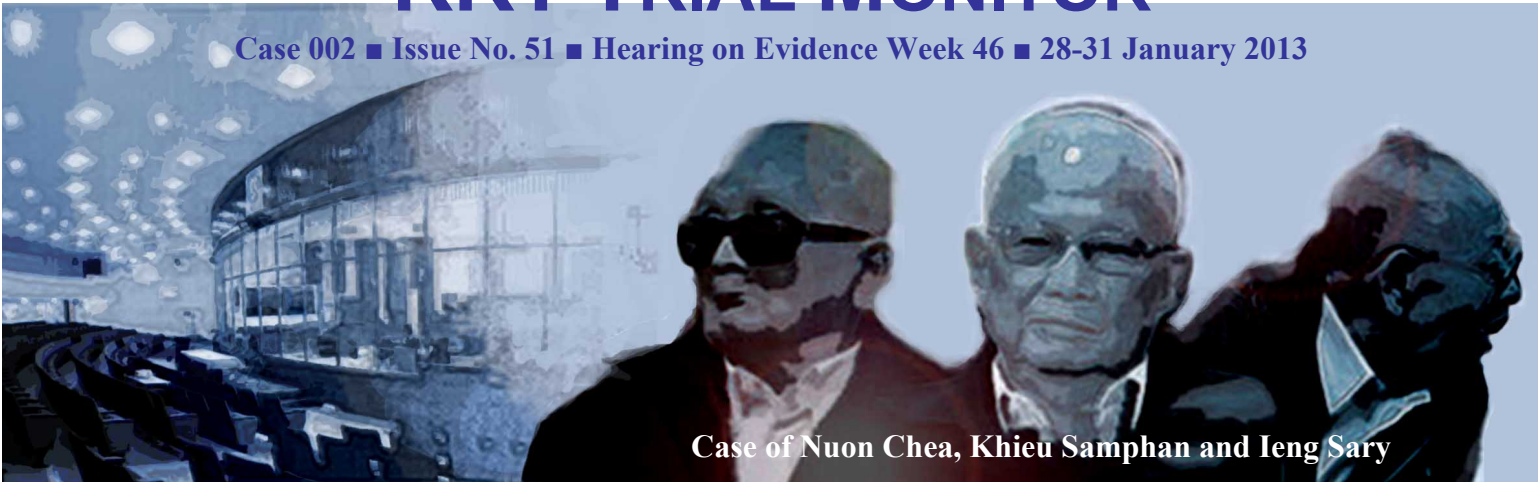


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 51 ■ Hearing on Evidence Week 46 ■ 28-31 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

*We were not driven past any of the sites of killings,  
but if the wind is blowing right,  
you could smell it way off in the distance.  
You could smell the bodies...*

- Witness Al Rockoff

## I. OVERVIEW

From Monday until Tuesday, the Chamber heard American photojournalist Al Rockoff testify on his experiences in Phnom Penh before and during the fall of the city in April 1975. In the two days following Rockoff's testimony, the Prosecution presented key documents relevant to the respective roles of Ieng Sary and Khieu Samphan.

Legal and procedural issues raised this week included the use of testimonies of deceased persons, timely circulation of the list of documents to be presented, and the health condition of Accused Nuon Chea and Khieu Samphan. Despite these concerns, Al Rockoff completed his testimony and the OCP presented documents expeditiously.

## II. SUMMARY OF AL ROCKOFF'S TESTIMONY

Al Rockoff, an American photojournalist made famous by his coverage of the Vietnam War and the Khmer Rouge invasion of Phnom Penh, testified before the Court on Monday and Tuesday.<sup>1</sup> He spoke in great detail of the evacuation of Phnom Penh, the months of fighting that preceded the evacuation, and his firsthand observations of Khmer Rouge cadres.

### A. Background

Alan Thomas Rockoff, 64, currently splits his time between his residence in Fort Lauderdale, Florida and his home in Phnom Penh. After forging his birth documents, Rockoff enlisted in the U.S. Navy at age 16 and began photographing while on active duty in Germany. He was deployed to Vietnam at age 18, where he spent the latter half of his service working as an army photographer. While serving in Vietnam, Rockoff traveled to Cambodia in 1970 as part of a two-month American incursion. Rockoff was discharged from the army in February 1973, and moved to Phnom Penh in April 1973, where he worked as a freelance photographer until he was evacuated to Thailand in May 1975.<sup>2</sup>

## **B. Cambodia before 17 April 1975**

When Rockoff moved to Phnom Penh in April 1973, war was “all around... 360 degrees.” Phnom Penh was an “isolated city under military siege.”<sup>3</sup> He endured the final five months of the U.S. bombing campaign in Cambodia, which, Rockoff recalled, formally ended on 15 August 1973. Until the cessation of the bombings, he saw and heard B-52 bombardment day in and day out. Rockoff photographed refugees fleeing the countryside, massive craters left by bombs in rice fields, and most memorably, the victims of the accidental bombing of Neak Leung, where a B-52 mistakenly dropped its twenty-ton load on the town’s center.

As most highways leading out of the city were blocked during the civil war, Rockoff hitched rides with Lon Nol soldiers in order to photograph the battlefields in the surrounding provinces.<sup>4</sup> He particularly recalled the evacuation of hundreds of thousands of civilians from Ta Kmao, a city just south of Phnom Penh, after intense KR shelling on the other side of the river. One of Rockoff’s most memorable missions out of the city occurred in October 1974, when he traveled to Kampong Chhnang Province to recover the body of Lim Savath, a Cambodian Associated Press (AP) photographer who was killed in the fighting between KR and the Cham Brigade. Rockoff was technically pronounced dead in the field hospital after shrapnel entered his wrist and the right atrium of his heart, sending him into a two-minute cardiac arrest. After a Swedish Red Cross emergency team revived and stabilized him, he was sent by Medevac to a military hospital in Saigon, and from there onto to the Philippines. He returned to Cambodia a mere five weeks later to continue photographing the civil war.

Since Rockoff was not a journalist, he had limited access to information, such as the Foreign Broadcast Information Services (**FBIS**) radio transcripts, which the U.S. State Department provided to the American Embassy. Thus, he relied mainly on his journalist friends to relay any war-related information. According to journalists, in the months preceding the liberation of Phnom Penh, the local radio station constantly circulated two announcements: first, the radio conveyed a message that, when the war ended, everybody would go back to where they came; second, Khmers who donated a million dollars or more to the final offensive fund would “have a place” in the “new Cambodia.” He added: “I don’t know if anyone was naïve enough to believe that, but that was what was going around. But the one thing that a lot of people have no problem with is going back home after the war.”<sup>5</sup>

Though Rockoff was not familiar with the names of senior Khmer Rouge leaders before 17 April 1975, he overheard rumors about a man named Saloth Chhay at the Ministry of Information, whose brother, Saloth Sar (or Pol Pot), was apparently coming to town soon. As he explained:

Just as the American Civil War, many families were split up, brother against brother. I believe at the time he had no idea of the importance of his brother... To him his brother was only a commander; he did not realize the importance.<sup>6</sup>

By early 1975, Rockoff saw very little chance for a Lon Nol regime victory. He felt the war was “not winnable” and everything hinged on how the Americans would resolve their war in Vietnam. In the meantime, however, “it was just a war of attrition.”

### **1. American Evacuation from Phnom Penh**

The final American helicopter airlift out of Phnom Penh occurred on 12 April 1975. Though he could not recall the Embassy issuing specific instructions to evacuate, “most Americans were aware of what was about to happen.” He lamented, however, that many Cambodians

did not get the message to evacuate, and the last four or five American helicopters left Phnom Penh with very few passengers.

## **2. Refugee Camps in Phnom Penh**

Most of Rockoff's knowledge of the refugee situation came from journalists or agency workers, since he personally did not interact or conduct interviews with refugees. He estimated that there were approximately two million refugees living in Phnom Penh by 1975.<sup>7</sup> Refugees flowed into the city, especially in the weeks leading up to 17 April, as camps outside the city began to experience intense artillery shelling. Upon arrival, many refused to go to established camps run by the Catholic Relief Service, CARE, or World Vision. Many refugees opted instead to live on the streets, sleep in parks, occupy abandoned villas, or, if they were lucky, stay with local relatives. They led an extremely difficult life, as they constantly had to forage for food. As Rockoff explained, "anything edible that was growing in Phnom Penh disappeared." Those with money could buy food, albeit at elevated prices. The city was dependent on outside sources for most of its food and planes brought in produce and pigs from the provinces.

