

Parties Clash over Weight Given to Uncorroborated Evidence
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The Trial Chamber in the Extraordinary Chambers in the Courts of Cambodia (ECCC) finished hearing document presentations by the Office of the Co-Prosecutors (OCP) relating to the second phase of the forced transfer of persons in Case 002/1,² with a number of journalistic articles and Communist Party of Kampuchea (CPK) reports put before the Court. Despite yesterday's insistence that they were not sufficiently prepared, the lawyers for the civil parties pressed on with their presentation of Civil Party statements, reading brief excerpts from those statements in quick succession. The Defense teams were afforded the opportunity to make observations on the opposing sides' document presentations and also present their own documents relevant to the issues of Case 002/1. The day was not completely calm, however, as the afternoon session produced a heated exchange over the weight to be attributed to unsworn civil party statements between Counsel for Ieng Sary Michael Karnavas and International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort.

The morning session began in a prompt manner as Trial Chamber President Nil Nonn made opening remarks and immediately handed over to Greffier Duch Phary, reporting on the attendance of the parties. Greffier Phary stated that all parties were present except for Ieng Sary who was present in the holding cell due to health reasons. She informed the court that the other two accused, Nuon Chea and Khieu Samphan, were absent due to health reasons, however due to

¹ Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC's hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

² Cambodia Tribunal Monitor's daily blog post on the first and second day of the latest documents hearing may be accessed at: <http://www.cambodiatribunal.org/blog/2013/01/parties-engage-clash-over-admissibility-documents;> and <http://www.cambodiatribunal.org/blog/2013/01/document-hearing-slowed-confusion-and-conflict-over-purpose-and-procedure> respectively.

their respective waivers,³ they had expressed their consent for the hearing to proceed in their absence.

Spectators from Svay Reng Province populated the morning's audience in the public gallery, alongside school children from Geelong Grammar School in Victoria, Australia.

Presentation on the Second Phase of the Population Movement Continues

The President handed the floor to Senior Assistant Co-Prosecutor Keith Raynor to finish his presentation on the documents on the second phase of forced transfer movements. After a brief greeting to the Court, Mr. Raynor launched straight into the continuance of his documentation presentation, which contained a number of articles and CPK reports detailing, in approximate numbers, the movements of significant parts of the Cambodian population during the second phase of forced transfer. The following documents were put before the court:

1. *A CPK document⁴ dated September 1975*: In a section⁵ regarding paddy dykes, it was stated, “Why do we make these paddy dykes? Not just to conserve water... But to transform the rural countryside... to improve society.” Commenting on the agrarian aspect of the forced transfer, the document stated,⁶ “Where must we assemble the forces of the people? We must do this wherever the soil is good, fertile, and favorable,” and “In 1977 we must ensure three tons per hectare.”⁷

In a section entitled “The utilisation and assignment of the labor force,”⁸ the prosecutor read:

In the past, some have assigned their labor force well. ... The labor force is divided into orderly teams ... leading to an atmosphere of happiness and solidarity. We must disseminate and study ‘scientific labour.’ Organising forces like this also makes the new group from Phnom Penh able to work with others. Another experience has been assigning the forces of the people to go in mass somewhere that has good water, to work vigorously.

In a section⁹ reporting on comparisons between Sector 15¹⁰ and the Northwest Zone, the following was stated, “In sector 15 we must have the goal of using 30,000 to 40,000 people to work on the highway at this site. We can get one ton per hectare here but in the Northwest we can get three to four tons.” The passage continued onto the next page,¹¹ stating:

Later we will eliminate villages ... and organize collectives instead. ... In the northwest we must add an additional force of 500,000 people. Preah Vihear

³ Document Numbers E258/2 and E223/4 respectively.

⁴ This has the document number E3/781.

⁵ The relevant ERNs are 00072373 (in Khmer), 00523573 (in English), and 00543749 (in French).

⁶ The relevant ERNs are 00523574 (in Khmer), 00523573 (in English).

⁶ The relevant ERNs are 00072373 (in Khmer), 00523573 (in English), and 00543749 (in French).

⁷ The relevant ERNs are (0072374 in Khmer), 00523574 (in English), and 00543750 (in French).

⁸ The relevant ERNs are 00072381 (in Khmer), 00523579 (in English), and 00543755 (in French).

⁹ The relevant ERNs are 00072382 (in Khmer), 00523580 (in English), and 00543755-56 (in French).

¹⁰ A sector not far from Phnom Penh.

¹¹ The relevant ERNs are 00072394 (in Khmer), 00523588 (in English), and 00543764 (in French).

has requested 50,000 first. ... Where there is the possibility of solving food supplies, send 20,000. In the north they need people to be given to Kompong Thom Province and the east need men also. ... [We need to think about] moving how many to other locations.

2. *An article by the journalist William Shawcross¹² published in the Far Eastern Economic Review on January 2, 1976, on the general theme of refugees arriving in Thailand at the rate of 30 a week:* Talking about a radio broadcast the journalist heard, the article documented how “every facet of life is now secondary to the production of rice.” Quoting the broadcast, Mr. Shawcross writes, “‘Grow! Grow everything!’ declares the radio. ‘Particular attention must be paid to rice. For rice means everything. Rice means steel, factories, energy, fuel, and tractors.’” He continues,

Conditions are bad in Preah Vihear although the current crop is declared as the greatest ever, despite being planted by an unskilled and unwilling labor force. Ieng Sary told of the aim of effecting a second great uprooting of people, refugees say that in the past two months up to 300,000 evacuees from Phnom Penh have been moved again, this time to Battambang Province. The journey was apparently made partly by boat and partly by train. Just enough people were left behind in the provinces south and east of Phnom Penh to harvest the rice that they and their fellows had planted in the early summer. The rest have been sent to the country’s most fertile region in order to extend the area of next year’s dry-season crop.

