



**“Five Years and Four Months”: Lawyers Debate Khieu Samphan’s Release on Bail after Witness Testimony Ends**

By Mary Kozlovski<sup>1</sup>

On Thursday, April 11, 2013, at the Extraordinary Chambers in the Courts of Cambodia (ECCC), French Catholic priest and witness François Ponchaud finalized his testimony after responding to questions from the defense teams for Khieu Samphan and Nuon Chea. In the afternoon, the Trial Chamber heard oral submissions from the prosecution<sup>2</sup> and defense for Khieu Samphan regarding the defense’s application for Khieu Samphan’s immediate release on bail.<sup>3</sup>

Today, 226 students from Phnom Penh’s Sisowath High School attended the morning session to listen to Mr. Ponchaud’s testimony. Khieu Samphan was present in court for the entire day, while co-defendant Nuon Chea observed proceedings from a holding cell in the morning due to his health problems, and returned to the ECCC detention center at midday.

***Khieu Samphan Defense Continues Examination of Witness François Ponchaud***

Resuming his cross-examination from the previous day, International Co-Lawyer for Khieu Samphan Arthur Vercken referred to the “purported” 1976 interview of Khieu Samphan at a

---

<sup>1</sup> Cambodia Tribunal Monitor’s daily blog posts on the ECCC are written according to the personal observations of

<sup>2</sup> President Nonn stated during the hearing that the prosecution was not required to file a written submission.

<sup>3</sup> The application for Mr. Khieu Samphan’s immediate release on bail can be accessed at:

[http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-04-10%2012:55/E275\\_EN.PDF](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-04-10%2012:55/E275_EN.PDF)

conference in Colombo, Sri Lanka, by Paola Brianti<sup>4</sup> who worked for a newspaper called *Christian Family*.<sup>5</sup> Mr. Vercken asked Mr. Ponchaud whether a French journalist named Eric Laurent<sup>6</sup> had informed him that Ms. Brianti never met Khieu Samphan, while William Shawcross said that neither individual met Khieu Samphan.<sup>7</sup> However, International Senior Assistant Co-Prosecutor Vincent de Wilde protested against the defense's methodology, requesting that they put specific questions to the witness, and arguing that they were citing information that may or not be on the case file. Mr. Vercken explained that he was seeking clarification from the witness, who could either confirm or invalidate the information. Once permitted to answer the question, Mr. Ponchaud confirmed that Eric Laurent told him he was by Paola Brianti's side the entire conference and that the interview was fabricated.<sup>8</sup>

Then Mr. Vercken inquired if Pich Lim Kuon, a former helicopter pilot who travelled from Democratic Kampuchea (DK) to Thailand and whom Mr. Ponchaud had talked of, had spoken directly to him about Khieu Samphan, or only mentioned a DK leader named 'Brother Hem.'<sup>9</sup> The witness replied that he met Pich Lim Kuon at a refugee camp in June or July 1976, who told him that he was a pilot transporting Khmer Rouge leaders. Mr. Ponchaud testified that in his book he quoted a response from Pich Lim Kuon that Angkar was Comrade Pang,<sup>10</sup> Comrade Hem, Comrade Van, Comrade Vet,<sup>11</sup> but Pich Lim Kuon did not know who exactly they were.

Mr. Vercken read at length an October 6, 1976, letter from the French Ambassador of Thailand to the French Ministry of Foreign Affairs including details of an interview the ambassador conducted with Pich Lim Kuon. After discussions of the "leaders" Pol Pot, Ieng Sary, Nuon Chea, and Son Sen, the Ambassador wrote:

It is impossible to provide the same amount of information on Mr Khieu Samphan whose real power seems to be much more limited than his official rank would suggest. Several tenuous yet converging indications make this a distinct possibility. Khieu Samphan would thus belong to the most recent stratum of the Khmer Rouge movement since he, Hou Yun and Hu Nim only joined the resistance in 1967. One member of this trio with which his political destiny is generally associated, Hou Yun, who had vanished from the scene, he was probably killed in combat in 1975. Hu Nim, theoretically the minister of information, had not been mentioned by the radio in Phnom Penh since February 1977. In addition Khieu Samphan holds the position of head of state, which is generally honorary in a socialist state. Furthermore, the only refugee [Pich Lim Kuon] with some knowledge of the ruling circles in Phnom Penh, mentioning him as not belonging to the first tier of leaders. Finally Pol Pot in his September 27 address referred in passing to the Comrade President

---

<sup>4</sup> The spelling of this name was unclear in the English translation.

<sup>5</sup> During the ECCC hearing on Wednesday, April 10, 2013, an "Italian journalist" named "Mr. Christiana" was mentioned by Khieu Samphan's national defense lawyer Kong Sam Onn. The English translation was unclear, but it was likely a reference to an Italian publication called *Famiglia Christiana*, or *Christian Family*. Cambodia Tribunal Monitor's account of the hearing can be accessed at:

[http://www.cambodiatribunal.org/blog/2013/04/%E2%80%9Cghost-country%E2%80%9D-francois-ponchaud%E2%80%99s-testimony-continues#\\_ftn24](http://www.cambodiatribunal.org/blog/2013/04/%E2%80%9Cghost-country%E2%80%9D-francois-ponchaud%E2%80%99s-testimony-continues#_ftn24)

<sup>6</sup> The spelling of this name was unclear in the English translation.

<sup>7</sup> The individuals are believed to be Paola Brianti and Eric Laurent. William Shawcross is the author of *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*.

<sup>8</sup> Mr. Ponchaud referred to an article in French weekly magazine *Paris Match*, in which there were "doctored" photographs of the Khmer Rouge, however the English translation was unclear.

<sup>9</sup> 'Hem' was Khieu Samphan's revolutionary alias.

<sup>10</sup> The spelling of this name was unclear in the English translation.

<sup>11</sup> 'Van' is Ieng Sary's revolutionary alias.

of the State Presidium, Mr. Khieu Samphan, whom he politely characterized as ‘an intellectual’. Knowing how the Khmer Rouge treat that particular category of the population, and having read the rest of the address which is largely dedicated to the glorification of the peasant class – the only true revolutionary force – makes it easier to understand the importance ... Khieu Samphan’s peers placed on the position of head of state.



After Mr. Vercken began to quote from an article published in *Herald Tribune* on May 11, 1976, Mr. de Wilde interrupted. The prosecutor noted that Mr. Vercken had provided a long introduction without asking any question and presented documents that made various assumptions, expressing doubt as to whether the witness could comment on reports by the French Ambassador made in 1976. Mr. de Wilde requested that defense counsel cease providing information that lent itself to a closing argument or pleading, rather than a cross-examination. International Civil Party Lead Co-Lawyer Elisabeth Simmoneau Fort echoed his objection. Trial Chamber President Nil Nonn said the question was lengthy and the chamber was concerned the response would stray from the scope of proceedings.

Rebutting the objections, Mr. Vercken replied that he had not had the chance to put his question to the witness and noted that the prosecution had read verbatim from whole passages in documents. Mr. Ponchaud told the court that he did not precisely recall his discussion with Pich Lim Kuon, but he mentioned ‘Comrade Hem’ as being among the DK leaders without identifying his specific position. People who were interested in DK learned that Saloth Sar was Pol Pot in September 1977, he added.

