and Khieu Samphan were unable to attend proceedings this week due to their hospitalization, the Trial Chamber brought forward document hearings originally scheduled for February 2013 instead of hearing the scheduled witness testimony. The Chamber pursued the effort to ensure the efficiency of the trial throughout the week's proceedings, and it inquired whether the OCP could present documents on further topics. The Prosecution explained to the Chamber that it could only present documents on the roles of the Accused in the following week, and it would attempt to prepare documents on JCE for future

presentation. The Chamber warned the Parties of sudden changes in the subsequent week's agenda, which included the testimony of witness TCW-565, in case Nuon Chea chose not to waive his right to be present in the courtroom.

#### A. Attendance

None of the three Accused were present in the courtroom, due to their health conditions. Khieu Samphan and Nuon Chea remained at Khmer-Soviet Friendship Hospital, and Ieng Sary observed the proceedings from the holding cell.

**Civil Party Attendance:** This week, 15 Civil Parties participated in the proceedings each day. Ten of them sat in the courtroom while the other five sat in the public gallery.

**Parties Attendance:** All Parties were represented in the courtroom. Son Arun, national counsel for Nuon Chea, left the courtroom for the afternoon sessions on Wednesday, and for the second and third sessions on Thursday. The Court did not announce his absence.

#### Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 21/01/13	<ul style="list-style-type: none"> <li>470 villagers from Tang Krasang commune, Santuk district, Kampong Thom Province</li> <li>Group of 15 Japanese students</li> <li>2 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>30 villagers from Kandal Stueng district, Kandal Province</li> <li>4 foreign observers</li> </ul>
Tuesday 22/01/13	<ul style="list-style-type: none"> <li>150 villagers from Bathi district, Takeo Province and also from Chhuk district, Kampot Province</li> <li>8 foreign observers</li> <li>100 students from Institute of Specialized Economics and Finance (ISEF)</li> </ul>	<ul style="list-style-type: none"> <li>250 students from Chea Sim High School in Takeo Province</li> <li>2 foreign observers</li> </ul>
Wednesday 23/01/13	<ul style="list-style-type: none"> <li>350 villagers from Krakor district, Pursat Province</li> <li>3 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>140 villagers from Kandal Stueng district, Kandal Province</li> <li>2 foreign observers</li> </ul>
Thursday 24/01/13	<ul style="list-style-type: none"> <li>400 villagers from Svay Chrom district, Svay Rieng Province.</li> <li>Group of 14 American students</li> <li>1 foreign observer</li> </ul>	<ul style="list-style-type: none"> <li>80 villagers from Rolea Bier district, Kampong Chhnang Province</li> <li>6 foreign observers</li> </ul>

#### B. Time Management

This week, the Court faced obstacles in ensuring proper time management due to the health conditions of the Accused and occasional procedural issues that required the Judges to take longer breaks for deliberations, most notably on Monday and Tuesday. The proceedings became smoother after the Trial Chamber took a longer adjournment on Tuesday and finally clarified the applicable procedure (see III.1). Perhaps as a result of the sudden schedule change, however, the ECCC website failed to properly announce the revised schedule in the Khmer-language page until the end of the week's proceedings.



### C. Courtroom Etiquette

The Trial Chamber and the Parties generally remained courteous, with the former repeatedly thanking the latter for their effort in accommodating the modified schedule. There was only one incident when Karnavas was reprimanded for his choice of words in characterizing the attending doctor in the holding cell (see III.2).

### D. Translation and Technical Issues

The French translators this week seemed to falter at times in following the French-speaking Parties in the courtroom, especially during the reading of documents. It became noticeable when they failed to follow de Wilde d'Estmael, which prompted him to suggest that the translators simply follow the annex table as he read the documents sequentially. The interpreters again struggled to keep up with Guissé, who acknowledged that she spoke too fast when identifying inaccuracies in the official draft transcript from the day before. Prosecutors Lysak and Raynor, on the other hand, were noticed to maintain a slowed pace in reading documents and repeated document numbers twice, which noticeably helped interpreters for English-to-Khmer linguistic rendition.

### E. Time Table

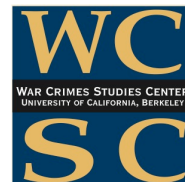
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 21/01/13	9:12	10:29-10:53	11:57-13:40	14:22-15:03	16:00	4 hours
Tuesday 22/01/13	9:06	10:34-11:01	11:42-13:41	14:18-15:15	15:44	3 hours and 15 minutes
Wednesday 23/01/13	9:06	10:33-10:54	12:03-13:31	14:45-15:08	16:08	4 hours and 50 minutes
Thursday 24/01/13	9:02	10:30-10:57	12:03-13:38	14:37	-	3 hours and 33 minutes
Average number of hours in session				3 hours 55 minutes		
Total number of hours this week				15 hours 38 minutes		
Total number of hours, days, weeks at trial				649 hours 20 minutes		
148 TRIAL DAYS OVER 46 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



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

This issue of **KRT TRIAL MONITOR** was authored by Daniel Mattes, Aviva Nababan, Noyel Ry, and Penelope Van Tuyl, as part of AIJI's KRT Trial Monitoring and Community Outreach Program. KRT TRIAL MONITOR reports on Case 002 are available at <[www.krtmonitor.org](http://www.krtmonitor.org)>, and at the websites of the [East-West Center](http://East-West Center) and the [War Crimes Studies Center](http://War Crimes Studies Center).

<sup>1</sup> Trial Chamber. Transcript of Trial Proceedings (24 January 2013). E1/161.4 [hereinafter **24 JANUARY TRANSCRIPT**]. Lines 2-4. 31.