While most refugee camps were outside the city, the largest camp was at the Cambodiana Hotel on the riverside. Rockoff described the miserable conditions at the hotel, where approximately 23,000 refugees squatted in newly built rooms. "It was nasty," Rockoff proclaimed, as he described how the swimming pool became one giant septic tank. The refugees attempted to grow corn and vegetables to supplement the food they received from World Vision.

Conditions at the Olympic Stadium, which also served as a refugee camp in 1975, were slightly better than at the Cambodiana Hotel. Those living at the stadium were primarily family members of fallen government soldiers, and therefore received food assistance from the Lon Nol army. Even so, the stadium refugees' diet consisted of rice and some salted fish.

## **3. Hotel Phnom (Raffles Hotel le Royale)**

Most journalists and relief agency workers living in Phnom Penh rented rooms at the Hotel Phnom (known today as the Raffles Hotel) because of its close proximity to the Ministry of Information,<sup>8</sup> where the Lon Nol government held daily press briefings. Rockoff could only afford a room at Hotel Asie on Monivong Boulevard, but would sometimes pick the lock of the room reserved for the *Los Angeles Times* correspondent at the Hotel Phnom.

Around the time of the American airlift out of the city on 12 April, the Red Cross declared Hotel Phnom a safe zone. They strung a large banner across the façade of the hotel and established a makeshift surgical theater at the back. According to Rockoff, there were always thousands of refugees milling around, trying to gain access to the hotel. On 17 April 1975, all Hotel Phnom guests, including the Red Cross, were kicked out.

## **C. The Fall of Phnom Penh - 17 April 1975**

On the night of 16 April, Rockoff went to the telegraph office with journalists Sydney Schanberg of the *New York Times* and British journalist Jon Swain, who were sending their editors reports about the intense shelling and fire at the southern end of the Monivong Bridge. The three men left the office at 8 o'clock in the morning on 17 April and headed back to the Hotel Phnom. On their way, they passed by the Ministry of Information, where they saw a group of armed KR soldiers rushing up the steps to the entrance. As they continued on, they saw armored personnel carriers (APCs) heading from Hotel Phnom toward the

French Embassy at the north. The APCs returned with scores of political cadres and stopped in front of the Catholic Cathedral. There, crowds assembled as a cadre shouted, "War is over, war is over!" through a bullhorn. According to Rockoff, "Everything was okay at that point. People were not panicking, they were happy."<sup>9</sup>

Rockoff spent the next two to three hours hitching rides with KR soldiers through different parts of the city. He spent approximately an hour at the intersection of Sihanouk and Monivong with French photographer Roland Neveu documenting the disarmament of Lon Nol soldiers. Rockoff described how young students unloaded truckloads upon truckloads of weapons. Soon enough, what began as a very small pile of weapons had grown to a pile of several hundred. He also witnessed a group of Lon Nol soldiers, some of them with their hands up, marching past the intersection towards Olympic Stadium. Aside from these soldiers, Rockoff did not witness the KR forcibly taking anyone away from the city. As he remarked, "there was no mass movement out of the city for the first few hours."<sup>10</sup>

The KR soldiers at the intersection seemed relaxed. Everyone, including the civilian onlookers, seemed to be in an "ok mood." Rockoff recalled seeing a number of younger-looking teenage soldiers, approximately 16-years-old, excitedly sipping Pepsis with ice. Despite the calm appearance of the KR, Rockoff avoided interacting with them since he could not speak French and did not want to reveal his American identity. He had one close encounter with a KR cadre who stopped a group of soldiers he was walking alongside with. Rockoff immediately darted off and hid behind a truck. After he emerged, he hitched a ride with a Cambodian man in a white Peugeot heading north on Monivong. The driver, still wearing his scrubs, had just come from the Preah Ket Mealea Hospital, where KR soldiers were forcing the staff and patients out of the building. Rockoff recalled how nervous the driver appeared after he discovered that Rockoff was an American.

After being dropped off at Hotel Phnom, Rockoff ran into Swain, Schanberg, and Schanberg's Cambodian assistant, Dith Pran. The three of them then immediately set out for the Preah Ket Mealea Hospital.

## **1. Description of Khmer Rouge Soldiers**

It was difficult to distinguish between Khmer Rouge and Lon Nol soldiers, as both groups carried many of the same weapons and wore mixed uniforms with similar footwear. The major difference between the two, according to Rockoff, was that after the Khmer Rouge entered the city at 8 a.m., the Lon Nol government soldiers were no longer armed. The Khmer Rouge also confiscated the Lon Nol troops' APCs. Radio operators carrying bulky PRC-25 U.S. military radios and similarly sized Chinese radios accompanied some senior KR soldiers. Rockoff thus deduced that KR throughout the city were in communication with higher-ranking officers.

While Rockoff witnessed KR soldiers entering the city from three different directions, he was particularly nervous about the soldiers entering the city from the south, who were "very dirty, tired, not in a good mood." Apparently, this group of soldiers came from the southern side of the Monivong Bridge on the Chroy Changvar peninsula, the area of intense shelling and fire as a result of intense fighting between Khmer Rouge and Lon Nol troops. Disconcerted by the grim mood of these soldiers, Rockoff refrained from traveling any further south than Independence Monument. Overall, however, Rockoff did not notice much difference between KR factions entering the city from the north and the south. In general, the soldiers seemed very "orderly and disciplined" and appeared to know who was in charge, even though there were no visible signs of rank.

Rockoff recalled that, on the morning of 17 April, he encountered members of the Nationalist Movement, who he described as “phony Khmer Rouge,” at the Ministry of Information. These phony KR were easy to identify because they wore good shoes, well-fitting clothing, and baseball caps with gold lettering. “They were too clean, too healthy to have been out in the field.”<sup>11</sup> Rockoff only saw the phony KR once that day.

## **2. Evacuation of Phnom Penh**

Around mid-day, people began to leave the city, as soldiers on loud speakers announced that the Americans were going to bomb Phnom Penh. Most evacuees left on foot with only the possessions they could carry. Some families loaded their cars with belongings, but were made to physically push their cars, since the KR prohibited anyone from driving. According to Rockoff, there was “no real resistance” amongst the evacuees, since most were refugees eager to return home. Furthermore, as Rockoff explained, “The Khmer “Kraham” (Khmer for “rouge” or “red”) had the AKs, they had the power. What are you going to do?”<sup>12</sup> To Rockoff’s knowledge, the only group that resisted the evacuation was a unit of the Cambodian airborne division, which held out for a week at a glass factory on the road to what would become the Choeung Ek killing fields. Rockoff heard heavy caliber mortar fire and explosions from the glass factory all the way from the French Embassy. Rockoff maintained that he did not personally witness any KR looting at the time.

The evacuation of Phnom Penh was not accomplished in one day. Rockoff witnessed the elderly and sick, including amputees and patients on gurneys, being wheeled out of Calmette Hospital on the 18<sup>th</sup> of April.

## **3. Rockoff’s Experience During the Evacuation of Phnom Penh**

When Rockoff and his crew arrived at Preah Ket Mealea Hospital, the scene they encountered horrified them: “There were bodies on the floor, blood everywhere. Easy to slip on the blood, it was wet. There were many wounded.”<sup>13</sup> Outside the hospital, KR cadres confronted Rockoff and his crew. Dith Pran, Schanberg’s assistant, attempted to tell the soldiers that the men were just French journalists who came to cover the KR victory. At one point, one of the cadres put his pistol to Rockoff’s head while the two cadres standing behind Rockoff moved aside to avoid getting “splattered.” Ultimately, Rockoff, Dith Pran, Schanberg, and Swain were forced into an APC and driven away.

After a kilometer or so, the APC stopped to pick up a “very, very nervous” naval officer, who immediately threw his wallet (presumably with his ID) under the bench in the carrier. Soon thereafter, the APC stopped and the KR cadres instructed the men to stand beneath the Japanese Bridge along the riverside. Rockoff never knew what became of the naval officer, who was led away from the rest of the group. From the bridge, Rockoff saw packs of civilians, who were in a “very somber mood” and no longer smiling, walking north. The KR did not use force to evacuate the civilians, but soldiers ushered them at regular intervals along the riverside.

The KR soldiers did not question the men during their detainment at the bridge. They did, however, search through their belongings. After rummaging through Schanberg’s bag, one cadre held a wad of \$100 bills in one hand and a pair of underwear in the other. Rockoff was shocked to see the cadre take the underwear, but put the money back in the bag. “I guess money had no value back then,” Rockoff postulated. The cadres also temporarily confiscated Rockoff’s camera bag with both his cameras and all of his films. He was grateful that it was returned, because otherwise “it would have been all for nothing.”



