



*Ieng Sary interview from the film Pol Pot et les Khmer Rouges - 1975*

## **Documents Reveal Khmer Rouge-Era Roles of Ieng Sary and Khieu Samphan**

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Details of the roles of accused persons Ieng Sary and Khieu Samphan fell under the spotlight in the January 30, 2013 hearing in the Extraordinary Chambers in the Courts of Cambodia (ECCC). The hearing was the latest in a series of “document hearings” throughout the Case 002/1 trial; hearings in which parties have the opportunity to present, to the Chamber and the public, documents which they believe to be of key relevance to the issues under consideration in the trial. The theme of the latest hearing is the roles of the accused persons.

Through a detailed presentation, the Office of the Co-Prosecutors (OCP) today put forward documents including fascinating historical videos, Standing Committee minutes, interviews and media articles, focusing on the role of Mr. Sary on the Standing and Central Committees and as Minister for Foreign Affairs.

In the afternoon session, the OCP commenced its presentation on the role of Khieu Samphan as a senior Khmer Rouge leader. It will conclude this presentation on January 31.

### ***Absence of All Accused and Discussion of Prior Circulation of OCP’s List of Documents***

During the morning sessions, an audience of 216 students from Chea Sim High School in Takeo province, together with a front row of seven young monks in vibrant orange, maroon and khaki robes, filled the public gallery. The first session of the day began after an unexplained, nearly 20 minute delay. When it opened, Trial Chamber Greffier Se Kolvuthy reported that all parties to the proceeding were present, except for International Co-Counsel for Ieng Sary Michael Karnavas, as well as the three accused persons. Ieng Sary was participating in his holding cell due to health reasons, while Nuon Chea remained admitted to the Khmer Soviet Friendship

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<sup>1</sup> 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>.

Hospital. Ms. Solvuthy noted that he had already submitted a waiver in respect of the current proceedings, which Trial Chamber President Nil Nonn noted had already been accepted.

The third accused, Khieu Samphan, had recently been discharged from that hospital and had requested on January 29 to waive his presence in court for this hearing and remain in the ECCC detention facility for today's hearing and the hearing on January 31. On January 29, the Chamber ordered Mr. Samphan to be examined by the ECCC's treating doctors before it would rule on this request.<sup>2</sup> Today, Trial Chamber President Nil Nonn "emphasized the importance of the key documents hearing and the potential for inculpatory evidence to be discussed" and the desirability of the accused being present.

However, in view of Mr. Samphan's recent discharge from hospital and "weak" state, the Trial Chamber would permit Mr. Samphan's application "in part." That is, the Chamber would permit Mr. Samphan not to be present for the documents hearing overall, on the condition that he would have to be present in his holding cell under the courtroom for the document presentation on documents relating to him.

Before the OCP could begin its presentation, National Co-Counsel for Khieu Samphan Kong Sam Onn was granted the floor. He requested for the OCP to send the list of all documents it intended to present at these hearings, even if it might be unable to review them all. Deputy International Co-Prosecutor William Smith advised it would be happy to do so. However, he noted that as the hearings had been scheduled very lately, his team had been working very long hours in order to select the most relevant documents, implying these lists were not yet fully ready. However, he assured that the OCP would provide these lists "as soon as possible."

National Co-Counsel for Ieng Sary, Ang Udom, echoed Mr. Sam Onn's concerns. He noted that his team had not yet received the list of documents yet, presumably those in relation to Mr. Sary. He acknowledged that the OCP had "been doing its best," but should have been prepared by now. Now, he said, they would have to proceed with the hearing concerning Mr. Sary without having this list before them.

This prompted a brief conference by all Trial Chamber judges. After a moment, Judge Jean-Marc Lavergne returned to his seat, while the president remained in deep conference with Judges Silvia Cartwright and You Ottara for a minute. The president then ceded the floor to Judge Cartwright to explain its ruling. She advised that:

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<sup>2</sup> Cambodia Tribunal Monitor's daily blog post on the hearing on January 29, 2013 may be accessed at <http://www.cambodiatribunal.org/blog/2013/01/phnom-penh-%E2%80%9Cisolated-city-under-military-siege%E2%80%9D-prior-its-fall>.

The Chamber does not accept the observations made by national counsel for the Khieu Samphan and Ieng Sary teams. The prosecutor has indicated that he has done his best and, at the last segment of this document hearing, it was obvious to the Chamber that the prosecution and the Ieng Sary team were the only ones prepared for the document hearing. The Chamber considers:

1. That it is inappropriate to criticize the prosecution when teams themselves have not been prepared to the limits of their abilities given the disadvantages that each team has encountered; and
2. All documents are on the case file and the parties are able to follow, reasonably expeditiously, everything that the prosecutor does.



Noting Mr. Udom was standing, the president advised that if his comments were not new comments, he was not able to proceed. Mr. Udom stressed that his team had no objection to the OCP's document presentation itself, and didn't mean to suggest that it did.

#### ***Overview of OCP's Presentation on Ieng Sary***

At this point, the president ceded the floor to the OCP. As indicated on January 29, the OCP would have two days to present documents concerning the roles of all three accused persons during the Democratic Kampuchea (DK) period. The OCP had earlier advised that it would do so beginning with Mr. Sary, then Mr. Samphan, and finally Mr. Chea.

The first prosecutor to take the floor for OCP's document presentation was National Senior Assistant Co-Prosecutor Chan Dararasmey. He advised that the OCP would be presenting 29 documents and eight video clips which revealed the roles of Mr. Sary when he was in power. Specifically, these documents would reveal the evidence concerning the activities of the DK under the jurisdiction of the ECCC. These documents would include speeches, telegrams, and meeting minutes. OCP would also eventually present these documents in a compendium ordered chronologically so as to reveal to the public "the truth of what happened during the DK period."

In addition, the documents would touch on some activities Mr. Sary undertook prior to his taking power. However, the presentation would exclude testimony of witnesses or experts — presumably, that is, excluding any interviews undertaken by such individuals

At this point, Mr. Dararasmey ceded the floor to Mr. Smith. He explained that the documents the OCP would present would illustrate Mr's Sary's:

1. Connection to the Communist Party of Kampuchea (CPK) as an ordinary member;
2. Role as a Standing Committee member;
3. Role as the Minister of Foreign Affairs; and
4. Role shortly before, during, and after the DK period.

### ***Facts Agreed by Ieng Sary***

The first document OCP presented was a highlighted excerpt from the Closing Order, which is the name the ECCC uses for the final indictment issued against the accused.<sup>3</sup> Mr. Smith explained that the portions highlighted in green represented the few facts to which Mr. Sary had already agreed. The prosecutor first presented a general list of those agreed facts, which are as follows:

- In 1950, Mr. Sary moved to Paris to study.
- In 1957, Mr. Sary moved to Phnom Penh.
- Mr. Sary was a professor at Kampuchebot Private High School until going into hiding in 1963.
- In 1960, Mr. Sary participated in the first party congress of the Worker's Party of Kampuchea (WPK), the new name for the Khmer People's Revolutionary Party (KPRP).<sup>4</sup>
- Mr. Sary was elected to the WPK Central Committee and was made a full-rights member of its Standing Committee at that time.
- In April 1963, after named by the late King Father Norodom Sihanouk as one of 34 known leftists, Mr. Sary fled to the Vietnamese border around the same time as Son Sen, to join Pol Pot there.
- In 1966, he and other members of the CPK moved to Ratanakiri province in Cambodia's northeast, where a new Central Committee headquarters was established. At that time, Mr. Sary became the Northeast Zone Secretary.
- In 1970, Mr. Sary went to Hanoi in order to establish the Voice of the National United Front of Kampuchea (FUNK) radio station.
- Mr. Sary then flew to Beijing to liaise with the Chinese Communist Party.
- In 1971, Mr. Sary was given a permanent base in Beijing.
- Mr. Sary was Special Envoy of the Internal Resistance in Beijing and in charge of relations with Norodom Sihanouk.
- Mr. Sary returned to Cambodia twice while in China:
  - In 1973, to accompany Norodom Sihanouk on a March 1973 visit to the liberated zones; and
  - In 1974.
- Mr. Sary returned to Cambodia permanently in April 1975.
- During the CPK regime, Mr. Sary used the revolutionary alias of Van.

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<sup>3</sup> This document has the document number E9/21.3 Annex A, and the relevant ERNs are E0006964 to 81 (in English). The Closing Order may be accessed at : <http://www.eccc.gov.kh/document/court/14888> (in Khmer), <http://www.eccc.gov.kh/en/documents/court/closing-order> (in English), and <http://www.eccc.gov.kh/fr/document/court/ordonnance-de-cl%C3%B4ture-dans-le-dossier-002> (in French).

<sup>4</sup> The Closing Order alleges that the WPK is the predecessor of the CPK.

At this point, Mr. Smith digressed in order to show a video clip from the film *Pol Pot et les Khmer Rouges*<sup>5</sup> of Mr. Sary's meeting with Norodom Sihanouk and their visit to the liberated zones. He pointed out that this meeting was also attended by Pol Pot, Mr. Samphan, and Hu Nim, and included a visit to Angkor Wat.