<sup>2</sup> See CASE 002 KRT TRIAL MONITOR. Issue 49, Hearing on Evidence Week 44 (14 January 2013).

<sup>3</sup> Trial Chamber. “Adjournment of proceedings” (16 January 2013). E258. As noted in the second paragraph, Nuon Chea indicated he “would not waive his right to be present for the hearings” as previously scheduled.

<sup>4</sup> Trial Chamber. “Revised Schedule for Forthcoming Document Hearings (commencing Monday 21 January 2013)” (17 January 2013). E223/3 [hereinafter **REVISED SCHEDULE FOR DOCUMENT HEARINGS**].

<sup>5</sup> See CASE 002 KRT TRIAL MONITOR. Issue 39. Hearing on Evidence Week 34 (8-10 October 2012). *A/so* CASE 002 KRT TRIAL MONITOR. Issue 40. Hearing on Evidence Week 35 (18-19 October 2012).

<sup>6</sup> REVISED SCHEDULE FOR DOCUMENT HEARINGS. Para. 3 listed the relevant Closing Order paragraphs.

<sup>7</sup> Trial Chamber. “Forthcoming Document Hearings and Response to Lead Co-Lawyers’ Memorandum Concerning the Trial Chamber’s Request to Identify Civil Party Applications for Use at Trial (E208/4) and KHIEU Samphan Defence Request to Revise Corroborative Evidence Lists (E223)” (19 October 2012). E223/2 [hereinafter **FORTHCOMING DOCUMENT HEARINGS**]. Para. 4. The Trial Chamber notified all Parties of a 30 November 2012 deadline for additional documents related to forced population movement and Tuol Po Chrey.

<sup>8</sup> *Ibid.* Paras. 9 and 13. The Trial Chamber explained that the OCP had to further reduce the number of witness statements. In the latter paragraph, it ordered the Lead Co-Lawyers to similarly indicate which Civil Party applications “form part of the representative sample of Civil Party applications they wish to tender into evidence.”

<sup>9</sup> *Ibid.* Para. 5. This paragraph listed the documents that the Trial Chamber intended to hear in the originally scheduled February 2013 hearing prior to the Chamber’s 17 January 2013 memorandum that utilized expanded paragraphs in the Closing Order and moved the hearing to the week of 21 January 2013. It was the standard to which the counsel for Ieng Sary claimed to adhere in compiling documents.

<sup>10</sup> Office of the Co-Prosecutors. “Annex 1: Remaining [Non-Statement] Documents to Be Put Before the Chamber [Not Relating to Forced Transfer 1, 2, or Tuol Po Chrey]” (23 November 2012). E223/2/1.1 [hereinafter **ANNEX 1**].

<sup>11</sup> Office of the Co-Prosecutors. “Co-Prosecutors’ Response to the Trial Chamber’s Request to Indicate Additional Documents Relevant to the Population Movement and Tuol Po Chrey Trial Segments and Motion for Scheduling of Documentary Hearings” (23 November 2012). E223/2/1 [hereinafter **CO-PROSECUTORS’ RESPONSE TO THE TRIAL CHAMBER’S REQUEST**]. Para. 3. The annex included two documents cited in the Closing Order paragraphs relevant to population movements and Tuol Po Chrey, but the other 46 are not related.

<sup>12</sup> Trial Chamber. “Decision Concerning New Documents and Other Issues” (30 April 2012). E190. [hereinafter **DECISION CONCERNING NEW DOCUMENTS**].

<sup>13</sup> OCP opposed Khieu Samphan’s use of four letters from: Philippe Jullian-Gaufres (15 October 2010), E190/2.5; Sam Sok (21 January 2011), E190/2.7; Roland Dumas (14 February 2011), E190/2.18; Claude Katz (18 April 2011), E190/2.19.

<sup>14</sup> Trial Chamber. Transcript of Trial Proceedings (21 January 2013). E1/161.1 [hereinafter **21 JANUARY TRANSCRIPT**]. Lines 15-16. 22.

<sup>15</sup> OCP opposed four of Nuon Chea’s documents: Joel Brinkley, *Cambodia’s Curse: The Modern History of a Troubled Land* (2011), E131/1/13.12; T.D. Allman, “Sihanouk’s Sideshow,” *Vanity Fair* (April 1990), E131/1/13.2; PRK Council of Minister’s Report (23 August 1986), E131/1/13.11 [“Concerns the K-5 Construction Plan for FY 1987”]; Report Concerning Visit to Thailand by Second Prime Minister Hun Sen (6 or 7 May 1998), E131/1/13.10.

<sup>16</sup> Guissé stated that the four names were already included in the list of proposed witness in 23 February 2011, E9/9.2, except for Ms. Claude Katz, because her letter came too late.

<sup>17</sup> Trial Chamber. “Decision on Objections to Documents Proposed to Be Put Before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01” (9 April 2012). E185 [hereinafter **DECISION ON OBJECTIONS TO DOCUMENTS**]. Paras. 9-11.

<sup>18</sup> When Karnavas referred to the OCIJ rogatory report, he actually referred to an item that the OCP had not yet presented, as the only rogatory report presented was in Annex 2, not Annex 1, to which Karnavas was supposed to make responses at this moment. See Footnote 26 for the reports in question from Annexes 2(A-C).

<sup>19</sup> Karnavas made general statements about the use of videos as evidence, but this was in direct reference to a film directed by Thet Sambath and put before the Chamber by the OCP: Thet Sambath, Interview of Nuon Chea entitled “Nuon Chea on Confessions” and “Nuon Chea on Year Zero” (2000), film, E93/7.2-3R.

