



## **Civil party speaks of evacuation, after tense document debate**

By Mary Kozlovski

On Friday October 19, 2012, hearings continued at the Extraordinary Chambers in the Courts of Cambodia (ECCC) in Case 002, involving defendants Nuon Chea, Ieng Sary and Khieu Samphan. Parties presented further documents before the Trial Chamber relating to communications and administration during the Democratic Kampuchea (DK) regime. About 300 people from Kampot and Takeo provinces observed the hearing from the public gallery.

The civil party lead co-lawyers concluded their document presentation in the morning and were succeeded by the defense for Nuon Chea. A tense debate ensued after the Trial Chamber issued a ruling postponing the presentation of certain documents. The document hearing concluded at the close of the morning session, with civil party Yim Sovann questioned in the afternoon session.

Ieng Sary was again absent from the court due to health issues. Nuon Chea was in court for the morning, but retired to a holding cell at midday citing a headache, backache and lack of concentration. Khieu Samphan was present in court all day.

### **Lead co-lawyers finalize document presentation**

National Civil Party Lead Co-Lawyer Pich Ang carried on from the previous day's hearing by seeking leave to screen a final video clip featuring Khieu Samphan<sup>i</sup> which he said depicted the situation for victims in cooperatives. In the clip that was played, Khieu Samphan stated:

I respected the discipline. I respected the discipline in the sense that I wasn't working in the fields or building dams with my comrades. I simply stayed out of the way so that I did not disrupt them. That was my spirit. And I was accused of not trying to know or understand anything, but firstly: how could I imagine this? It was a nationalist movement so I trusted from my heart. Secondly, because I was thinking that I could contribute in part, if I could not work in the field like my compatriots, so I tried to live modestly. I did not want to perceive that my countrymen work hard in the field and they had to endure a lot of difficulties and I was living in Phnom Penh. I enjoyed my life and I had a lot of food to eat myself. So both my wife and I, I was the head of the state and my wife was a cook, she cooked and I was not resented with that because I did not work as hard as my countrymen in the field and my wife did

not work that hard either. So I have no reason to complain, because I was fine myself in Phnom Penh. Our family, I met my family together. Even if my children were in the children's center they came home to visit us every week. They were in a better and privileged situation than those who work hard in the field so I had nothing to complain about my life.

Mr. Ang read at length from a portion of the CPK statute<sup>ii</sup>, from Article 7 through to Article 23, but omitting Article 11, as follows:

*Article 7: Party organizational lines.* The party organizational lines are as follows:

1. The party organization which has the highest power rights throughout the country is the general conference representing the entire country. During the period of time between one general conference to another, the highest operational unit throughout the country is the central committee;
2. The organization which has the highest power rights in each zone is the zone representational conference. During the time from one conference to another, the highest operational organization for each individual zone is the zone committee;
3. The organization which has the highest power rights in each sector or city is the sector or the city representational conference. During the time between one sector or city conference to another, the highest operational organization for that sector or city is the sector or city committee;
4. The organization which has the highest power rights in each district is conference representing the district. During the time period from one district conference to another, the operational organization for each individual district is the district committee;
5. The organization which has the highest power rights from a branch is the branch representational conference for large branches, or for other branch conference for the entire of the branches for small branches. During the time period between branch conferences, the operational organization for each branch is the branch committee for large branches, or the secretary or deputy secretary for small branches;
6. Party organizations in the Revolutionary Army of Kampuchea have similar organizations according to each party echelon framework.

*Article 8.* Any sector or unit which has special characteristics – be they political, military, economic or cultural, social affairs related – may be organized separately with the central committee being responsible directly or indirectly along a specific organizational line.

*Article 9.* If each revolutionary cooperative, factory, military company level unit, worksite and ministry office may organize a party branch provided there are three or more party members. Branches which have from three to eight party members must select a secretary or deputy secretary to lead routine work. Branches with nine or more party members must select a branch committee to lead. If necessary for the work, a sub-branch may be organized.

*Article 10. The tasks of a branch.* A branch has two tasks:

1. *Tasks among the popular masses.* Proselytize the popular masses with specific plans and programs in its area in the unions and cooperatives and in the revolutionary army regarding political lines, ideological principles and stances and organizational lines according to the task of national defense and the construction of Democratic Kampuchea (DK) in the party stance of class struggle or socialist revolution and in building socialism. Along with this, a branch must grasp and agitate popular mass organization at each side in the unions and the cooperatives and in the revolutionary army to carry out revolutionary activity strongly in accordance with the task of national defense and the construction of DK in the party direction of socialist revolution and building socialism;
2. *Internal tasks.* *a.* Closely re-educate and build party members and core organization politically, ideologically and organizationally, according to the tasks of national defense and constructing DK with the party stance of class struggle, socialist revolution and building socialism. *b.* Closely grasp organization in the strengthening and expanding of the screening of party members and core organization. Clearly, deeply and closely arrange the tasking of party members and core organization to work among the popular masses, the worker peasants in the unions and cooperatives and in the revolutionary army, in order to agitate the revolutionary movement to be constantly hot, according to the party political lines of national defense and the construction of DK in the party direction of socialist revolution and building socialism. Implement a regular and

detailed branch life, once monthly manage branch property and administer branch discipline, maintaining systems of reporting to upper echelon to the situation of the work of the branch, etc.

*Article 12. The district committee.*

1. District committee must hold an ordinary district representation conference once every six months in order to run<sup>iii</sup>. Clearly and profoundly examine and deliberate on district activities by drawing experience, seeking out good and bad qualities;
2. Designate new work according to the party line; must designate clear plans for work among popular masses and for internal party work within its district framework;
3. Select and appoint the new leadership organization and the district committee based on the ten criteria of the party and with the prior examination, deliberation and agreement of the sector committee and zone committee.

*Article 13. Tasks of the district committee.* The tasks of the district committee are:

1. Go down close to the branches, down to the specific bases of branches in the unions and cooperatives and in the revolutionary army, in order to lead the implementation of tasks both among the popular masses and internally to be always hot and active in plans, according to the political lines of national defense and the construction of DK and according to the party's direction of socialist revolution and building socialism;
2. Constantly and tightly grasp the popular masses in the unions and cooperatives and in the revolutionary army within its district framework politically, ideologically and organizationally by constantly arming them politically, ideologically and organizationally in the task of national defense and the construction of DK, according to the party direction of socialist revolution and building socialism;
3. Constantly and tightly grasp the branches, cadres and party members along with all the co-organization of the district, in regards to the personal history politically, ideologically, organizationally by arming them politically, ideologically and organizationally.
4. Manage the property of the district organization and administer discipline in the district framework maintaining the system of reporting to the upper echelon.

*Article 14.* A district committee must hold ordinary meeting once monthly to examine, monitor and deliberate on all work and to bring up new work.

*Article 15.* Sector city committee must hold ordinary sector city representational conferences once every six months in order to:

1. Clearly and profoundly examine and deliberate the sector city activities by drawing experience, seeking out good and bad qualities;
2. Designate new work according to the party line, must designate clear plans for work among popular masses and for internal party work with each sector;
3. Select and appoint the new leadership organization, the sector city committee, based on the 10 criteria of the party and with the prior examination, deliberation and agreement of the zone committee.