In the video, an energetic Pol Pot, dressed in a simple shirt, narrated how he became leader of the Party<sup>6</sup> while images were shown of Sihanouk, dressed in black and adorned with a *krama*,<sup>7</sup> warmly greeting a group of men, who were clapping and taking turns to shake his hand. The video mentioned that Jacques Vergès — a French-Vietnamese lawyer and International Co-Counsel for Khieu Samphan — had known Pol Pot for about 20 years, and described him as a “polite, discreet, and cheerful young man.”

Pol Pot also suggested that “I did not wish to appear as a leader ... Fortune played a major part in my life, such as when I became the secretary of the Party ... they gave me the job.” The video closed with a shot of Sihanouk and others dressed in black climbing the steps up to Angkor Wat and then standing in single file in front.

Returning to the list of agreed facts, Mr. Smith proceeded to present facts of particular relevance to CPK history and Mr. Sary's role, some of which he had briefly mentioned earlier in the hearing. These facts were as follows:

- As of April 17, 1975, the CPK was governed by statutes first adopted at its first Party congress in September 1960.
- The 1960 congress at which the KPRP became the WPK was the real starting point of the Cambodian Communist movement.
- The Central and Standing Committees were comprised of full-rights and “candidate” or “reserve” members. The latter two statuses were lower, and did not confer decision making rights.
- Pol Pot was the highest authority of the CPK as the Secretary of the Standing Committee. To talk to Pol Pot was the same as talking to the Party.
- Mr. Chea was second in the Standing Committee, followed by Ta Mok.
- In Pol Pot's absence, Mr. Chea would preside over meetings of the Standing Committee.
- After the disappearance in 1962 of the-then WPK secretary, the second WPK congress in February 1963 appointed Saloth Sar *alias* Pol Pot as secretary and Mr. Chea as deputy. A small group of individuals participated at that congress, including Mr. Sary, Sao Phim, Ta Mok, Vorn Vet, and Ros Nhim.
- A few months later, Pol Pot, and another few leaders including Mr. Sary and Mr. Sen, fled the city and established Office 100 near the Vietnamese border.
- By 1965, they were joined by their respective spouses Khieu Ponnary, Ieng Thirith and Yun Yat.

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<sup>5</sup> This translates from the French as “Pol Pot and the Khmer Rouge.”

<sup>6</sup> This video has the document number E/2348R.

<sup>7</sup> A *krama* is a traditional Cambodian scarf, usually checkered.

- Mr. Chea, whose identity remained secret, stayed in Phnom Penh and was responsible for Party operations in the capital city and most zones.
- In 1967, several Party members agreed to launch a general uprising in 1968.
- The Central Committee headquarters, also called Office 100, relocated to Ratanakiri a few kilometers away from Office 102, a Northeast Zone office used by Mr. Sary, who had been appointed zone secretary.
- On March 18, 1970, Sihanouk was overthrown by Lon Nol and Prince Sirik Matak, who established a regime later called the Khmer Republic.
- On March 23, 1970, the FUNK was established.
- Mr. Sary went to Hanoi in 1971 to establish the Voice of FUNK, which he placed in control of his wife Ms. Thirith until 1975.
- In April 1971, Mr. Sary travelled to Beijing to serve as Special Emissary of the Internal Resistance Movement, with a direct telegraph link from his villa in Beijing to Office 100.
- The existence of the CPK was not officially announced until September 1977.

***Detailed Examination of Articles in the Statute of the CPK and their Relevance to Ieng Sary***

Next, Mr. Smith presented to the Chamber the statute of the CPK from 1976,<sup>8</sup> noting that the CPK had been in place from 1960 and its statutes had changed several times since then. Its statutes, Mr. Smith asserted, constituted “highly probative evidence of the functions of the Party and its members.” It addressed topics including:

- The purpose and structure of the Party;
- Key organizational principles;
- Rights and duties of Party members;
- Party discipline; and
- Criteria for Party leadership positions.

Mr. Smith began his presentation of this document by referring to the statute section setting out the fundamental and political stances of the party.<sup>9</sup> This stated that the CPK’s goals of the party were to “totally and permanently achieve the national revolution,” and thereafter “continue to make and achieve Socialist revolution” with a view to ultimately achieving Communism. It would “defend and construct the country,” armed with “strong proletariat worldviews and life views.” It opposed the “revolution of the petty bourgeoisie, the capitalists, the feudalists, the imperialists, and all reactionaries,” and would “absolutely fight and oppose idealism, experimentalism, dogmatism, and liberalism.” In addition, the statute provided that:

The CPK clearly understands its extremely heavy task ... every member of our Party must strive to build and consolidate the internal solidarity and unity of our Party ... and must always be on the offensive, forging himself in the heat constantly ... making Socialist revolution and constant Socialist success, as quickly as possible, keeping on moving forward towards Communism in our most beloved Kampuchea.

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<sup>8</sup> This statute has the document number E3/214.

<sup>9</sup> The relevant ERNs are 00530009 (in Khmer), and 00184024 (in English).

Regarding the duties of Party members, Article 2 of the statute set out that these were to:

- Proselytize the popular masses on Party policy, ideology and organization in the unions, cooperatives and Revolutionary Army of Kampuchea (RAK). Members were also to be highly responsible and serve the popular masses and strive to learn from them.
- Agitate the popular mass movement, especially worker peasants, and be connected to national defense and building the DK in the direction of Socialist revolution.
- Have a life inside a Party branch, which should organize meetings regularly and at least once a month. Every Party member was to have a regular branch life, no matter their stature in the Party.
- Respect Party organizational discipline.
- Always build Party policy, ideology, organizational stances to absorb them in order to implement Party policy, ideology, and organization ever better and more efficiently.
- Strive to constantly improve Party solidarity and unity.
- Always and absolutely strive to maintain Party secrecy with the highest stance of revolutionary vigilance.
- Criticize and self-criticize, and inspect revolutionary life, to build themselves as good examples.
- Actively fight in work of national defense according to the Party's direction.
- Follow solid principles and stances of proletariat patriotism and internationalism.
- Study culture, technology, and science, to increase capabilities of national defense and construction in the direction of Socialism.

At this juncture, the prosecutor briefly mentioned Article 3, which detailed the right of full-rights party members to participate in discussions and deliberations on Party affairs. Mr. Smith highlighted the statute's Article 4, which addressed Party discipline and respect for such discipline and Party organization. This article detailed that CPK discipline was very firm, and stood on the principle of awareness of each Party member. Respect for Party discipline and organization equated to respect for the Party line, ideological stance, organizational stance, and Party statute. Anyone opposing these would be "fractur[ing] the unity of the Party and [trying] to destroy it," causing a break in security, and endangering the Party and the revolution. Anyone acting in this manner for three consecutive months was punishable by:

- Criticism or warning;
- Change of duties;
- Rejection from the Party; or
- Various punishments according to whether activities opposed the Party or constituted treason.

Article 7 of the CPK Statute detailed the structure of the Party. It declared that the "highest operational unit is the Central Committee," of which Mr. Sary had allegedly been a member. The tasks of the Central Committee were outlined at Article 3. They were:

- Implementing the Party political line and stance throughout the Party.

- Instructing Party zones and organizations to carry out activities in accordance with this, and with national defense and building the DK and Socialism.
- Governing and arranging Party members by “grasping personal histories, political, ideological, and organizational stances” and arming them “politically, ideologically, and organizationally.”
- Acting as a liaison between other Marxist-Leninist brother and sister parties.

Moving to Article 9 of the Statute of the CPK, Mr. Smith noted that this entitled the establishment of a Party branch where there were three or more Party members. Article 10, meanwhile, set out an extra level of responsibility and set of tasks for individuals running Party branches.

Concerning decision making and reporting within the CPK, Mr. Smith directed the Chamber’s attention to Article 6. This article stated that the CPK took “the principle of democratic centralism as its organizational foundation. That is, all Party leadership organizations [were to] implement collective leadership and have specific persons holding responsibility. All the various decisions of the Party [were to] be made collectively. All echelons of Party leadership organizations [were to] be collectively appointed.” It also noted the following dichotomous relationships in relation to decision making:

- The minority respected the majority.
- The lower echelon respected the upper echelon.
- Individuals respected the collective.
- Private organizations respected the organization.
- Echelon organizations respected the central organization.

In addition, the lower echelon was required to report “on the situation and on work done.” Conversely, the upper echelon had to advise the lower echelon about the “general situation and instructions which they must carry out.” This, Mr. Smith said, was “highly relevant” to Mr. Sary’s role on the Central and Standing Committees, as well as in the Ministry of Foreign Affairs since it had CPK branches within it.