<sup>20</sup> Again, Karnavas referred to documents not listed in Annex 1 as presented by Vincent de Wilde, but in new OCP documents listed in Annex 2(A-C). In particular, Karnavas stressed the untrustworthiness of documents issued by the United States government, because at the time of DK, the United States had fought a secret war in Cambodia and lied to the American Congress and people, and the documents were likely tainted by national security motives. See Footnote 26 for the documents in question from Annexes 2(A-B).

<sup>21</sup> Karnavas objected to OCP’s use of a document containing a confession, as torture-tainted material is viewed as unreliable and inadmissible, pursuant to Internal Rule 87(3)(d). The OCP included it in Annex 1, as it was in Closing Order Footnote 3018: Muol Sambath *alias* Ros Nhim. S-21 Confession (14 June 1978). IS 5.63.

<sup>22</sup> DECISION ON OBJECTIONS TO DOCUMENTS. This decision is one of three that de Wilde cited as having already resolved Karnavas’ objections, especially in relation to his concern over torture-tainted evidence and evidence without examination of the authors. For example, de Wilde recalled that, in paragraph 20 of this decision, the Chamber already ruled that Closing Order footnotes have *prima facie* reliability and relevance.

<sup>23</sup> DECISION ON OBJECTIONS TO DOCUMENTS. Para. 21.

<sup>24</sup> Office of the Co-Prosecutors. “Annex 2 A – Additional OCP Documents Relating to Phase 1 - Movement of the Population” (23 November 2012). E223/2/1.2 [hereinafter **ANNEX 2(A)**]. This annex consists of 88 documents; Office of the Co-Prosecutors. “Annex 2 B – Additional OCP Documents Relating to Phase 2 - Movement of the Population” (23 November 2012). E223/2/1.3 [hereinafter **ANNEX 2(B)**]. This annex consists of two documents; Office of the Co-Prosecutors. “Annex 2 C – Additional OCP Documents Relating to Tuol Po Chrey Execution Site” (23 November 2012). E223/2/1.4 [hereinafter **ANNEX 2(C)**]. This annex consists of four documents.

<sup>25</sup> CO-PROSECUTORS’ RESPONSE TO THE TRIAL CHAMBER’S REQUEST. Para. 6.

<sup>26</sup> In his response to the OCP presentation of Annex 1 documents, Karnavas made general objections to specific types of documents that were actually only listed in Annexes 2(A-C). The OCIJ rogatory reports he opposed are listed as number 39 in Annex 2(A), number 2 in Annex 2(B), and number 4 in Annex 2(C). The international communications of foreign governments and international organizations that he opposed are all listed in Annex 2(A) from numbers 2 to 16. The international media reports that he opposed are listed from numbers 17 to 36 in Annex 2(A) and as number 1 in Annex 2(B).

<sup>27</sup> The photographs to which Karnavas objected were listed as numbers 37-8 in Annex 2(A) and numbers 2-3 in Annex 2(C), and they were, respectively: Al Rockoff. Photograph Depicting Evacuation of Phnom Penh (April 1975). D366/7.1.416; Nhem En. Photograph Depicting Khmer Rouge Combatants at Olympic Stadium (17 April 1975). D313/1.2.238; Craig Etcheson. Photograph Depicting Tuol Po Chrey Killing Site (1997). D313/1.2.104; Craig Etcheson. Photograph Depicting Tuol Po Chrey Mass Grave Pits (1997). D313/1.2.106.

<sup>28</sup> Tram Kak district records were listed in Annex 2(A), relating to the forced evacuation phase one, as 40-88.

<sup>29</sup> 21 JANUARY TRANSCRIPT. Line 25, 61; 1, 62.

<sup>30</sup> Records listed in Annex 2(A) without a discernible author had numbers 40, 43-47, 49, 55, 62, 64, 79, and 86.

<sup>31</sup> 21 JANUARY TRANSCRIPT. Lines 16-17, 64.

<sup>32</sup> See CASE 002 KRT TRIAL MONITOR. Issue 14. Hearing on Evidence Week 9 (12-15 March 2012). II.D.4(a), (c). On the previous occasion, the Prosecution argued that Internal Rule 87 demonstrates a presumption of the reliability and authenticity of evidence, and it does not require the author’s appearance before the Court.

<sup>33</sup> Trial Chamber. “Decision on Objections to Documents Proposed to Be Put Before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties” (3 December 2012). E185/1 [hereinafter **SECOND DECISION ON OBJECTIONS TO DOCUMENTS**]. Para. 18. In addition, paragraph 9 of this decision demonstrates the Trial Chamber’s agreement with OCP’s arguments in the week of 12-15 March 2012 concerning the presumption of relevance and reliability of evidence if compliant with Internal Rule 87.

<sup>34</sup> According to de Wilde, the reports, biographies, and confessions recorded at Kraing Ta Chan Security Centre were especially relevant to the CPK policy of taking specific measures against former officials of the Lon Nol regime, which relates to the first forced population movement.

<sup>35</sup> Initially it was not very clear whether the President meant that the Defense would present documents on these topics in favor of the Defense. On 21 January, Nil Nonn stated that “the Chamber is seized of the request by the defence team for Mr. Ieng Sary requesting to put before the Chamber 56 documents.” Karnavas clarified this the next day, explaining that they actually compiled *objections* to 54 documents that fell under Paragraph 5 of the 19 October 2012 memorandum. He suggested that the Defense Team read through all documents referenced in the cited Closing Order paragraphs, and that they had found 54 documents to which they objected.

<sup>36</sup> Internal Rule 87(3) states: “The Chamber bases its decision on evidence from the case file provided it has been put before it by a party or if the Chamber itself has put it before the parties. —Evidence from the case file is considered put before the Chamber or the parties if its content has been summarised, read out, or appropriately identified in court. The Chamber may reject a request for evidence where it finds that it is: a. irrelevant or repetitious; b. impossible to obtain within a reasonable time; c. unsuitable to prove the facts it purports to prove; d. not allowed under the law; or e. intended to prolong proceedings or is frivolous.”