3. *An item from the French Press Agency dated January 21, 1976,¹³ and entitled “Cambodia: The New York Times reports new and forced movements with a high death toll”:* The piece read:

In a dated dispatch from the small Thai border town of Aranyaprathet, the *New York Times* reported that hundreds of thousands of Cambodians are again being moved from one part of the country to the other and 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. According to a refugee, a great deal of these migrants are suffering from malaria, cholera, typhoid, and dysentery. Six hundred refugees died within a month of their arrival in the region where he was staying. This new movement which rivals in scale to the one that occurred in Phnom Penh last April apparently began in early November. According to testimonies gathered by the *New York Times*, deportees are not allowed to eat anything other than rice and are escorted by armed soldiers at all times. Other migrants travel to their new destinations on foot, in ox-drawn carts, or lorries. Many of the migrants have died of disease or exhaustion during the journey.

¹² This has the document number e190.1.318, and the relevant ERNs are 00708573 (in Khmer), 00005151(in English), and 00780515(in French).

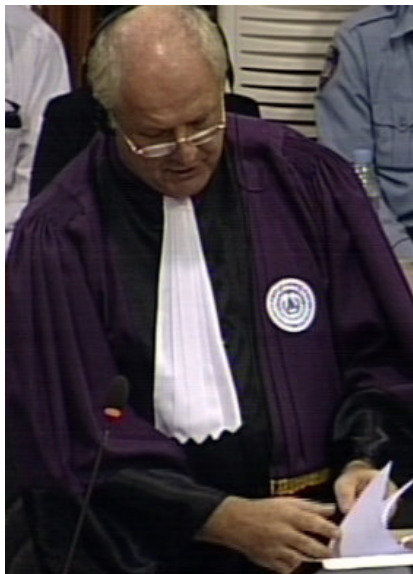
¹³ This has the document number d199/26.2.184, and the relevant ERNs are 00548749 (in Khmer), 00519810 (in English), and 00389829 (in French).

4. *A CPK report detailing population movements of 17 April people, entitled “The general view of section 5 northwest zone”, dated 27 June 1977:*¹⁴ Under the subtitle “Sector 5 population, 377,500,” the Co-Prosecutor read:

- Thmar Pauk - The majority of the population were liberated. Almost 100 percent are post-17 April people.¹⁵
- Sisiphon district - 50,000 population, almost 100 percent are “new people.”¹⁶
- Phnom Srok - population 70,000, with base people approximating 300 families and 50,000 people have come from Phnom Penh.
- Preah Nep - population prior to April - 150 families.
- More than 70,000 have come from Phnom Penh; it is the worst place of starvation which last year alone killed more than 20,000.

5. *Amnesty International report mentioned in Wednesday’s hearing:*¹⁷ “There has been numerous accounts of civilians being taken away and never being seen again. ... Many people became missing due to forcible transfer to work in remote areas; until recently there were reports of constant, forced migration.”

Once he had finished with the Amnesty document, Mr. Raynor indicated he had finished his presentation and announced, “We have heard a lot about rice today and with the leave of the court, I wish to show one last video entitled *La Recolte du Riz*.”¹⁸



Video number 12 was then screened on the court monitors and showed repeated scenes of workers harvesting in paddy fields. Lots of people, dressed the same, were shown buzzing about, and reaping the crops in very close proximity. Some scenes showed the extent to which villagers populated the rice fields.

Having concluded his document presentation, Mr Raynor thanked the court. President Nonn then handed the floor to the Lead Co-Lawyers of the Civil Parties to supplement the documents the OCP had produced.

Document Presentation by Lawyers for the Civil Parties

International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort greeted the court hurriedly and began her presentation. Before she began in earnest she gave a slight

introduction to her presentation:

¹⁴ This has the document number e3/1181, and the relevant ERNs are 00214486 (in Khmer), 00223175(in English), and 00612289 (in French).

¹⁵ The relevant ERNs are 00214489 (in Khmer), 00223176 (in English), and 00612290 (in French).

¹⁶ The relevant ERNs are 00214490 (in Khmer), 00223176 (in English), and 00612291 (in French).

¹⁷ This has the document number E3/3316, and the relevant ERNs are 00591055 (in Khmer), 00419921 (in English), and 00607929 (in French).

¹⁸ This has the document number E3/3011R.

As we have done on several occasions, we will present civil party documents. I have limited myself to important documents due to time constraints and so that the trial may proceed without undue delay. There are 3,800 civil parties, and we have only chosen some statements from these, but they are all important. We have excluded statements heard before and statements from likely testifiers. Part of our presentation will focus in particular on security centers insofar as they constitute military structures.

Ms. Simonneau Fort began with an excerpt from civil party statement D22/100, which read as follows:

April 17, 1975 - I saw Khmer Rouge soldiers dressed in dark clothes who ordered us to leave and not to take any personal effects. ... Angkar would feed all of them. My uncle informed me that Angkar had arrested my parents while they were transferring earth from the dam. The soldiers came to our home, threw me down the stairs, tied my hands, and arrested my mother. My younger brothers and sisters trekked in the rain to the rice distribution point. ... I saw nine families, a group of 17 April people. They were transported Prey Nouk pagoda and kept there for two nights and joined by 27 other families then transported to Tanay prison in Kampot province. ... In the prison there were four huts all housing more than 1000 prisoners.¹⁹

Moving on to another civil party,²⁰ aged 30 in 1977, Ms. Elisabeth Simonneau Fort read:

In 1977 my wife, who had a cough, and I had been imprisoned by the Khmer Rouge soldiers. They accused us of being enemies because I told them I was a former teacher. They transported us to a camp in Kratie province. There I was separated from [my] wife, arrested, tied hands, blindfolded with a karma, and had a gun pointed at me. At the detention center I saw a hut and a bed on which 10 people were lying with their hands and feet shackled. I stayed in the hut for a week. I was asked to carry three cubic meters of rice a day. I observed that prisoners regularly disappeared.