An hour later, a truck arrived at the bridge and took the men to the Ministry of Information. It was evident to Rockoff that the soldiers at the bridge had been in communication with their superiors, who, in turn, ordered that the men be transferred to the Ministry. When they arrived at the Ministry, they saw a group of Lon Nol government officials outside the building negotiating with a group of armed KR soldiers. Rockoff managed to capture a photograph of this exchange by inconspicuously snapping the camera hanging around his neck without lifting it.

Though they were only at the Ministry for five to ten minutes, Rockoff and the other journalists witnessed the arrival of Long Boret, the Prime Minister of the Khmer Republic, and his wife. It was clear to Rockoff that the two were prisoners, even if the KR did not point their guns at the couple. Rockoff managed to capture a photo from behind of the couple walking back toward a car. Unbeknownst to Rockoff at the time, there were also a number of other significant government officials assembled at the Ministry, including Lon Non (President Lon Nol's younger brother), Hou Hang Sin (director of Long Boret's cabinet), and several generals. Rockoff learned after his departure from the country that the men were ultimately bludgeoned to death at the Cercle Sportif (the site of the current American Embassy).

Soon thereafter, Rockoff and the other journalists were told to go to the French Embassy. When they stopped at the Hotel Phnom to pick up a few personal and emergency items, they witnessed the evacuation of the hotel "in full force." Refugees and Red Cross workers alike were forced to leave. Just like other evacuees, the Red Cross was not allowed to drive its vehicle, so they had to push the truckload of medical supplies along the road. En route to the Embassy, Rockoff witnessed "many, many, hundreds of Khmer Rouge soldiers marching single file southward on Monivong." He photographed this scene, with the Khmer Rouge walking south on the left side of the street, and hundreds of civilians walking north on the right side. To Rockoff's knowledge, the KR did not provide any assistance to the evacuees fleeing the city.

When Rockoff and his companions arrived at the French Embassy, they (along with many evacuees) climbed over the fence to enter the compound. KR forces stationed around the Embassy regularly walked past in groups of two or threes, but they were not allowed in the compound without a French consular official escort. On occasion, KR would come in looking for film or cigarettes. Rockoff only left the compound once, when he and Japanese photographer Naoki Mabuchi snuck out a hole in the back wall to wash up at nearby Boeung Kak Lake. There, Mabuchi (who was fluent in Khmer) had friendly conversation with KR cadres stationed around the lake, who really just wanted cigarettes. Rockoff attempted to photograph the scene at the lake, but was reprimanded for leaving the premises when he went inside to retrieve his camera.

A number of Lon Nol soldiers and officials, such as Prince Sisowath Sirik Matak,<sup>14</sup> took refuge at the embassy. Additionally, members of the FULRO<sup>15</sup> Montagnard ethnic minority sought refuge there, but were later forced out at gunpoint. Rockoff could not hazard a guess as to how many Cambodians and minorities took refuge at the Embassy, as there was much confusion during the first few days of the evacuation. However, he recalled the arrival of the East Germans, who were forced to evacuate their embassy, even though they had flown in specifically to witness the Communist victory. He reminisced how bitter the East Germans were to abandon their gourmet foods, such as pate, to the common food supply.

On 20 April 1976, the majority of Cambodians without proper documentation were forced out of the embassy. Rockoff recalled cheerful goodbyes between the Cambodians who stayed and those who left. However, a short while later, Rockoff heard a fair amount of gunfire from the Stade Lambert sports complex directly north of the compound, which he later learned

was the sound of KR executing the evacuees.<sup>16</sup> Dith Pran was the only Cambodian that Rockoff knew who survived after leaving the embassy.

While at the embassy, Rockoff had very limited information about what was happening beyond the compound's gates. Unlike "A-list" journalists, such as Patrice de Beers, Sydney Schanberg, and Jon Swain, Rockoff did not have contact with the French diplomatic staff and was unaware of any negotiations or discussions between consular officials and KR cadres.<sup>17</sup> While he could listen to the BBC and Voice of America on the radio, he could not listen to Khmer Rouge broadcasts and received very few updates. The KR soldiers prohibited those in the embassy from having two-way radios.

#### **D. Leaving Democratic Kampuchea**

On 6 May 1975, Rockoff left the French Embassy in a convoy of Chinese trucks headed for the Thai border.<sup>18</sup> Instead of using the national highway, the trucks took an unpaved, yet clearly well traveled and covered trail, which paralleled the main road. It was an uncomfortably packed and tediously slow journey, with the truck stopping at the edge of every district in order to gain clearance to enter the next sector. On his way out of town, Rockoff noticed how empty the city was: "When you saw people, they were Khmer Rouge. And you did not see families. You didn't see civilians."<sup>19</sup> He also said:

We were not driven past any of the sites of killings, but if the wind is blowing right, you could smell it way off in the distance. You could smell the bodies, but they're not going to show us what they did.<sup>20</sup>

Rockoff finally entered Thailand on 9 May 1975. He had drinks with a man who used to work at the U.S. Embassy in Phnom Penh. This man presumably relayed Rockoff's information to the U.S. Embassy in Thailand, which issued a telegram saying that Rockoff saw three KR factions enter the city on 17 April 1975. (See III.A.) Rockoff dismissed the content of the telegram as wholly inaccurate,<sup>21</sup> and offered the following comment: "I don't know who was the source of this document, but he should be re-educated as to the inaccuracies."<sup>22</sup>

#### **E. Witness Demeanor and Credibility**

Mr. Rockoff offered very frank responses to the Parties' and Judges' questions. His demeanor and dress were casual, and he was modest about his knowledge of the regime. While he helpfully answered queries, he spoke solely about what he personally observed and learned from journalists. He was always very open and straightforward about his sources of information. He identified any particular information that he acquired only after the DK regime, and noted if he acquired his information from second-hand or third-hand sources. He concluded his testimony with a *sampeah*, a traditional Cambodian greeting and way of showing respect, to the Judges as he exited the courtroom.

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

The propriety of using documents not in the Case File was raised during Rockoff's testimony. After the conclusion of his testimony Tuesday afternoon, the Chamber sought the positions of the Parties about presentation of documents on the roles of the Accused. The Prosecution said that it was prepared to begin presentation of documents beginning the following day, Wednesday. The Civil Party Lawyers and the Khieu Samphan Defense Team indicated that they did not wish to present any document at that point in time. The Ieng Sary and Nuon Chea Defense Teams informed the Chamber that they would have to consult with their respective clients, considering that both were suffering from ill health and were not present in the courtroom.

## **A. Use of Evidence Not in List of Documents**

On Tuesday, international counsel for Khieu Samphan, Ms. Anta Guissé, attempted to present a telegram from the U.S. Embassy. (See II.D.) Prosecutor Dale Lysak objected on the ground that the document had not been put before the Chamber, as it was neither in the Defense team's nor the OCP's list of documents. Guissé replied that the document came to light in the course of Rockoff's courtroom testimony. She argued that, when the Parties were asked to submit their lists, those lists were made in accordance with a list of witnesses. Rockoff was not yet in the list of witnesses back then. Lysak countered by emphasizing the importance of using "proper procedure," and arguing that Counsel must file a motion to identify new documents to be put before the Chamber. The Chamber concurred with the OCP's objection, and denied the motion to use the document. Nonetheless, because Al Rockoff apparently caught a glimpse of the document when it was flashed on his monitor, he proceeded to comment on the document.

## **B. Availability of the Prosecution's List of Documents**

Before the Prosecution began presenting documents, Kong Sam Onn, national counsel for Khieu Samphan, and Ang Udom, national counsel for Ieng Sary, noted that the Prosecution had not distributed a list of the documents they intended to present. The Chamber, through Judge Silvia Cartwright, however, allowed the Prosecution to proceed with the presentation. She noted that Prosecutor Keith Raynor had indicated that the OCP had exerted all efforts within the limits given, and that the OCP will furnish copies once the list becomes available. Cartwright added that the documents are in the Case File; thus, all the Parties should be able to follow the OCP's presentation expeditiously.

## **C. Presentation of Documents on the Role of Ieng Sary**

Prosecutor Chan Darasamey gave an overview of the documents relating to Ieng Sary, stating that the OCP would present 29 documents and 8 video clips on the role of the Accused. These documents and videos were segregated into four classes, and were presented in the following order: 1) Ieng Sary's connection to CPK as an ordinary member, 2) His role as a Standing Committee member, 3) His role as Minister of Foreign Affairs, 4) Interviews with Ieng Sary on his role before, during, and after the DK period.