<sup>37</sup> Karnavas explicitly noted that his team did not object to the introduction of an article authored by Suong Sikoeun, as he appeared in Court to testify and the article “sort of dovetails what he testified to.” For his testimony, see CASE 002 KRT TRIAL MONITOR. Issues 30-33. Hearings on Evidence Weeks 25-28.

<sup>38</sup> Karnavas already raised objections on this matter since 2011. See DECISION ON OBJECTIONS TO DOCUMENTS, Para. 10. In this instance, he specifically objected to the use of Heder’s documents, as he worked for the OCP when drafting the introductory submissions and later for the OCIJ when preparing the Closing Order.

<sup>39</sup> REVISED SCHEDULE FOR DOCUMENT HEARINGS. Para. 4.

<sup>40</sup> *Revolutionary Flag* (August 1975). E3/5.

<sup>41</sup> National Prosecutor Seng Bunkheang referred to Article 27 of the Statute of the CPK, E3/214; minutes of the CPK Standing Committee meeting (9 October 1975), E3/182; letter to Comrade Ya, Secretary of Northeast Zone (11 November 1975), E3/1150; minutes of CPK Standing Committee meeting (22 February 1976) E3/229, which recorded attendance that included Comrade Deputy Secretary Nuon Chea and Comrade Khieu Samphan, and which discussed Son Sen’s report on the enemy situation in the Eastern Zone as well as Chinese military aid.

<sup>42</sup> This group of documents included a telegram sent from Ya, the Northeast Zone Secretary, to Brothers Van and Doeun, E3/386, which noted that he needed Angkar’s agreement to “slow down fighting for a while.” It also included the minutes of a Standing Committee meeting (11 March 1976), E3/217, which Nuon Chea, Ieng Sary, and Khieu Samphan attended, and which discussed security in Monduliri. The prosecutor also presented a document summarizing a Standing Committee decision (19-21 April 1976), E3/235; minutes of Standing Committee meeting (14 May 1976), E3/221; minutes of Standing Committee meeting (30 May 1976), E3/224,

which recorded attendance of Pol Pot, Nuon Chea, and Khieu Samphan as they discussed the duties of the RAK related to agricultural production, noting, for example, that Sector 703 should dig canals to link the Bassac River.

<sup>43</sup> One report from a Vietnamese messenger, D56/10.008, regarded the public announcement by the FUNK and the GRUNK on the composition of the People's Liberation Army, and stated, "Khieu Samphan was appointed as the president and the commander, and the army chief of the army; and Saloth Sar was appointed as the chief leading the military of the army; and Nuon Chea was appointed as the political leader of the Army". He also quoted from a FBIS – the U.S. Foreign Broadcast Intelligence Service – report of a Pyongyang Radio Broadcast on Pol Pot's biography and position (October 1972), E3/290.

<sup>44</sup> Interview with Cambodian refugees – members of Kampong Som Standing Committee – at Khmer-Thai border (February to March 1980), E3/1714, in which they described the attack on Phnom Penh in 1974-1975 as controlled by the Center's Army under Pol Pot and Nuon Chea. They stated it was under the control of Pol Pot and Nuon Chea; interview with Ieng Sary (22 July 1981), E3/94, who explained that the real composition of the security part of the Center was Pol Pot, Nuon Chea, So Phim and Son Sen; interview with Ieng Sary (28 August 1996), E3/93, who alleged that Pol Pot's right hand was actually Nuon Chea, and a committee of Pol Pot, Nuon Chea, Son Sen, and Yun Yat considered all security matters.

<sup>45</sup> Communiqué by Ieng Sary's group, "The Truth about the Dictatorship Regime of Pol Pot: 1975-1978" (9 September 1996), E3/86.

<sup>46</sup> Order from Comrade Hin, commander of Division 703, a Special Zone division (months after 17 April 1975), E3/832. The list included Sisowath Ritharavong, a royal described as having "a feudal, people-betraying lineage."

<sup>47</sup> Lysak presented a report from Division 164 Secretary Muth to Brother 89, alias for Son Sen (5 January 1976), on fighting at Koh Tral island, which mentioned a monthly report sent up from military units, E3/1016; telegram from Son Sen *alias* Uncle 89 to 05, who, according to witnesses, was Sar Sarun, Secretary of Division 801 (23 January 1976), on Angkar's awaited response to Vietnamese attacks, E3/887; daily report on CIA involvement, signed by Khieu, alias of Son Sen (26 February 1976), E3/1175; report from Chhin, Division 920 Secretary, to Son Sen and copied to Ieng Sary (3 March 1976), on arrests and interrogations, E3/923; report from Division 310 Secretary, Oeun, to Angkar (16 March 1976), which additionally noted moral degradation in relations between men and women, document E3/1176; Lysak also presented a report from Oeun on the biographies of prisoners (26 May 1976), E3/1162.

<sup>48</sup> Lysak presented a document from a meeting of division committees (1 June 1976), E3/814, which sought "100% self-support and 30% support of Angkar" and a document regarding a meeting in which Son Sen detailed plans for rice production to division secretaries (18 August 1976), E3/797.

<sup>49</sup> "Decisions of a Party Committee Conference of All Divisions" (10-14 July 1976), E3/790. The conference categorized the duties of the RAK, to 1) continue socialist revolution, 2) defend the nation and build the revolutionary army to become the party's apparatus, 3) launch attacks and build socialism to achieve the targeted 3 tonnes/hectare, 4) build the Party, and 5) destroy enemies and infiltration. Lysak then presented the minutes of a meeting between Son Sen and division secretaries in which he disseminated orders related to the decisions of the Conference (2 August 1976), E3/795.