### ***Examination Returns to DK Evacuations***

Moving onto the evacuation of cities during the Khmer Rouge period, Mr. Vercken quoted Mr. Ponchaud as saying in a video interview with former International Co-Investigating Judge Marcel Lemonde that the deliberate decision to empty cities was, in his opinion, related to ideology rather than vengeful peasants acting against city dwellers. The witness told the court that he stood by this opinion and the evacuations were a Khmer Rouge practice since April 1970, but he did not imagine they would expel people from Phnom Penh. Mr. Ponchaud elaborated as follows:

There was not really much vengeance; it was more ideological. It is possible, of course, that vengeance was used somewhat, in that they maybe used vengeance at the service of their ideology, but I think that the core was ideological. The idea was to create a new society without cities, without compradors, as Khieu Samphan states in his dissertation.

Mr. Vercken inquired if the necessity of feeding Phnom Penh’s population in April 1975 – two to three million out of a total population of about 7.3 million, according to some estimates – was a key concern. The witness replied that population statistics from the period could not be relied upon – two to three million people in the capital was an estimate – and though food supply was a problem, the primary reason for evacuating the city was ideological. When queried on whether there was a debt that DK had to pay back to North Vietnam after they assumed control, Mr. Ponchaud replied that people have said there was a famine in DK because of poor harvests but,

to his knowledge, the harvests in Chhor commune<sup>12</sup> where he lived were excellent and people congratulated the Khmer Rouge for good harvests between 1975 and 1976. The witness said there were rumors in Cambodia about “organized famine” but he never saw anything in writing. Some of Cambodia’s rice went to North Vietnam to reimburse the war debt and, according to information he had heard, some was sent to China, Mr. Ponchaud said, adding that Pol Pot “in his madness” stored rice in peripheral regions of Cambodia such as Preah Vihear. Mr. Ponchaud told the court that in 2000 he saw enormous warehouses and caves in Battambang province where the Khmer Rouge had stored rice. He continued:

Pol Pot said that the war with Vietnam cannot be avoided, we’re going to attract, try to woo the Vietnamese troops into Cambodia and they will be cut from their back base and we will have rice and we will be able to fight them more easily. So these are the three main reasons for the famine in Cambodia, but this famine was also a weapon of domination, a weapon to dominate and subjugate the population.

### ***The Authority of Low-Ranking Cadres***

The defense lawyer then quoted an excerpt from Mr. Ponchaud’s book, which described commune chiefs in DK as having “the right of life or death over the villagers under his authority”. “In theory he should consult his own superiors before executing anyone, but he often does so only after the sentence has already been carried out and the atmosphere of tranquillity reigning among the villagers depends to a large extent on him,” Mr. Vercken read, pressing Mr. Ponchaud for detail on the authority of commune chiefs. The witness replied that he wrote his book in 1976 and did not have certain specific information<sup>13</sup> and that Khieu Samphan told him directly – also mentioned in a film – that the regime erred in delegating power to unprepared and incompetent cadres, whom they did not have time to train and who were given responsibilities too quickly. The witness testified:

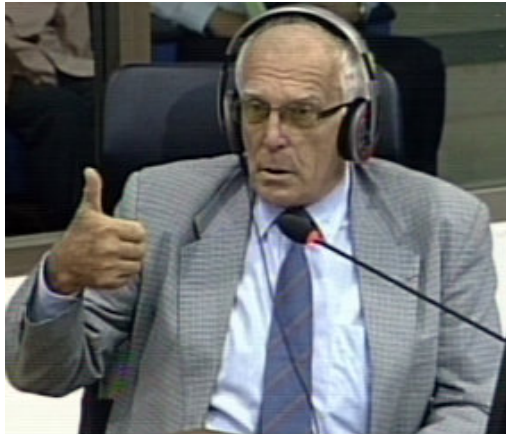
The Khmer Rouge gave responsibilities to people who were frustrated, often who were ignorant, who could neither read nor write, people who had been marginalised in the former regime. So maybe the original idea was very good, but it was absolutely utopian and it was they who executed people essentially ... the people who essentially sent people to their deaths was the ... cooperative chief and I believe that it is the cooperative chief who sent the people to the commune chief or the sector chief for them to be executed, so they are those who are the most responsible in certain ways for these massacres. So the Khmer Rouge revolution in my eyes are general instructions that were applied literally even beyond what was asked for low ranking local cadres.

Additionally, Mr. Ponchaud stated that Angkar would ask certain cooperatives to provide two tons of rice but they would give three tons to prove their worth, thus starving the people. He said local cadres often went beyond the structure of Angkar – in production and in committing executions – though he emphasized that he was not trying to excuse anyone.

---

<sup>12</sup> There is a commune called *Prey Chhor* in Kampong Cham province, but it was unclear in the English translation if Mr. Ponchaud was referring to this commune.

<sup>13</sup> Mr. Ponchaud again stated, as he had in previous testimony, that he had information about Battambang province, but was “intelligently criticized” by Cambodia scholar Michael Vickery in his book *Cambodia: 1975-1982* for assuming that the situation in DK was the same everywhere.



Finally, Mr. Vercken read another passage from Mr. Ponchaud's interview with former Judge Lemonde, in which he describes "total improvisation" when he went to Prek Phnou<sup>14</sup> and saw thousands of people waiting in the fields which gave the impression that nothing was organized. "I would say that it was one of the general instructions that was given for all cities, but I would say it was done Khmer style," Mr. Ponchaud was quoted as saying in the interview. "That means everybody managing on his own." In court, Mr. Ponchaud emphasized that nothing was organized and refugees told him they asked Khmer Rouge soldiers where they

could get rice, and were told to manage on their own.

After Mr. Vercken concluded his examination, Mr. Ponchaud inquired if he could make some comments on Khieu Samphan's guilt, but President Nonn denied the request, stating that he could only answer questions put by parties based on his experiences and events he witnessed.

### ***Lawyers for Nuon Chea Focus on U.S. Bombing and Pre-1975 Period***

To begin with, International Co-Lawyer for Nuon Chea Victor Koppe asked Mr. Ponchaud about his observations on the effect of US bombing on the Cambodian economy. Mr. Ponchaud firstly said there were bombings firstly from 1968 to 1970 along the Ho Chi Minh Trail, which affected Mondulkiri, Ratanakiri and all the way to Memut.<sup>15</sup> Mr. Ponchaud testified there were likely one million tons of bombs dropped, perhaps more, on eastern Cambodia, with rubber plantations completely destroyed by Agent Orange. The witness recalled that in his area many babies were born without limbs because of Agent Orange used on rubber plantations in Memut and Snuol<sup>16</sup>. Plantations in Choup<sup>17</sup> were ruined by the South Vietnamese air force, which also destroyed factories,<sup>18</sup> he said, adding that the bombings were disastrous for the area and the Cambodian economy broadly.