### **1. Enumeration of Agreed Facts**

Prosecutor William Smith read aloud from the agreed facts contained in the Closing Order. These included passages stating that, in 1950, Ieng Sary moved to Paris to study. He returned to Phnom Penh in 1957, and worked as a history and geography high school professor until he went into hiding in 1963. In 1960, he participated in first Party Congress of the Worker's Party of Kampuchea (WPK); he was made a full rights member of the Standing Committee at that time. After the disappearance of the Secretary of WPK, a second Party Congress was held in late February 1963, where Pol Pot was appointed Secretary and Nuon Chea Deputy Secretary.

In April 1963, after King Norodom Sihanouk named him as one of 34 known leftists, Ieng Sary fled to the Vietnamese border. In 1966, he and other members of the CPK moved to Rattanakiri, where Office 100 (the Central Committee headquarters) was located. Ieng Sary became the Northeast Zone Secretary.

On 18 March 1970, Lon Nol and Sirik Matak overthrew Sihanouk and established the "Khmer Republic." On 23 March 1970, Sihanouk announced the formation of FUNK and called on the countrymen to rise up against new government. Around this time, Ieng Sary traveled to



Hanoi and organized the Voice of FUNK radio station, which was managed by Ieng Thirith until 1975. From 1971, he was based in Beijing as special envoy of the internal resistance of Beijing and in charge of relations with Sihanouk. During this period, he returned to Cambodia twice: in 1973, when he accompanied Sihanouk to visit liberated zones, and again in 1974.

Ieng Sary returned permanently to Cambodia in April 1975. At this time, statutes adopted in the 1960 governed the CPK. During the CPK regime, he used the *alias* "Van." The Central Committee and the Standing Committee were comprised of "full rights" and "candidate" members. Pol Pot had the highest authority as Party Secretary, followed by Nuon Chea, then Ta Mok. In Pol Pot's absence, Nuon Chea presided over meetings. The existence of the CPK was not officially announced until September 1977.

Later in the day, Ang Udom requested that the OCP refrain from reading agreed facts, since doing so is not useful, because the Parties have already agreed on these matters. The OCP explained that it only did so to give a clearer picture of what the documentary evidence contain. However, Prosecutor Smith agreed to refrain from reciting agreed facts from that point onward.

## **2. CPK Statute**

Smith read passages from the CPK statute of 1976,<sup>23</sup> clarifying that the statute was first created in 1960, but revisions were made over time. The Prosecutor read provisions that related to the purpose of the Party, *i.e.*, to achieve a national democratic revolution, achieve a socialist revolution, and thereafter move towards communism. He also referred to passages on organizational structure and responsibilities, rights and duties of ordinary members and of Central Committee members, Party discipline, and criteria for Party leadership positions.

## **3. Video Clips of Events Prior to the DK Period**

The OCP also presented Ieng Sary's interview with the newspaper *Le Monde*, which was entitled, "Interview with a Cambodian Revolutionary," dated 15 January 1972.<sup>24</sup> Smith pointed out portions of the article relating to Ieng Sary's involvement in the communist movement before 1975, his views on the United States, and the CPK practice of working with the population and organizing power.

Smith also presented an interview published in the *Vietnamese Courier* on 31 January 1972.<sup>25</sup> In this interview, Ieng Sary answered questions about FUNK and GRUNK, and agrarian reform in liberated areas. Ieng Sary reportedly said that big tracks of land owned by "traitors" were confiscated, and either used in common by people or distributed to landless peasants. Rents on land were not allowed to exceed 50% of the cost of production, interest rates were forbidden, and cooperatives were encouraged in order to eliminate middlemen.

## **4. Documents from the DK Era**

Prosecutor Smith presented a number of videos from the DK period. One of them was footage of Pol Pot, Nuon Chea, Ieng Sary, Son Sen and other leaders in a rally attended by many cadres at the Olympic Stadium at an unknown date.<sup>26</sup> Smith also presented a video clip of a visit by the Vietnamese Labor Party. The delegates were shown meeting, dining, and touring with Pol Pot, Ieng Sary, Nuon Chea, and other senior leaders.<sup>27</sup>

Smith then moved on to a video and an article containing interviews with Ieng Sary, where he discussed the reasons for the evacuation of Phnom Penh. In the video, which showed Ieng

Sary talking to a journalist in 1975, Ieng Sary said the evacuation was conducted to “make Cambodia modern,” as the population had to be “proletarianized.”<sup>28</sup> Additionally, the evacuation sought to “thwart plans to sabotage.” The article contained an interview with James Pringle, which was given during the Lima Conference of Non-Aligned Nations. It was published in *Newsweek* on 8 September 1975. In the interview, Ieng Sary said the evacuation was conducted to address food shortage.<sup>29</sup> They originally thought there were two million people in Phnom Penh. However, upon entering the city, they discovered there were three million people. Since they did not have the means to transport sufficient food into the capital, the “people had to go where the food was.” Ieng Sary also said the evacuation was conducted to foil plans by the United States and the defeated Lon Nol regime to “spread confusion after [their] victory.”

Another category of record that Smith presented was minutes of Standing Committee meetings. The OCP said these showed that the Standing Committee had a hand in how the country was run, and that Ieng Sary had been tasked by the Party to deal with work related to foreign affairs. In the list of attendees, the OCP noted that, generally, Pol Pot was named first, followed by Nuon Chea, then Ieng Sary. Smith thereafter showed telegrams, saying that Ieng Sary was “copied in” on a “hundred occasions.” This showed that he “participate[d] in the knowledge chain on targeting of enemies,” according to Smith. The telegrams contained reports about border clashes with the Vietnamese and execution of spies or “internal traitors.” Smith also presented a 2007 interview with Khieu Samphan, where Khieu Samphan said that Ieng Sary wrote speeches for him and other senior Party members.

Smith presented Ieng Sary’s statement to the UN General Assembly on 5 October 1976.<sup>30</sup> The Prosecutor argued that the speech reflected the rhetoric of the CPK statute about the importance of maintaining solidarity with non-aligned countries and animosity towards capitalist and imperialist countries: “American imperialist lackeys and other revolutionary forces continue to relentlessly oppose our country.” Smith also presented a 20 September 1978 document of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, which discussed a telegram from Ieng Sary dated 16 September 1978.<sup>31</sup> In Ieng Sary’s telegram, he described a decision of the UN body to analyze the human rights situation in the country as an “impudent interference” into the internal affairs of the DK, and showed support for Cambodia’s traitors, particularly, “American imperialists and their partners” who were defaming the DK while whitewashing their own crimes. “Democratic Kampuchea will make mincemeat of any criminal maneuver of the imperialists and their partisans.” Smith also presented another telegram from Ieng Sary to the same UN Sub-Commission. In this telegram, the OCP said, Ieng Sary, as Minister of Foreign Affairs, “rebuk[ed] the British government” for asking for an investigation into crimes occurring in Cambodia.

The Prosecution also presented a group of documents recovered from the Ministry of Foreign Affairs. These included a handwritten document entitled *Diary of the Khmer Rouge Foreign Ministry*. The OCP said that entries in the diary described meetings, congresses, and the atmosphere at the MFA, Ieng Sary’s role, and a “preoccupation with locating enemies and supporting the revolution.” Also in this group of documents was a report produced by the MFA, *Working with the Committees of Every Unit - 12 September 1977*, which said that enemy activities had been “smashed.” Lastly, Smith presented a letter contained in the confession of Hu Nim,<sup>32</sup> which was addressed to “Dear Communist Party of Kampuchea, whom I respect more than my life,” and listed the name of Ieng Sary among other senior CPK leaders. In the document, Hu Nim, who was arrested on April 1977, pleaded for his life. This suggested, according to Smith, that the addressees had the power to release people from S-21.

## **5. Documents on CPK Power Relations**

Smith presented various documents that tended to illustrate how power was shared in the CPK. First, he showed a video of Ta Mok<sup>33</sup> saying that Pol Pot was on top of the hierarchy, "Nuon Chea was number Two, Ieng Sary was number Three, Sao Phim was fourth, I (Ta Mok) was the fifth." Subsequently, Smith presented the confession of Meak Touch, Cambodian Ambassador to Laos, who was detained at S-21. The confession had an annotation, "Comrade Van," which, Smith said, indicated that Ieng Sary was informed of Meak Touch's situation. Next, the OCP showed footages from a documentary produced by the DK government of a rally, which, according to Smith, "relates to the apparent authority that Ieng Sary and the other senior leaders had at the time."

The Prosecutor then presented a chart made by the OCIJ of Ieng Sary's foreign travels during the DK, comparing them with S-21 records of arrests and executions of Ministry of Foreign Affairs staff. This showed that Ieng Sary was in Cambodia for around 80 percent of the DK period. Thus, Smith argued, Ieng Sary's role as Minister for Foreign Affairs was "much more of an internal role inside the country than an external one."