<sup>50</sup> As examples of Division-to-Center communications on investigations of enemies, Lysak presented: a report from Sou Met, Division 502 Secretary (1 September 1976), E3/1133; minutes of a meeting between Son Sen and Division 164 (9 September 1976), E3/813; minutes of a meeting between Son Sen and division and independent regiment secretaries and deputy secretaries (16 September 1976), E3/800; minutes of joint meeting between division secretaries and Son Sen (19 September 1976), E3/810, with specific reference to food supplies and health problems in the military; telegrams from Son Sen to divisions under command of the Center (23 September 1976), E3/1024 and E3/1101, which concern Vietnamese enemies called "the Sevens" or "Group Seven"; minutes of a meeting between the divisions and Office 62, the logistics office of the General Staff (30 September 1976), E3/801, concerning the arrests of cadres and their subsequent transfer to S-21; telegram from Dim, Division 196 Deputy Secretary, to Division Secretary, Brother Muth, and copied to Brother Nuon and Brother Khieu (6 October 1976), E3/1225, on the use of children to hunt for bandits; minutes of meeting with division secretaries and deputies (18 October 1976), E3/815, in which Son Sen blames the CIA and a Soviet-Vietnamese revisionist group for continued treasonous events at the bases and in the RAK; report from Division 801 Secretary, Roeun, to Brother 89 (25 November 1976), E3/1164, noting some organizational measures against enemies in the division and expecting "the Party's recommendations"; minutes of meeting with division secretaries and logistic officers (15 December 1976), E3/804, in which Son Sen stressed the need for biographies. As an example of chain-of-command, Lysak compared a report sent by Division 801 Secretary, Roeun (25 December 1976), E3/1079, and a General Staff report, "Overall Situation in The Country and Along the Border via Telegrams from the 1 to 31 December 1976," E3/1132, to note that Roeun's reporting was subsequently used by the General Staff.

<sup>51</sup> Lysak referred to the minutes of a meeting of division and regiment secretaries and deputy secretaries (30 August 1976), E3/798. In response to the arrest of dissidents allegedly tied to Chan Chakrey, Son Sen instructed the attendees of new measures: give additional education about the spirit of vigilance. Do not allow pacifism...Divisions are to examine and keep track of no-good elements. Organize for them to be administered separately...it is imperative to conduct further purges of no-good elements. It is imperative to be absolute." The prosecutor also mentioned the minutes of a meeting between Son Sen, Division 703 Secretary, Pin, S-21 chairman, Duch, and S-71 chairman, Pang (9 September 1976), E3/811, in which they discussed the discovery of leaflets criticizing the regime in Phnom Penh, and Duch made a connection to the flyers that caused Chakrey's



arrest. Lysak then presented the minutes of a subsequent meeting between Son Sen, Duch, Division 170 Secretary, Sok, and Division 290 Secretary, Tal (16 September 1976), E3/822, in which they discussed the arrest of senior cadres, referring to a “plan that Angkar had sent out pursuant to which all Chakrey connections have to be arrested,” as it listed the names of 33 cadres and Chan Chakrey’s wife and niece. He presented a General Staff report, written by Witness Ung Ren, on Division 170 (1 October 1976), E3/820, which stated that the new Division 170 Secretary, Sok, was not implementing strong enough supervision.

<sup>52</sup> Lysak first presented the minutes of a meeting of secretaries and deputy secretaries of the divisions and independent regiments (9 October 1976), E3/13. To explain the delay of the anniversary celebrations, Lysak referred to the S-21 confession of Chhouk, Sector 24 Secretary (19 September 1976), D288/6.5/2.22, in which he mentioned a plot to “Smash Brother No. 1 and Brother No. 2” in a 1976 celebration, which Duch reported, to “Respected Brother” (26 September 1976). Lysak showed a statement by Khieu Samphan (27 September 1976), E3/192, announcing that Pol Pot would take temporary leave for “his health” and that Nuon Chea was appointed his temporary replacement. The prosecutor then returned to document E3/13, quoting Son Sen’s declarations on successful tracking of “traitorous links in Division 170” and the pursuit of the network, largely through interrogations, up to Chan Chakrey. Lysak then presented Duch’s report on the arrest and investigations of Chan Chakrey (6 August 1976), D288/6.5/2.14, which he noted was consistent with Son Sen’s account in the 9 October meeting. In that meeting, Son Sen explained that Chan Chakrey’s interrogation led to the arrest of Chhouk, who confessed the assassination plot, Vietnamese collusion, and their leader, Ya, who was then arrested. Multiple division secretaries also reported their progress in purging traitors from within their ranks, and Son Sen concluded with three principles for purging “no-good elements”: the “dangerous” category must be “absolutely purged”; the “ordinary liberal” category require repeated education, and those who “merely believed the enemy incitement” must “undergo refashioning” to erase their belief in the enemy.

<sup>53</sup> Lysak presented a report from Meas Muth, Division 164 Secretary, to Son Sen (19 October 1976), E3/1135, on soldiers missing from the Division hospital, with “a hand-written note the following day from Son Sen *alias* Khieu, to Bong Nuon, making a request for approval to search for them. A subsequent telegram from Son Sen to Meas Muth (4 November 1976), E3/1151, approved the search.