Chapter 2, Article 5 of the Statute of the CPK set out selection criteria for leaders of the Party. These criteria, which seemed to require a “stronger revolutionary stance than regular members,” were:

1. Strong revolutionary stance on the Party line.
2. Strong revolutionary stance on proletarian ideology.
3. Strong revolutionary stance on internal Party solidarity and unity.
4. Strong revolutionary stance on lines of organizational leadership and the work of the Party.
5. Strong revolutionary vigilance, maintenance of security, and defense of revolutionary forces.
6. Strong revolutionary stance on independence, mastery, self-reliance, self-mastery
7. Strong revolutionary stance on the making and examining of personal histories and revolutionary life views.



8. Strong revolutionary stance on class.
9. Strong revolutionary stance on clean life morals and political cleanliness.
10. Capability to build oneself and be receptive to political leadership.

Senior leadership of the CPK “created obligations and duties that were more onerous,” Mr. Smith said, with the Central Committee having most responsibility for the political line of the Party across the country. In conclusion on this document, Mr. Smith suggested that the Statute of the CPK “legislate[d] a behavioral template” for Party members and Party leaders, and was therefore central to understanding Mr. Sary’s role and behavior.

### ***Interviews Ieng Sary Gave to the Foreign Press in 1972***

Next, Mr. Smith presented an interview which Mr. Sary gave to the French newspaper *Le Monde*, which was reported in a January 15, 1972 article entitled ‘Interview with a Cambodian Revolutionary.’<sup>10</sup> This article, the prosecutor said, outlined Mr. Sary’s role pre-1972, as well as his views on the U.S., and the CPK practice of working with the population and organizing power.

Regarding the CPK’s progress in liberating the people, Mr. Sary referred to the “FUNK program” applying in the “vast liberated zone,” under which people were now “the source of all power” and committees functioning “as the State apparatus.”<sup>11</sup> The number of functionaries was kept deliberately low, he said, to maintain good Party discipline. Moreover, they cadres went into the villages to live with the people, direct education, and take part in agrarian production.

As for the U.S., Mr. Sary offered the following assessment:

Since 1951, we have followed step by step the criminal actions of American imperialism and its Cambodian servants. We have learned to understand the nature of this imperialism, which we have always fought, and whose intrigues have tended towards the destruction of the independence and neutrality of Cambodia in order to transform her into a base for American aggression against the countries of South East Asia and China. We had, for a long time, foreseen the *coup d’état*. We view that the evolution of the situation in Cambodia and South Vietnam would inevitably lead American imperialism and the “Phnom Penh clique” to commit the heinous crime of March 18, 1970 [namely, the *coup d’état*]. We have, over a long period, carried out intense political work among the people so they could understand the profound nature of imp and its servants. Thus, long before the *coup d’état*, we had achieved the political mobilization of the masses so as to prepare for a long term war of resistance.

Thus, the CPK had long been prepared for “long term war of resistance” and this should not have been of great surprise to the Cambodian people in 1970. Their struggle needed to rely firmly on “the most hardworking of the masses: the workers and the peasants.”

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<sup>10</sup> This interview has the document number E3/597.

<sup>11</sup> The relevant ERNs are 00744036 (in Khmer), 00003963 (in English), and 00722245 (in French).

A second article from this period was a January 31, 1972 article in the *Vietnam Courier* which discussed the progress of the FUNK and Royal Government of National Union of Kampuchea (GRUNK) resistance movement in Cambodia.<sup>12</sup> Asked whether the CPK had carried out democratic reforms regarding land, and how agrarian production was organized, Mr. Sary said that the following measures had been carried out by the CPK:

- Land had been confiscated and made common to the people.
- Land owned by non-treasonous owners would be taken by the State and the peasants temporarily, on payment of a small rent.
- Land rents had been sharply cut, and interest rates over 50 to 60 percent were forbidden.
- Intensive agitation work was being carried out on these policies, with the organization of the peasants into a “patriotic peasants’ association.”
- Agrarian cooperatives had been established to eliminate middlemen.
- Peasants were to improve two rice crops per year.<sup>13</sup>

***DK-Era Videos, Including of an Olympic Stadium Rally and a Visit by the Vietnamese***

Next, Mr. Smith was permitted to show a video which he said showed Pol Pot, Mr. Chea, Mr. Sary, and Mr. Sen, among other CPK leaders, leading a rally at the Olympic Stadium with thousands of cadres in attendance and many more civilians.<sup>14</sup> This video, Mr. Smith said, showed Mr. Sary’s power as a leader. He noted that the exact date of this rally was unknown.



*Ieng Sary, Nuon Chea, and Pol Pot at the Olympic Stadium Rally as seen in a video clip show by the prosecution.*

The video, which was in black and white, with no sound, opened with a group of what seemed to be male and female senior leaders, dressed in black, and most wearing *krama* and “Mao hats,” shaking hands with each other. The next shot showed scores of individuals standing in lines in

<sup>12</sup> This interview has the document number E3/11.

<sup>13</sup> The relevant ERNs are 00711428 to 29 (in Khmer), 00762415 to 16 (in English), and 00738624 (in French).

<sup>14</sup> This video has the document number E3/3051R.

front of flag poles. A small group of individuals paraded in front of them, presumably the CPK leadership. The video cut to a close up of Pol Pot shaking hands.

At this point, the video moved to a shot of leaders filing in to the main Olympic Stadium indoor complex, with some making first pumps, walking past cadres who appeared to be lined up as a guard of honor, several of whom looked very young and were dressed in lighter uniforms and Mao hats. This was followed by a slow panning shot around the stadium, revealing hundreds or perhaps thousands of cadres standing and applauding, and then a shot of what appeared to be a huge crowd of civilians gathered outside.



*Cadres at the Olympic Stadium Rally as seen in a video clip show by the prosecution.*

Next, the video showed various cadres standing at a lectern giving speeches. A wide shot of the exterior of the stadium outdoors at this point revealed thousands of people standing in front of an outdoor podium. Pol Pot was then shown proceeding in to the stadium, applauding along the way. Senior leader standing on stage were also applauding, although some glare in the video made it difficult to distinguish their faces. The camera then panned to the crowd, zooming in to show close ups of some young people in the audience, including a girl with carefully coiffed hair.

Once again, the camera trained on the seated people, presumably CPK leaders, sitting on stage and applauding. It then showed what appeared to be the same group of individuals standing before a large wall and saluting the portraits of Karl Marx, Friedrich Engels, Vladimir Lenin, and Josef Stalin. Finally, the camera cut to a panning shot of the people in the audience holding up their right hands against the sides of their faces, palm out, in a formal salute.

Prefacing the next video to be shown, Mr. Smith asserted that it showed Mr. Sary's role interacting with international delegations in matters of State affairs. This video dated from July 27, 1975 and was entitled *Socialist Republic of Vietnam of a Visit by a Vietnamese Delegation to Cambodia*.<sup>15</sup> It reportedly featured Mr. Sary, as well as Pol Pot, Mr. Chea, Mr. Samphan, and Vorn Vet, among others, suggesting that when international delegations visited, the CPK Standing Committee seemed to meet with them.

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<sup>15</sup> This video has the document number E3/3201R.

The video itself opened with a shot of a delegation of people descending the stairs of an airplane. A narrator stated that “Comrade Pol Pot, who was the secretary of the CPK, along with the other numerous comrades leading the party, arrived at Pochentong Airport waiting to welcome the Vietnamese Labor Party delegation with close friendship, solidarity and warmest fraternity.” The video also noted that this was the first visit by such delegates. After scenes of vigorous handshakes and, indeed, warm embraces between the delegation and the CPK representatives, the video cut to an image of scores of Cambodians applauding enthusiastically and waiving bouquets of flowers in the air.

Another scene from the video showed the delegates descending stairs towards a waiting black Mercedes. Next, they were seen touring a site and then enjoying a lunch with bottled beers and wearing casual short white shirtsleeves. During a nighttime scene, there were more embraces between the visitors and the CPK representatives, followed by speeches at a formal dinner at a long banquet table.

The narrator advised that the Vietnamese delegates offered their “Warmest congratulations for the glorious victory of visions of the brotherhood of the Cambodian people,” while the video showed a scene of applauding dinner guests. At another meeting during the day, a presentation of gifts was undertaken. One was what appeared to be a marble relief and a printed sign in Vietnamese, again while very warm embraces were taking place. The narrator added that the Vietnamese offered a “drawing and a set of classical tea cups.” After this, the Vietnamese delegation left with much the same fanfare with which they had arrived, parading past another crowd of young people, several lines deep and all dressed in black, again brandishing and waving bouquets. Before climbing the steps to their waiting plane, the Vietnamese delegation and CPK representatives took the opportunity for one final round of warm embraces and handshakes, followed by two handed goodbye waves by the CPK representatives.

### ***Objection to OCP’s Presentation and Ieng Sary’s Explanations for the Evacuation of Phnom Penh***

After the mid-morning break, the floor was briefly ceded again to Mr. Udom. He requested that Mr. Smith refrain from raising documents relevant to the agreed facts as it was not useful to discuss such documents at this juncture. On March 24, 2011, Mr. Udom said, his team had pinpointed the facts to which Mr. Sary agreed, which were presumably those noted in the highlighted document Mr. Smith had showed to the Chamber.<sup>16</sup>

Mr. Smith assured the Chamber he would not read them again. However, he said, the purpose of the OCP doing so related to the stated purpose of the presentation of giving the public a “clear picture” of the relevant documentary basis of the trial.