*Article 16. Tasks of the sector city committee.* Tasks of the sector city committee are:

1. Go down close to the district and branches and the specific bases of the branches in the unions and cooperatives, in the revolutionary army, in order to lead the implementation of tasks both among the popular masses and internally to be always hot and active in plans according to the political lines of national defense and the construction of DK and according to the party's direction of socialist revolution and building socialism;
2. Constantly and tightly grasp the popular masses in the unions and cooperatives in the revolutionary army within each sector city framework, politically, ideologically and organizationally by constantly arming them politically, ideologically and organizationally in the task of national defense and the construction of DK according to the party direction of socialist revolution and building socialism;
3. Constantly and tightly grasp the district organization, branch organization, the cadres, the party members, along with all the core organization of the sector in regards to personal histories, politically, ideologically and organizationally by arming them politically, ideologically and organizationally in the task of national defense and the construction of DK;
4. Manage the property of the sector city organizations and administer discipline in the sector city framework.

*Article 17.* The sector city committee must hold ordinary meetings once every month to examine, monitor and deliberate on all work and to bring up new work.

*Article 18. Zone committee.* The zone committee must hold an ordinary zone representational conference once each year in order to:

1. Clearly and profoundly examine and deliberate on zone activities by drawing experience, seeking out good and bad qualities;
2. Designate new work. According to the party line, must designate clear plans for work among the popular masses and for the internal party work, within its zone framework;
3. Select and appoint the new leadership organization, the zone committee, based on the 10 criteria of the party and with the prior examination, deliberation and agreement of the central committee.

*Article 19.* The tasks of the zone committee. The tasks of the zone committee are:

1. Go down close to the sectors, districts, branches and the specific bases of the branches in the unions and cooperatives and in the revolutionary army, in order to lead the implementation of tasks both among the popular masses and internally to be always hot and active in plans, according to the political lines of national defense and the construction of DK, and according to the party's direction of socialist revolution and building socialism;
2. Constantly and tightly grasp the popular masses in the unions and cooperatives and in the revolutionary army within its zone politically, ideologically and organizationally, by constantly arming them politically, ideologically and organizationally in the task of national defense and the construction of DK, according to the party direction of socialist revolution and building socialism;
3. Constantly and tightly grasp all the sectors, all the district parties all the branches, all the cadres and party members, along with all the core organization of the zone in regards to personal histories, politically ideologically and organizationally by arming them politically, ideologically and organizationally in the task of national defense and the construction of DK, according to the party direction of socialist revolution and building socialism;
4. Manage the property of zone organizations and administer discipline in the zone framework, maintaining a system of reporting to the central committee on the situation and the work of the zone.

*Article 20.* The zone committee must hold ordinary meetings once every three months to examine, monitor and deliberate on all work and to bring up new work.

*Article 21. The central committee.* The central committee must call an ordinary general conference representing the entire country once every four years in order to:

1. Clearly and profoundly examine and deliberate on the all central committee activities by drawing past experience of right and wrong regarding politics, ideology and organization as well as all important work.
2. Designate the political lines and statute of the party;
3. Select and appoint the new central committee based on the 10 criteria of the party.

*Article 22.* A general conference may be held before the designated time or can be postponed, according to the specific situation. The number of full rights representatives who must be invited to participate in a general conference representing the entire country will be designated by the central committee.

*Article 23. The tasks of the central committee.* The tasks of the central committee are:

Implement the party political lines and statutes throughout the party;

1. Instruct all zones and sector city organizations and party organizations responsible for various matters to carry out activities according to the political lines and ideological and organizational discipline, in accordance with the task of national defense and building DK, and in accordance with the party direction of socialist revolution and building socialism;
2. Govern and arrange cadres and party members who are the entire party, along with all core organization by constantly, clearly and closely grasping personal history, political, ideological and organizational stances and closely and constantly arming them politically, ideologically and organizationally and for act in the names of the party in contact with all brother sister Marxist-Leninist parties.

After concluded his reading of the CPK statute, Mr. Ang referenced Khieu Samphan's book *Cambodia's recent history and the reasons behind the decisions I made*<sup>iv</sup>, reading from the text as follows:

However, if there's a through investigation, we can find the central committee of the CPK cannot be compared to the central committee of other party who was known in the world. As I wrote in my open letter dated 16 August 2001, this organization was not the Angkar of the leadership of the party, it was just the place where cadres can be trained ideologically, politically, especially to educate the secretary and the committee of the party who were responsible for zone, sector and army, so that they can learn well on political decisions on behalf of the standing committee.

### **Defendants' media interviews presented to chamber**

Mr. Ang handed the floor to International Civil Party Lead Co-Lawyer Elisabeth Simmoneau Fort, who cited a series of notes taken by journalists Ea Meng Try and Loeung Sopheak during interviews with the Nuon Chea and Khieu Samphan on June 9, 10 and 11, 2006<sup>v</sup> Ms. Simmoneau Fort said the documents "express Nuon Chea and Khieu Samphan's vision of the central structure and their role within that structure". From this document she quoted Khieu Samphan as saying:

Everyone made so many errors. No one is perfect. We have to learn from our mistaken them move to make a change. I also committed mistakes during my time in power<sup>vi</sup>.

From the same document, Ms. Simmoneau Fort read a statement attributed to Khieu Samphan, in response to a question about central committee membership:

There were eight persons. Members of the committee met to take specific decisions, before referring them to the members of the central committee who came from every region and zone throughout the country. I was a member of the central committee, but I did not have control over any zone. The standing committee members include Pol Pot, secretary, Nuon Chea, deputy secretary, Ieng Sary, Son Sen, Ta Mok, Vorn Vet, So Phim.<sup>vii</sup>

International Co-Lawyer for Khieu Samphan Arthur Vercken challenged the document and the notes "purportedly taken by a so-called journalist", protesting that the defense did not have audio recordings of the interviews. Ms. Simmoneau-Fort argued that the document had already been tendered into evidence and admitted, and she understood that the Trial Chamber had ruled earlier that defense counsel could not comment on the documents. She observed, however, that Khieu Samphan could offer comments and the chamber would later assess the probative value of the documents.

After a brief discussion among judges, Trial Chamber President Nil Nonn ruled the objection was unfounded as the document had an 'E3' number and can therefore be presented before the chamber, which would later assess the probative of the evidence when making its judgement. President Nonn stated that defense counsel should not object to the presentation of documents by other parties and that Khieu Samphan could make remarks after the various presentations.

International Co-Lawyer for Nuon Chea Andrew Ianuzzi – who apologized for a slight wardrobe malfunction resulting from a lost button – sought clarity on the chamber's position, asking if defense lawyers could not object unless their client submitted to questioning or commented on documents. In a somewhat unclear

response, President Nonn said the chamber reminded defense counsels of the right of the accused to make remarks on documents presented by other parties during the hearing on October 10, 2012. Mr. Ianuzzi repeated that he wished to know if defense counsels would be prevented from objecting unless their clients availed themselves of the opportunity to do so. Trial Chamber judges spoke briefly amongst themselves, before President Nonn clarified that defense counsel had the right to comment or object to documents presented to the chamber, but must wait until other parties have completed their presentations.

Ms. Simmoneau Fort proceeded to quote Khieu Samphan from the same document:

I acknowledge that, at the time, we made many errors, but at the same time we also did many good things for our country. In this regard, to be correct, we should talk both good and bad of that regime. Stop talking about killings, which is only one side of the coin. If you want your country to gain independence and freedom, you have to sacrifice something for your country. People should not have so much freedom. Political leaders have to practice radical policy. If we did not proceed in that manner we would have been dependent on the Vietnamese in all areas and in all matters.<sup>viii</sup>

The lead co-lawyer then read an exchange between interviewers and Nuon Chea from the document as follows:

Nuon Chea: When I was in power, politics was good, but comrades and our civil servants were not good. We did not have good bridges to convey our good policies to the people and that is the reason why we failed and that is the reason why we did not attain our objectives.