<sup>54</sup> Lysak referred to minutes of a meeting (1 March 1977), E3/807, in which division secretaries listed policies for arrests of threats and removals to S-21. At the conclusion, Son Sen described another “treasonous network” that was eliminated as evidence of the need for continued purges. Also related was a report from Division 801 Secretary, Roeun, to Uncle 89 (30 March 1977), E3/1168, asking for approval to remove cadres contrary to “implementation of the line”; telegram from Division 920 Secretary, San, to Brother 89, on traitors (6 April 1977), E3/1199, which Son Sen sent to Angkar and annotated, “Arrest them”; telegraph report from Division 164 Secretary, Meas Muth, on capture of a Thai boat (12 August 1977), E3/1082.

<sup>55</sup> Such documents included: reports from Division 801 to Brother 89 (24 and 29 March 1977), E3/1061 and E3/1060, respectively, concerning the arrests of Vietnamese at the border, with handwritten notes for forwarding “to Angkar” and referring to Tuol Sleng; S-21 confession of Sour Tuon, *alias* Mao, with annotation from Khieu to Roeun, Division 801 Secretary (2 June 1977), D43/4 Annex 22; S-21 confession of Division 164 Deputy Secretary, Hang Doeun, *alias* Dhoem, with annotation, E3/150; S-21 confession of Khuon Dim, with annotations from “Khieu” and noted as sent to “Brother Nuon” (10 September 1977) D43/4 Annex 99; S-21 confession of Chia Sun, D43/4 Annex 91; S-21 confession of Srei Saroeun, D302.5; report from Division 170 Secretary, Sok, to Brother 89 (4 June 1977), E3/1202, on the arrest of 11 internal enemies for having “talked, traveled, and communicated freely,” and their transfer to S-21.

<sup>56</sup> By this point, the Closing Order alleges Son Sen had been sent to the East Zone to oversee the Vietnam conflict. Lysak refers to a telegram from Division 164 Secretary, Meas Muth, to Committee 870 and copied to Uncle, Uncle Nuon, Brother Van, Brother Vorn, Brother Khieu, Office, and Documentation (31 December 1977), E3/915, in which he vows to defend the Party and “the territory of our Motherland.”

<sup>57</sup> See CASE 002 KRT TRIAL MONITOR. Issue 7. Hearing on Evidence Week 2 (13-15 December 2011). III.A.2. Son Arun’s raised this objection in response to Seng Bunkheang’s presentation of document E3/5.

<sup>58</sup> See CASE 002 KRT TRIAL MONITOR. Issue 33. Hearing on Evidence Week 28 (20-23 August 2012). II.C.

<sup>59</sup> Veng Huot outlined the OCP presentation: 1) period immediately before 17 April 1975 and situation in Phnom Penh; 2) Khmer Rouge attack on Phnom Penh; 3) arrival of Khmer Rouge in Phnom Penh on 17 April 1975; 4) evacuation of city dwellers; 5) evacuation of people to countryside cooperatives; 6) identification, separation, and execution of civil servants and soldiers of the Khmer Republic and events that took place at Tuol Po Chrey, and; 7) second phase of forced evacuation, the number of people evacuated, and consequences on the people.

<sup>60</sup> Report on 24-25 February 1975 conference, United States Department of State, E3/334. The ‘traitors’: Lon Nol, Sirik Matak, Son Ngoc Thanh, Cheng Heng, In Tam, Long Boret, and Sosthene Fernandez.

<sup>61</sup> “Indochina,” U.S. Department of State (28 February 1975), E3/3551, which discussed the ongoing rice airlift; document E3/3334 discussed the rice airlift, as well as the movements of KR forces near the city and the explosion of rockets within the city limits by the end of February 1975; “The French Press Agency Reports More Embassies Evacuating Personnel,” FBIS (9 March 1975), described casualties and KR attack on Pochentong airport; U.S. Department of State (11 March 1975), E3/3336, on continued rice airlift, as well as Khmer Republic leaders’ peace offers and Sihanouk’s call for the deaths of the seven ‘traitors’;

<sup>62</sup> “Paris Radio Interviews Sihanouk on the Cambodian Situation,” and “Khieu Samphan Appeals for Intensified Struggle,” FBIS (13 and 17 March 1975), E3/120. It should be noted that FBIS, the Foreign Broadcast Intelligence

Service, was an American intelligence operation that listened to media broadcasts and collated them into regular reports, always including a variety of sources, from international media to clandestine insurgent radio.

<sup>63</sup> U.S. Department of State reports (18 March 1975), E3/3341, which detail the fall of Neak Loeung to KR forces, Khieu Samphan's announcement that KR forces controlled the Mekong, and the continued success of US food aid in keeping prices down; "Rockets hit Long Boret's Home [and] Just Miss [the] U.S. Embassy," FBIS (20 March 1975); FBIS (1-3 April 1975), E3/118, which described the FUNK's "complete control of the Mekong River from Phnom Penh to the South Vietnamese border" as well as Lon Nol's decision to leave; "Pol Pot, The Killing Embrace," video clip, D108/32.2R item 988.

<sup>64</sup> "Private Weapons to Be 'Borrowed,'" "Long Boret Stops in Bangkok En Route to Phnom Penh," "Khieu Samphan Denial," "Long Boret Addresses the Nation After Saukam Khoy Flight," FBIS (4-12 April 1975), E3/118.

<sup>65</sup> "[The] French Press Agency Reports Deteriorating Military Situation [on the] 15<sup>th</sup> and 16<sup>th</sup> of April," "The NUFC Radio Reports Pochentong Airport 'Completely Liberated,'" "Government Appeals for Doctors to Treat Casualties," "Phnom Penh Leaders Request Ceasefire, Transfer of Power, 16<sup>th</sup> of April," "CPNLAF Issues Appeal to the People to Liberate Phnom Penh" FBIS (15-16 April 1975), E3/118. Included in FBIS documents were reports by French journalist Jean-Jacques Cazaux detailing the KR advance and the cease-fire talks' failure.