Mr. Ponchaud repeated an earlier comment that, according to declassified archives, Henry Kissinger had advised former US President Richard Nixon to drop an atomic bomb on the Ho Chi Minh Trail. He went on to testify that subsequent U.S. bombing of Cambodia between February 6 and August 15, 1973, were intended to allow the U.S. army to leave the region after an agreement between the US and North Vietnam to end the Vietnam War,<sup>19</sup> Mr. Ponchaud testified that because the Khmer Rouge refused to sign on to this agreement the U.S. dropped 239,000 tons of bombs on Cambodia – a small country that had "done nothing to them" and where there was no US military presence. These 1973 bombings, Mr. Ponchaud stated, led in great part to the exodus of people from the countryside to the cities, though the Khmer Rouge also shared responsibility. "This is also one of the reasons why the Khmer Rouge became furious

---

<sup>14</sup> Prek Phnou is an area located along National Road 5.

<sup>15</sup> Memut is a commune in Kampong Cham province.

<sup>16</sup> Snuol is a district in Kratie province.

<sup>17</sup> Choup is a district in Kampong Cham province.

<sup>18</sup> Mr. Ponchaud mentioned 'French interests' in the attack on Choup district, but did not specify what those interests were.

<sup>19</sup> Mr. Ponchaud's response was unclear in the English translation.

and it's perfectly understandable, when you're country is completely being destroyed," he said, emphasizing that about 40,000 people died because of the bombings though others had said there were 100,000 deaths.

Under questioning about the economic consequences of bombing on industry and agriculture, Mr. Ponchaud said the first U.S. bombings of the Ho Chi Minh Trail were "catastrophic" for rubber plantations. He recollected a friend in Memut who stayed with the Khmer Rouge for about a year, unable to work because the plantations were destroyed. The witness testified that after the 1973 bombings the country was ruined, and during the civil war between 1970 and 1975 nobody was farming. He said, "People were simply trying to survive and as of 1973 with the bombings, what remained was completely obliterated and that, in and of itself, was completely catastrophic. The people arrived in Phnom Penh – they were bereft. They had nothing. They could only receive meagre assistance."

Mr. Ponchaud added that Battambang province was spared bombing by the US and also the Khmer Rouge – the latter because a provincial official had sold rice to the Khmer Rouge.<sup>20</sup>

Pressed for detail on the situation for the general population, Mr. Ponchaud described increasing misery and hunger and the U.S.'s transportation of rice to Cambodia from South Vietnam. There was enough to survive, he related; however, once the Khmer Rouge cut off access to the Mekong River in 1975 the situation worsened, and the US airlifted rice from Thailand before Pochentong came under attack in late March or early April. "Things deteriorated progressively, but they were able to survive on whatever supplies they could amass up until January 1975," Mr. Ponchaud, commenting that Khmer people have an incredible capacity for survival. The witness explained that refugees at least had some hospitals, but after the Khmer Rouge took power there were no healthcare services in the Cambodian countryside and the situation was even worse in Phnom Penh. Later, after the Vietnamese army occupied Cambodia in 1979, there were nationwide food shortages, Mr. Ponchaud recalled, and one person told him that 'Year Zero' was actually 1979 when there was "absolutely nothing left."

In response to query from Mr. Koppe, Mr. Ponchaud described the killing of 39 civilian foreigners in 1970 after the coup d'état<sup>21</sup> before testifying that Lon Nol attempted to unite Cambodians by calling on "ancestral hatred" against the Vietnamese dating back to the capture of Kampuchea Krom in the 19<sup>th</sup> century. The Lon Nol army killed many Vietnamese people, he said.<sup>22</sup>

### ***Defense Queries Witness's Use of the Word "Genocide"***

Noting that Mr. Ponchaud had described the execution of 2,000 Vietnamese people by the Lon Nol soldiers as "genocide," Mr. Koppe inquired if the witness had a specific reason for classified the action as such. "They were attacked because they were Vietnamese," he said. Mr. Ponchaud testified that it was for the court to determine "genocide," but in 1975 the Khmer Rouge assisted

---

<sup>20</sup> Part of Mr. Ponchaud's response was unclear in the English translation.

<sup>21</sup> Mr. Ponchaud appeared to be saying that Lon Nol ordered North Vietnamese soldiers to kill these people, but the English translation of his response was unclear.

<sup>22</sup> Mr. Ponchaud spoke at length about various parties, including the Lon Nol, North Vietnamese, South Vietnamese and US armies in this response, but the English translation was unclear.

Vietnamese people with their repatriation and it was only in 1978 that their actions toward Vietnamese people were less moderate. The Khmer Rouge killed Vietnamese people who were still residing in Cambodia at that time but that was perhaps a “reaction,” not necessarily genocide but this was for the court to judge, Mr. Ponchaud said. “It was a sort of colony they needed to neutralize.”

Mr. Koppe quoted a statement Mr. Ponchaud gave to the court’s Office of the Co-Investigating Judges (OCIJ) as saying that there was no religious persecution in DK in the case of Christians or Buddhists:

Those who were killed and, some were, were not killed because of the religion but because they were perceived as political enemies and they refused to apply the orders of Angkar. It is true that the regime was anti-religious but I would not describe this as genocide or persecution because, once again, it was not because they were religious figures that the people concerned were executed, but because they were enemies. I would say that the same applied to the Chams.

When pressed about these comments, Mr. Ponchaud said he used the term “genocide” when discussing the killing of Vietnamese people in 1970 because Lon Nol incited racial hatred and they were killed because they were “Yuong.”<sup>23</sup> The witness testified that there was no religious persecution of Christians in Cambodia, though he estimated almost 90 percent of Catholics in the country were killed: “For the most part they were people from Phnom Penh and Battambang. They were the enemy, they were April 17 people, they were new people, prisoners of war, and my deep conviction is that as of 1978 there was will to eliminate all of the new people, all of the liberated people.”

For various reasons, the Cham did not fall into the mould of the Khmer Rouge and those who did not adhere to Angkar’s traditions were killed, Mr. Ponchaud said, adding further:

The Khmer Rouge as of 1978 had sought out the Cham people because they were Cham, not because the Cham were disobeying Angkar law, but because specifically they were Cham. So the Khmer Rouge went into the villages and unearthed the Cham and they were taken away and undoubtedly killed, but that was only as of 1978. I would call that political, religious persecution and there I would stat talking about genocide but only as of 1978, and once again it was in a very restricted, limited manner.

### ***Lawyer Seeks Detail on Evacuation and DK Cadres***

Mr. Koppe inquired if various groups of Khmer Rouge soldiers behaved differently from others in April 1975. Mr. Ponchaud recollected that some soldiers told the foreigners to leave, others told them to stay; some were likeable and sympathetic, while others were “ready to eat us alive.” He said there was a difference in their treatment of Cambodian people, and they did not all speak, dress or act the same way. “Generally speaking, the Khmer Rouge were quite ignorant,” Mr. Ponchaud told the chamber. “They didn’t know anything about life. They knew nothing about city life.”

When asked about his testimony on the presence of a CIA leader at the French embassy, Mr. Ponchaud said everyone at the embassy identified him as such, but he did not know the man’s

---

<sup>23</sup> The term ‘Yuong’ was used to refer to Vietnamese people, often in a derogatory manner.

name. He added that he believed there were CIA networks operating in Cambodia at the time, as there were in Vietnam, Laos and France.