## **6. Statements After the DK Era**

Prosecutor William Smith concluded his presentation of documents on the role of Ieng Sary by reading passages of an interview by Stephen Heder on 17 December 1996. Ieng Sary reportedly said:

I say that if what is meant is a planned genocide aimed simply at making a race disappear, it seems to me there was no such plan. However, as you just said, the acts committed were aberrant and once in motion caused great suffering to the nation. I am in unison with you on this.

## **D. Presentation of Documents on the Role of Khieu Samphan**

Prosecutor Veng Huot began by giving an overview, explaining that, on 13 and 14 February 2012, the OCP presented documents relevant to Khieu Samphan's role prior to 17 April 1975. Thus, at this stage, the Prosecution presented documents that covered the following:

1. Khieu Samphan's membership in high-level bodies within the CPK, including the Party's Central Committee and his attendance at the meetings of the Standing Committee,
2. Khieu Samphan's role in the establishment of DK, the adoption of its Constitution, the resignation of Norodom Sihanouk as Head of State, and the establishment of the new Presidium with Khieu Samphan as its head,
3. Khieu Samphan's oversight of the Ministry of Commerce, including ministry reports addressed to him,
4. Documents related to arrests of Ministry of Commerce cadres who worked in offices under Khieu Samphan's supervision,
5. Khieu Samphan's speeches containing endorsements of CPK policies and reflected his role in the Party and in the DK government,
6. Amnesty International correspondence addressed to Khieu Samphan during the DK period, which sought to bring to his attention mass crimes being committed in Cambodia,
7. Khieu Samphan's interviews and publications, including several video recordings where the Accused discussed his role during the DK period, the crimes committed during the period, and his relationship with other leaders of the Party,

8. Khieu Samphan's statements to the OCIJ, where he further discussed his role.

## **1. Khieu Samphan's Statements to the OCIJ**

Prosecutor Tarik Abdulhak presented the statements the Accused gave to the OCIJ in late 2007.<sup>34</sup> The OCP said these documents gave Khieu Samphan's version of events in relation to the allegations leveled against him.

The first interview was made in 13 December 2007.<sup>35</sup> The discussion included Khieu Samphan's whereabouts in days preceding the fall of Phnom Penh, his presence at Udong before 17 April 1975 with other senior members of the Party; his work from 1970-75, entry into Phnom Penh and the whereabouts of some senior Party leaders in the city, and the composition and frequency of the meetings of the Standing Committee and Central Committee. In this interview, Khieu Samphan acknowledged that he was a member of the Central Committee, first as candidate member in 1971, until he became a full rights member in 1976. He also said that he participated in 14 of the 19 Standing Committee meetings he was aware of.

In the interview on 14 December 2007,<sup>36</sup> Khieu Samphan described Office 870, saying it was an office of the Standing Committee and was composed of only two members: Office 870 Chairman Seua Vasi *alias* "Doeun" and Khieu Samphan himself. Doeun, assisted by Pang,<sup>37</sup> was in charge of political affairs, while the Accused was in charge of preparing price lists, distribution of goods to zones, and maintaining relations with Sihanouk. Khieu Samphan also talked about the speeches he wrote, saying that he "generally" agreed with their contents, but disagreed on certain points, such as the elimination of currency. In the interview, the Accused clarified,

I could not make my disagreement public because we did not want to reveal to the public that there were disagreements with the party itself. I would not have survived if I dared to reveal disagreement or objection to anything.

He also expressed some doubts about the evacuation of Phnom Penh, saying that he asked himself why the movement he believed in made a decision "which deviated from the movement's principles." He referred to Hu Nim and Hou Yun<sup>38</sup> as examples of what occurred to people who disagreed with CPK policies. He insisted, however, that he only learned of the extent of the arrests at the end of 1998 through his readings.

## **2. Records of Meetings of the Party Leaders**

Prosecutor Abdulhak also presented a Standing Committee meeting, which he said contained "delegation of work and operational processes," and assigned responsibility for "the front and the Royal Government and commerce for accounting and pricing" to "Comrade Hem" (Khieu Samphan). The Prosecutor explained that they identified a total of 23 meetings of the leadership of the Party. Of the 23 documents of these meetings, only 19 contain lists of attendees. In those 19 documents, Khieu Samphan is recorded to have attended 16 meetings. The only people who attended more frequently were Pol Pot (17 meetings) and Nuon Chea (18 meetings).

## **3. Establishment of DK**

Abdulhak read extensively from a speech recorded by FBIS, which was entitled "Text of Deputy Prime Minister Khieu Samphan's Report on the New Draft Constitution Delivered on 14 December 1975, Third National Congress in Phnom Penh, Recorded." According to the

OCP, this document showed Khieu Samphan's role in the creation of the new state, its Constitution, and the principles underpinning it. The speech discussed how the second National Congress, held in February 1975, established the DK's domestic and foreign policy, which consisted of:

1. Attacking and driving out the U.S. imperialist aggressors;
2. Condemning and punishing the seven traitors: Lon Nol, Sirik Matak, Son Ngoc Thanh, Cheng Heng, In Tam, Long Boret, Sosthene Fernandez --- the arch antinational, arch fascist, and arch corrupt traitors;
3. Upholding the stand of great national solidarity.

In the speech, Khieu Samphan said that they "practice[d] a collective system in transportation and labor," which had been "in effect for a long time" already and was applied "everywhere." In the speech, the Accused upheld freedom of religion, saying this was a "new freedom for our people."

Abdulahak presented minutes of a meeting held on 8 March 1976, attended by Pol Pot, Nuon Chea, and other senior leaders. Khieu Samphan reported on principles, objectives, manner of election, and characteristics of the members of the People's Representative Assembly.<sup>39</sup> The OCP also presented a decree that Khieu Samphan had issued in his capacity as the President of the State Presidium on 2 May 1976.<sup>40</sup> Article 7 of this decree stated that the Kampuchean Republic Assembly would have full rights to determine major issues.

#### **a. The Resignation of Norodom Sihanouk**

The OCP presented several documents relating to the resignation of the late King Norodom Sihanouk. In records of meetings held in March 1976, Khieu Samphan appeared to have reported on the "Sihanouk problem," and suggested that, "Angkar should take pity on him, that he would even crawl and show the gesture of respect. Whatever. Just let him resign." While the Accused reportedly described Sihanouk as a "killer to the people," he said, "keep him as a dignitary, don't kill him." The OCP then presented a broadcast recorded by FBIS,<sup>41</sup> which made Sihanouk's resignation public. As the OCP explained, in the broadcast, it appeared that Khieu Samphan was the person who accepted the resignation.

The Prosecution also read portions of a document about a conference of the People's Representative Assembly of DK in April 1976, which included a speech delivered by Khieu Samphan.<sup>42</sup> The Accused spoke of the creation of a new state and the need to "raise revolutionary vigilance." The document also discussed the decision to accept the resignations of Sihanouk and persons from the previous government.

The OCP showed several videos on this topic. One short video clip showed Sihanouk, accompanied by Khieu Samphan, when the King returned from China in September 1975.<sup>43</sup> Another showed a visibly agitated Sihanouk in October 1975, preceding his resignation, saying as follows:

When the interests of my country commanded, I have to leave. I don't want to be kicked in the back, sacked, or driven out because I haven't betrayed my country. That's why I fought and I won. I'm a fighter. Anyone who wants to engage in boxing, I will join him in boxing.

In another video,<sup>44</sup> Sihanouk explained that he did not see the killing fields because he was "practically a prisoner" of the KR in the Royal Palace.



I was completely isolated. I saw only one man: Khieu Samphan—from time to time. He came to the Royal Palace just to say “Hello. How are you?” I tried to get his permission and Pol Pot’s permission to have, for instance, on the occasion of my birthday, I would like to have my children, my grandchildren, but he said, “No, no, no. Now they are far from Phnom Penh. They are in good health. But, please, don’t have a family life anymore because now we have communism. We have to think of the country, the homeland only. No more family life.

#### **4. Trips Around Cambodia**

Prosecutor Abdulhak presented documents to show that Khieu Samphan took trips to worksites and cooperatives in the countryside. In one video, Sihanouk said that, from September 1975 until April 1976, he traveled as Head of State together with Khieu Samphan.

I saw that the communes were concentration camps. I saw how work went on day and night. When the moon shone, people could not sleep. Sleep was not allowed, people had to work. I saw what people ate for there was no rice. Rice was mixed with other things like maize, cut up banana leaves... Diet was very, very bad.

Sihanouk explained that he survived the regime, even after he was replaced as Head of State and placed under house arrest, because China’s Chairman Mao Zedong and Premier Zhou Enlai prohibited the KR from killing him, his wife, and their two children.