Q. What measures did you take against comrades who were not good?

Nuon Chea: I educated them, I corrected them. That was an extremely difficult task.

Q. What did you do precisely?

Nuon Chea: I educated them and I corrected them, I did not allow them to continue carrying out their duties.<sup>ix</sup>

Finally, Ms. Simmoneau Fort quoted a final passage from the document, in which Nuon Chea states: “In the final analysis my plans failed, which led to the weakening of my regime. Ultimately, I had to capitulate”.<sup>x</sup>

Ms. Simmoneau Fort moved on to a transcript of an interview with Khieu Samphan by Voice of America (VOA) on November 14, 2007<sup>xi</sup>, quoting him as saying, firstly:

Well, regarding work that is what happened before and as time went on since 1975 Mr. Ieng Sary has been in charge of foreign affairs in DK and his responsibilities with regard to foreign affairs. He also discharged those functions in the party and the state. I for my part was chairman of the state presidium and worked in Office 870. As you can see in that Office 870, my role was very specific<sup>xii</sup>.

Then, secondly, from the same document:

In this regard I would like to tell you something, I have already told you, haven't I, that Mr. Ieng Sary was in charge of foreign affairs. As for me, I was in charge of my duties, as I pointed out earlier, I was officially head of state. However, my complete and daily duties were carried out in Office 870. Now regarding Office 870, as I pointed out to you, I pointed out what the principles were, didn't I?<sup>xiii</sup>

### **Intellectuals and diplomats repatriated during regime**

Ms. Simmoneau Fort turned to a cache of documents detailing the position of certain intellectuals and diplomats within the structure prior to April 17, 1975, noting that she wished to see what became of them after that date. She cited a civil party application by Chao Kim<sup>xiv</sup> which she said she would not quote from. The citation prompted an interjection by National Co-Lawyer for Ieng Sary Ang Udom, who said the chamber had ruled that ‘E3’ documents could be read in court and should not be objected to, but the lead co-lawyer was reading a document that did not bear an ‘E3’ number. Mr. Udom further inquired as to how documents could be objected to if they had already been read, noting a request he made in court the previous day<sup>xv</sup>. President Nonn said the chamber had ruled on that request and would not reconsider it, allowing Ms. Simmoneau Fort to proceed. Mr. Ianuzzi attempted to speak several times, but was cut off by President Nonn.

Ms. Simmoneau Fort cited the same document, but noted that she would not read from it and that she had “withdrawn” the written record of the witness interview with the elder brother of Chao Seng. Ms. Simmoneau Fort presented an annex of an interview with Chao Seng’s brother<sup>xvi</sup> noting that it contains an interview with Chao Seng by a French communist publication called *Humanité* in which he speaks as a representative of the FUNK (National United Front of Kampuchea) office. After International Co-Lawyer for Khieu Samphan Kong Sam Onn inquired if the document was available in Khmer, President Nonn sought clarification if the document was available in at least two languages. Ms. Simmoneau Fort replied that all civil party applications and their attachments had been submitted to the ITU (Interpretation and Translation Unit) for translation, but the aforementioned document was currently only available in French, and she would therefore not read passages from it while such translations were not at hand. The chamber spoke for a short time, before the civil party lead co-lawyer was permitted to continue.

Ms. Simmoneau Fort quoted from a letter Chao Seng wrote to his wife from Peking in December 1975<sup>xvii</sup>:

My beloved wife, after a much needed siesta in view of the incorrect schedules in France we went to welcome the first group of Cambodians, approximately 40 persons, who are due to return to Phnom Penh along with us. The conference shall last until the end of the month. Ambassadors are expected to return to their stations and we will have a better picture then ... Always carry the spirit of revolutionary optimism, it takes care of many things. You must be optimistic and positive because as you will see everything will be fine for us and for everyone.

Ms. Simmoneau Fort then referenced a partial list compiled by DC-Cam<sup>xviii</sup> of 232 Cambodians who were repatriated from foreign countries to DK between 1975 and 1976<sup>xix</sup>. Mr. Vercken commented that he did not see the link between the subject of the hearing and the documents presented by the lead co-lawyer, who responded that they were directly relevant to central structures and those who worked within them before and after April 1975. Ms. Simmoneau Fort said such individuals resided at Boeung Trabek, which is covered in the closing order and part of the relevant structures. Mr. Vercken countered that Ms. Simmoneau Fort was attempting to achieve another aim, he did not comprehend the relevance of the documents cited and was uncertain as to whether such individuals worked within the administration. President Nonn permitted the lead co-lawyer to continue. Ms. Simmoneau Fort cited the civil party statement of the wife of Ouk Keth<sup>xx</sup> – an ambassador who returned to DK after 1975– but did not seek submission of the written record of the witness

interview. However, she noted a 1977 letter from the Cambodian embassy in Beijing addressed to a number of ambassadors requesting that Ouk Keth return<sup>xxi</sup>:

To the beloved comrade in charge of the embassy of DK in Senegal. In accordance with the instructions from the Ministry of Foreign Affairs (MFA) of DK, I wish to provide you the following information. The ministry has decided that comrade must return to the country. You must prepare your travel upon receipt of this letter. 2. As for comrade's wife: request that she wait for you. You may have her stay with her parents. 3. As for the embassy premises we have requested the Chinese embassy to assist in maintaining and supervising ht property for us. Comrade requests further to inform the Chinese embassy for the government invites you back to the country for education and study in order to achieve tasks<sup>xxii</sup>.

Ms. Simmoneau Fort noted that Ouk Keth's named was listed as '33' in a list of prisoners executed on December 9, 1977<sup>xxiii</sup>. She then made reference to a list of Cambodian nationals living abroad who were executed at Tuol Sleng between April 1975 and January 1979<sup>xxiv</sup>, which is attached to the civil party application and contained in a book by Ong Thong Hoeung<sup>xxv</sup>.

In her final presentation, Ms. Simmoneau Fort presented a transcript of a speech by Khieu Samphan, in his capacity as president of the state presidium, during a meeting to commemorate the capture of Phnom Penh by the Khmer Rouge<sup>xxvi</sup>. She read an excerpt of the speech as follows:

Today, after having driven out all American imperialists and their lackeys, our workers, our peasants and our revolutionary army have become the indisputable masters of our country and administration. During the past two years, under the correct and clear-sighted leadership of our revolutionary organization, our workers, peasants and revolutionary army have scored many other great achievements, especially those which clearly attest to our great capabilities both in the fields of defending our country and administration and in the domain of comprehensive national rehabilitation and reconstruction based on the principles of independence and self-reliance<sup>xxvii</sup>.

After noting that the prosecution had already presented another portion of the speech describing "enemies", Ms. Simmoneau Fort concluded her presentation.

### **Nuon Chea defense objects to document ruling**

Prior to Mr. Ianuzzi's presentation, President Nonn noted a request to submit a specific document<sup>xxviii</sup> and said the chamber had not yet decided to summon the relevant expert witness to testify. President Nonn also referenced a book by Philip Short<sup>xxix</sup> who will be summonsed to testify next year. President Nonn affirmed that the chamber would therefore not allow Mr. Ianuzzi to present these documents at this point in time. Mr. Ianuzzi expressed surprise, arguing that this was the first time he had ever heard such a ruling, that such conditions were never placed on these documents and the defense was told they could present any documents they considered relevant to this stage of the proceedings.