### ***François Ponchaud's Refugee Interviews Probed***

Moving on to Mr. Ponchaud's interviews with Cambodian refugees, Mr. Koppe sought detail on Michael Vickery's criticisms of Mr. Ponchaud's work in this area. Mr. Ponchaud replied that he realized that even with Battambang province treatment of people differed in neighboring areas and he perhaps tended to generalize information he gleaned about Battambang to the rest of Cambodia. He explained that he wrote his book in 1976 and did not have information pertaining to the entire country, whereas Michael Vickery wrote his book after 1979 and was able to distinguish between various sectors. Mr. Ponchaud related how in his book he recounted a directive from 'Angkar Leu' to smash the social class, which in some areas was interpreted as an order to kill people who were not peasants, but understood elsewhere as an obligation to force people of higher social class to live like peasants of lower social status. The witness said that different treatment was meted out based on a single directive and under DK there were few written decrees.



Next, Mr. Koppe queried whether Mr. Ponchaud was aware of Mr. Vickery's criticisms about his selection of refugees to interview. Mr. Ponchaud said he knew the criticisms and that he had spoken to people from Phnom and Battambang, but he did not collect testimonies that were exclusively from the rich or poor. Mr. Koppe cited Mr. Vickery's book *Cambodia: 1975 -1982* as stating that of 94 refugee accounts collected by Mr. Ponchaud, 63 had their occupations listed and of these 52 were town dwellers and 42 certainly of elite status, and inquired if the witness had considered the refugees' backgrounds. Mr. Ponchaud told the defense lawyer that he had, but their backgrounds did not detract from the truth of their stories.

The witness explained that when he first began speaking to refugees in September 1975 he had difficulty believing their accounts, but the information gradually "converged" and he was convinced that they were telling the truth. He added that he continued to listen to Khmer Rouge radio to understand the regime's ideology, while the refugees told him the experiences of Cambodian people whether they originated from the city or the countryside. Mr. Ponchaud asked that he not be accused of choosing to only speak to the elite. "One applies a certain intuition when speaking with refugees," the witness commented. "The fact that I spoke Khmer was of huge assistance because refugees, either rightly or wrongly, sometimes took me for being one of them. and one could sense after a while if the refugee was speaking the truth or if they were being misleading."

Mr. Koppe told Mr. Ponchaud he was not accusing him, but recounting Michael Vickery's criticisms, and read the following excerpt from Michael Vickery's book:



The elite nature of this information is even more apparent among the 20 informants whom he [Mr. Ponchaud] names and who provided the most important evidence: four of them were teachers or students, three doctors or pharmacists, four technicians, two businessmen, one court clerk, four military, and the remaining two unidentified by occupation. ... Naturally almost the entire body of their testimony concerns the fate of the urban evacuees not the peasants in whom Ponchaud claims special interest.

After being asked for his reaction to this passage, Mr. Ponchaud detailed to the court a first wave of refugees who reached the border, comprised mainly of city dwellers – military officers from Battambang province, in particular – followed by a second wave which included ethnic Chinese people who had the most to lose in the revolution. From January 1976, teachers and monks arrived at the border followed by peasants well after that, Mr. Ponchaud said, stating that people came in increments over the course of the revolution and when he was writing his book most refugees were from the cities. Mr. Koppe queried whether Mr. Ponchaud agreed with an assessment by Gareth Porter that refugees he spoke to were intentionally attempting to “blacken” the regime they had fled from. In response, Mr. Ponchaud said he could agree with it to a certain extent but did not consider it very valid. He told the chamber that a refugee does not necessarily tell lies and he paid sufficient attention and caution when evaluating refugees’ stories and DK broadcasts.

When asked how he assessed whether refugees were giving accurate information, the witness responded answered that he observed the manner in which they spoke and, as he knew Cambodia well, he could connect places mentioned to extract very specific information and judge if people were being truthful. Mr. Ponchaud testified:

I don't claim to hold the truth on Democratic Kampuchea and even so I must confess ... when I took my book to the publishers on October 24, 1976, I did ask myself: was I mistaken? Was I wrong? I who wanted to help the Cambodian people – am I doing a disservice to the Cambodian people by taking this book to the publishers? I had reservations up until 11<sup>th</sup> hour and I was telling myself: do I hold in my hands the truth? And then afterwards I answered the question. I have the truth. I am nothing compared to the drama of the Cambodians in light of their suffering. I was seeking information on Cambodia. Even to this day, I cannot fathom the cultural context, the context of terror in which millions of Cambodians lived during the odious, ghastly horrific regime of Democratic Kampuchea, but in 1976 I asked myself: am I wrong? Did I get it wrong? But alas, I would have preferred to be wrong.

Still focusing on refugee accounts, Mr. Koppe queried if Mr. Ponchaud was able to ensure that the stories he heard came directly from the people he spoke to and were not related to those people by others. After recounting several disturbing stories from the refugees he interviewed, Mr. Ponchaud explained how they were able to go into the minutest details. “When you meet refugees who still have scars from being whipped or from being struck with an axe – how is that a lie?” Mr. Ponchaud said, adding that such details could not be fabricated, but obviously some interviewees exaggerated. The witness declared that refugees told their own personal stories, including places, dates and persons present, and he did not ask them about political considerations, though they sometimes volunteered such information. “The political statements I make in my book come from what I heard on the radio broadcast during Democratic Kampuchea,” he said. “They do not come from the refugees. Refugees were only providing me what they experienced as the so-called utopia, the abhorrent utopia, of Democratic Kampuchea.”

Pressing further, Mr. Koppe inquired how Mr. Ponchaud established that refugees were not victims of low-ranking cadres, but victims of a particular policy. In his answer, Mr. Ponchaud commented on the ECCC and Khmer Rouge philosophy:

That goes to the very heart of this tribunal's problem. Are you trying individuals or are you trying a policy or an ideology? For me, from the very start, that was the essential question that I was asking myself. You have people, including Khieu Samphan who is present here, who attempted, who had good intentions in the beginning and then they became lost in their ideology, which was totally utopian – an ideology that was yearning for a better world. Obviously, there were some directives that were coming from the top. They were perhaps good directives, but they were entirely naïve directives, based on the assumption that people were good. And I think that is the fundamental line of Khmer Rouge thinking which is consistent with the writings of French philosopher Jean-Jacques Rousseau. That is: man is good, is fundamentally good – it is society that corrupts him. There were directives being given which were thought to be good, but as I stated there were no written directives and so human nature, as it is, when subordinates felt inhabited by power, they did not hesitate to exercise it.

Under questioning from Mr. Koppe about the refugees, Mr. Ponchaud said that in France between September 1975 and March or April 1976 refugees sought him out; he visited temporary shelters where they stayed before being sent elsewhere and once they were integrated into society. In Thailand in about June or July 1976, he added, the camp authorities did not choose refugees for him to speak to and he interviewed people by chance. After 1979, Mr. Ponchaud stated that he had trouble interviewing people in certain camps, including one run by Funcinpec and others controlled by the Khmer Rouge. He confirmed to Mr. Koppe that the number of refugees in camps along the Thai border remained fairly stable at about 50,000 people between 1976 and 1978, though at other times it was less and refugees came in different phases.