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<sup>16</sup> This document has the document number E9/21.3.

Permitted to move on at this juncture, Mr. Smith explained that his documentation presentation still related to the 1975 period. The next document he presented was a video from 1975 in which Mr. Sary explained to a journalist why he believed Phnom Penh had been evacuated.<sup>17</sup>

Again being an extract from *Pol Pot et les Khmer Rouges*, this clip showed a much younger and healthier Mr. Sary, wearing thick, chic, horn-rimmed black glasses. Mr. Sary said that before the liberation “about two million people had to be evacuated.”



However, after the liberation, “people who lived in Phnom Penh and the provinces increased to about three million.” Thus, a five day evacuation was prepared. At this point, the video cut to an image of a peasant woman beaming and wearing a *krama* wrapped around her head, followed by a herd of geese running, presumably to evoke the return to the agrarian life.

“We knew clearly that fighting had started between January and June,” Mr. Sary said. At this point, the video cut to a brief image of Khmer Rouge historian, upcoming expert witness and former OCP and OCIJ expert Stephen Heder, who commented in French that “The real reason for the evacuation was that it was a way to make Cambodia modern. The population had to be proletarianized.” Cutting back to Mr. Sary, the latter added that “The evacuation of Phnom Penh sought to thwart plans and plots to sabotage.”

On September 8, 1975, Mr. Sary reportedly gave an interview to the *Newsweek* journalist James Pringle at the Lima Conference of Non-Aligned Nations.<sup>18</sup> Mr. Pringle described Mr. Sary as “among the top two or three leaders” and the interview as a rare opportunity for Cambodia to emerge “from its shroud of mystery.” Asked by Mr. Pringle for the reasons for the evacuation, on this occasion Mr. Sary responded that:

There were two reasons, the first of which was food. We thought there were two million people in Phnom Penh, but when we entered we discovered three million. In the past, the U.S. had transported from 30,000 to 40,000 tons of food a month into Phnom Penh. We did not have sufficient transportation to move food into the capital. Therefore, the people had to go where the food was. We had to furnish this food with independence and dignity and without asking for help from any country. ...

We discovered a document detailing a secret political military plan by the U.S. Central Intelligence Agency and the defeated Lon Nol regime to spread confusion after our victory [through three means:]

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<sup>17</sup> This video has the document number E3/2384R, and the relevant ERNs are (in Khmer), (in English), and (in French).

<sup>18</sup> This interview has the document number E3/550, and the relevant ERNs are 00291035 to 38 (in Khmer), 00087603 to 04 (in English), and 00698732 to 34 (in French).

1. If we were unable to solve the problem of feeding the population, they would ... [agitate] among the people.
2. Many of the Lon Nol soldiers who waved white flags had in reality hidden their arms. They intended to attack us after we had taken Phnom Penh.
3. They planned to corrupt our troops and weaken their spirit of revolution with loose women, alcohol, and money.

Mr. Sary also said that Phnom Penh was no longer deserted as about 100,000 had returned and others were continuing to do so. Moreover, “people could go back to Phnom Penh if they wished.” He then described how people were working day and night to build the country, which was “like a giant workshop.”

Mr. Sary further stressed that people had complete religious freedom although they had to respect the State law. Officers of the Lon Nol regime were participating in state production and the national life, if they were sincere. Asked whether Long Boret was dead, Mr. Sary responded curtly, “Dead or not dead, he is a traitor and was judged by the people and Congress.”

### *Standing Committee Minutes*

At this point, Mr. Smith noted that in a statement given by Mr. Samphan to the OCIJ, he had said that “In principle, the most important body [in the CPK] was the Central Committee, but in practice it was the Standing Committee.”<sup>19</sup> He likened this to the differentiation of roles as between a cabinet and parliament. By way of illustration, Mr. Samphan said that the “Central Committee convened a meeting every six months from 1970 onwards. The Standing Committee met frequently, probably about every seven to 10 days or more regularly in emergencies.”<sup>20</sup>

Mr. Smith advised the Chamber that in total, there were 19 Standing Committee meeting minutes on the case file. The first of these<sup>21</sup> designated the role of Mr. Sary and also other accused. Third in the list of people to be designated, Mr. Smith pointed out, was “Comrade Van;” that is, Mr. Sary.<sup>22</sup> The minutes on the case file generally showed the attendees in the order Pol Pot, Mr. Chea, and Mr. Sary, which the OCP submitted was evidence of Party hierarchy. He noted that in the minutes in question, Mr. Sary was designated with foreign affairs work for both the Party and the State.

Mr. Smith also noted that the minutes indicated the importance of the Standing Committee since it seemed “able to designate how the Party and the country [was] run.” These particular minutes also showed that the Standing Committee was the most important body in the country. For instance, they noted that “In bringing up projects, we must ask the Standing Committee so that it may decide and approve.”<sup>23</sup> However, there was a delicate balance: the Standing Committee could not run if everything came to it “in entirety.” At the same time, working in individual

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<sup>19</sup> This statement has the document number E3/27, and the relevant ERNs are 00156619 (in Khmer), and 00156770 (in English).

<sup>20</sup> The relevant ERN is 00156619 (in Khmer).

<sup>21</sup> This has the document number E3/182, and the relevant ERNs are (in Khmer), (in English), and (in French).

<sup>22</sup> The relevant ERNs are 00191108 (in Khmer), and 00183393 (in English).

<sup>23</sup> The relevant ERNs are 00191090 (in Khmer), and 00183394 (in English).

sectors without consulting the Standing Committee was a mistake. Thus, it was necessary to take Party decisions and implement them.

It was therefore important to document decisions to “make it clear what must be done.” The minutes accordingly stressed the importance for minutes to be kept well. When telegrams were received, the office was to consider them immediately and give them to the Standing Committee for a decision.<sup>24</sup> Work had to be given to each section to consider. The work should not be concentrated at the Standing Committee. Instead, the Standing Committee’s office would monitor implementation by the sections and report back and forth.<sup>25</sup> This, Mr. Smith said, demonstrated that the Standing Committee possessed the higher power in the CPK.

Use of the word “traitor” was serious, the minutes stressed. There was a need for close grasping of matters to avoid the situation where reeducation was not possible.<sup>26</sup> This discussion related to a particular individual. Mr. Smith said that this type of discussion of enemies and traitors was significant.

Mr. Sary attended at least 10 Standing Committee meetings, based on the 19 minutes on the case file. Relevant details of the 10 meetings as follows:

1. **November 2, 1975:**<sup>27</sup>
  - Topics discussed at this meeting included foreign affairs topics, enemy countries, individuals threatening the party, and acceptance and distribution of foreign aid. Attendees included Pol Pot, Mr. Chea, and Mr. Sary, listed third.<sup>28</sup> The minutes showed a preoccupation with threats from Thailand and Vietnam.
2. **February 22, 1976:**<sup>29</sup>
  - This meeting included a discussion of national defense matters.
3. **February 22, 1976:**<sup>30</sup>
  - As later explained, this was a second meeting held that same day. Attendees again included Pol Pot, Mr. Chea, and Mr. Sary.<sup>31</sup> The meeting included a proposal to use “additional adolescent children from the base areas” for management by industries, Mr. Smith said, showing that Mr. Sary could discuss significant matters and was present when the issue of child labor was discussed.<sup>32</sup>
4. **March 8, 1976.**<sup>33</sup>
5. **March 11, 1976.**<sup>34</sup>
6. **March 13, 1976.**<sup>35</sup>

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<sup>24</sup> The relevant ERNs are 00019111 to 12 (in Khmer).

<sup>25</sup> The relevant ERNs are 00019112 (in Khmer).

<sup>26</sup> The relevant ERNs are 0019121 to 22 (in Khmer), and 00183404 (in English).

<sup>27</sup> These minutes have the document number E3/227.

<sup>28</sup> The relevant ERN is 0019127 (in Khmer).

<sup>29</sup> These minutes have the document number E3/229.

<sup>30</sup> These minutes have the document number E3/230.

<sup>31</sup> The relevant ERN is 0000711 (in Khmer).

<sup>32</sup> The relevant ERN is 0000712 (in Khmer).

<sup>33</sup> These minutes have the document number E3/231.

<sup>34</sup> These minutes have the document number E3/217.

<sup>35</sup> These minutes have the document numbers E3/233 and E3/234.