<sup>66</sup> This letter was sent in response to an American offer to evacuate Sirik Matak to the U.S. prior to 17 April 1975, and it further stated: "You are leaving, and if I die here, it will only be because I made a mistake – I believed in you." Raynor further presented a memorandum recording a Cabinet meeting at the White House (16 April 1975), E3/3445, in which Henry Kissinger read Sirik Matak's letter aloud.

<sup>67</sup> Trial Chamber. Transcript of Trial Proceedings (23 January 2013). E1/163.1 [hereinafter **23 JANUARY TRANSCRIPT**]. Lines 14-15. 38.

<sup>68</sup> The first of Cazaux's observations in document E3/2684 referred to a man named Hem Keth Dara, identified as the son of the former Minister of the Interior, who took on an outwardly aggressive appearance and claimed in the early morning of 17 April that he and 200 followers had taken over the city. By 2:00PM, however, Khmer Rouge forces had taken control from the man. Cazaux noted Prince Sirik Matak's presence at the French Embassy, seeking refuge, where, he also noted, foreign journalists were transferred and Cambodians sought protection. Raynor then played another clip from "Pol Pot: The Killing Embrace" (D108/32.2R item 988), which showed the evacuation in progress and the empty streets of Phnom Penh. With relation to the Hem Keth Dara episode, the prosecutor presented the published observations of British journalist Jon Swain (*Times of London*, E3/51), which firstly confirmed the false takeover and later described the many people at a hospital with no doctors present. The journalist also reported seeing 50 prisoners in front of the Information Ministry, including Lon Non and Hem Keth Dara, who was already unarmed and treated like a "semi-prisoner."

<sup>69</sup> "Asylum," telegram from MoFA to French Embassy in Phnom Penh denying asylum requests of Sirik Matak and Um Bun Hor (17 April 1975), E3/2687; telegram from French Consul in Phnom Penh, Jean Dyrac, to MoFA, on FUNK attempts to search the Embassy, E3/2689; One telegram details KR attempts to evacuate the city and Calmette Hospital (E3/2688), and another describes the evacuation order as a dual attempt "to solve the food problem" and to "revolutionize the city," as it also describes the surrender of Long Boret and the arrival of Khieu Samphan in the capital (E3/2696).

<sup>70</sup> Raynor corroborated Cazaux's reports in document E3/2684 with a series of telegrams from the French Consul to the MoFA, E3/2691-4. They described Dyrac's fears for the Embassy and detailed a meeting with a delegation from the "City Committee," in which the Consul promised to provide lists of people in Calmette Hospital and the French Embassy. Dyrac specifically mentioned Sirik Matak and stated that, barring announcement of asylum, his name would be included in the lists. In "Situation at our Embassy," a telegram from the French Embassy to the MoFA (19 April 1975), E3/2698, Dyrac warned that their "situation is critical," as supplies run out and FUNK soldiers surround the Embassy. Raynor returned to E3/2684, in which Cazaux described the many rumors of rape, looting, and executions as refugees prepared to leave the Embassy.

<sup>71</sup> The Prosecutor then played a video extract from "Cambodia Year Zero" (D108/32.2R item 0102). He also corroborated the journalist's account with a FBIS report, E3/118, which quoted articles on the evacuation of hospitals, including one published in the *Los Angeles Times* on 8 May 1975. He again cited E3/51 for reports on the experiences of French medical staff operating at gunpoint and later moving to the Embassy.

<sup>72</sup> "Beheadings Reported," *Chicago Tribune* (19 April), E3/3367, regarding a KR radio broadcast that most top leaders had been beheaded while civilian populations evacuated the city; "Long Boret in Phnom Penh," FBIS (19 April 1975), E3/118, described the capture of the former Prime Minister as he tried to leave.

<sup>73</sup> "Request for Immediate General Evacuation," and "Departure of Refugees," telegrams from Dyrac to the MoFA (20 April 1975), E3/2701-2. At this point, Raynor played a video extract from "Cambodia: A History of Genocide," which included an image of Sirik Matak at the Embassy. Raynor presented another telegram from Lorine, the French Embassy cryptographer, to the MoFA (21 April 1975), E3/2707, concerning the painful separations of Cambodian men married to French women and her own adoption of a boy who was born at the Embassy to a mother who had to leave. One telegram (22 April 1975), E3/2714, examined the KR's attempts "to destroy systematically all vestiges of a consumer society," while another, "Foreign Refugees at the Embassy of France," (23 April 1975), E3/2715, described how only foreign wives were allowed into the Embassy, without their Khmer husbands, and how the domestic staff was taken away.

<sup>74</sup> "A Victory Message," broadcast by Khieu Samphan on the Phnom Penh Domestic Service (21 April 1975), FBIS, E3/118. Raynor followed this document with a short video depicting Phnom Penh's abandoned streets and vacant homes, as well as a crowd of people walking on a stretch of road.

<sup>75</sup> *Time Magazine* (28 April 1975), E190.1.302.

<sup>76</sup> 23 JANUARY TRANSCRIPT. Lines 18-19, 25. 71, concerning document E3/118.

<sup>77</sup> Ibid. Lines 20-23. 74. Cazaux also published an article in the *Los Angeles Times* (8 May 1975), E3/3366, which noted, "the same empty roads, burned villages, and deserted countryside...[in] the cities, there was the same silence." Raynor followed with two videos of empty streets covered only with forgotten banknotes.

<sup>78</sup> "The Testimony of Brigadier-General Sor Buon, Former General in the Khmer National Armed Forces (27 May 1975)" telegram from French Embassy in Thailand to the MoFA (23 June 1975), E3/2666. The report's author, an unnamed Embassy representative, added that Sor Buon's account was consistent with the comments of other refugees and noted that the Brigadier-General "[took] care to talk about only what he has seen." Raynor briefly interrupted his presentation to show a video of Phnom Penh's empty streets and a damaged Wat Phnom.