To be told now, at 11 a.m. two minutes before I'm about to begin my presentation which, I might add, was centred on those very two documents you just mentioned, I find that remarkable ... Where you are coming from, Mr. President? Why weren't these indications given to the parties ages ago?



President Nonn interrupted Mr. Ianuzzi, stating that the chamber had advised the defense of the grounds for withholding the two documents for the time being. He added that the chamber would give the defense another opportunity to present relevant books and essays. The court will hear the testimony of Philip Short, but the chamber has not yet decided if it will summon Stephen Heder, President Nonn reiterated.

For the record, Mr. Ianuzzi mentioned the three documents he intended to present<sup>xxx</sup> - emphasizing the 'E' in their document numbers – and argued that they had long been on the case file. Mr. Ianuzzi reaffirmed that these indications had been made for the first time, and he found the practice “strange” and “to our detriment”. He was again interrupted, and President Nonn deferred to Trial Chamber Judge Jean-Marc Lavergne for an explanation. Judge Lavergne asserted that the chamber did not wish to counter the defense’s right to present documents it deemed relevant, but it was not the appropriate juncture at which to do so.

Mr. Ianuzzi appeared to receive clarification – though it was not stated directly – that the document related to Philip Short could be discussed if and when he appears before the chamber. He then noted that the other document he wished to present was Ben Kiernan’s interview with Chea Sim and Heng Samrin<sup>xxxii</sup>, and inquired if this document could only be discussed if and when Ben Kiernan testified. Judge Lavergne said the chamber had referred only to two documents – one by Philip Short and one by Stephen Heder – that the defense could present at future hearings. Mr. Ianuzzi asked if the aforementioned document by Stephen Heder could only be discussed if Stephen Heder appears as a witness. Judge Lavergne said that if Stephen Heder is summonsed the document could be entertained, and if not, there would be another opportunity to consider whether the document will be admitted.

### **Counsel for Nuon Chea present interview with Chea Sim and Heng Samrin**

Moving on, Mr. Ianuzzi prefaced his presentation by stating that the defense team understood that currently most of the proceedings in Case 002 relate to matters not directly relevant to factual allegations respecting the first two population movements and the recently included crime site of Tuol Po Chrey. While he noted that the defense comprehended that the rationale was to lay a foundation for future trials in Case 002, Mr. Ianuzzi emphasized that the defense team – in agreement with international co-prosecutor Andrew Cayley – believed this would never happen. Mr. Ianuzzi said that alleged CPK administrative and related structures were relevant within the facts set as the basis of the current trial, namely the first two population movements and Tuol Po Chrey. He requested that the chamber read from the document he was referencing in full, and not simply the sections quoted in court.

Mr. Ianuzzi read out two portions of the aforementioned interview with Chea Sim and Heng Samrin. Firstly, a section in which Heng Samrin is quoted as saying:

At that time, I was still with Son Sen, and Son Sen had meetings, divided us into groups. I took part in activities with Son Sen. Then after three months in Phnom Penh here following liberation, I was sent back to the East. Then after I got back to the East, Division 1 was totally destroyed and [its personnel arrested]. If I was still in that division I don't know what would have become of me. And it was this first division that Pol Pot praised highly in the fighting. There was only this division that fought hard and drove deeply [unclear] in the highway 1 region and along the

Mekong River [unclear] right to the border and was very active. The liberation of Nak Loeung<sup>xxxiii</sup> involved this division and my 126<sup>th</sup> regiment fought to liberate Nak Loeung from east and west and on the water to liberate it on April 1, 1975. It was me who liberated Nak Loeung from the east and the west. Then I was ordered to send my troops to go and fight into Phnom Penh, but fighting into Phnom Penh did not involve strong fighting. The [unclear Khmer words] (Lon Nol soldiers) rallied to us, and let the troops go through at that time. At 17 April at 9 a.m. I arrived at the Independence Monument. After liberation of there was a division of responsibility among three divisions from the east. There was my first division, my younger brother's second division and Chhieu's third division who fought up to Chhroy Changva with the Marines. The second division fought its way up to opposite [unclear Khmer words] and this first division along highway 1 and the road from Takhmao into Phnom Penh. There were the three thrusts from the east ... Then after staying three months they had my division leave the division command to Chhbar Ampov and the troops to Prek Ang<sup>xxxiii</sup> ... in that three months, I did a lot of work, immediately after liberation there was a meeting in order to receive the plan, distribute it [unclear Khmer words] from the center. It was for the whole country not just for one division, it included both military and civil [officials]. At that time all zones from throughout the country came to the meeting to receive the plan from the center, Pol Pot, it was on 20 May which we have fixed as the Day of Hatred, the day the Pol Pot plan was fixed to distribute generally to implement the political plan inside and outside the country as the time Pol Pot announced it, so we took 20 May as the Day of Hatred as his [unclear]<sup>xxxiv</sup>.

Mr. Ianuzzi quoted from the same document, noting that Ben Kiernan and Heng Samrin appeared to be discussing a May 20, 1975, meeting:

They didn't say 'kill' [the Lon Nol leaders]. They said [unclear Khmer words] don't allow them to remain in the framework. It doesn't mean 'smash'. Nuon Chea used this phrase. 'Komtech' [assumed English transliteration of Khmer word] means kill, but they used a general word 'komchat' [assumed English transliteration of Khmer word]<sup>xxxv</sup>. Nuon Chea talked about wiping out markets, not allowing money. If there were markets and money, there was property. The important heavy pressure was against property. If there was money there were markets, and if there were markets there would be people with money and these people would have property. So they wanted to wipe out property, not allow private property to exist<sup>xxxvi</sup>.

Mr. Ianuzzi repeated the line including 'komtech' and 'komchat' and said he hoped people would be reminded of an exchange between International Co-Lawyer for Nuon Chea Jasper Pauw and expert witness David Chandler on that point. He added he intended to emphasize with the two documents he did not present, that there was much autonomy at the mid- and lower-levels. International Senior Assistant Co-Prosecutor Keith Raynor objected that Mr. Ianuzzi was seeking to put the content of the documents before the chamber, when it had ruled that they are not currently relevant or admissible.

Mr. Ianuzzi asserted that it seemed many of their witness requests had thus far been rejected and they had not received a reasoned ruling on the issue. The defense was currently preparing a written motion, Mr. Ianuzzi said, before being interrupted when he attempted to elaborate. President Nonn interjected, stating that the chamber had given the defense the opportunity to present documents relevant to the CPK structure and it would consider other requests in due course. President Nonn said the court's internal rules did not impose a time limit on the chamber to make such a ruling. In an increasingly tense exchange, Mr. Ianuzzi reaffirmed that he did not believe the chamber had afforded him the opportunity to discuss communications and

administrative structure and he knew the chamber would prefer to have a “trial by script, a show trial of sorts”. He was again cut off. As Mr. Ianuzzi tried to speak, he was briskly informed that he could only present documents. Mr. Ianuzzi said Nuon Chea would not be comment on the documents put forth.

Mr. Ianuzzi said he had been informed that the prosecution was permitted to make use of a document by Stephen Heder on October 10. He added would check the relevant transcripts for confirmation and, if such was the case, he would “strenuously object” to his treatment in court. President Nonn said the chamber was not prohibiting the defense from presenting the documents in the future. In reply, Mr. Ianuzzi urged the chamber to consult a page 16 of the draft trial transcript from October 10.

After a brief consultation among judges, Trial Chamber Judge Silvia Cartwright inquired the prosecution to provide a reference to the document cited by Mr. Ianuzzi, who rose to proffer more information. Judge Cartwright waved her hands and interrupted Mr. Ianuzzi, noting that the prosecution would inform the chamber and thanking him for being “so very extendedly helpful”.