7. **May 3, 1976.**<sup>36</sup>
8. **May 7, 1976.**<sup>37</sup>
9. **May 14, 1976.**<sup>38</sup>
10. **May 17, 1976.**

- Mr. Sary reported on Ministry of Foreign Affairs activities to Pol Pot. “Our side has educated our brothers to hold meetings, keep confidential, and be vigilant,” he said.<sup>39</sup> Again, Mr. Smith said, it was significant that Mr. Sary was discussing “vigilance in building the Socialist revolution.” Mr. Sary also discussed, in relation to embassies in Phnom Penh, how to report to the Ministry of Foreign Affairs, and for the ministry to report to “the office” (presumably, the Central Committee’s Office 870).<sup>40</sup>

### ***Various Telegrams Copying Ieng Sary***

Telegrams were another group of documents which, Mr. Smith said, showed Mr. Sary as being copied in on in at least 100 occasions. Mr. Smith sought to highlight some of these, beginning with a January 23, 1970 telegram addressed to “Office 870.”<sup>41</sup> This telegram reported on a meeting with a six-man Vietnamese delegation. The telegram discussed first who had been part of the Vietnamese delegation, then discussed border incursions at the Cambodian-Vietnamese border. It reported that the discussions were difficult but the Cambodian delegation was able to “achieve solidarity.” Significantly, Mr. Smith said, the telegram had been copied to Pol Pot, Mr. Chea, Mr. Sary, Brother Vy, Brother Khieu (an alias for Son Sen), and Brother Vorn.

A March 19, 1978 telegram addressed from Kang Chap *alias* Se was copied to Pol Pot, Mr. Chea, Mr. Sary, Brother Van,<sup>42</sup> Brother Von, and Office 870.<sup>43</sup> It reported on enemies in the North Zone and the systematic purge there. Significantly, Mr. Smith said, the telegram discussing enemies burrowing from within. It detailed how the enemy remnants had risen up, contacted police, soldiers and civil servants who were discussed as “new people.” Only after opposition activities were they recognized for their enmity and “20 heads of them [were] swept cleanly away.” The situation was now under control, including in Preah Vihear.

An April 21 telegram<sup>44</sup> from Oeun Meng<sup>45</sup> *alias* Vy, the Northeast Zone secretary, was copied to Ieng Sary and discussed border clashes with Vietnam and the infiltration of spies and rising of internal traitors.<sup>46</sup> It specifically discussed how spies were identified and internal traitors “swept clean.”

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<sup>36</sup> These minutes have the document number E3/219.

<sup>37</sup> These minutes have the document number E3/220.

<sup>38</sup> These minutes have the document number E3/221.

<sup>39</sup> This telegram has the document number E3/223, and the relevant ERNs are 0000829 (in Khmer), 00182708 (in English), and 00323984 (in French).

<sup>40</sup> The relevant ERNs are 00182711 (in English), and 00323796 (in French).

<sup>41</sup> This telegram has the document number E3/893.

<sup>42</sup> This may have been a misstatement because Brother Van was reported to be one and the same as Mr. Sary, who had already been listed in the telegram under his real name.

<sup>43</sup> This telegram has the document number E3/995.

<sup>44</sup> The year of this telegram was not given.

<sup>45</sup> The phonetic spelling of this name was unclear in the English language.

<sup>46</sup> This telegram has the document number E3/157, and the relevant ERNs are 00001902 (in Khmer), (in English), and (in French).



In total, these telegrams illustrated, according to Mr. Smith that Mr. Sary had a “monitoring role” in his capacity as a Standing Committee member with respect to activities within the CPK, including the killing of internal enemies within the country.

***Further Documents Relating to Ieng Sary’s Oversight of Enemy “Smashing”***

In keeping with the theme on internal enemies, the prosecutor next highlighted a Central Committee decision on March 30, 1976, regarding the right to “smash” inside and outside the ranks.<sup>47</sup> This decision described how the Standing Committee was given the power to “smash;” that is, to kill. This related to Mr. Sary, Mr. Smith said, because of his position on both the CC and SC.

Also relevant to this issue was Mr. Samphan’s OCIJ statement on December 14, 2007. In this statement, Mr. Samphan said that disappearances were approved as follows:

A number of cadres below it approved to punish those who committed adultery by shaving half the hair off their heads and exposing them to the public. Such mistakes were denounced and corrected. ... In relation to the disappearance of the members of the Central Committee and the Standing Committee, everyone seemed to approve, but I did not know the extent or the scope of the arrests.<sup>48</sup>

This, Mr. Smith said, again showed Mr. Sary’s exposure to CPK killing policies. In the same interview, Mr. Smith said, Mr. Samphan said that the speech he delivered in Colombo, Sri Lanka, was written by Mr. Sary, who had also written speeches for Mr. Chea and Mr. Vet, according to Mr. Samphan. This showed that Mr. Sary had a further role in speechwriting for other senior Party members.

***Communications between Ieng Sary and the U.N.: “Kampuchea is the Master of Its Destiny”***

Next, the prosecutor presented two speeches Mr. Sary gave to bodies of the U.N. The first was an October 5, 1976 speech by Mr. Sary to the U.N. General Assembly.<sup>49</sup> This speech, Mr. Smith said, reflected the rhetoric of the CPK statute concerning solidarity with non-aligned nations and anger at capitalist nations. Even in such a speech, Mr. Sary was “quite bold” in discussing the treatment of “enemies.” Indeed, he stated that “The American imperialist lackeys and other revolutionary forces continue to relentlessly oppose our country ... striving to rally the rump of forces of perfidy ... undermining inside our country and also to intervene in internal affairs.” However, the nation, people and army had inflicted defeats by the U.S. Nevertheless, “blinded by their vaulting ambition,” the Americans persisted.<sup>50</sup> The prosecutor argued that this speech reflected what was discussed in Standing Committee meetings concerning smashing internal enemies, showing corroboration between the regime’s public and private statements.

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<sup>47</sup> This decision has the document number E3/12.

<sup>48</sup> This statement has the document number E3/210, and the relevant ERNs are 00156691 (in Khmer), and 00156949 (in English).

<sup>49</sup> This speech has the document number E3/607, and the relevant ERN is 00156689 (in Khmer).

<sup>50</sup> The relevant ERNs are 00816624 (in Khmer), and 00586824 (in English).



*Ieng Sary at the Olympic Stadium Rally as seen in a video clip show by the prosecution.*

Next, Mr. Smith referred to a September 20, 1978 document. He noted, first, that this document did not have an E3 number but was not rejected by the Trial Chamber's decision assigning E3 numbers.<sup>51</sup> Moving to discuss its substance, Mr. Smith advised that it constituted a telegram from Mr. Sary to the Sub-commission on the Prevention of Discrimination and Protection of Minorities, which was part of the U.N. Economic and Social Council. In his telegram, Mr. Sary stated that:

We reject Sub-commission decision 1 as an impudent interference in the internal affairs of DK. By that decision, substantial support [is given to] the act of traitors to the country and the maneuvers of American imperialists and their partners, who after committing immeasurable crimes against the people of Kampuchea, massacring more than one million people of Kampuchea ... continue to defame and whitewash their crimes. Kampuchea is the master of its destiny and after three years has succeeded in solving fundamental problems, is self-sufficient ... without recourse to the imperialists. As in the past, people of DK will make mince-meat of any criminal maneuvers of the imperialists or their partners. They will not tolerate any affront to the sovereignty of Kampuchea.

This statement, Mr. Smith said, was in response to Resolution 11/31 adopted on September 15, 1978, in which the Sub-commission decided to request its chairman or another member to analyze materials "on the situation of human rights in the DK" in accordance with a decision of the U.N. Commission on Human Rights and other comments by the Sub-commission. This

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<sup>51</sup> This telegram report has the document number D366/7.1.820.

matter was to be reported on and “given highest priority at its 35th session.” This was a significant document for understanding Mr. Sary’s role in the regime during that period, Mr. Smith said, after which the president adjourned the hearing for the lunch break.

***Nuon Chea Believes He Is “Approaching Death”, May Withdraw Document Hearing Waiver***

A new audience of 87 villagers from Kampong Chhnang took up seats in the public gallery for the afternoon. Before the OCP could resume its document presentation, however, the floor was given to the International Co-Counsel for Nuon Chea Victor Koppe, who first congratulated the OCP for presenting what appeared to be the OCP’s “preliminary closing submissions.” This, Mr. Koppe said, was in contrast with International Senior Assistant Co-Prosecutor Keith Raynor’s presentation the previous week which, the defense counsel said, was more restrained in terms of discussing only the contents of the documents.

Mr. Koppe noted that the Chamber had ordered Mr. Samphan’s presence in the afternoon presentations on his role during the DK despite his counsel’s protestations. He also noted that his colleague Son Arun was absent as he was currently traveling to the Khmer Soviet Friendship Hospital to advise Mr. Chea of the hearing’s progress today and also advise him, as recommended by both his counsel, to withdraw his waiver of participation in the hearings.

The defense counsel also noted that Mr. Chea’s health condition had shockingly deteriorated when his team visited him yesterday afternoon. This contrasted with the Trial Chamber’s report that Mr. Chea was improving. Both Mr. Chea and his family had believed, for at least two days, that Mr. Chea “was approaching death.”