Another civil party statement was then read out:²¹

In early 1976 they brought Comrade Ach, director of a technical school at Russeo Keo in a Jeep to an unknown destination. Thereafter a cadre came to take over from him as director. One week later I along with others from the school were led away to Kandal Province where people were re-educated through work. I had to grow rice, vegetables, and so on and so forth. I had to work from 6 a.m. to 11p.m.

¹⁹ This has the document number D22/100, and the relevant ERNs are 00358174-76 (in Khmer), 00369510-11 (in English), and 00850531-32 (in French).

²⁰ This has the document number D22186, and the relevant ERNs are 00387631 (in Khmer), 00417896-97 (in English), and 00816822-23 (in French).

²¹ This has the document number D22/8, and the relevant ERNs are 00152355 (in Khmer), 00156813 (in English), and 00343764 (in French).

We were sometimes given rice and oatmeal. I could not join my wife during meals. Men were separated from their wives. We could only meet during the evening. In late December 1976, we were asked to teach at the fine arts school. We went with them but there was no fine arts school. They took us to the S-21 security center.

Ms. Simonneau Fort then reeled off a list of statements in quick succession whose content pertained to security center conditions:

1. A statement on Siem Reap prison;²²
2. A statement on Koh Kong security center in the West Zone;²³
3. A statement on Phnom Pros and Phnom Srey security centers in Kompong Cham;²⁴
4. A statement on Koh Kong and S-21 security centers;²⁵ and
5. A statement on Song security center in the Southwest Zone.²⁶

Concluding the portion on security structure, with leave from the bench, the civil party lawyer continued to the topic of forced movement phases 1 and 2 and Toul Po Chrey security center, stating, "I have chosen to read only a few extracts, but many civil party statements refer to these subjects." Ms. Simonneau Fort went through the statements as follows:

1. *A statement from a civil party aged 25 in 1975:*²⁷

In April 1975 all my family were ordered by Khmer Rouge to leave Phnom Penh. ... In the meantime the Khmer Rouge asked everyone to give their names and positions in the former regime. In 1975 my elder brother, who was a teacher, his wife, and children were executed in the pagoda because he interpreted a song from the former regime. One of my cousins, a marine, and his wife were taken to Day It pagoda, because the Khmer Rouge discovered that he was a government soldier. In June 1975, after my husband was executed, my daughters asked where their father was and because there was not enough to eat they died because there was no medication. ... During the harvest season the Khmer Rouge evacuated my family to a new base in Battambang saying that there was a lot of rice but not enough harvesters.

2. *A civil party statement from a person aged 6 in 1975:*²⁸

The nightmare began after April 17 when six members of my family and myself were forced to leave our beloved home in Phnom Penh. The Khmer Rouge took total control of the city and told us over the radio that we had to leave for three

²² This has the document number D22/144.

²³ This has the document number D22/1721a.

²⁴ This has the document number D22/3280.

²⁵ This has the document number D22/3820a.

²⁶ This has the document number D22/83.

²⁷ This has the document number D22/ 1240, and the relevant ERNs are 00523356-57 (in Khmer), 00840000 (in English), and 00861757-58 (in French).

²⁸ This has the document number D22/3751, and the relevant ERNs are 00873721-22 (in Khmer), 00569592 (in English), and 00865640 (in French).

days only. We were promised that after 12 days we could come home. After that, we had to take the boat to Koh Sat Chunlea, where we stayed for seven to eight months, before Angkar forced my parents to go to Battambang. My family and myself were herded into a train like cattle, and after a few days we reach Battambang. From a town in Battambang, an ox cart took us to a village Kompong Sombur. This was the beginning of 1976. A few months later I was separated from my parents and forced to live with other children who had also been taken away from the parents in neighbouring villages. I lived in a house with 30 to 40 other children and guarded by Khmer Rouge cadre who tried to brainwash us by telling us we belonged to Angkar and our parents are the enemies.

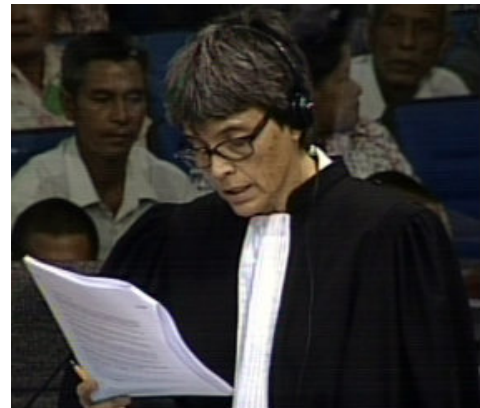
3. *A statement from a civil party aged 30 in 1975, with three children ages 6 months, 4, and 5.*²⁹

When the Pol Pot clique came into Phnom Penh in April 1975, the Khmer Rouge soldiers had hardened expressions, as if they were angry, and they quickly chased the population out of their houses and we had to leave Phnom Penh due to American bombardment. We were supposed to leave Phnom Penh for three days. I clasped my children close in the fear they would be taken away and went forward step by step for several days. At one point it rained heavily but there was no shelter. I tried to shelter my children, but we were soaked and could not sleep. We had to walk for eight days to Toul Prey Sak. My baby fell ill. I decided to stop walking because my baby was sick.

Ms. Simonneau Fort then ran through a list of Civil Party statements relating to forced transfer, giving a truncated summary of their content in rapid succession. These statements included six documents solely on the forced transfer from Phnom Penh;³⁰ one on the forced transfer from Kompong Speu,³¹ one detailing the treatment of certain groups during the transfer from Phnom Penh,³² and one on the second phase of forced transfer.³³

Bringing her presentation to a close, Ms. Simonneau Fort noted in reference to the president's earlier remarks about the civil parties' documents supplementing those of the OCP, "They are not supplementary to the OCP's documents but rather complementary because they flesh out factual details with first-hand." With that she handed over to her colleague, National Lead Co-Lawyer for the Civil Parties Pich Ang.