#### **Defense criticizes lack of clarity in document hearings**

Mr. Udom rose and noted that the defense did not have any documents to present but had some observations to make. President Nonn responded that Mr. Udom may make observations “in response to the documents presented by other parties”, but they must be specific to documents, not general. Mr. Udom said the prosecution had clarified an issue for him, and he had no further comment.

Mr. Vercken commented that the defense team felt they had been “expelled from the proceedings” and the past two days had been a “press conference” in which the Khieu Samphan defense refused to participate. He asserted that the parties were informed that these proceedings would not focus on admissibility or probative value of documents. Mr. Vercken indicated that the parties had received conflicting information about whether or not they could react to documents presented by the parties and that President Nonn had just “amended the rules” of the hearing a few minutes ago. He added that the defense team had thus far only reacted to documents when prosecutors described them in terms that were too general. “The Khieu Samphan defense does not intend to participate any further in such a press conference, because we are not in a trial, we are in a process in which the rights of the accused are not respected,” Mr. Vercken concluded.

When Mr. Ang rose, and began by stating that his comments may now be belated, President Nonn interjected and said he therefore did not have to proceed. In a somewhat confused exchange, President Nonn told Mr. Ianuzzi he was not permitted to make an observation, and then reverted to Mr. Ang, informing him that he could proceed. Mr. Ang noted the documents were important for the public and the hearings were not useless, and said he found Mr. Vercken’s intervention “inappropriate”. Mr. Ianuzzi remarked that Mr. Vercken had raised the issue of whether or not parties would be able to object to documents, and that if they had known in advance they would have made substantive comments. He added that Mr. Vercken’s use of the term ‘press conference’ was accurate - “it was simply to show documents without comment, without debate” – and for President Nonn to inform parties that it was suddenly adversarial was “remarkable”. “You are a remarkable presiding judge,

truly,” Mr. Ianuzzi said. Judge Cartwright could be heard saying that she “would like to warn” Mr. Ianuzzi. The chamber convened for several minutes.

Judge Cartwright said the judges would deliberate on Mr. Ianuzzi’s comments, and inquired if the prosecution had the requested reference. Mr. Raynor said the prosecutors had placed two English summaries of *Revolutionary Flag* before the chamber on October 10 that they believed were prepared either by Stephen Heder or Professor Ben Kiernan<sup>xxxvii</sup>, and noted an “obvious difference” between a record of interview taken by Stephen Heder and a document such as *Revolutionary Flag* believed to have been summarized by Stephen Heder. Furthermore, Mr. Raynor remarked that a document hearing was not a press conference, it was about putting evidence before a court. He noted that an English judge in the trial of Slobodan Milosevic had once made it clear that the purpose of counsel in such trials was not to “showboat”. Mr. Raynor asserted that the purpose of the hearing was to put relevant documents before the chamber and it was “sad” that defense counsel felt the need to “preen their feathers”. Perhaps it is time for defense counsel to “put their peacock feathers in”, Mr. Raynor concluded.

Mr. Vercken observed that the chamber, and the senior legal officer, earlier informed parties that the hearing was concerned with neither the submission of documents, nor their probative value, but with enabling the public to “take stock” of the documents, most of which already have reference numbers. Instead, Mr. Vercken contended, judicial proceedings had taken place and suggested the matter be clarified to put an end to misunderstandings. Mr. Udom asked why the prosecution was permitted to read a portion of an interview Stephen Heder conducted with Ieng Sary in court on October 10, and said he was unsure if there was an opportunity for them to object. Mr. Udom said the matter was not confined to editions of *Revolutionary Flag*, but there were also statements and interviews written by the two experts which had an ‘E3’ classification. Mr. Udom queried why Ms. Simoneau Fort could read documents in court that did not have an ‘E3’ classification, whether parties could object to the presentation of documents and why certain documents were allowed to be read, but not others.

In a somewhat unclear response, President Nonn said the chamber had clarified the issue relating to the two documents the chamber did not permit to be presented at this stage. Civil party applications had already been admitted and were subject to adversarial hearings. He noted that there were documents classified as ‘E3’ and annexes to those documents may be used in some cases, particularly those relating to civil party applications. President Nonn said parties were permitted to put forward documents at an appropriate time to facilitate “the flow of the hearing” and could make observations on certain documents presented, but could not discuss their weight or probative value.

Mr. Udom noted the document number of the interview conducted by Stephen Heder<sup>xxxviii</sup> that the prosecution put before the chamber, and sought clarification on whether the hearing allowed for the admission or rejection of documents. President Nonn said the chamber had not rejected any documents presented by the parties. At this point, Mr. Ianuzzi commented that while he took the prosecution’s point that there was a difference between an article authored, and interview conducted, by an expert, he was attempting to emphasize that it would have been useful to be advised

in advance of the parameters of the hearing. He further noted that there were potential issues with an interview conducted by someone who was not an investigator with the Office of the Co-Investigating Judges (OCIJ), if that was the rationale for not discussing a report prepared by an expert. “If the rationale for not discussing a report prepared by an expert is that he’s not here, then that same rationale should apply to interviews conducted by that expert who is not a judicial officer at the time of conducting interviews,” Mr. Ianuzzi asserted. He added that if parties are to be prevented from discussing certain documents, they should be informed in advance and given clear reasons in order to make appropriate motions or appeals.

### **Chamber warns defense counsel for Nuon Chea**

After the lunch break, Trial Chamber Judge Jean-Marc Lavergne acknowledged that the prosecution had presented an interview Stephen Heder conducted with Ieng Sary, but the chamber would not amend its decision to postpone the Nuon Chea defense’s presentation of written documents authored by Stephen Heder until the chamber decides whether he shall be summonsed to testify. “The chamber intends to clarify that such postponement is entirely consistent with the good administration of justice and that it serves to avert repetitious arguments before this chamber, and does not in any way curtail or have a detrimental effect on the rights of the defense to refer to such documents at an appropriate time,” Judge Lavergne asserted.

Judge Lavergne then observed that Mr. Ianuzzi had made various comments contesting or criticizing the chamber’s decision, and had been warned that such behavior was inappropriate and he was not permitted to continue. Judge Lavergne further recounted that Mr. Ianuzzi addressed President Nonn as a “remarkable judge” and stated that his manner and tone in delivering such remarks was “disrespectful and discourteous” and “entirely insulting” toward President Nonn and the entire chamber. Judge Lavergne continued that because of Mr. Ianuzzi’s “entirely inappropriate and unacceptable behavior”:

The chamber solemnly and hereby warns counsel Ianuzzi that pursuant to Rule 38 of the internal rules with respect to misconduct of a lawyer, continuance of such behavior may lead to refusal of his participation in this chamber and refusal to be given audience.

### ***Civil party takes the stand***

Civil party Yim Sovann took the stand and responded to series of customary questions by President Nonn. She testified that she was born October 5, 1960, in Prek Trang village, Sre Bo commune, in Kandal province’s Sa’ang district and currently lives in Phnom Penh. Her father’s name is Touch Som and her mother’s name is Touch Ly, her husband’s name is Kim Leang and she has three children. Ms. Sovann said that between April 17, 1975 until January 6, 1979, she left Phnom Penh and lived in Poh Tiban commune, in Kandal province’s Sa’ang district, before leaving to live in Pursat province’s Kandieng district and returning to Phnom Penh in 1979. President Nonn informed Ms. Sovann that as a civil party she could express her suffering and the material and psychological harm suffered during the DK period and the “crimes committed by the alleged accused, namely Mr. Nuon Chea, Khieu Samphan and Ieng Sary”<sup>xxxix</sup>. At this point, Mr. Ianuzzi attempted to comment, but President Nonn informed him that he was not permitted to take the floor.