***Further Communications between U.N. and Ieng Sary***

By way of response, Mr. Smith sought to clarify that his team did not wish to present closing submissions. He then returned to his document presentation and to his last mentioned theme of communications with the U.N. Another telegram, dated April 22, 1978, from the Minister of Foreign Affairs, Mr. Sary, to the Sub-commission on the Prevention of Discrimination and Protection of Minorities, rebuked the British government for requesting an investigation of crimes in Cambodia at the time. The telegram was set out in a June 13, 1978 note of the U.N. Secretary General entitled *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World*, which noted that Mr. Sary had requested that the telegram be circulated to official U.N. bodies.<sup>52</sup> In the considerably lengthy telegram, Mr. Sary stated that:

This infamous calumny against the people of Kampuchea is no new development and did not take by surprise the people and government of the DK. The imperialists, expansionists, and annexationists have conducted their campaign of denigration against the people of Kampuchea ever since the latter rose up in defiance of their domination, oppression and exploitation. At that time, they not only launched verbal attacks but also rep and mas the people of Kampuchea in an attempt to stifle the latter’s struggle ...

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<sup>52</sup> This note has the document number E3/1337, and the relevant ERNs are 00333906 (in Khmer), 00235721 (in English), and 00235729 (in French).

The British government has no right to interfere in the internal affairs of the DK. The people and the government of DK condemn with their last ounce of strength the odious inference of the British government as an affront to the dignity of the Kampuchea people and the sovereignty of DK ...

Progress has also been made in creating the new society, which is a collective society ... based on independence, equality and Socialist collectivism. All the forces of production have been liberated ...

The former government employees, who are simple citizens once again, fulfill their daily tasks and live just like the people and the administrators, on the basis of equality. They support the new regime, which can both defend the country effectively and ensure its rapid development ... Everyone is equal and there are no exploiters or exploited. All peasants control the rice paddies and the fields, and all workers the factories ... All the fruits paid for with the sweat and blood of the people come back to the people and not to anyone else. ...

In the mobilization of national and popular forces, the government of DK has well-defined policies which make a clear distinction between strategic and tactical forces. It knows perfectly well when to struggle with determination and when to unite, and when to make concessions and show mercy. However, when dealing with a handful of traitors, the agents of foreign imperialists and reactionaries who seek to destroy their own people, their own nation, and their own revolution, the government applies a dictatorship of the proletariat resolutely and rigorously.<sup>53</sup> ...

It is therefore invaluable the government of the DK considers that the U.N. should reject the slander and calumny of the imperialists, expansionists, annexationists and their supporters against DK, particularly the interference in the internal affairs of DK on the part of the British government, and it should reject the slander and calumny of hoodlums, traitors and stateless persons ... If there were no genuine rights and freedoms and the new regime of Kampuchea were exploiting and oppressing the people, the latter would undoubtedly destroy that regime.

### ***Documents Recovered from the Ministry of Foreign Affairs***

Mr. Smith turned to another document, entitled *Diary of the Khmer Rouge Foreign Ministry*. This document was discovered by a Cambodian returning from the countryside in a house apparently belonging to Mr. Sary. The document was a handwritten, often shorthand document of 152 double-pages in a black diary printed by a Lon Nol era company.<sup>54</sup> The first entry appeared on May 21, 1976, and the last on January 4, 1979. It appeared, Mr. Smith, to be an account of:

- The ministry's meetings and congresses;
- The ministry's atmosphere; and
- Mr. Sary's role.

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<sup>53</sup> The relevant ERNs are 00333917 (in Khmer), 00235727 (in English), and 00235736 (in French).

<sup>54</sup> This diary has the document number E3/522.

It included a short excerpt of the Party statute.<sup>55</sup> There also appeared to be reports from Party cells within the ministry. At the bottom of one page, Brother Van (that is, Mr. Sary) quite good although there was some room for improvement.<sup>56</sup>

There was also a discussion of enemies of the revolution.<sup>57</sup> Another entry concerned evacuation of people and said that “the world estimates that someday, we will let the people return to the cities.” The author indicated that this showed people had never undertaken such activities as transferring people from the cities to rural areas.<sup>58</sup>

At another part of the book, there was a section entitled “Van’s Comments about Comrade Chhaem.” Qualities becoming of Chhaem included that he was loyal, and was close to the masses. At this point, Mr. Smith stated he would slow down, apparently after receiving a signal from his national counterpart. Indeed, in the Khmer translation channel, the translators could be heard pleading with the president to ask the prosecutor to slow down, which may have been what the national prosecutor was responding to. The diary also noted that Chhaem, on the other hand, could be “too independent minded” and free in speech, and separating people into types.<sup>59</sup>

Assignment issued prior to the Ministry of Foreign Affairs’ congress listed Comrade Van as number one.<sup>60</sup> This document, Mr. Smith summarized, revealed the ministry’s preoccupation with the location of internal enemies.

Next, Mr. Smith presented a report entitled *Working with the Committees of Every Unit: September 12, 1977*.<sup>61</sup> This report summarized the reports from the committees. In particular, it noted that there had been success in having “smashed and swept cleanly way the enemies who were CIA, KGB and Yuon<sup>62</sup> territory swallows” and had been planning a *coup d’état*.” However, there was a need for future work to ensure the ministry was “immaculate.” While 98 percent of the ministry was “good” and understood the problem, another 2 percent still existed, who were “in the process of conducting activities.”<sup>63</sup> There was a need to “overcome everything to prevent this 2 percent from laying eggs or expanding.” Thus, there was a need to encircle and close them down until only 1.5 or 0.5 percent remained. At this point, Mr. Smith conceded that the document did not state expressly that the document was from the Ministry of Foreign Affairs, but argued that this was apparent from reading it.

Finally, on this topic, Mr. Smith moved on to a letter which he stated had been contained in the confession of Hu Nim.<sup>64</sup> The document in which it was contained suggested that Mr. Nim had been arrested on April 11, 1977. In his letter, which was addressed to the CPK and individually-

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<sup>55</sup> The relevant ERN is 00003243 (in English).

<sup>56</sup> The relevant ERN is 00003247 (in English).

<sup>57</sup> The relevant ERNs are 00427842 to 43 (in Khmer), and 00003254 (in English).

<sup>58</sup> The relevant ERN is 00427872 (in Khmer).

<sup>59</sup> The relevant ERNs are 00427921 (in Khmer), and 0003216 (in English).

<sup>60</sup> The relevant ERNs are 00427949 (in Khmer), and 00003336 (in English).

<sup>61</sup> This report has the document number E3/857, and the relevant ERN is 00355487 (in English).

<sup>62</sup> Yuon is a derogatory Khmer word for Vietnamese.

<sup>63</sup> The relevant ERN is 0086707 (in Khmer), and 00811327 (in French).

<sup>64</sup> This document has the document number E3/1550.

listed members of the Standing Committee, Mr. Nim pleaded for his life. He denied having been a spy working for Son Ngoc Thanh and maintained this “absolute stance” despite knowing it might mean death.<sup>65</sup>

Additionally, Mr. Nim said he would not escape, and requested his legs not be chained as he had insomnia and hepatitis and could not become accustomed to the chains. If he did run away, the Party had permission, Mr. Nim said, to “shoot me down.” Mr. Smith noted that Mr. Sary was the third person to whom the letter had been personally addressed, after Pol Pot and Mr. Chea and ahead of addresses including Mr. Samphan. The letter also indicated, according to Mr. Smith, that the Standing Committee had the power to release people from S-21.

### ***Power Relations in the CPK***

The next topic Mr. Smith sought to discuss was the power relations in the CPK as these related to Mr. Sary. He began this part of his presentation with a short video clip featuring Ta Mok who explained power relations in the Standing Committee.<sup>66</sup> In this clip, again from *Pol Pot et Les Khmer Rouges*, a sprightly looking Ta Mok said that Pol Pot was responsible for the party, Mr. Chea was number two, Mr. Sary was third, Sao Phim was fourth and Ta Mok was fifth.



*Ta Mok interview from Pol Pot et Les Khmer Rouges, 1975.*

Next, Mr. Smith referred to Meak Touch *alias* Nem, former DK-era ambassador to Laos. In Mr. Touch’s confession, he stated that Khmer immigrants to Lao were to be sent for indoctrination. This confession was relevant, the prosecutor said, because first, in its top right-hand corner, it had an annotation “Comrade Van” and second, it related to an employee of the Ministry of Foreign Affairs.<sup>67</sup>

<sup>65</sup> The relevant ERNs are 00003117 to 18 (in Khmer), and 00759691 (in English).

<sup>66</sup> This video has the document number D108/32.2.

<sup>67</sup> This confession has the document number E3/1547.

A documentary film produced by the DK government showed a CPK rally attended by Mr. Chea, Mr. Sary and other leaders on the podium.<sup>68</sup> This clip, which was in color, showed a large group of people dressed in black, wearing Mao hats and *krama*, marching in double file up the stairs of the main Olympic Stadium complex. The next scene showed a large CPK flag, followed by the parties taking their seats in the stadium and slogans in Khmer. This was followed by a scene outside the stadium where a procession of applauding individuals also dressed in black, *krama* and Mao hats, led by Pol Pot, walked past rows of people holding machine guns and filed up the stairs into the stadium, to dutiful applause. After the leaders arrived on the podium, the camera shifted to close up shots of individual leaders including Pol Pot, Mr. Chea, and Mr. Sary.