Mr. Ang began the presentation of 25 victim information applications that "related to the facts which have



²⁹ This has the document number D22/3850, and the relevant ERNs are 00571056-58 (in Khmer), 00867203-04 (in English), and 00860735-36 (in French).

³⁰ Document numbers D22/10, D/22/121a, D22/203, D22/216, D22/348, and D22/354.

³¹ This has the document number D22/235

³² This has the document number D22/257

³³ This has the document number D22/273

occurred.” Mr. Ang noted that each statement was taken from a victim information form, which was filled out by any potential civil party who wishes to take part in proceedings. The statements were quoted by Mr. Ang in the following order:

1. Prior to 1976 I left with my husband who was a soldier at Mondulkiri province. He was assigned to a station in Kratie province. I was about to return to see my husband in Kratie, but I was told that the boat traveling through Kratie had stopped, so I returned with my children. On April 17, 1975, they evacuated my family to head to the provinces under the pretext of the U.S. bombing. At that time I separated from my children who went with my mother west of Oudong district. Upon arrival the Khmer Rouge asked the new people to stay with the base people. I was asked to plant potatoes and rice and given two meals a day.³⁴
2. From Kandal province during the war under the Lon Nol regime, we moved to Phnom Penh. When Lon Nol was toppled, we were evacuated from our house because we were told the U.S. would bomb city. Some refused, and the Khmer Rouge would point guns at them and some were shot. We traveled for many days Kandal Province where the Khmer Rouge sent us to live. At that location the Khmer Rouge tried to get the background of the new people. Whoever used to work previously would be sent to do the same work by Angkar.³⁵
3. Prior to 1975 my family was wealthy, living in Kandal Province. My father was a soldier, and my aunt worked at the national bank. When the Khmer Rouge gained victory, they took control of Phnom Penh and Kandal province. ... Upon entering the city they declared the war was over. They cheered the victory, but the next day the Khmer Rouge ordered the people to leave to cleanse and get rid of the enemies. We left at gunpoint and those who refused to abide were beaten with gun butts. My family was separated, and I walked with my sister to return to our home village. Along the way there was nothing to eat and we were forced to ask for rice from other travellers. My family was sent to Pochentong to wait for the train and there was instructed to board the train, and then we continued until we reached the station and there were several ox carts awaiting our arrival.³⁶
4. I lived at Cham To barracks. One soldier told me to pack my belongings because the Khmer Rouge soldiers had captured the city. At night I rushed and left with my in-law and two children. My husband and I did not stay together because he was on guard duty. I saw soldiers on the road. The road was crowded. Some children were crying as they lost their family members. The situation was of a terrible nature. I saw dead bodies that were killed by the Khmer Rouge. The bodies decomposed quickly. I saw a house where they raised pigs, which was abandoned. I saw pigs and dogs eating human corpses. I walked under the eyes of the Khmer Rouge. The monks were ordered to leave the pagoda. Some children cried because they lost their mothers.³⁷
5. On April 18, Khmer Rouge evacuated my family by making an announcement on a speaker on a mobile unit. “Leave for three days,” it said. Angkar will look after your house. Along

³⁴ This has the document number D22/1999, and the relevant ERNs are 00541456 (in Khmer).

³⁵ This has the document number D22/525, and the relevant ERNs are 00496962 (in Khmer).

³⁶ This has the document number D22/2953, and the relevant ERNs are 00557816 (in Khmer).

³⁷ This has the document number D22/1340, and the relevant ERNs are 00526053 (in Khmer).

the road I saw dead bodies of Lon Nol soldiers. The Khmer Rouge did not tell us where to go. It was up to us, so we returned to Kampong Thom Province. My parents and siblings were to leave with the base people.³⁸

The president interrupted Mr. Ang at this point, to say the time was appropriate for a small break and brought the first session to a close.

Continuation of Civil Party Witness Forms

After President Nil Nonn reopened the hearing to begin the second session, he handed the floor immediately back to Mr. Ang to continue his production of 25 Civil Party Application forms on the forced transfer of the population. Mr. Ang thanked the President and recommenced presenting where he left off in the first session, quoting again from the forms as follows:

6. Between 1970 and 1975, I was a primary school student in Toul Tom Pong in Phnom Penh. On April 17 I was asked to leave my house for three days after an announcement because the Khmer Rouge needed to get rid of the enemy. The Khmer Rouge said that if anyone refused to leave they would be accused of being an enemy and would be shot dead. My father took my mother and seven children on National Road No. 3. April 17 people would be transferred to Sector 4. We boarded transport under the watchful eyes of the Khmer Rouge. The adults were separated from the children, and females separated from males. We all had to eat separately. The Khmer Rouge forced us to work hard in building dykes and canals and plowing. They monitored the activities of the new people. They monitored us every day, day and night. Often we were asked about our background, and the living conditions became worse as we did not have sufficient food and we were forced to work eight to 10 hours a day. We were told not to say anything bad about Angkar and dress only in black.³⁹
7. In 1975 my family was evacuated from Phnom Penh and everyone had to travel on foot. On that day my family separated from various places. My younger sister, whose husband was a colonel, was killed at Bokor Mountain. Also in December 1975 my mother-in-law was killed after being accused of being a feudalist. By mid-1977 my elder brother's family was taken and killed by Angkar after they revealed their backgrounds. My husband was a Lon Nol Government soldier. Five to six members of his family died. Eight of my nephews were killed. The application of the proverb "If you dig the grass, you need to clean the root" turned out to be true.⁴⁰
8. On April 14, 1975, the Khmer Rouge took control of Kompong Speu province. I fled by military plane to Phnom Penh. On April 17, the Khmer Rouge took full control of Phnom Penh and made an announcement for all city dwellers to evacuate immediately to avoid U.S. bombardment. We walked day and night to Kampong Speu province. I stayed there for 1.5 months and then was further evacuated to Banteay Meanchey Province. They separated me from my family to live in the children's unit to pick rice. I received one bowl of rice and one

³⁸ This has the document number D22/1322, and the relevant ERNs are 00525684 (in Khmer).