<sup>79</sup> "Thursday the 24<sup>th</sup> of April," interview with Jean Remy, head of the French Planters Association "and Cambodia's most influential Frenchman," *Times* newspaper, E3/51; article in *Washington Post* (4 June 1975), E3/3372; "Amnesty International Urges Cambodia to Respond to Allegations of Summary Executions," news release, Amnesty International (30 March 1978), E3/3316.

<sup>80</sup> Thet Sambath, *One Day at Po Chrey*, film [edited down to 19 minutes, 53 seconds].

<sup>81</sup> Record of the Standing Committee's Visit to the Northwest Zone (20-24 August 1975), E3/216. Other sections discussed the need to strengthen and expand cooperatives as they absorbed evacuees from Phnom Penh and provincial cities, as well as the goal to rapidly modernize the Zone's agricultural infrastructure. One final section, the "shortfall or points to be considered," stated the challenges ahead concerning "the water problem," and an "insufficient" workforce of one million persons, which required "400,000 or 500,000 or more" people.

<sup>82</sup> "Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector, CPK (September 1975), E3/781. The document notably stated, "We must quickly prepare to transform from backward agriculture to modern within 10 to 15 years," before it went on to suggest Cambodia's cooperatives were far ahead the developmental stage of China, which still lacked paddy dikes. It also stated an important goal that, "In 1977, we must ensure 3 tons [of rice] per hectare."

<sup>83</sup> "The General View of Sector 5, Northwest Zone," CPK (27 June 1977), E3/1181. A notable statistic referred to Sisophon District, where the population was 50,000, and "almost 100 percent of them [were] 'new' people." Raynor closed his presentation with a CPK propaganda film showing men and women collecting massive amounts of rice: *La récolte du riz*, film, E3/31.

<sup>84</sup> William Shawcross, *Far Eastern Economic Review* (2 January 1976), E190.1.318.

<sup>85</sup> "Cambodia: The 'New York Times' Reports New and Forced Movements with a High Death Toll," Fresh Point Press Agency (21 January 1976), D199/26.2.184. The article referred to the account of one refugee that 600 had died from disease within a month of their arrival in Phnom Srok. It further noted that the movement started in late October or Early November and that evacuees were transported by foot, in oxcarts, in lorries, or "packed inside freight cars like 'fish inside a can'."

<sup>86</sup> 24 JANUARY TRANSCRIPT. Lines 9-10, 11.

<sup>87</sup> The two Civil Party statements cited had document numbers D22/100 and D22/186, respectively. Simonneau-Fort also referred to a third Civil Party, D22/8, who was "re-educated through work" in Kandal Province before he and his wife were taken to S-21 in Phnom Penh in Winter 1976.

<sup>88</sup> D22/1370.1, on Krang Ta Chan Security Centre in the Southwest Zone; D22/144 on Siem Reap Prison; D22/1721A on Koh Kyang Security Centre in the West Zone; D22/3280 on Phnom Pros and Phnom Srei Security Centres in Kampong Cham; D22/3820A refers to Koh Kyang Security Center and S-21; D22/83 on Sang Security Center in the Southwest Zone.

<sup>89</sup> Simonneau-Fort referred to the statements of the following Civil Parties: D22/1240, who lost her brother, a former teacher, and his family, her cousin, a former soldier, and his family, and her husband and daughters; D22/3751, who noted her separation from her parents and education with other children that they belonged to Angkar; and, D22/3850, who described suffering from the elements while laboring in Kandal Province.

<sup>90</sup> D22/10, D22/121A, D22/203, D22/216, D22/348, and D22/354 on forced transfer out of Phnom Penh; D22/235 on forced transfer from Kampong Speu town; D22/257 on forced transfer from Phnom Penh and the treatment of certain groups during that transfer; and, D22/273 on forced transfer phase two.

<sup>91</sup> These three Civil Parties had document numbers D22/525, D22/1248, and D22/3129, respectively. In his presentation on the forced population movements, Pich Ang referred to the following as well: D22/1999; D22/2953; D22/1340, who saw many human corpses during the evacuation; D22/1322; D22/3787, who was evacuated first to Kampong Speu Province, and, later, to Preah Net Preah District in the Northwest Zone and witnessed mass killings there for minor mistakes; D22/247, who experienced discrimination, as a '17 April' person; D22/2818; D22/40; D22/35, D22/2451; D22/1794; D22/3461, who evacuated Phnom Penh at gunpoint; D22/231; D22/2751; D22/519, who experienced the second forced transfer; D22/3623; D22/1414; and, D22/2470.

<sup>92</sup> The five Civil Parties whose statements were cited in relation to Tuol Po Chrey were: D22/1079, whose father was killed after the summoning; D22/1529; D22/2011; D22/1557, whose uncle, a former army captain, was killed at Tuol Po Chrey; and, D22/32, who also lost two sisters while living in Bakan District, Pursat Province.

<sup>93</sup> 24 JANUARY TRANSCRIPT. Lines 7-8. 69.

---

<sup>94</sup> CO-PROSECUTORS' RESPONSE TO THE TRIAL CHAMBER'S REQUEST. Paras. 10-11.  
<sup>95</sup> 24 JANUARY TRANSCRIPT. Line 10. 76.



**WSDHANDACENTER**  
FOR HUMAN RIGHTS & INTERNATIONAL JUSTICE  
*Stanford University*

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

A complete archive of trial monitoring reports is available online at:

<http://handacenter.stanford.edu/reports-list>

For more information about Handa Center programs, please visit:

<http://handacenter.stanford.edu>

---