After Mr. Koppe inquired if Mr. Ponchaud was aware of estimates that up to one million people in refugee camps after the Vietnamese invaded Cambodia in 1979, the witness said he had these numbers but would refer to these people as “displaced”, stating that from January 7, 1979, to June 17 or 18, 1979, about 80,000 people left Cambodia for Thailand, mainly belonging to the upper classes who had not been killed by the Khmer Rouge including teachers and doctors who had lost their families. Mr. Ponchaud testified that following a famine in Cambodia after the occupation/liberation – depending on one's beliefs – of the country by Vietnamese troops, particularly as of September 1979, millions of Cambodians fled to Thailand and international community distributed food and supplies. Towards the end of 1979 the Thai government, probably on the advice of China, opened camps inside Thailand, such as Khao I Dang about 30 kilometers inside Thailand, he said. Mr. Ponchaud testified that the Thai army recruited soldiers from camps like Khao I Dang – which had about 150,000 refugees – to fight against the Vietnamese presence in Cambodia. He added:

All of this is part of world geopolitics. China opposed to the Soviet Union, which was present in Cambodia through the Vietnamese. And then again as of 1984 the Vietnamese army, supported by the Cambodian army by Hun Sen, cleansed the border and there, there were about 400,000 refugees, which were not legally termed as refugees, but as displaced people who sought refuge inside Thailand.

### ***Defense Presses Witness on His Knowledge of Nuon Chea***

After Mr. Koppe queried when Mr. Ponchaud first heard of Nuon Chea, and the witness replied that he could not remember, but it was perhaps over the radio. He said that neither Nuon Chea nor Khieu Samphan was mentioned in the August 1979 trial prosecuting the “Pol Pot-Ieng Sary gang.” The witness stated that Nuon Chea was trained by the Vietnamese to interrogate people and they perhaps mistakenly thought he was “their man in Cambodia.” Finally, Mr. Koppe questioned the English translation of a Khmer word Mr. Ponchaud placed in front of Richard Nixon and Henry Kissinger’s names in his earlier testimony, which the witness confirmed was meant “contemptible” as he profoundly despised both men. The Nuon Chea defense finished questioning the witness.

Before Mr. Ponchaud left the courtroom, he informed the bench that some words translated from his testimony the previous day did not correspond with what he had said, which was perhaps an interpretation issue. President Nonn assured the witness that they would rely on the rendition of the language he had testified in. François Ponchaud’s testimony in Case 002 concluded.

### ***Debate over Khieu Samphan Defense’s Late Application***

Prior to a hearing of submissions and arguments on the Khieu Samphan defense’s application for their client’s immediate release on bail, International Senior Assistant Co-Prosecutor Tarik



Abdulkhak rose to inform the chamber that the prosecution had received a belated application from the Khieu Samphan defense filed under Internal Rule 87(4)<sup>24</sup> the previous day, a courtesy copy of which was sent to the prosecution about an hour earlier.<sup>25</sup> Mr. Abdulkhak noted that as it was an application to admit additional evidence, it perhaps needed to be dealt with before the hearing proceeded.

For some time, arguments lobbied back and forth between the defense and prosecution on the application. Mr. Vercken told the chamber the aforementioned submission was filed for translation today, and sought former International Co-Investigating Judge Marcel Lemonde’s book about his work and experiences at the ECCC – recently published in France – to be placed on the case file. The defense would like to use specific excerpts from this book in their oral arguments on their request for Khieu Samphan’s immediate release on bail, Mr. Vercken declared. He pointed out that the submission was only eight pages long, while

---

<sup>24</sup> ECCC Internal Rule 87(4) reads: “During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial.” The ECCC Internal Rules are available at <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>.

<sup>25</sup> At the time of writing, the ‘Première demande visant a faire verser aux debats des extraits du livre de M. Marcel LEMONDE’ is currently only available in French. It can be accessed at: [http://www.eccc.gov.kh/sites/default/files/documents/court/2013-04-10%2012:55/E275\\_EN.PDF](http://www.eccc.gov.kh/sites/default/files/documents/court/2013-04-10%2012:55/E275_EN.PDF)

the prosecution had just presented him with five scientific and medical studies totalling about 200 pages in English that he had to examine over lunch after cross-examining Mr. Ponchaud.

In answering to Mr. Vercken's comments, Mr. Abdulhak stated that there was a "sea of difference" between the documents the prosecution shred with the defense and Khieu Samphan's recent application. He noted that Mr. Lemonde's book had been publically available since January 2013 and known to the parties by March 15, 2013, at the latest, when the defense for Nuon Chea sought to have passages from the text admitted in an appeal to the Supreme Court Chamber (SCC). The prosecutor further reminded the chamber that the application for Khieu Samphan's release was filed on March 29, 2013 – two weeks after parties were aware of the existence of Mr. Lemonde's book – and refers to interviews Mr. Lemonde gave in connection with his book. The chamber had reminded parties only the previous day in a memorandum that parties must make Rule 87(4) submissions at least two weeks prior to relevant hearings, a requirement the current application fails to meet, Mr. Abdulhak emphasized. He observed that the defense was seeking the amendment of their original application and raising grounds that did not appear in the original application.

"It would be contrary to justice and entirely unfair to allow the defense to make these sorts of applications virtually an hour before the hearing," he added. Mr. Abdulhak said the prosecution had sent copies of studies relating to the prevalence of post-traumatic stress disorder (PTSD) in Cambodia and attitudes toward former Khmer Rouge leaders to the defense in lieu of a written submission from the prosecution. The articles contain only a few pages that are directly relevant to the proceedings and are merely new or updated versions of documents already on the case file, Mr. Abdulhak told the chamber. He said the defense failed to make a timely request despite being apprised of the book's existence, and thus the Rule 87(4) application should fail. Either the defense should apply to have the hearing adjourned so as to allow the prosecution to respond to the application or the chamber should reject the application, Mr. Abdulhak concluded.

With some indignation, Mr. Vercken replied that he did not appreciate being accused of having deliberately violated court rules. He said the defense were informed on April 2 that there would be a hearing on their application for Khieu Samphan's release on bail on April 5 or April 11. They had not exceeded any deadlines and the hearing was already scheduled when the document was sent for translation, he added. It was "rather rich" for the prosecution to say that there were only 200 pages of reports and studies, which were complicated and in raw form with very small font that he could hardly read, Mr. Vercken argued, putting on his glasses and scrutinizing the sheaf of documents. The defense lawyer told the chamber that he had done the best he could to review the documents given the time limitations and he was willing to respond. Therefore, Mr. Vercken inquired, why was the prosecutor unable with the means at his disposal to respond to an eight-page request?

At this juncture, President Nonn requested a response to the prosecution's suggested deferral of the hearing or rejection of their additional submission. Mr. Vercken replied that the defense requested the admission of a few passages from Mr. Lemonde's book as cited in their application and argued that the prosecution had had sufficient time to examine those passages. He said he did not feel authorized to call for postponement of the hearing, and if the chamber chose not to hear his oral submissions, he would like to request Khieu Samphan's immediate release today.

Following an extensive discussion among the bench, Trial Chamber Judge Silvia Cartwright firstly noted that an application for immediate release must be determined quickly – hence the early scheduling of the present hearing – and that the defense’s application for the admission of a new document had taken the chamber completely by surprise when it was highlighted by the prosecution. Judge Cartwright told the parties the chamber did not have time to properly consider the application for admission of the new extracts of Mr. Lemonde’s book and therefore would not do so. She stated that the aforementioned application would be considered through the usual procedure, with parties able to comment, and the same process applied to the prosecution’s application to admit additional material as part of its argument. “The major problem is that we simply cannot deal with both applications and still give full consideration to Khieu Samphan’s application for immediate release from detention,” Judge Cartwright said, confirming that the present hearing would proceed.