³⁹ This has the document number D22/1248 and the Khmer ERN 00523449

⁴⁰ This has the document number D22/3129, and the relevant ERNs are 00560829 (in Khmer).

ladle of porridge a day. I was emaciated. Some people accused of making minor mistakes were killed, under the pretext of re-education. There was no gain in keeping us.⁴¹

9. On April 17 the Khmer Rouge forced the people to leave towns and go to the countryside and if they refused they would be shot dead. At that time I had just delivered my baby. Ten days after delivery I was forced onto National Road 4. On the road I encountered a lot of difficulties; there was no water, shelter, or food. Children cried with fatigue as they walked under the heat of the sun. I saw a lot of dead bodies on the road. When I could no longer move, my husband pulled me on a piece of card. We headed north in the direction of Oudong. We had to hide the biography of my husband who was former military personnel, so we could not return to our home district. In September 1975 we were forced to go to Pursat Province Wat Leung Cooperative. Since we were considered 17 April [people], we received one can of rice per day for five to six people. In order to survive we had to pick leaves from trees and mix it with our gruel. In early 1976 my family was separated. My children had to work and did not engage in any study. I could not look after my children due to the long hours of the agricultural work. Occasionally I saw my husband. One day I saw a man who worked with my husband was wearing my husband's shirt. The man told me that my husband was arrested and killed. Upon hearing the news I almost fainted. From that day onwards I lost hope in my life. Due to insufficient food and lack of medicine, in the period of four months my six children died of malnutrition. The people in the cooperatives disappeared. I almost became crazy.⁴²
10. I lived near Toul Tom Pong market in Phnom Penh. I heard on the broadcasts that the Khmer Rouge entered the city, and after, it became a bit subdued. There were a lot of soldiers, big and small vehicles, making an announcement that everyone should leave their houses for seven days to avoid the U.S. bombardment. I and my seven children were forced to leave and I was separated from my husband. I saw the Khmer Rouge kill people on the spot as they disobeyed Khmer Rouge orders. Whoever had a role with the previous regime had to register with Angkar, and then Angkar would send them to do their previous job. Some people rushed to sign up and were ordered to dress nicely and line up on National Road 1 and then killed.⁴³
11. On April 17 we were forced to leave Phnom Penh under gunpoint. The Khmer Rouge soldiers told us that Americans would drop bombs on the city and we needed to leave to avoid bombardment. Together with my younger brother, sister, and three children (ages 8, 5, and 4), we left. When [we] arrived at the base, we were forced to engage in work on the plantations. I was given no times to rest. When I was sick or fatigued I did not dare to rest.⁴⁴
12. On April 17, I lived in Phnom Penh with five brothers, [a] sister, and parents near the railway station. After noon, the Khmer Rouge soldiers ordered us to leave the house because the Americans would drop bombs. Along the road the Khmer Rouge would instruct us on which

⁴¹ This has the document number D22/3787, and the relevant ERNs are 00570179 (in Khmer).

⁴² This has the document number D22/247, and the relevant ERNs are 00421489 (in Khmer).

⁴³ This has the document number D22/2818, and the relevant ERNs are 00556891 (in Khmer).

⁴⁴ This has the document number D22/40, and the relevant ERNs are 00323606 (in Khmer).

direction we needed to head to. The Khmer Rouge did not hesitate to kill anyone who disobeyed. I witnessed the killing in this fashion.⁴⁵

13. In 1970 my family lived in Phnom Penh; we were ordinary workers. In 1975 my family returned to our native village and we were considered April 17 people and all jewellery was confiscated. The only means of survival was the exchanging of clothes with base people.⁴⁶
14. In 1975 the Khmer Rouge cadres evacuated my mother, uncles, aunts, and nephews to Svay Rieng province. They forced them to work extremely hard, with small rations and food and no medicine, because they alleged we were 17 April people.⁴⁷
15. Three days following April 17 I was forced to leave the city. We were not allowed to bring any belongings; the Khmer Rouge told us they were going to reorganize the city. I was forced to walk all the way to Kandal Province, 15 days journey. We were then organized into 17 April people, and they sent us to a new location Chum Lu Commune, which was riddled with malaria. We were only given half a tin of rice and it was not sufficient for us.⁴⁸
16. Prior to April 17 my family lived in Phnom Penh, and I was married to a husband who was a former soldier of Lon Nol regime. The Khmer Rouge entered Phnom Penh, shot guns in the air, and pointed at city dwellers. Because of the fear we had to leave the city, and we had to carry our belonging barefoot. When we reached Nek Leung, we went to my husband's hometown, hoping we would meet relatives. We travelled barefoot for two months. I pitied my young children because they were crying the whole way because of hunger. My family was accused of being 17 April and were discriminated by base people. We got smaller rations of food.⁴⁹
17. On April 17 my family lived in Phnom Penh. My husband was a Lon Nol soldier. Three days after the liberation they began to evacuate people. They shot into the air threatening city dwellers; anyone who resisted their orders would be killed. Those who came from any country villages had to come back to those villages, allowing the Khmer Rouge to reorganize the city. On National Road 2, I witnessed lots of swollen corpses. We were sent to Ta Am village in Takeo province. Those people called us "the contemptible 17" and forced our families to work extremely hard, much harder than the base people, and [with] much smaller rations. If they were given a bowl of gruel we would get half.⁵⁰
18. My family was gathered by Khmer Rouge on a truck after my father died. They gathered us in different trucks; the new people were on one and base people the other. Along the way on National Road 3 to Kampot province, when we reached Bokor valley, they turned into the steep valley and dumped the people into the valley; the base people were taken elsewhere.⁵¹

⁴⁵ This has the document number D22/35, and the relevant ERNs are 00323529 (in Khmer).