At this juncture, the prosecutor presented a timeline chart prepared by the OCIJ compiling Mr. Sary's foreign travel during the DK compared with S-21 records of arrests and executions of Ministry of Foreign Affairs staff, in order to determine if Mr. Sary was in the country at the time when arrests, imprisonment and executions occurred.<sup>69</sup> According to the charge, 99 and 85 imprisonment and execution dates were able to be coded for the chart, as the rest had incomplete data. Nor was the list of Mr. Sary's travel, which the chart had used, exhaustive. Nevertheless, based on the chart's statistics, Mr. Sary was reported in Cambodia for approximately 80 percent of the DK period. Thus, Mr. Sary's role as Minister for Foreign Affairs could be argued to be "much more of an internal one than an external one," Mr. Smith said.

#### ***Interview between Ieng Sary and Stephen Heder***

The prosecutor shifted focused to an interview of Mr. Sary undertaken by Mr. Heder on December 17, 1996, which appeared to be a Documentation Center of Cambodia (DC-Cam) interview transcript.<sup>70</sup> Dr. Heder stated that he "believed there was proletarianization by compulsion, Khmerization also by force, those who resisted or failed these plans could be considered enemies, and fourth, traitors or enemies could be arrested and ultimately killed. Asked for his reactions to this, Mr. Sary said that he also saw things in this way and 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 ... the acts committed were aberrant, and once they were in motion, they caused great suffering to the nation ... So like you said, as the revolution was beset by more and more complications and problems, the number of human beings who were said to have done wrong increased ...

... In September 1975, there was a meeting to decide what we had to do to prevent Vietnam from coming to take control of Cambodia ... It was only the Standing Committee, not the Central Committee; the Standing Committee.

This concluded the OCP's presentation on the documents relating to the role of Mr. Sary.

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<sup>68</sup> This video has the document number E3/3052R.

<sup>69</sup> This chart has the document number E3/489.

<sup>70</sup> This interview has the document number E3/89.

### ***Nuon Chea's Withdrawal of Waiver and a "Good" Prognosis on his Health***

Following the mid-afternoon break, Mr. Koppe updated the court, as promised, about Mr. Udom's visit to see Mr. Chea. Mr. Chea had "signed a written withdrawal of his earlier waiver," Mr. Koppe said, which his team was circulating to the parties via e-mail. The president appeared not to react to this momentarily. With an apparent word from Judge Cartwright, the Trial Chamber judges huddled around their communal translator in conference. Trial Chamber Greffier Roger Phillips then handed the president a document which was presumably the withdrawal about which Mr. Koppe had spoken.

After a few minutes, the president asked Mr. Koppe to rise. He then asked the defense counsel whether Mr. Chea had waived his rights concerning just the document presentation in relation to him, or in relation to the entire hearing. Mr. Koppe clarified that he had waived his rights just in respect of himself. Mr. Koppe said that he presumed this to be the specific extent of Mr. Chea's waiver, although he could not comment on this definitively as Mr. Chea's withdrawal document was in Khmer.

In contrast to Mr. Koppe's earlier report that Mr. Chea considered himself near death, the president at this point noted that according to the report of Mr. Chea's treating doctor issued today, the accused person was "good." While he coughed occasionally, and could not get out of bed without assistance, it appeared that his health was improving.

### ***Debate on Use of Statements Given by Now-Deceased Individuals***

International Co-Counsel for Khieu Samphan Anta Guissé was given the floor at this point. She wished to submit an oral request relating to the documents to be presented in relation to Mr. Samphan's role. She first recalled the Chamber's June 20, 2012 decision.<sup>71</sup> At paragraph 22, she said, the Chamber said that:

written statements or transcripts proposed to be put before the Chamber and which go to proof of the acts and conduct of an accused as charge in the indictment shall, subjected to the limited exceptions provided below, be regarded as not allowed by law ... and inadmissible for this purpose unless the defense has been accorded the opportunity of in court examination of their authors.

On the basis of this decision, Ms. Guissé requested that the OCP be denied leave to present documents 20,<sup>72</sup> 70,<sup>73</sup> 71<sup>74</sup> and another<sup>75</sup> of its provisional list of documents to be used with respect to Mr. Samphan's role as indicated on its list with today's date. She also objected to their use of a document from the OCP's Annex B.<sup>76</sup> International Senior Assistant Co-Prosecutor Tarik Abdulkhak could be observed sighing at this point.

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<sup>71</sup> This decision has the document number E96/7.

<sup>72</sup> This document has the document number 10.18.

<sup>73</sup> This document has the document number IS20.35

<sup>74</sup> This document has the document number E190.1. 72.

<sup>75</sup> This document has the document number E3/464.

<sup>76</sup> This document has the document number E9/14/1/1.12 at Item 35.



Mr. Abdulhak responded that it was “unfortunate” that he had to begin his presentation by correcting Ms. Guissé’s legal submissions. These statements, he said, related to people who were deceased, and as such, constituted an exception under international law. Paragraph 32 of the Chamber’s decision, he said, stated that “Statements of individuals who are deceased can be admitted into evidence even if they relate to the acts and conduct of the accused,” consistent with international practice.

Ms. Guissé responded that admission of statements of deceased could not be made in such an oral presentation but under a very specific, alternate procedure. This prompted Judge Lavergne rise and then huddle in conference with his fellow judges. After several minutes, Judge Lavergne was given the floor to address the parties on this issue. He advised as follows:

Mr. Co-Prosecutor, the Chamber has heard the objections posed by the defense of Mr. Khieu Samphan ... at this particular stage, the Chamber would like to know whether the document opposed by [them] figures on the [document] list [already] before the Chamber or if they are entirely new documents ... and [whether you] intend to have these documents presented this afternoon.

Mr. Abdulhak confirmed that all were on the OCP’s April 2011 document list, although one of them was potentially an additional document. He stressed that these statements had been selected because the authors were deceased. After looking over to Judge Lavergne, the president then ceded the floor to the OCP to begin their document presentation.

### ***Overview of Documents Relating to Khieu Samphan and Notice of Nuon Chea’s Impending Discharge from Hospital***

At this point, National Senior Assistant Co-Prosecutor Veng Huot took the floor. He advised that on February 13 and 14, 2012, OCP presented documents relevant to Mr. Samphan’s role in the period prior to April 17, 1975. Today’s document presentation built on the previous one. As such, they invited the judges to consider the documents shown in the two presentations together, as they formed part of the same continuum. These documents related to:

1. Mr. Samphan’s membership of high level bodies within the CPK, including the Central Committee and his attendance at meetings of the Standing Committee.
2. Mr. Samphan’s role in the establishment of the DK, the adoption of its constitution, the resignation of Norodom as head of state, and the establishment of the State Presidium headed by Mr. Samphan.
3. Mr. Samphan’s oversight of DK’s Ministry of Commerce.
4. Arrests of Ministry of Commerce cadres working in offices under his supervision.
5. Mr. Samphan’s speeches containing endorsements of CPK policy and reflected his role in the party and in the DK government.
6. Amnesty International correspondence addressed to Mr. Samphan during the DK period which sought to bring to his attention the mass crimes being committed in Cambodia.
7. Mr. Samphan’s interviews and publications, including several video recordings where he discussed his role during the DK period, crimes allegedly committed during the period and his relationship with other leaders of the Party.
8. Mr. Samphan’s statement to the OCII.

Mr. Huot qualified that these documents were a “representative sample of a larger body of evidence.” They revealed, he asserted, Mr. Samphan’s role as a leader of the CPK and the DK, his furtherance of CPK policy and his vigorous defense of such policy.

Before the floor was ceded to Mr. Abdulhak to commence the substantive presentation, the president returned briefly to Mr. Chea’s health. He stated that, according to the Khmer Soviet Friendship Hospital, Mr. Chea would be discharged on January 31, 2013 at 2 p.m. after having been admitted for 14 days. The report was signed by Dr. Kim Sonsan, the president concluded.

***Statements Khieu Samphan Made to the OCIJ***

At this juncture, Mr. Abdulhak moved into his substantive presentation. He sought to begin by first presenting the last type of document on Mr. Huot’s list, namely statements the accused person gave to the OCIJ before he ceased cooperating with them. These are:

- Statement at an adversarial hearing E3/557.
- E3/27 first interview on December 13, 2007
- Two interviews on Dec 14, 2010 E3/37 and E3/210.