### ***Defense for Khieu Samphan Makes Oral Arguments in Support of Application***

Mr. Vercken began his argument by stating that, based on the SCC’s recent decision to invalidate the original severance of Case 002<sup>26</sup> revealed the uncertainty around when Khieu Samphan would be tried on the totality of the charges in the indictment. He said he felt the impact of the health of Ieng Sary and Nuon Chea on the trial had been connected with Khieu Samphan’s circumstances, though Khieu Samphan attends all hearings without argument – “he has no specific health issues” – or trying to take advantage of problems.

Nevertheless, Mr. Vercken added, the duration of 82-year-old’s detention for five years and four months in a small cell cannot be ignored. He emphasized that Khieu Samphan had not delayed the proceedings – some delays were due to financial or procedural issues – and as yet there is no indication of when he will be tried on the totality of the closing order, which the chamber did not have the power to amend though it had decided to adjudicate only part of it at present. Thus, Mr. Vercken said, the difficulties alluded to by the SCC remain and the foreseeability of a final judgement for Khieu Samphan is far removed.

The defense contended that the present complications at trial meant that provisional detention was now invalid, and permitted the consideration of Khieu Samphan’s release on bail, with the guarantee that it would not disrupt public order in Cambodia and that the accused would continue to appear before the chamber. Given Khieu Samphan’s advanced age, life expectancy in Cambodia and the lack of clarity on when a definitive judgement would be issued, Mr. Vercken told the chamber, the trial might continue with his release on bail.

---

<sup>26</sup> The Supreme Court Chamber found in February that the Trial Chamber’s decision to sever Case 002 into a series of smaller trials was invalid, as the chamber had not sought the views of parties on the severance or provided adequate reasoning for the decision (see Decision on the Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s decision concerning the scope of Case 002/01 at

[http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-11%2018:23/E163\\_5\\_1\\_13\\_EN-1.PDF](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-02-11%2018:23/E163_5_1_13_EN-1.PDF)).

The Trial Chamber announced orally on March 29, 2013, that Case 002 would be severed, and Case 002/01 would hear the same charges relating to the forced evacuation of Phnom Penh in April 1975, the second phase of forced population movement from September 1975, and the execution of Lon Nol soldiers at Tuol Po Chrey in Pursat province (see <http://www.eccc.gov.kh/en/articles/case-002-severed-and-nuon-chea-found-fit-stand-trial>). A full written decision is not yet available. The decision on the original severance of Case 002 in September 2011 is at <http://www.eccc.gov.kh/en/document/court/severance-order-pursuant-internal-rule-89ter>.

Next, Mr. Vercken recalled that earlier in the ECCC's operations, the co-investigating judges severed Case 001 against Kaing Guek Eav, *alias* Duch, from those of the four other co-defendants and while Khieu Samphan was detained in November 2007, the judges focused primarily on Duch's case. Furthermore, he added, the decision to postpone the case of the four other accused persons was issued a few days before the detention order expired. Mr. Vercken noted that the chamber had based some prior decisions – such as those regarding Ieng Thirith's case – on the jurisprudence of the European Court of Human Rights (ECHR), which states that estimates for a reasonable time span for trial must consider provisional detention during the investigation but also from the day when people are presented before the chamber.

The defense told the chamber that Khieu Samphan was living in Phnom Penh when the court was being developed and he was a potential candidate for prosecution, and he never attempted to go underground. Mr. Vercken said that the consequences of prolonged incarceration on detainees' health – physically and psychologically – should be considered.<sup>27</sup> On the point of a potential disruption in public order occasioned by Khieu Samphan's release on bail, Mr. Vercken argued that Ieng Thirith did not appear to have been subjected to violence, or attempts at violence, since her release on grounds of unfitness for trial.

The defense lawyer said the current case did not necessarily excite the interest of a majority of the Cambodian population, quoting 2008 statistics revealing that only three percent of Cambodians were able to name the accused persons, and in 2010 only 11 percent were able to do so.<sup>28</sup> Mr. Vercken told the chamber the prosecution's documents intended to show that the figures were higher, but those questioned in order to attain those figures were civil parties and civil party representatives. Even in those reports, only 60 percent of civil parties and 90 percent of civil party representatives could name the accused persons at the ECCC, the defense pointed out. "This shows that even if we play around with the numbers, even if we play around with the statistics, for reasons that might be cultural or economic or for various reasons, the Cambodian population does not seem to be interested in an aggressive way, I should say, or in a general way in this trial," Mr. Vercken contended. "It does not seem to be a priority."

The defense asserted that security concerns were exaggerated, and a 1991 incident in which Khieu Samphan was assaulted occurred in a particular context and was believed by many to have been a political calculation, to bestow the impression that Khieu Samphan was a *persona non grata* in Phnom Penh. The incident cannot be taken into consideration, Mr. Vercken reasoned. Though previous arguments in requests for release on bail referenced threats against former

---

<sup>27</sup> Mr. Vercken seemed to be saying that an argument might be made that Khieu Samphan's health could be better monitored while he was in detention, but this was unclear in the English translation.

<sup>28</sup> These figures are believed to originate from research undertaken by the Human Rights Center at the University of California, Berkeley, School of Law, though the two reports were not directly identified. *So We Will Never Forget: A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia* dated January 2009, can be accessed at: [http://www.law.berkeley.edu/files/IHRLC/So\\_We\\_Will\\_Never\\_Forget.PDF](http://www.law.berkeley.edu/files/IHRLC/So_We_Will_Never_Forget.PDF). *After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the Extraordinary Chambers in the Courts of Cambodia*, dated June 2011, can be accessed at: [http://www.law.berkeley.edu/files/HRC/Publications\\_After-the-First-Trial\\_06-2011.pdf](http://www.law.berkeley.edu/files/HRC/Publications_After-the-First-Trial_06-2011.pdf)

Khmer Rouge, especially Duch, as the latter has been tried and judged, such arguments could be discarded, he said.

The defense proposed that Khieu Samphan be released to a known residence – details about the residence were attached to the application – not to be changed without the court’s authorization and reminded the chamber that Khieu Samphan had committed to abide by their orders, hand over his passport and identification papers. Mr. Vercken declared that Khieu Samphan had never tried to flee or draw financial benefit from discussing his role during DK, living a humble life up until the day of his arrest. “He simply has no means to flee given his age, he technically and financially simply does not have the means,” Mr. Vercken asserted, adding that his client had undertaken not to communicate with the media or anyone other than his lawyers and would not write any articles or write books. “He will be focused entirely on this trial.”

Mr. Vercken said that Khieu Samphan would have no contact with civil parties and would obey any bail conditions imposed by the chamber. He continued:

At his age, Khieu Samphan has no intention of leaving his home to live the life of a young man. He is an 82-year-old man. He will stay at home and he will be cared for by his relatives and family. And that is all he asks for. He will abide with assistance if the chamber so decides, to do his utmost and participate in his defense before this trial and before this chamber.