The OCP also showed a video of the visit of the Laotian President in late 1977.<sup>45</sup> Abdulhak explained that the video, which showed Khieu Samphan, Nuon Chea, Ieng Sary and Vorn Vet, contains footages of Khieu Samphan performing his functions as Head of State and traveling around the country, inspecting cadres at various sites.

#### **5. Statements During the DK**

The OCP presented numerous statements made from 1975 to 1979 that concerned a range of subjects, including deaths in the country; availability of food; defending Cambodia from enemies of the State, including attempts by Vietnamese agents to effect a *coup d’etat*; nation-building and political teachings of cadres; and the condition of the “working class, peasantry, and revolutionary army.”

One statement, broadcasted by the Phnom Penh Domestic Service on 21 April 1975, was the “Congratulatory Statement by Deputy Prime Minister, Minister of National Defense, and Commander in Chief Khieu Samphan to Cambodian People’s National Liberation Armed Forces (CPNLAF) and Cambodian People.”<sup>46</sup> In the speech, Khieu Samphan said, “This is our nation’s and people’s greatest historic victory... Finally the enemy died in agony.”

The OCP also presented a handwritten note by Sihanouk, written while in Beijing on 28 March 2007. According to Abdulhak, this note is relevant in showing Khieu Samphan’s statements to Sihanouk following the fall of Phnom Penh. In the note, Sihanouk said that he sent a congratulatory message to Khieu Samphan on 17 April 1975 and he expressed his desire to return to Cambodia. Sihanouk, in his note, continued to say that he received an “official response” from Khieu Samphan, informing Sihanouk that, “there was a fatal epidemic in Phnom Penh that required the Khmer Rouge to evacuate people from the capital to the countryside and asked [Sihanouk] to report later about [his] return to the country.”

The OCP also read parts of Khieu Samphan's speech on 17 April 1976,<sup>47</sup> the first anniversary of the fall of Phnom Penh, where he described the 17<sup>th</sup> of April 1975 as "the date the dark era which had overcast our beloved Cambodia ended." It went on to say that, within one year from liberation, they "achieved in all aspects as much as one would in 10 years." In August of that same year, Khieu Samphan affirmed in a speech at the 5<sup>th</sup> Summit Conference of the Non-Aligned Countries in Colombo, Sri Lanka, that, despite attempts by enemies to "destroy results of the victory," such as bombing Siem Reap in February 1976, they had "overcome all obstacles," and "succeeded in solving living conditions of [their] people, particularly [they] have solved the problem of food."<sup>48</sup> Nevertheless, Khieu Samphan said, they constantly had to strengthen their revolutionary vigilance because "the enemy would never give up their dark schemes to destroy [their] revolution."

In an interview entitled "Khieu Samphan Interviewed on Executions, National Problems," published on the *Cristiana Famiglia* in 26 September 1976,<sup>49</sup> Khieu Samphan reportedly said that criminals who committed certain crimes against Democratic Cambodia deserved "the most rigorous abhorrence... Those traitors who remained in Democratic Cambodia have been executed."

Similarly, in the anniversary speech he gave on 15 April 1977, he again encouraged revolutionary vigilance against enemies. He also gave an update on Cambodia's production capacity: "In 1976, we managed to solve our problems and fulfill production plan... Now we can feed our people a sufficient ration allocated by the state. We even have a surplus of grain for export." According to the OCP, this statement showed that the State allocated food rations in the country. In another speech that year, on 30 December 1977, the OCP explained that Khieu Samphan discussed the "recurring theme" of alleged Vietnamese attempts to stage a *coup d'état* in Cambodia.<sup>50</sup>

In the 1978 anniversary speech, Khieu Samphan described the working class and the revolutionary army as "complete masters of their own destiny," enjoying independence and sovereignty. He also spoke of how the Vietnamese were "devoured by sinister ambition to annex Kampuchean territory." He ended his speech by calling everyone to "defend tooth and nail the country, the revolution, the power, the people, the army, the Party, and the Kampuchean race... All units throughout country must continue to increase revolutionary vigilance."

## **6. Reports and Letters from Amnesty International**

Prosecutor Abdulhak presented a series of reports by, and correspondence from, Amnesty International to Khieu Samphan in his capacity as President of the State Presidium. These documents raised concerns about the fate of 26 residents of Battambang that the Thai authorities handed over to the DK authorities on 23 November 1976. Newspaper reports indicated that they might have been executed in Cambodia. Amnesty International also brought to Khieu Samphan's attention reports that citizens were being subjected to threats and acts of brutality by local authorities, summary executions, and that 112,000 families were being held in a camp in Battambang. Amnesty International asked that the DK conduct an investigation and that the government allow a delegation from Amnesty International or other international organizations to travel to DK "to address the widespread concern of this issue." Amnesty International indicated in their reports that their requests and queries to the government were left unanswered.

## **7. Documents Related to the Ministry of Commerce**

Prosecutor Abdulhak then presented documents pertaining to the Ministry of Commerce. He first referred to minutes of meetings that showed Khieu Samphan was assigned

responsibilities relating to commerce. The OCP also presented reports from the Ministry of Commerce regarding exports and negotiations that contained requests for guidance; these documents had the annotation “Brother Hem.” Matters in these documents included expenditure of a loan from China; communications between the Ministry of Commerce and Oeng Sok,<sup>51</sup> a cadre assigned to work in Hong Kong; and trade arrangements with Madagascar, China, and Yugoslavia. Commodities Cambodia exported included rice, coffee beans, pepper, and peanuts.

Tarik stated that, aside from showing the authority structure of the Ministry of Commerce, these documents also “appear to reflect a centralized coordination of the gathering of produce from around the country by the Ministry of Commerce.” He additionally indicated that paragraph 1190 of the Closing Order states that approximately 482 individuals from the Ministry of Commerce were sent to S-21, saying that this issue is relevant considering the responsibilities of Khieu Samphan.

## **8. Statements After the DK**

The last set of documents on the role of Khieu Samphan consisted of statements the Accused made after the Democratic Kampuchea. In an issue of *Time* magazine, dated 10 March 1980, Khieu Samphan reportedly said that, while they “faced many complicated problems,” they had one major achievement: “We solved the food problem.” He also denied that they engaged in mass killings, or killed more than three million people, saying there was “no reason for us to carry out the so-called genocide.” However, in answer to the question “How many people were eliminated during the revolution?” Khieu Samphan allegedly said: “All I can say is that the number was not more than 10,000.”

The OCP also presented a 1981 interview where Stephen Heder asked the Accused about allegations of CPK criminal activities. Khieu Samphan answered: “[T]here were innocent people whose lives were affected. I would like to stress that they were affected by Yuon (referring to the Vietnamese) agents, Khmer people who were Yuon undercover agents in our authority lines.” In a video of an interview in 1983, when he was asked if he denies all guilt in the massacres, he admitted that errors were committed during the DK, he however, went on to say:

I can reassure you that those errors were committed at the level of executions. You can imagine how tense the situation was after the war... There were cases of personal vendetta, there were reprisals by people in rural areas against people coming from the towns. And in the cases of revenge, we did our best to stop them and to limit them. But to say that systematic massacres were committed is not true. I say “no” to that.

Abdulhak also presented statements that tended to show “centralized policy and efforts to arrest the enemies.” A 15 July 1987 report, *What are the Truths and Justices About the Accusations Against DK of Mass Killings from 1975 to 1978*, from the Office of the Vice President of DK in Charge of Foreign Affairs, which position was then held by Khieu Samphan, indicated as follows:

- 1.) More than 20,000 people died from illness and food shortage, majority were people evacuated from the cities who were not used to the hardship of the countryside. The food shortage was mainly caused by Vietnamese agents, who destroyed medicines and stole tons of rice.
- 2.) Around 10,000 people died at the hands of Vietnamese agents.

- 3.) Over 3,000 people died “from our mistakes” due to confusion from the subversive activities of Vietnamese agents and measures to arrest and punish such agents.
- 4.) “Only in dozens” of people died as “part of struggle against the traitors.”

The Prosecution also presented documents about Khieu Samphan’s relations with Pol Pot. In an interview published in *Le Monde* newspaper, he reportedly said that Pol Pot “started to lose touch with reality” following the 1975 victory, but everyone continued to commend and endorse his decisions because Pol Pot spoke of threats, and his explanation sounded convincing. He also said that Pol Pot was “always forthcoming” with him and regarded him as a patriotic individual. Khieu Samphan said he never felt threatened by Pol Pot.

Before proceedings adjourned for the week, the OCP presented a documentary, *Pol Pot and Khieu Samphan: Facing Genocide*, produced in 2007 or 2008. Khieu Samphan said:

I didn’t exert any power... even if you talk about responsibility, they didn’t accuse me of anything because I didn’t know anything. If you ask why didn’t I know anything? Why didn’t I try to find out? Perhaps you can blame me for that, but for me, I didn’t want to know because I respected the rules of the Party.