### ***Civil party lawyers lead questioning of Yim Sovann***

In response to opening questions by National Civil Party Lawyer Sam Sokon, Mr. Sivann testified that her life prior to 1975 in Kandal province's Sa'ang district was hard, as Khmer Rouge and Lon Nol soldiers were fighting in the battlefield. She fled to Phnom Penh in 1972 and remained there until 1975 with her family. Ms. Sovann said she could not afford to go to school. Ms. Sovann said she had to move to a different location in Phnom Penh, after Khmer Rouge soldiers shelled the place where she was staying for a few months. Psar Deumkor was on fire, Ms. Sovann said, and she moved to the Olympic Stadium<sup>x1</sup>.

Ms. Sovann said she did not know where the shelling came from during the night, but it was targeted at residents of the Lon Nol regime and lasted from 9 p.m. until midnight and she was "very terrified". The civil party informed the court that the hospitals were full of injured people and corpses. When asked about her father's job before April 17, 1975, Ms. Sokon said he was a "spy" – but only people in her family knew that – and a farmer.

Turning to the forced evacuation of Phnom Penh, Mr. Sokon asked the civil party about the situation in the city and whether fighting between the two parties continued. Ms. Sovann testified that Khmer Rouge soldiers arrived in Phnom Penh on April 17, 1975, and they were no longer fighting because the Lon Nol soldiers were defeated and surrendered. "The Khmer Rouge soldiers violated the soldiers of the Lon Nol and the people. I was terrified," she said. When asked if she had seen Lon Nol soldiers tortured or executed, Ms. Sovann said she witnessed such events in front of Prek Puth pagoda. She recounted taking her sister to find her uncle who was a soldier, and saw Khmer Rouge soldiers in black uniform with short hair, fully armed. Ms. Yovann detailed seeing a tank and soldiers beating people with rifles and said she did not know why they violated the soldiers and 17 April people, or why they hated the 17 April people and considered them sworn enemies.

Mr. Sokon inquired if someone came to Ms. Sovann's house on April 17, 1975, and asked them to leave. Ms. Sovann described hearing people call themselves 'comrade brother'. It was at about 3 p.m. and her father initially refused to leave, Ms. Sovann testified. "They came with rifles and some dry rice, and they told my father: 'you must leave, if you don't do so, the Americans will drop the bomb on Phnom Penh'. And my father rushed to pack the bag and to collect some rice and try to move out from my place. It was very miserable to leave," Ms. Sovann recalled. She said they were all armed – men and women – and wore black uniforms with red scarves. They told her family that the 'upper Angkar' had asked them to leave and they must go to their home village for three days otherwise Americans might drop bombs and kill them, Ms. Sovann said. She added that the people refused to tell the family where they were from. Generally all of the 17 April people were in the same situation, the civil party testified.

When Mr. Sokon pressed Ms. Sovann on the details of the departure, Ms. Sovann said the soldiers only gave them 15 minutes to leave and if they refused, measures would be taken. She described witnessing soldiers shoot a lock on a house in O'Russey market and then shoot the people as they ran out of the house, before she ran away. Ms. Sovann said she saw wounded soldiers at a military hospital in Borei Keila – which belonged to the Lon Nol army – whom Khmer Rouge soldiers pushed from

their beds. Some of the wounded were taken by their relatives, and others were left behind to die in the hospital, she recounted.

### ***Evacuation from Phnom Penh described***

From 3 p.m. onwards on April 17, 1975, Ms. Sovann recalled that her family left along Psar Depo<sup>xli</sup> market towards Stung Meanchey, but were blocked. They went to O'Bekaom<sup>xlii</sup> and tried to visit their uncle in a military unit there where they saw corpses but found no one. Ms. Sovann said her father decided to continue on the road toward Pochentong airport, along which lay corpses of soldiers. "I was very traumatized," she said. From Pochentong, the family reached Sokoun pagoda where they stayed for about four to five days, before the Khmer Rouge soldiers told them to move on to wherever they wanted to go. The family attempted to return to their home village, but was prevented by the blockage of roads 3 and 4. Ms. Sovann testified that "a flood of people" filled the street, with some people dying along the way and sometimes "a kind of stampede" where they died. Other people tried to use a car to move but there were too many people, and Khmer Rouge soldiers grabbed one driver and shot him, the civil party recalled. Ms. Sovann said people were terrified and some became lost. The family held the small children to their chests and journeyed along national road 3 for five to six days until they reached Stung Kampong Thuol, where they stayed for a while, Ms. Sovann said.

When Mr. Sokon asked if transportation was provided for the evacuation, Ms. Sovann said that some people had cars, but they ran out of gas and had to try to push it. Others carried things on their shoulders and heads, Ms. Sovann testified, and all 17 April people experienced the same difficulties: of being horrified, and having no money, food or water along the road. The civil party said she did not see any sick people receive treatment from Khmer Rouge soldiers at the time.

Mr Sokon inquired if the corpses along the road were civilians or military personnel. The civil party said the bodies scattered on the road to the airport were in military uniform, and she tried to stay away from them. Nobody who died during the evacuation was given a funeral according to Khmer tradition, Ms. Sovann recalled. She said the bodies were in the ditch, or on the roadside, and she saw one person – the driver – shot to death, as his car was pushed along by other people. The civil party said her family wished to return to their village, but could not, and had to travel to another district, where there were no arrangements made for their arrival.

Ms. Sovann said she arrived later than other people in Koh Thom district<sup>xliii</sup> and stayed in Sampan Leu pagoda. "I heard people say that when you are there, Angkar are there to receive you and they told me that they cooked the rice mixed with corn and they were ready for you. When I saw the rice cooked, mixed with the corn, I was crying," Ms. Sovann testified<sup>xliiv</sup>. Ms. Sovann then recounted that her father told her he wanted to cross the river to find his friend, which they did, and stayed in Poh Tiban village. She said that the base people there – though they were her uncle's friends – disliked them, asked for their clothing and any valuables. "They expressed hatred against us and they made us to work without providing any tools and they blamed us for being 17 April people, for being bad people ... I tried to work until I felt sick and when I felt sick they forced me to lie down in the sun," the civil party testified, adding that they insulted her by saying she did not have a real fever.

Mr. Sokon asked the civil party if she lost any family members during the evacuation from Phnom Penh. Ms. Sovann said that her family stayed at Ke Rung pagoda for three days and were moved out again. They were not permitted to return to their hometown and therefore continued to Samrong Yaong, before moving on again. She said they were exhausted because they had to travel on foot all day and some people eventually took them by an ox cart to Preng Ambel, after her father gave them his watch. The family met Khmer Rouge soldiers who ordered them to remain there temporarily, the civil party said, before they were moved again to Sampang on a boat, but none of her family members died on this journey. Finally, Mr. Sokon inquired if Ms. Sovann and her family were asked by Khmer Rouge soldiers to give biographies when they arrived at their destination. Ms. Sovann replied that when they reached Poh Tiban commune, they were ordered to prepare their biographies. The family attended a meeting and were told to submit their biographies and were immediately put to work in the fields, Ms. Sovann testified.