In conclusion, Mr. Vercken requested that the chamber consider the lack of foreseeability of judgement in the current trial – with subsequent trials perhaps still to come – and the totality of the charges in the indictment, and immediately release Khieu Samphan on bail under strict conditions.



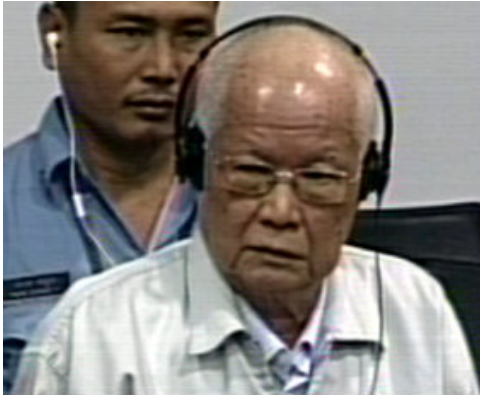
In response to a query from President Nonn on how Khieu Samphan would come to the court for hearings if released on bail, Mr. Vercken replied that he could travel by his own means with his family to cover the cost of transportation or, if the tribunal’s budget permits, it could provide a car to bring Khieu Samphan to the ECCC. Judge Cartwright requested an indication of where Khieu Samphan would live if released on bail and whether there was any documentation to support the statement that Khieu Samphan was indigent. Mr. Vercken replied that details of his client’s intended address was contained in the annexes of their application for his release on bail and confirmed that Khieu Samphan did not have a current passport.

The defense lawyer said there may have been a misunderstanding in translation on the question of indigence, as he had not discussed Khieu Samphan’s status in this regard. Mr. Vercken emphasized that Khieu Samphan has a family that would bear the costs of transportation to the tribunal if necessary, but there was “never an issue of indigence.” Judge Cartwright replied that the translation said Khieu Samphan has “no means” which she took to mean that he was indigent. When Mr. Vercken appeared confused, Trial Chamber Judge Jean-Marc Lavergne sought clarification and the defense lawyer said he did not want to enter into detail during the

proceedings, but his family would bear Khieu Samphan's costs of living if he were released on bail.

After the recess, Mr. Vercken clarified that he had wanted to convey to the chamber earlier that Khieu Samphan did not have the means to escape and was not "sitting on a pile of gold," but his family would finance his modest daily living expenses. At this point, Khieu Samphan was granted permission to speak briefly.

### ***Khieu Samphan Briefly Addresses the Chamber***



Firstly, Khieu Samphan confirmed that he did not have a passport and that all of his children were currently working and earning a living. "We live in one flat together, we share the bill, we share the cost of food, we share the living costs," the defendant said. "I hope that once I am released on bail from the court, I am going to live with them, and I am sure they will be able to feed me." Khieu Samphan then informed the court that his wife travelled by motorbike to the ECCC detention center to visit him and if necessary, he could take the motorbike with her to attend proceedings. "I will comply with all the

conditions imposed by the chamber on me when I am released on bail, and especially I would like to reassure the chamber that I will be present in all the proceedings upon summons by the chamber until the court is concluded," he said.

### ***Prosecution Makes Oral Arguments on Defense Request***

The prosecution opposed the application for Khieu Samphan's immediate release on bail as the conditions in Internal Rule 63(3)b<sup>29</sup> exist to support a continuation of detention and the chamber should order his continued detention.

On the alleged uncertainty and lack of foreseeability in the current trial and completion of proceedings, Mr. Abdulhak stated that the cases the Khieu Samphan defense relied upon originated from judgements from the ECHR that are irrelevant to the present hearing. The prosecutor recalled that on the issue of legal certainty the defense relied upon ECHR judgements: *Velichko v. Russia* dated January 15, 2013; *Tsitsiriggos v. Greece* dated January 17, 2012; and *Tsarkov v. Russia* dated July, 16, 2009.<sup>30</sup> In all three cases the ECHR states that domestic legislation must provide sufficient legal certainty regarding conditions of detention and, though they deal with the issue of indefinite detention, all three cases turn on facts related to a lack of

---

<sup>29</sup> Rule 63(3)b reads: The Co-Investigating Judges consider Provisional Detention to be a necessary measure to: i) prevent the Charged Person from exerting pressure on any witnesses or Victims, or prevent any collusion between the Charged Person and accomplices of crimes falling within the jurisdiction of the ECCC; ii) preserve evidence or prevent the destruction of any evidence; iii) ensure the presence of the Charged Person during the proceedings; iv) protect the security of the Charged Person; or v) preserve public order. The ECCC Internal Rules are available at <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>.

<sup>30</sup> For specific references to these cases, refer to footnote 18 of the application for Mr. Khieu Samphan's immediate release on bail, which can be accessed at: [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-04-10%2012:55/E275\\_EN.PDF](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-04-10%2012:55/E275_EN.PDF). ECHR judgements can be accessed here: <http://www.echr.coe.int/ECHR/EN/Header/CaseLaw/Decisions+and+judgments/Lists+of+judgments/>



due diligence and undue delays in the prosecution of crimes before domestic courts. Mr. Abdulhak said the cases were also of limited relevance as they dealt primarily with pre-trial detention during investigative proceedings.

The prosecution contended that other cases referred to in the defense's application – *Letellier v. France* dated June 26, 1991; *Labita v. Italy* dated April 6, 2000; *Valderrama v. France* dated January 26, 2012<sup>31</sup> – deal with pre-trial detention. Mr. Abdulhak argued that all ECHR cases cited deal with allegations that turn on their own facts and could not be compared to the complexity of Case 002 at the ECCC. Further ECHR pre-trial decisions cited by the defense – *Pyatkov v. Russia* dated November 13, 2012; *Bilal Dogan v. Turkey* dated November 27, 2012; *Leontuic v. Romania* dated December 4, 2012; *Velichko v. Russia* dated January 15, 2013<sup>32</sup> – turn on matters of domestic law and domestic criminal procedure and are irrelevant regarding allegations of a lack of certainty and delay.

Mr. Abdulhak argued that the chamber should adopt the approach of the Pre-Trial Chamber on – dealt with in its July 3, 2009, decision on Khieu Samphan's appeal against detention and revisited in a decision on April 30, 2010 – which focuses on whether the length of detention is proportionate to the case including its complexity and procedure. The prosecution contended that the defense's arguments in relation to lack of foreseeability do not stand up to scrutiny, outlining the breadth of the proceedings since substantive proceedings began on November 21, 2011, which have been challenging, but orderly.

“There can be absolutely no credible suggestion that at any stage of this case there has been undue delay or a lack of diligence on part of authorities,” Mr. Abdulhak said, adding that the more appropriate cases to examine would be those adjudicated before other internationalized or international tribunals dealing with mass crimes. He noted that in more than 50 cases at the International Criminal Tribunal for Rwanda (ICTR), accused persons were detained for periods of longer than five years, while this occurred in at least 31 cases at the International Criminal Tribunal for the former Yugoslavia (ICTY). “The average lengths of time for trial at these tribunals are significantly longer than what is projected by your honors in relation to completing the current trial,” he said, adding that the chamber would doubtless issue a plan for completion of Case 002 proceedings in due course.