#### **E. Manner of Presenting Documents**

At one point during the presentation of documents relating to Ieng Sary, international counsel for Nuon Chea, Mr. Victor Koppe, objected to Prosecutor Smith’s manner of presentation, saying that use of the words “significant, significantly probative, demonstrates, shows” transformed the document hearings into a “preliminary closing submission.” In contrast, Koppe continued, Prosecutor Keith Raynor’s presentation the previous week was “more to the content of documents.” Smith replied that he did not intend to make closing submissions and apologized if it appeared as alleged. This friendly exchange concluded without the Chamber’s intervention, and Smith quickly proceeded with the presentation.

#### **F. Use of Statements of Deceased Persons**

On Wednesday afternoon, Guissé requested that the Chamber disallow the Prosecution from presenting certain documents. Guissé recalled a ruling prohibiting written statements or transcripts which go to the proof of acts and conduct of an accused, as charged in the indictment, from being put before the Chamber, unless the defense has been given the opportunity of in-court examination of their authors.<sup>52</sup> This ruling is pursuant to IR 87(3)(d).<sup>53</sup>

Guisé therefore asked that certain letters and statements of deceased persons about Khieu Samphan’s acts be excluded, because the Defense Team has no way to ascertain their veracity. Abdulhak argued that the documents in question are statements of deceased individuals, which are subject to the exception found in paragraph 32 of the ruling:

Admission of the written statement or transcript of deceased or unavailable witnesses has been granted where the Chamber is satisfied that the witness is genuinely unavailable and that the proposed evidence is reliable, and where it considers that the probative value of this evidence is not substantially outweighed by the need to ensure a fair trial.<sup>54</sup>

Abdulhak stressed that this practice is “fully consistent” with international standards. The Prosecutor also informed the Chamber that all the documents to be presented were submitted and put before the Chamber in April 2011, in accordance with IR 80.<sup>55</sup>

The following day, the Chamber overruled the objection and stated as follows:

[A]ll documents which were objected by the Khieu Samphan defense concern individuals who are now deceased and the Chamber finds them to be sufficiently relevant and reliable to be put before it. Any probative value of these statements will be evaluated based on all the circumstances and legal standards in E96/7. However, document E190.1.72 consists of an interview by an individual who is due to testify before this Court in the near future. Therefore, the Co-Prosecutor will be allowed to introduce the document during the testimony of this individual. Any objection to the document can be presented at that juncture.

#### **G. Nuon Chea's Withdrawal of his Waiver of His Right to be Present**

On Wednesday and Thursday, Koppe said that Nuon Chea's health was deteriorating, and that the Accused had withdrawn his waiver of his right to be present during the presentation of documents relating to him. Counsel clarified that there was no objection to the presentation of documents relating to Khieu Samphan. Thus, despite Nuon Chea's withdrawal, the Chamber conducted document hearings relative to Khieu Samphan until the appointed time for adjournment on Thursday afternoon.

In direct contradiction to Koppe's statement that Nuon Chea's health was significantly deteriorating, and that the Accused and his family were convinced that "Nuon Chea was approaching death," the President read medical reports that stated that Nuon Chea's health was improving, and that he was to be released from the hospital on Thursday afternoon.<sup>56</sup> Due to this discrepancy, national counsel for Nuon Chea, Mr. Son Arun, requested that the Chamber call the treating doctors to testify on Nuon Chea's condition before the Accused was released. President Nil Nonn denied this request, saying, "This is not the expected procedure. The Chamber sees there is no need to do that, and we take that request as inappropriate." Thus, Nuon Chea returned to the ECCC's detention center on Thursday afternoon. Towards the end of proceedings on Thursday, Judge Silvia Cartwright announced that the Chamber received a medical report recommending Nuon Chea rest "completely," without following proceedings even from the holding cell, for two weeks.

#### **H. Khieu Samphan's Right to Be Present**

At the conclusion of Tuesday morning's hearing, Guissé noted that Khieu Samphan was fatigued, and informed the Chamber that he waived his right to be present during document hearings on Wednesday and Thursday. Guissé requested that Khieu Samphan be permitted to rest "entirely" in the detention facility, in order to regenerate his health. President Nil Nonn replied that the Chamber would call the treating physician to examine Khieu Samphan, and the Chamber would then rule upon the request.

On Wednesday morning, President Nil Nonn advised that that day's document hearings would be significant, because they concerned potential inculpatory evidence on the roles of Khieu Samphan. Therefore, the Chamber commanded Khieu Samphan's presence. However, considering that Khieu Samphan remained weak, the Chamber granted his waiver "in part," and instructed Khieu Samphan to follow the proceedings from the holding cell beginning Wednesday afternoon, when presentation of documents related to him was expected to commence.



#### IV. Trial Management

This week, despite challenges with legal and procedural issues, the Chamber heard the full testimony of one witness and concluded the document presentation in relation to Ieng Sary. Although the OCP covered a lot of ground with respect to documents related to Khieu Samphan, such document hearings will continue the following week.

##### A. Attendance

Ieng Sary participated in the proceedings from the holding cell for the whole week. Nuon Chea remained at the Khmer-Soviet Friendship Hospital until 2 o'clock on Thursday afternoon, when he was discharged and returned to the detention facility. Khieu Samphan was present in the courtroom for the morning sessions of Monday and Tuesday. Following his waiver of his right to be present, Khieu Samphan was absent on Wednesday morning. He participated in the proceedings from the holding cell during the other sessions of the week.

**Civil Parties Attendance.** The same Civil Parties, from Kampot Province, observed the proceedings for the whole week. Ten participated in the courtroom, while around five observed from the public gallery.

**Parties Attendance.** All Parties were represented throughout the week, although some counsels were absent. On Monday morning, National CPLCL, Mr. Pich Ang, was absent. On Tuesday, Kong Sam Onn, counsel for Khieu Samphan, was absent. On Wednesday, Michael Karnavas, counsel for Ieng Sary was absent due to health concerns. On the same day, Son Arun was absent the whole afternoon because he visited Nuon Chea at the hospital. On Thursday, Karnavas was observed to be absent.

##### Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 28/01/13	<ul style="list-style-type: none"><li>• 300 villagers from Koh Andet District, Takeo Province</li><li>• 16 foreign observers</li></ul>	<ul style="list-style-type: none"><li>• 150 villagers from Kandal Province</li><li>• 3 foreign observers</li></ul>
Tuesday 29/01/13	<ul style="list-style-type: none"><li>• 350 students, including several teachers, from Heng Samrin Russei Srok High School, Kampong Cham Province</li><li>• 9 foreign observers</li></ul>	<i>(No court proceedings.)</i>
Wednesday 30/01/13	<ul style="list-style-type: none"><li>• 250 students, including several teachers, from Chea Sim High School, Takeo Province</li><li>• A few monks from Takeo Province</li><li>• 6 foreign observers</li></ul>	<ul style="list-style-type: none"><li>• 120 villagers from Banteay Meas District, Kampot Province</li><li>• 6 foreign observers</li></ul>
Thursday 31/01/13	<ul style="list-style-type: none"><li>• 250 students, including several teachers, from Hun Sen Ang Vor High School, Kampong Cham Province</li><li>• 2 foreign observers</li></ul>	<ul style="list-style-type: none"><li>• 120 villagers from Punhea Leu District, Kandal Province</li></ul>

## B. Time Management

The proceedings commenced approximately 20 minutes late on Monday and Wednesday. The Chamber gave no indication of what caused the delay. Sessions began about 30 minutes late on Thursday, as well, likely due to preparations for the ruling on Guissé's objection regarding statements of deceased persons. (See III.F.) The Chamber alerted Parties on pliable scheduling, with the President saying on Thursday that they "will assess the situation as it unfolds," particularly relative to which witnesses and Civil Parties will be called considering that Nuon Chea has to rest for two weeks. The Court will resume proceedings on Tuesday, 5 February. No sessions were scheduled for 4 February due to the cremation ceremony of former King Norodom Sihanouk.