Ms. Simmoneau Fort resumed questioning after a short recess about Ms. Sovann's family. Ms. Sovann said she had two younger brothers and two sisters, and in 1975, she had another younger brother. Ms. Simmoneau Fort asked Ms. Sovann to describe the soldiers who came to her home in Phnom Penh. The civil party said soldiers in black uniforms with red scarves around their necks told her family to leave Phnom Penh – some of them were old and some young. The family was told they did not need to take property with them because they only had to leave for three days to avoid the American bombardment, Ms. Sovann testified.

When asked if her father was threatened when he refused to leave, Ms. Sovann said he asked the comrades to delay his journey but they told him upper Angkar needed him to, and they would take measures against him if he refused. The Khmer Rouge soldiers told the family they would be shot dead and accused of being enemies or Lon Nol soldiers if they decided not to leave, Ms. Sovann recalled. The family therefore had no choice and had to pack their things and leave, she said, but could not go back to their home village. When Ms. Simmoneau Fort asked about her neighbours, Ms. Sovann said her uncles and aunts were evacuated, but they were later separated from them, and her family left behind others who were also evacuated from her area.

#### ***Treatment of people during the evacuation***

Turning to the evacuation out of the city, Ms. Simmoneau asked the civil party if she had water to drink on the journey from Phnom Penh. Ms. Sovann said they had no water, and when they were at Vihear Kun pagoda, they had to drink water from a pond and there was a limited amount. “The sick and the elderly people were not treated by any Khmer Rouge at all during the April 17, 1975,” Ms. Sovann testified, informing Ms. Simmoneau Fort that she did not notice any pregnant women and did not know what people who were elderly or sick did.

The civil party listed the places she went through until reaching ‘Poh village’: Psar Depo; Stung Meanchey; O’Bekaom; Wat Vihear Kun where she stayed for about five or six days; Stung Kampong Thuol for about a week; Wat Teuk Thla; Chre Pnauv mountain along national road 3; Ke Rung pagoda; Samrong Yaong; Prey Lvea; Stung district; Preng Ambel; Sampan pagoda; Poh Tiban pagoda, Village 5 in Kandal province’s Koh Thom district. It took about one month to reach Village 5, Ms. Sovann said. In response to Ms. Simmoneau Fort, Ms. Sovann said she was at that



location from April, or early May until early 1976, before being evacuated to a cooperative named Kbal Chhae Puk in Pursat province's Kandieng district<sup>xlv</sup>.

Ms. Simmoneau Fort asked what people in Village 5 were called and how treatment of people differed. Ms. Sovann said the people in the village were called 'base people' and the 17 April people were considered enemies of the Khmer Rouge. "The base people were the people of the revolution and the 17 April people were considered as enemies, feudalists, capitalists. I didn't understand then why we were treated in this manner. We were not capitalists or feudalists. We were also poor people in Cambodia," Ms. Sovann testified. She noted that the 17 April people had to look for food on their own and did not have enough to eat, whereas the base people had rice stored for themselves. Ms. Sovann's family lived together at the beginning, she said. Ms. Sovann testified that she was assigned to work in a female unit, was not allowed to return home and did not receive any education, as the 17 April people had no chance to attend school. However, there were self-criticism meetings, where Ms. Sovann told the court she was constantly criticized for being lazy in her work and where 17 April people were mostly targeted for criticism, which she did not understand at the time.

In response to queries from Ms. Simmoneau Fort, Ms. Sovann said her younger brother was born in late 1975, because he was very young when they were evacuated to Pursat province. Ms. Sovann recalled a female medic who was in the military and also a village midwife in her late 20s, who helped her mother but did not provide her with any medicine during her younger brother's birth.

Ms. Simmoneau Fort quoted an exchange from the civil party's written record of witness interview before the OCIJ, in which she stated there was a security center in the village called center 15, where she saw people being transported with their hands tied behind their backs, though she never saw anyone executed during her six months at Poh Tiban. Ms. Sovann was quoted as saying in the interview that the people were accused of being "enemy elements" and had "no hope for survival" as people taken there "always disappeared". Ms. Sovann confirmed the statement, and said she was not sure who the victims were in Village 5, but as her house was on the riverbank she saw people tied up and taken away and transported by boat from the other village. The civil party said she walked past office 15, but never witnessed any execution.

Ms. Simmoneau Fort asked Ms. Sovann why she had to leave the village. The civil party testified that the family was evicted. Though they wished to remain, they were told that they would have to stay in security office 15, and so left. Ms. Sovann said people – including the leader of her female unit – told her it was the "second wave of evacuation" from that location. Ms. Sovann said a boat was sent to take them to the other side of the riverbank and they had waited for a few days, but met a friend of her father's who told them they must move to Pursat province where there was plenty of food or they would eventually die. Ms. Sovann testified that they boarded a truck and were driven to past Sa'ang, Takhmao, Wat Sleng and finally reached the railway station where they had to wait. In response to Ms. Simmoneau Fort, Ms. Sovann said she did not know why there was a second wave of evacuations of 17 April people, and confirmed to the court that only 17 April people were forced to transfer.

Ms. Sovann said she stayed at Sampan Leu pagoda and they were given three kilograms of rice per family when they got on the truck. They did not receive any water while waiting for the train, and had to drink from a pond, but later received one loaf of bread on the train, Ms. Sovann recounted. She recalled that her mother took care of her younger brother, but did not have enough breast milk because she was skinny and exhausted, and nobody cared for either of them. The currency was abolished after April 17, 1975, so they could not buy anything and did not exchange any goods, Ms. Sovann said. Though some families had hidden things to feed themselves along the way, Ms. Sovann explained that her family was barehanded.

Ms. Simmoneau Fort asked if Ms. Sovann's siblings were placed within special units in Kbal Chhae Puk. Ms. Sovann said she was evicted and stayed in Kbal Chhae Puk cooperative in commune 9 in Pursat province, where she was separated from her siblings after about three or four months. Ms. Sovann explained that her younger brother was attached to a child mobile unit, she was separated – but did not join a special unit – and her father joined another unit. She said small huts were built for new people at the cooperative and they had a small room, and her father told them if they were not given rice they could find food to eat as they were close to the river, and it would not be as miserable as in Koh Thom district.

#### ***Civil party describes fate of family members***

When Ms. Simmoneau Fort pressed Ms. Sovann about the fate of her father, the civil party said that in the cooperative toward the end of 1978, her father was asked to mind the rice fields as he was told the enemy would be penetrating. The day her father was arrested, he was in a sad and depressed mood and Ms. Sovann went along with him to meet some people. Later that day, Ms. Sovann said she had lunch and when she returned to meet her father, she encountered two militiamen on the way, and was told by a man named Vuthy that her father had been tied to a bed. Ms. Sovann testified that she was horrified and knew that her father had been killed, and burst into tears but was told by the villagers to stop crying or she would be accused of being a traitor. A person named Loeung then told Ms. Sovann, she recounted, that her father had asked the militiamen to forgive his family members, before he was tied and marched away with his hands tied behind his back and imprisoned at Office 07. “They accused my father of being an enemy. At that time I was crying very hard, I could not do anything to help,” Ms. Sovann said<sup>xlvi</sup>.

When Ms. Simmoneau Fort asked how Ms. Sovann knew her father had been executed, the civil party recalled that he was taken to Banteay Youn where Security Office 07, a prison, was located, and a friend of her sister's informed them that her father was executed that night. Ms. Sovann testified that there was an old Chinese man – a former airport director in Siem Reap – who was released after he gave militiamen his watch. She said she wondered about corruption at the time, and why her father was accused of being an enemy, arrested and executed, while others were released<sup>xlvii</sup>. Ms. Sovann said Security Office 07 was heavily guarded and nobody could approach it without permission, so they could not perform a religious ceremony to mourn the passing of their relatives.