⁴⁶ This has the document number D22/2451, and the relevant ERNs are 00551621 (in Khmer).

⁴⁷ This has the document number D22/1794, and the relevant ERNs are 00535334 (in Khmer).

⁴⁸ This has the document number D22/3461, and the relevant ERNs are 00566392 (in Khmer).

⁴⁹ This has the document number D22/231, and the relevant ERNs are 00421213 (in Khmer).

⁵⁰ This has the document number D22/2751, and the relevant ERNs are 00556117 (in Khmer).

⁵¹ This has the document number D22/519, and the relevant ERNs are 00496869 (in Khmer).

19. Prior to 1975 I was a Lon Nol soldier residing in Kampot province up until April 1975. I had to give up my job and hide my identity. My family was evacuated and asked to move to the Northwestern zone of the country. We had to carry belongings, and it took us several weeks to reach Bantaey Meanchey province. We had to abandon our self-interest and get rid of our old capitalist mentality. We would live in a society of equality; there would not be any exploitation. When we arrived, the base people considered us as the 17 people, and Angkar made us work with the base people.⁵²
20. During the rainy season and the transplanting season in Pursat province, they asked us what our family background was. They were particularly interested in what my parents did. They were very good at interviews. Many people were lured into telling them the truth, and they would take those people in a truck and take them away.⁵³
21. Following April 17, the Khmer Rouge evacuated my relatives from Phnom Penh and relocated [us] to Kompong Speu province, my father's hometown. The cadre gathered the 17 April people and placed them in a new village specifically for 17 April people. Up until November 1976, the Khmer Rouge cadre summoned my father at about 6 a.m. to plant potatoes until 10 p.m. Following this they arrested my father, tortured him, took his liver, cut open his stomach, and then cooked it. They told our families that we were from the previous regimes, and they treated us very badly. We were not given sufficient medicine apart from the rabbit dung medicine.⁵⁴

Civil Party documents relating to Tuol Po Chrey

Turning to statements relating to Toul Po Chrey, Mr. Ang quoted from the Victim Application Forms:

22. In April 1975 the Khmer Rouge took control of Pursat provincial town and announced on the loudspeaker for people to leave the city. They asked to identify members of the former regime. My father was summoned for a meeting and then disappeared. My wife was also killed.⁵⁵
23. Early April 1975 the Khmer Rouge took control of Pursat province and announced for civil servants to present themselves. Those that did so were taken on a truck and were eventually killed at Tuol Po Chrey, and witnesses told me they saw bodies there.⁵⁶
24. April 18, the Khmer Rouge carrying arms ordered the people to leave their homes in order to welcome the prince. Former officers would be taken for education. There were so many bodies found at Tuol Po Chrey.⁵⁷

⁵² This has the document number D22/3623, and the relevant ERNs are 00567828 (in Khmer).

⁵³ This has the document number D22/1414 and the relevant ERNs are 00528133 (in Khmer).

⁵⁴ This has the document number D22/2470, and the relevant ERNs are 00551851 (in Khmer).

⁵⁵ This has the document number D22/1079, and the relevant ERNs are 00518541 (in Khmer).

⁵⁶ This has the document number D22/1529, and the relevant ERNs are 00530043 (in Khmer).

⁵⁷ This has the document number D22/2011, and the relevant ERNs are 00541770 (in Khmer).

25. In 1975, a former commander soldier in Pursat Province, when the Khmer Rouge took over, he surrendered and was asked to leave the village. We were divided into two groups, 17 April people and base people. I informed by another man the former commander was executed at Toul Po Chrey.⁵⁸
26. Prior to 1975 my family lived around O'Russey. My family were evacuated to Pochentong then to Pursat province. My elder sister was killed by Khmer Rouge. My younger sister died due to disease. In 1978 my mother had to steal food to give to the family. My father was found stealing and called for re-education. He stole again and was caught; he was frogmarched with my mother and executed after being told to kneel down in front of a pit. I was told to run away to another cooperative, but they found me and threatened my life.⁵⁹

Mr. Ang concluded his presentation of the Civil Party information taken from the victim information forms and handed the floor back to the President, who stated the schedule for the afternoon session: "Defense teams will have an opportunity to make observations and objections on the key documents presented by Prosecutors and Co-Lawyers. We also grant them the opportunity to raise other documents, pursuant to decision 223/3 paragraph 4. Documents in relation to Joint Criminal Enterprise (JCE) will be heard at an appropriate time in the future." With that, the Chamber adjourned for lunch.

Defense Teams Turn to Probe of Documentary Evidence

Opening the afternoon session in front of an audience of villagers from Kampong Chnnang, President Nonn turned to the defense teams' submissions regarding the document presentations of the OCP and the Civil Parties. Before he had a chance to hand over to the Counsel for Nuon Chea to begin, however, the President spotted that Mr. Raynor was on his feet and granted him the floor. The prosecutor, enquiring about the documentary hearings on the roles of the accused, asked the bench, "You kindly indicated before lunch that the documentation presentation on JCE will take place at a later stage. Can you give guidance as to whether the bench has made a decision on the roles of the accused? I appreciate the uncertainty of next week in terms of the health of the accused, but we are preparing on concurrent fronts, so need guidance as to prioritization."

After the bench had deliberated this point, President Nonn stated that it was the Chamber's intention that next week, the chamber will hear the scheduled witness TCW565 on Monday, if Nuon Chea has waived his right to be present for that testimony. Regarding the document submissions on the roles of the accused, "the Chamber will determine the scheduling of that hearing, and that will be held on Wednesday next week; however this is tentative." The President explained that this depended on the health of the accused and that the Chamber would communicate this information by email by tomorrow afternoon once all the information on this matter is received.