## C. Time Table

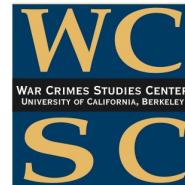
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 28/01/13	9:18	10:40-11:03	12:06-13:32	14:34-15:03	16:10	4 hours and 34 minutes
Tuesday 29/01/13	9:04	10:32-10:57	11:53	-	-	2 hours and 24 minutes
Wednesday 30/01/13	9:19	10:39-11:01	12:00-13:33	14:34-14:57	16:07	4 hours and 30 minutes
Thursday 31/01/13	9:28	10:40-11:05	12:02-13:35	14:44-15:09	16:04	4 hours and 13 minutes
Average number of hours in session				3 hours 55 minutes		
Total number of hours this week				15 hours 41 minutes		
Total number of hours, days, weeks at trial				665 hours 1 minute		
152 TRIAL DAYS OVER 47 WEEKS						

**Unless specified otherwise,**

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

**Glossary of Terms**

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



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<sup>1</sup> Mr. Rockoff was questioned in the following order: International Prosecutor Dale Lysak; International CPLCL Elisabeth Simonneau Fort; Judge Jean-Marc Lavergne; international counsel for Nuon Chea, Mr. Victor Koppe; international counsel for Nuon Chea, Mr. Son Arun; and international counsel for Khieu Samphan, Ms. Anta Guissé.

<sup>2</sup> As a freelance photographer, Rockoff provided material to the *Associated Press*, *The New York Times*, *Newsweek*, and *Time* magazines.

<sup>3</sup> Trial Chamber. Transcript of Trial Proceedings (29 January 2013). E1/166.1 [hereinafter **29 JANUARY TRANSCRIPT**]. Lines 19-20. 9.

<sup>4</sup> Rockoff also travelled to battlefields with some medical students who lived in his hotel and who worked as medics in the fields. He regularly set out with the ambulance early in the morning to get into position before military operations began.

<sup>5</sup> Trial Chamber. Transcript of Trial Proceedings (28 January 2013). E1/165.1 [hereinafter **28 JANUARY TRANSCRIPT**]. Lines 2-5. 84.

<sup>6</sup> Ibid. Lines 22-25. 98.

<sup>7</sup> This estimate is based on Rockoff's conversations with refugee relief agencies such as Catholic Relief Services, CARE, World Vision, and the International Committee of the Red Cross. Rockoff frequently did pro bono photography for these agencies. At the Red Cross headquarters, Rockoff noticed hundreds of boxes filled with refugee identification cards totalling over one million.

<sup>8</sup> The Ministry of Information used to be located just south of Street 108, on the boulevard that runs east from the train station to the river.

<sup>9</sup> 28 JANUARY TRANSCRIPT. Lines 12-13. 19.

<sup>10</sup> Ibid. Lines 21-22. 30.

<sup>11</sup> 28 JANUARY TRANSCRIPT. Lines 22-23. 94.

<sup>12</sup> 29 JANUARY TRANSCRIPT. Lines 10-11. 14.

<sup>13</sup> Ibid. Lines 10-11. 14.

<sup>14</sup> "On 18 March 1970, Prince Norodom Sihanouk was overthrown by General Lon Nol and Prince Sirik Matak, who established a regime which was later called the "Khmer Republic."; and "Sirik Matak attempted to take refuge in the French embassy but was later handed over to the CPK. They [Sirik Matak and Long Boret] were both executed by the CPK, as confirmed by Ieng Sary." OCIJ. "Closing Order." (15 September 2010). D427 [hereinafter, **CLOSING ORDER**]. Paragraphs 25 and 1193.

<sup>15</sup> FULRO, a French acronym, stands for the United Front for the Liberation of Oppressed Races. It was initially an organization within Vietnam whose objective was autonomy for the Degar tribes. After 1969, the group evolved into a fragmented guerrilla group that carried out strikes against the South Vietnam and Socialist Republic of Vietnam regimes.

<sup>16</sup> Today, the sports complex is known as the "Old Stadium." Rockoff initially believed and/or hoped that the KR soldiers were firing into the air to clear away the black, ominous rain clouds overhead.

<sup>17</sup> For this reason, Rockoff could not confirm for Mr. Lysak whether the KR negotiators called themselves the 'Comité de la ville,' or the 'City Committee.'

<sup>18</sup> Rockoff was part of the second convoy to leave the French Embassy. The first convoy left for Thailand a few days before the second. While there was a self-imposed embargo on the part of the journalists on writing anything about the evacuation until all foreigners had escaped, some reporters on the first convoy betrayed the agreement. Nevertheless, Rockoff was grateful for these premature articles because they signified that the first convoy successfully fled the country.

<sup>19</sup> 28 JANUARY TRANSCRIPT. Lines 7-10. 79.

<sup>20</sup> Ibid. Lines 6-9. 91.

<sup>21</sup> Rockoff wondered whether the man he had drinks with miscommunicated what he said about KR entering the city from three different directions to mean there were three separate KR factions.

<sup>22</sup> 29 JANUARY TRANSCRIPT. Lines 6-7. 52.

<sup>23</sup> Document E3/214.

<sup>24</sup> Document E3/597.

<sup>25</sup> Document E3/11.

<sup>26</sup> Document E3/3051R.

<sup>27</sup> Document E3/3201R.

<sup>28</sup> Document E3/2384R.

<sup>29</sup> Document E3/550.

<sup>30</sup> Document E3/607.

<sup>31</sup> Document D366/7.1.820.

<sup>32</sup> Hu Nim *alias* "Brother Phoas" was the Minister of Propaganda from April 1975 until his arrest and deportation to S-21 in April 1977. CLOSING ORDER. Para. 883.

<sup>33</sup> According to Witness Khiev Neou, Ta Mok, a former monk, was the Secretary of the Southwest Zone during the DK. CASE 002 KRT TRIAL MONITOR. Issue No. 27, Hearing on Evidence Week 22 (19-21 June 2012). 9-10.

<sup>34</sup> Prosecutor Tarik Abdulhak said that, by February 2008, Khieu Samphan ceased cooperating with the OCIJ and, instead, asserted his right to remain silent (Document E3/072).

<sup>35</sup> Document E3/27.

<sup>36</sup> Documents E3/37 and E3/210.

<sup>37</sup> According to Witness Saloth Ban, Chhim Sam Aok *alias* "Pang," was the chairman of Office 870, and had the authority to manage all the ministries in DK and while Doeun supervised an office called "K-2." When Doeun disappeared, Khieu Samphan took over managing the staff in K-2. CASE 002 KRT TRIAL MONITOR. Issue No. 20, Hearing on Evidence Week 15 (23-26 April 2012). 3.

<sup>38</sup> Hou Yun was involved with Hu Nim and Khieu Samphan in appealing to Phnom Penh residents and monks to “rise up and smash the enemy” prior to the city’s liberation. CLOSING ORDER, para. 1130.

<sup>39</sup> The meeting also discussed reports from sector secretaries on arrests and the “enemy situation” in Sectors 303, 106, and 103.

<sup>40</sup> Document E3/260.

<sup>41</sup> Document E3/275.

<sup>42</sup> Document E3/165.

<sup>43</sup> Document D295/2/2.23R.

<sup>44</sup> Document D108/32.2R.

<sup>45</sup> Document D295/2/2.65R.

<sup>46</sup> Document E3/118.

<sup>47</sup> Document E3/275.

<sup>48</sup> Document E3/549.

<sup>49</sup> Document E3/608.

<sup>50</sup> Document D108/28.123.

<sup>51</sup> Prosecutor Tarik Abdulhak said that Oeng Sok *alias* “Sok” is in the list of prisoners of S-21, he is indicated to have come from the Ministry of Commerce, and was detained on 29 December 1978. His wife, Phal Va *alias* “Nat,” is also in the list of S-21 prisoners.

<sup>52</sup> “Within the ECCC legal framework, the Chamber considers that written statements or transcripts proposed to be put before the Chamber which go to proof of the acts and conduct of an accused as charged in the indictment shall, subjected to the limited exceptions identified below, be regarded as “not allowed under the law” pursuant to Internal Rule 87(3)(d) and are inadmissible for this purpose, unless the Defense has been accorded the opportunity of in- court examination of their authors.” Trial Chamber. Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber (20 June 2012). E96/7 [hereinafter **DECISION ON OCP RULE 92 SUBMISSION**], para. 22.

<sup>53</sup> IR 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 summarized, 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>54</sup> DECISION ON OCP RULE 92 SUBMISSION, para. 32.

<sup>55</sup> IR 80 states: “1. The trial begins with an initial hearing. The President shall declare the initial hearing open. 2. At this hearing, the Chamber shall consider the lists of potential witnesses and experts submitted by the parties in accordance with these IRs. Where the Chamber considers that the hearing of a proposed witness or expert would not be conducive to the good administration of justice, it shall reject the request that such person be summoned...”

<sup>56</sup> On Wednesday, President Nil Nonn said, “He coughs occasionally but his body temperature is normal. His breathing is also normal although he is still weak and cannot get up without any assistance. Doctors also emphasize that his health condition improves better as opposed to yesterday.”





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