Noting that trials of this nature involve large numbers of documents, witnesses and extensive legal arguments, Mr. Abdulhak said the record showed that Khieu Samphan's defense has vigorously defended their trial against the charges, filing numerous procedural request and challenges to the evidence admissibility – all of which is within his rights – in which case it is unconvincing to argue that there have been undue delays.

Citing Mr. Vercken's reference to the decision to sever proceedings against Kaing Guek Eav, *alias* Duch, and suggestion that this caused delays, Mr. Abdulhak pointed out that this was a new argument made in the Rule 87(4) application. He said that according to written records filed by the co-investigating judges, close to 300 records – many relating to broader issues in Case 002 –

---

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

were placed on the case file by the time the closing order in Case 001 was finalized. “There has been no undue delay or lack of diligence in the present proceedings,” Mr. Abdulhak contended.

The prosecution moved onto the five grounds listed in Internal Rule 63(3)b1 and 63(3)b2, dealing with the need to prevent the charged person from exerting pressure on witnesses and victims, to prevent any collusion between the charged person and accomplices of crimes falling within the jurisdiction and to preserve evidence or prevent its destruction. Mr. Abdulhak argued that elements on the case file indicated that Khieu Samphan’s release on bail would create a “material risk” that pressure on witnesses or victims may occur that there may be collusions with alleged accomplices and evidence may be endangered.

Mr. Abdulhak cited the testimony of witness Sa Siek in August 2012<sup>33</sup> in which she confirmed the contents of an OCIJ report indicating that she and her now deceased husband were approached by Khieu Samphan’s wife and questioned about matters at issue in these proceedings. The prosecutor noted that on January 10, 2008, the co-investigating judges informed Nuon Chea via memorandum – sent to all parties – that they were prohibited from conducting their own investigations during a judicial inquiry. In the ensuing period, Sa Siek and her husband were interviewed by the OCIJ and prosecutors filed an investigative request to interview them again in December 2009, Mr. Abdulhak said. According to the OCIJ report indicates, by early March 2010, Khieu Samphan’s wife had travelled to Battambang to speak to them about events described in their OCIJ statements, which Sa Siek confirmed in court. The prosecutor asserted:

This is an instance where one of the individuals that Khieu Samphan now proposes to reside with upon his release has made contact with witnesses who had been interviewed by OCIJ, witnesses who were of interests to OCP and in circumstances where CIJs had given clear instruction that parties were not to engage in their own investigation ... The purpose of that visit was to clarify certain events that allegedly Khieu Samphan could not recall. One can infer that this visit in fact was at the behest of Khieu Samphan because it was apparently designed to clarify certain facts on his behalf. In our submission, this gives rise to a clear basis to conclude that if released, Khieu Samphan living in his family home together with his family members or on his own may seek to contact witnesses or accomplices and may seek to interfere with evidence.

The prosecution submitted that there remains a risk to Khieu Samphan if he is released – found by the Pre-Trial Chamber to exist in 2009 and 2010 – and allowing him to live at home with his family makes him an easy target for harm in a situation where attitudes of victims toward the accused remain vengeful. Citing the surveys referenced by the defense, Mr. Abdulhak asserted that the December 2010 study<sup>34</sup> already on the case file – based on interviews with over 1,000 respondents, only a fifth of whom were civil parties – found that about 40 percent of people in the general population continue to harbour feelings of revenge towards former Khmer Rouge and the regime’s leadership. In support of his submissions, Mr. Abdulhak recounted the 1991 attack

---

<sup>33</sup> Cambodia Tribunal Monitor’s accounts of Sa Siek’s testimony can be accessed at: <http://www.cambodiatribunal.org/blog/archive/201208>.

<sup>34</sup> This is believed to be a reference to *After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the Extraordinary Chambers in the Courts of Cambodia*, dated June 2011, can be accessed at: [http://www.law.berkeley.edu/files/HRC/Publications\\_After-the-First-Trial\\_06-2011.pdf](http://www.law.berkeley.edu/files/HRC/Publications_After-the-First-Trial_06-2011.pdf)

on Khieu Samphan, pointing out that while the contemporaneous media report mentioned possible political calculations, it described how a mob of 10,000 people quickly swelled, smashing windows and leaving Khieu Samphan “beaten, whimpering, and cowering half inside a bedroom closet.” Furthermore, the prosecutor said, in 2000 Khieu Samphan made his speaking publicly about the Khmer Rouge conditional on independent security being provided to ensure his safety.

“With all of the information now publicly available about crimes and Khieu Samphan’s role therein, and this close to the completion of the trial, it would simply be an unacceptable risk to release him, to expose him to these risks and potentially jeopardize an orderly completion of this trial,” Mr. Abdulhak contended, pointing to a SCC decision on the risk of flight that deemed all of the above matters relevant. On this issue of risk of flight, the prosecutor disagreed with the defense that Khieu Samphan had willingly submitted himself to the court’s jurisdiction and argued that a number of Khieu Samphan’s past statements challenged the tribunal’s legitimacy. Mr. Abdulhak quoted from three separate interviews with Khieu Samphan that indicated, in conjunction with other evidence and taken in context, an “unacceptable risk” that if released Khieu Samphan would not be available for a continuation of trial, may interfere with witnesses or evidence and may cause a disruption in public order. He concluded by saying:

To release him now at this stage of the trial, only months before its conclusion and shortly before judgement is to be rendered ... create clearly an unacceptable risk, a risk that should not be taken. And your honors should therefore exercise your discretion to keep Khieu Samphan detained, while of course assuring him that we will altogether endeavour to bring this trial to an expeditious conclusion.

In a brief response to the prosecution’s submissions, Mr. Vercken argued that ECHR jurisprudence examines provisional detention not only in the investigative phase but also in the judgement. He pointed out that while trials before international courts involving allegations of mass crimes are generally long, Case 002 at the ECCC was the only court conducting prosecutions long after the alleged crimes were committed and with defendants at such advanced age, like Khieu Samphan. Mr. Vercken further contended that no other international courts had faced as many difficulties – financial, political or otherwise – as the ECCC, which must be taken into account.

Citing the prosecution’s argument that Khieu Samphan had previously challenged the legitimacy of the court, Mr. Vercken inquired if the chamber had ever observed this directly in court. He cited an interview with Khieu Samphan on Voice of American in which the defendant said: “let the tribunal summon me ... I will go.”

Mr. Vercken reminded the chamber that the trial was both adversarial and inquisitorial, detailing how in France the judgement phase is shorter because the tribunal relies more on the investigation. People who criticize the trial often say that it is almost a rereading of the investigation, the defense lawyer said, adding that the length of the trial must be considered.

Finally, Mr. Vercken referred to the prosecution’s assertion that Khieu Samphan might exert pressure on witnesses based on their recounting of Sa Siek’s testimony. He quoted an excerpt from the transcript from Sa Siek’s testimony where she confirmed to International Co-Lawyer

for Khieu Samphan Anta Guissé that Khieu Samphan's wife encouraged Sa Siek to tell the truth about Khieu Samphan. Thus, Mr. Vercken said, the prosecution's argument that Khieu Samphan might pressure witnesses was a "complete fantasy,"

President Nonn announced the conclusion of the hearing of submissions concerning the application for Khieu Samphan's immediate release on bail, informing parties that the chamber would render a decision in due course. Proceedings are set to resume at the ECCC on Monday, April 22, 2013, at 9 a.m.