Mr. Ang also took to his feet to discuss the scheduling of the remaining document presentations, enquiring further about the tentative scheduled hearing about JCE and whether it will be after the presentation of the roles of the accused. President Nonn stated that earlier in the week it had

⁵⁸ This has the document number D22/1557, and the relevant ERNs are 00530391 (in Khmer).

⁵⁹ This has the document number D22/32, and the relevant ERNs are 00275797 (in Khmer).

looked unlikely that they would be able to fulfill the document hearing, but this changed with the Prosecution's preparedness to present on the roles of the accused next week. On the matter of JCE, he said the bench will not set a schedule but would inform the parties in reasonable time.

Ms. Guissé joined in the discussion, requesting that the bench take into account the updated medical information on her client Khieu Samphan and reminding the court that the last medical certificate given was on January 22, 2013. She also stated that she was "unsure as to whether her client would be able to attend the hearing." In reply to this point the President expressed the judges "expect that Khieu Samphan will be discharged from the hospital this weekend. If he continues to be hospitalized, the parties will be informed. Parties will be kept abreast of new developments regarding this matter."

The President then turned to the substance of the afternoon's hearing, handing the floor to the defense teams to state their observations on forced movement phases 1 and 2 and the military structure as presented by the Lead Co-Lawyers for the civil parties. He also reiterated the ability of the defense to produce additional documents at this stage.

International Counsel for Nuon Chea Victor Koppe informed the court of his team's intentions to give objections via written submissions, having received no instructions from his client. He reiterated that no oral submission would be given at this time.

After mistaking the time and greeting the court in the afternoon session with a cheery "Good morning," Michael Karnavas launched into some preliminary remarks about the doctor tending to Ieng Sary before he presenting his team's response to the OCP and Lead Co-Lawyers' document presentation. Stating his "profound regret" that he once again has to re-cover the issue of the competency of the doctors hired by the Court, he described an incident that occurred this morning with Dr. Kim Somsan. Mr. Karnavas described how the doctor had indicated to the Case Manager of the Ieng Sary team, So Mosseny, that he is not able to tell whether Ieng Sary is able to follow proceedings. Mr. Karnavas stated, "When Mosseny asked the doctor to put all this in the report, he indicated that he could not do so unless he contacted the board and was instructed by the board." He continued, "Yesterday afternoon they [the Chamber] received a report saying he was able to follow proceedings, despite just today saying that he could not tell. You are being misled by the doctor when he says he [Mr. Sary] can follow the proceedings." The counsel then added in a remark that appeared to irk Judge Cartwright, "Such observations are nothing more than pure mendacity." He called for the Chamber to dispense of the daily misleading reports and noted that it has an impact on whether Mr. Sary has in fact tacitly waived his right to be in the courtroom.

With respect to the documents, Mr. Karnavas stated that he had three points to make, with which he incorporates all previous comments he had made on documentary evidence of this sort. He made reference to two documents in particular.

The first document to which Mr. Karnavas objected was a telegram⁶⁰ drafted by Mr. Jean Louis Tolfin, the French Ambassador to Thailand that documented the testimony of Sor Bun. Pointing out that neither the ambassador nor Sor Bun could come to give testimony, Mr. Karnavas called

⁶⁰ This has the document numbers D199/262.1.132 and E3/2666

the content of the document “hearsay from hearsay.” He therefore asked the Court to disregard the document completely, or, in the alternative, treat it with extreme caution and circumspection, unless other witnesses that give oral evidence can verify it.

The second item to which Mr Karnavas objected was Video 12,⁶¹ played in the course of yesterday’s hearing. Complimenting the videographer and calling it “a lesson to the Office of the Co-Investigating Judges and the OCP on how an investigation should actually be done,” Mr. Karnavas went on to ask the Court why the Prosecution is relying on videos that give uncorroborated testimony from villagers. He stated, “It would be more prudent to bring in witnesses that were seen in the video, so they could be subject to cross-examination and confrontation, a right guaranteed by the Cambodian constitution.” He argued that this evidence be disregarded unless the witnesses in the video come to the Court to testify.

Turning to the admissibility of the Civil Party statements read out by Ms. Simonneau Fort, the defense counsel noted that these were unsworn statements, and unless the owners of the statements came to give evidence, they should be given the appropriate weight as provided by the Cambodian rules of procedure. Mr Karnavas completed his statement by noting that he had no documentary evidence to present at this time.



The floor was then handed to International Counsel for Khieu Samphan Anta Guissé to express her comments in relation to the documents presented. Before she did so, however, she took the opportunity to rectify a mistake that came into the record on Tuesday, January 22. She indicated that the mistake originated because she was speaking a little too fast for the translators, so she remarked, “It will teach me to speak a little slower, so that the whole court may understand and not just Judge Lavergne.” She explained:

Slightly after 3:38 p.m. and 40 seconds in the tape of proceedings, I am translated as saying that there is not enough time planned for the documents presented. I was speaking in relation to a memorandum circulated by the bench, which read that comments were open for the accused themselves and not the lawyers. In the English translation it appeared that we had not read the Chamber’s memo and not paid attention to it. Quite the contrary, we understood everything.

Having cleared up this imprecision, Ms. Guissé turned to comments made on the documents presented by the OCP and Lead Co-Lawyers. She firstly stated that the remarks made by Mr. Karnavas were correct and endorsed the view of his team. She next congratulated the prosecutor on “very skilfully inserting video extracts into proceedings.” She asserted, however, that there is a problem with these videos in probative terms, noting:

We do not know where and when the clips were filmed. ... As a way of presenting something in a court of law this is not acceptable because you are

⁶¹ This has the document number E186.1r

inserting subjective elements, for example, when you see bodies stretched across the ground and you don't know the circumstances in which they were killed. I acknowledge the refusal to play commentary; however you do not know the date, you do not know who is on the ground dead. As the videos were intersecting documentary evidence, it can be inferred that they are directly related to the documents before and after. This is problematic. The videos contain matters that are subjective, for example, the young man who claims the girls who had died at the Toul Po Chrey site may well have been raped. We are bordering the limits of the utility of such documents in the court of law.