Commencing first with the first formal interview on December 13, 2007, Mr. Abdulhak noted that Mr. Smith had already mentioned this document in passing and would not discuss the same portions. However, he did wish to highlight an additional question regarding where Mr. Samphan had come from when he entered Phnom Penh:

For about 10 days, I had been at the headquarters of Pol Pot to the west of Oudong. I would like to assert that I did not participate in the work of the headquarters. I was just present in the headquarters and observed the events upon which Pol Pot briefed me once in a while ... I think that there were just the two of us [present]. Nuon Chea may have been there with us too, but I’m not sure. There were also some commanders of the army who controlled the battle for Phnom Penh and who came on a regular basis ... [including] Ta Mok, Koy Thuon, ... and there may have been Sao Phim as well. [Mr. Sen was also present] but he had his own headquarters.<sup>77</sup>

Mr. Samphan also confirmed that he stayed with the Khmer Rouge permanently from 1970 to 1975, as his role was to establish relations with Norodom Sihanouk. When the CPK was established, Sihanouk knew neither Mr. Chea nor Pol Pot. Thus, Mr. Samphan was the only one who could establish relations with him, presumably because they were already acquainted.

At another passage in the statement, Mr. Samphan acknowledged that he was a member of the Central Committee as a candidate member from 1971 and a full-rights member from 1976. Then, asking Mr. Samphan about his participation in Standing Committee meetings, he confirmed that he had attended around 14 out of 19 meetings as suggested by the Introductory Submission.<sup>78</sup>

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<sup>77</sup> The relevant ERNs are 00156614 (in Khmer), 00156743 (in English), and 00156666 (in French).

<sup>78</sup> The relevant ERNs are 00156619 (in Khmer), 00156751 (in English), and 00156672 (in French).

On December 14, 2007, Mr. Samphan described to the OCIJ the appointments of Doeun and himself to Office 870, his cohabitation at Office K-3 with other leaders, and speeches he gave as the president of the DK.<sup>79</sup> Asked how long Seou Vasy *alias* Doeun was the chairman of Office 870, Mr. Samphan said that Mr. Vasy was appointed “around June 1975,” and was arrested in 1977, which Mr. Samphan only discovered “after 1979.” Mr. Samphan had not been surprised by Mr. Vasy’s absence as each leader had to concentrate on his or her duties and Doeun travelled a lot.<sup>80</sup>

Asked to describe what Office 870 was, Mr. Samphan said:

It was one office of the Standing Committee. It had only two members: Doeun and me. Doeun was the chairman, assisted by colleagues such as Pong, and he was in charge of political affairs. As for me, as I stated earlier, I was in charge of the price lists and distribution of goods to the zone under instruction from the Standing Committee. I also had [to manage relations with] Norodom Sihanouk.

While Office 870 was initially “not so important,” it later had to monitor the suspected members of the Party on behalf of the Standing Committee, although Mr. Samphan said he did not learn this until he moved to Pailin after the revolution.<sup>81</sup>

Regarding speeches Mr. Samphan gave, the investigator asked if the accused person whether he agreed with those speeches. Mr. Samphan stated that he generally agreed with the content:

Because there was an ultimatum imposed by Vietnam in May 1976. ... But on certain points, I disagreed with what was said in the speeches, for instance, the elimination of currency, which resulted in the absence of small industry or handicraft or development ... I could not make my disagreement public because we could not reveal [this] to the public ... Furthermore, I would not have survived if I [did so] – the obvious example of that was Hu Yun and Hu Nim.<sup>82</sup>

In the third OCIJ interview Mr. Samphan gave, also on December 14, 2007, he continued with the “theme of fear and arrest.” Probed further about whether he knew about arrests and executions, and about an apparent contradiction, Mr. Samphan said:

I brought up the executions of Hu Nim and Hu Yun but I only learned the information about the arrests of these two people after 1979 ... I do not know how to explain to you more clearly. At that time, there was an ultimatum imposed by Vietnam. Pol Pot himself and the CPK felt threatened. This situation meant that it was not possible to envisage any dissidents. ... I observed that some members of the Central Committee disappeared one after another. I could not inform you

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<sup>79</sup> This statement has the document number E3/37.

<sup>80</sup> The relevant ERNs are 00156675 (in Khmer), 00156753 (in English), and 00156680 (in French).

<sup>81</sup> The relevant ERNs are 00156607 (in Khmer), and 00156872 (in French).

<sup>82</sup> This has the document number , and the relevant ERNs are 00156689 (in Khmer), 00156948 (in English), and 00156694 (in French).

about the names because I was not close to them. Nonetheless, I did not know the exact extent of the arrests at the time.<sup>83</sup>

Mr. Samphan said, indeed, that he only learned the extent of the massacres at the end of 1998 “through his readings.”

At this point, Mr. Abdulhak relayed an extract from Mr. Samphan’s statement which Mr. Smith had already discussed, namely the passage in which Mr. Samphan described a situation in which alleged adulterers had half their heads shaven, and how everyone in the Standing Committee seemed to already have approved of arrests within the Central and Standing Committee while Mr. Samphan was not fully aware of them during the DK period.

Regarding the evacuation of Phnom Penh, Mr. Samphan said, he clearly believed the population “may have fallen along the way,” which made him ponder why the leaders made such a decision deviating from its line.<sup>84</sup> That is, Mr. Abdulhak said, Mr. Samphan appeared to be concerned as early as April 1975 about the suffering being inflicted on the revolution.

### ***Role Khieu Samphan Played in CPK Upper Echelons and DK Institutions***

At this juncture, Mr. Abdulhak sought to refer to a Standing Committee meeting minutes which Mr. Smith had also previously referred to, from the October 9, 1975 meeting. On its first page, the document indicated that the delegation of work and processes had an order, the first being Pol Pot, Mr. Chea, then Mr. Sary. Fourth on this list, Mr. Abdulhak said, was Comrade Hem or Mr. Samphan,<sup>85</sup> who was made “responsible for the front and the Royal Government and commerce for accounting and pricing.”<sup>86</sup> Mr. Abdulhak noted that the minutes listed Mr. Samphan first, then full-rights Standing Committee members such as Vorn Vet and others. Similarly, in a list of bodyguards to offices around Phnom Penh, the document also listed Pol Pot’s residence K-1 first; then Uncle 2 at K-3; then Brother Van or Ieng Sary; then Brother Hem or Mr. Samphan; then Brother Vorn.

This led Mr. Abdulhak to note that of a total of 23 meetings of the Party leadership for which the Court had documents, some being Standing Committee meetings and others not formally indicated as such (although the Standing Committee was also present at these), only 19 of these meetings contained lists of individuals attending. These are perhaps the 19 minutes to which Mr. Smith had earlier referred. Within these documents, Mr. Samphan was recorded as attending 16 meetings. Only Pol Pot and Mr. Chea attended more meetings. Standing Committee members such as Mr. Sen and Mr. Vet attended less than 10 of these meetings.

### ***Events in 1975 Relating to the Return of Norodom Sihanouk and His Resignation***

Next, Mr. Abdulhak moved to the topic of the return to Cambodia of the late King Father Norodom Sihanouk, and his eventual resignation and replacement by Mr. Samphan.<sup>87</sup> A black

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<sup>83</sup> This has the document number , and the relevant ERNs are 00156691 (in Khmer), 00156949 (in English), and 00156966 (in French).

<sup>84</sup> The relevant ERNs are 00156690 (in Khmer), 00156949 (in English), and 00156966 (in French).

<sup>85</sup> Hem is alleged to be a revolutionary alias of Mr. Samphan.

<sup>86</sup> This has the document number E3/858, and the relevant ERNs are (in Khmer), (in English), and (in French).

<sup>87</sup> This video has the document number D295/2/2.23R.

and white video of this occasion opened on a scene showing a line of nine individuals standing before lines of hundreds of cadres in the background at what appeared to be Phnom Penh's Pochentong airport. The film then cut to a wide shot of hundreds of people in shirtsleeves and slacks, followed by the landing of a large passenger jet with a tail emblazoned with a wide, dark colored stripe running horizontally through its center. Four young girls were also shown carrying baskets while a crowd of several hundred people waved in the background.



*King Norodom Sihanouk arrives in Phnom Penh as seen in a video clip show by the prosecution.*

The nine men in a line were then seen waving and smiling, while the passenger jet taxied to a half and turning into position. The nine men then walked over as the film cut to a shot of Norodom Sihanouk appearing at the plane door and applauding continuously while descending the stairs, greeting the first of the nine men with a warm embrace. Next were scenes of Norodom Sihanouk hugging and kissing the nine men, with his wife in tow.

In a second video clip, the Khmer flag was seen flying. The clip then cut to a ceremony with Norodom Sihanouk holding his hands together in a polite, traditional prayer sign. Next, an individual in horn rimmed glasses appearing to be Mr. Sen gave a speech, while a close up showed a young Mr. Samphan sitting in the front row near Norodom Sihanouk, listening to the speech. Several apparent dignitaries in dark suits sat behind. This footage, Mr. Abdulhak said, dated from around September 1975.

Hearings were then adjourned for the day. Hearings in the ECCC will continue at 9 a.m. on Thursday, January 31, 2013 with the continuation of today's document presentation by the OCP. On January 31, the OCP will conclude its presentation on the Khmer Rouge-era role of Khieu Samphan. It was unclear whether the Chamber will also continue with the document hearing concerning Nuon Chea.