After again apologizing to the interpreters, she took her seat.

The president granted the floor to the prosecution to deliver a few points in rebuttal. Mr. Raynor thanked Ms Guissé for her kind comments about the skillful way in which the videos were delivered, adding, "They were not Steven Spielberg, but they may well inform the Chamber." He moved on to argue that admissibility and weight are two entirely different legal concepts, that the videos are admissible, and that the parties "can be sure that the Chamber will take this weight into account."

Picking up on Mr Karnavas' point about the need for collaborative evidence, Mr. Raynor said evidence will be given and offered as the example of a photograph of a group of Lon Nol civil servants taken by the photographer Al Rockoff.⁶² The prosecutor explained, "He [Mr. Rockoff] may be able to tell the Court if he appears as a witness what happened to those people."

For the civil parties, Mr. Ang took the opportunity to respond to Mr. Karnavas' comments about the doctor for his client. "Firstly Mr. Karnavas brought into question the professionalism of the doctor. Ask the court to clarify the qualification of the doctor and his relevant experience. Only then can his comments gain any credibility," Mr. Ang asserted.

Turning to the Counsel's comments that the owners of unsworn civil party statements should testify in court, Mr. Ang replied curtly, "If the Counsel for the accused wishes to ask ... they will happily oblige this request."

For her turn, Ms. Elisabeth Simonneau Fort, in a seemingly combative response to Mr. Karnavas' comments relating to civil parties, pointed out:

The situation with civil party oaths has already been debated and decided. A memorandum on this very topic was exchanged, and the Chamber has given the decision. If they do not take an oath, it is not that they are lying; it is unrealistic to say more than 4,000 or so people are all lying. Should there presume to be a difference in honesty between non-oaths and oaths? In the internal rules [of the ECCC] you do not have to give appropriate weight to civil party statements because they do not take oaths. The civil parties saw, heard, and lived these situations very directly.

⁶² A famous American photographer during the war.

In response to Mr. Ang's comments, Mr. Karnavas first invited the doctor to the Trial Chamber to give evidence as to his qualifications. When responding to Mr. Ang's further comments that the defense ought to call these witnesses if they so desire, he reminded his "learned friend" that the defense does not bear the burden of proof, "a principle applied universally." Instead, Mr Karnavas insisted, "why don't we recognise that the better practice is to have the witness to come and give evidence," agreeing with prosecutor that "this affects their probative value".

Becoming animated in response to Ms. Simonneau Fort's impassioned rebuttal, Mr. Karnavas queried:

I don't see why civil parties get all worked up when we are merely doing our job. There is less probative value for statements not subject to penalty if they lie under oath. They can lie with impunity because it's up to the judges. I am not saying they will, but they could. And let me make this perfectly clear, we have never suggested that the civil parties are lying, that their statements have no value. We very clearly recognize the value of civil parties and that they are allowed to provide statements not under oath. But when given the opportunity we will point out that these statements have less probative value as those made under oath, and as the trial continues, I and my colleague [National Counsel for Ieng Sary Mr Ang Udom] will continue to make submissions to do so.

The judges huddled in deliberation for a few minutes, discussing all the matters raised in the afternoon session. After having sought sufficient advice on the points raised, the president dealt with the issue of the treating doctor firstly. Speaking to the defense counsel for Ieng Sary, the president recounted that Mr. Karnavas had raised this matter a number of times and the Chamber had also indicated repeatedly that it has already ruled on a number of occasions on this matter. Turning to the issue of the oaths given by civil parties, he indicated that matter has also been ruled upon, pointing out that the Court follows the civil law system and that Cambodian national laws and indeed the ECCC itself permits this practice. The President then handed to Judge Cartwright to add more clarity to these matters.



Judge Cartwright responded first to Mr. Karnavas' submissions on the competency of the doctor. She stated, "The Trial Chamber has ruled clearly this matter on at least a number of occasions. The treating doctor is to report directly to the Chamber on any changes to the Defendant's health. It is unhelpful for any unqualified members of any of the teams to confront the doctors." Turning to the meaning of the word "mendacious," in reference to the defense counsel's earlier comments, the Judge clarified that the word meant that someone was lying. She then issued an admonition that "saying the doctor is lying is an inappropriate statement for this Court," adding with a slight smile, "or anywhere for that matter". She rounded this point off by saying that the Chamber is fully aware of the

responsibility it has in this regard and will refuse to hear such arguments repeated “ad nauseum.”

On the matter of the scheduling for next week, Judge Cartwright advised that, subject to the health of Nuon Chea and subject to his willingness to waive his right to participate in proceedings, the Chamber would hear testimony from the witness whose alias is “Red Arch” early on Monday. Repeating the Trial Chamber’s belief that Khieu Samphan will be discharged from the hospital this weekend, the judge stated that the Court would adjourn for tomorrow and next Friday, due to a public holiday, returning to documentary hearings on Wednesday with the Prosecution presentations on the roles of the accused.

The president thanked Judge Cartwright for her clarifying comments, for informing the public regarding the issues that have been faced by the Chamber today, and for the scheduling information provided for next week’s hearing.

With the day’s proceedings brought to a conclusion at approximately 2:40 p.m., the President informed parties that Court would reconvene on Monday, January 28, and depending on the health of the accused will hear oral testimony from the scheduled witnesses. The President urged the Counsels for Nuon Chea to notify the chamber as to the matter of the waiver as soon as is practicable and, if possible, by Friday.