Ms. Sovann then described what happened to her sister, who was in the children's unit attached to Security Office 07 where they were given only two ladles of gruel and picked unripe rice. Ms. Sovann testified that the children were so hungry they picked

the rice from the ‘rice corn’ and were accused of being enemies and were taken away. The civil party told the court they wanted her mother’s ring or her sister would be taken away and killed. The man who threatened to kill her sister was her former teacher, Ms. Sovann recounted. She said her mother refused to give them the ring and they marched her sister to Security Office 07, from where she was transferred to Security Office 08 and the family never saw her again.

At this point, Ms. Simmoneau Fort concluded her questioning and noted that Ms. Sovann would express her suffering at the conclusion of her testimony.

***Prosecution briefly questions civil party***

Mr. Raynor proceeded with his questioning by referring to Ms. Sovann’s statement to the OCIJ, seeking confirmation that she was at Poh Tiban for six months from May to November 1975 and her family was given a hut to stay in near the river. Ms. Sovann confirmed this information. The prosecutor inquired if Ms. Sovann knew of an island named Koh Kor, to which she replied that it was a village close to her home village, some 30 kilometers away, and she later learned it was an execution site. Mr. Raynor again asked for confirmation that Ms. Sovann saw people transported by boat to the security center when she was living by the river. The civil party confirmed that she had once seen about five or six people on a boat, whose hands were tied behind their backs and she believed that they must have been accused of being enemies. In response to Mr. Raynor, Ms. Sovann confirmed that she believed the Khmer Rouge considered 17 April people and soldiers in the former Lon Nol regime to be enemies.

Ms. Sovann testified that she believed from 1975 to late 1976, the people with hands tied behind their backs either were 17 April people or former Lon Nol soldiers. The civil party confirmed to Mr. Raynor that people taken to Security Office 15 disappeared and never returned. Ms. Sovann described how she saw Security Office 15, which was in village 1 or 2 that she used to walk past when she went to harvest crops before her family was evicted to Pursat province.

***Yim Sovann’s cooperative in Pursat province***

Mr. Raynor quoted Ms. Sovann’s statement to OCIJ as saying those in Security Center 07 were under “close surveillance” but were allowed to work, and if they committed other offences they would be sent to Security Center 8, where the treatment was “miserable “ and prisoners were “handcuffed, shackled and severely tortured”. Ms. Sovann confirmed the statement, and said that at Security Center 7, sometimes people who stole food were arrested for re-education and if they improved, they were released. However if they did not improve, Ms. Sovann testified, they were sent to Security Center 8. Mr. Raynor again read from the OCIJ statement, quoting Ms. Sovann as saying in response to a question about 500 people being killed at that center, that she saw people who were evacuated from Svay Rieng province in the East Zone “being tied in a line and taken to Security Center 8 to be executed”.

Mr. Sovann confirmed the statement, adding that it was right before the liberation by Vietnamese troops. One day when she was harvesting, Ms. Sovann testified, she saw people from the East Zone with their hands tied behind their backs being transported along the rice paddy. Ms. Sovann recalled that she asked an old woman how she was, and the woman said she was from Svay Rieng province and was very thirsty, before

two militiamen hurried her along. The civil party said she realized that they were being sent to Security Center 8, and some of those tied up were very young.

At this point, Mr. Ianuzzi interjected and inquired if the prosecution planned to remain within such an area of questioning, as it appeared to relate to events in 1978. If so, Mr. Ianuzzi submitted that events at any crime base in 1978 are outside the parameters of the current trial as determined by the chamber. President Nonn reminded the prosecution to stay within the temporal framework of the current trial.

Moving on with his questioning, Mr. Raynor asked the civil party if she heard of a place called Tuol Po Chrey when she was at Kbal Chhae Puk. Ms. Sovann said she used to pass by Tuol Po Chrey commune, where villagers told her Lon Nol soldiers were executed. When Mr. Raynor sought clarification on whether she was in Tuol Po Chrey when she received this information, Ms. Sovann replied that she would walk by the area to collect thatch for the roof of her hut in late 1976 and early 1977. The civil party said she heard from Khmer Rouge soldiers that soldiers of the former regime were loaded into a truck and sent there for execution, which villagers told her took place over about half a month in April 1975. She told the court that she saw a hill covered in earth and she had met people from Kbal Chhae Puk cooperative whose relatives were killed there<sup>xlvi</sup>. Ms. Sovann described the area as a big, open field close to the Tonle Sap and next to the forest. When Mr. Raynor asked if people indicated to how many Lon Nol soldiers died at Tuol Po Chrey, Ms. Sovann said they only told her they saw a truckload of people sent there – including Lon Nol soldiers and civil servants of the former regime – but she knew no exact figures.

With this response, the prosecution concluded questioning of Yim Sovann.

### ***Nuon Chea defense raises characterization of allegations***

Mr. Ianuzzi firstly informed the chamber that the Nuon Chea defense team had no questions, nor did the other defense teams. Secondly, Mr. Ianuzzi cited President Nonn's introductory comments to the civil party in which he referred to "crimes committed by alleged accused", but was interrupted with President Nonn inquiring as to the subject of Mr. Ianuzzi's comments. President Nonn asked if Mr. Ianuzzi wanted another clarification, in order to avoid a statement that might "insult the proceedings" or criticize the President for being unreasonable. Mr. Ianuzzi assured the chamber that he did not intend to insult the proceedings, and apologized if it was now presumed that everything he said was insulting. Mr. Ianuzzi repeated that he had heard President Nonn say "crimes committed by alleged accused" and noted the lack of qualification in front of the word 'crimes'. He submitted that President Nonn should have said 'alleged crimes committed by alleged accused'. Mr. Ianuzzi argued that whether crimes were committed and whether anyone was responsible for such crimes, were open questions. He then referred to a notification of the decision on the co-prosecutors' request to include additional crime sites within the scope of Case 002/01, and noted the addition of the 'killings of Tuol Po Chrey' – where 'killings' was not qualified. Mr. Ianuzzi said he was attempting to clarify for everyone's sake that the court needed to speak in the language of allegations and accusations, for base crimes as well as for levels of responsibility with respect to the defendants. Mr. Ianuzzi observed that it was important for a judicial chamber to use proper language so as not to give an impression that the judges have already decided crimes were committed.

Mr. Udom supported the request by Mr. Ianuzzi, and confirmed that the Ieng Sary defense had no questions for the civil party, but reserved the right to questions should the judges pose inquiries relating to their case. Mr. Sam Onn affirmed that the Khieu Samphan defense had no questions for the civil party. Ms. Simmoneau Fort noted briefly that whatever the merits of the defense counsel's comments, it was not the time for such remarks while the civil party was present to give testimony. She suggested that the civil party appear on Monday to present her final statement.

President Nonn adjourned the hearing, with proceedings to resume on Monday, October 22, 2012, at 9.a.m. with a statement from civil party Yim Sovann and the testimony of another civil party.

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<sup>i</sup> Document number E109/2.3R. Though it was not identified by name in court, this appeared to be a clip from *Survive: In the Heart of the Khmer Rouge Madness* produced by Rosanne Saidnattar.

<sup>ii</sup> Document number IS9.1.

<sup>iii</sup> The English translation of this word was unclear.

<sup>iv</sup> Document number E4.23. The ERNs are 00103883 (Khmer), 00103785 (English) 00595497 (French).

<sup>v</sup> Document number E3/122.

<sup>vi</sup> The ERNs are 00613201 (French), 00347033 (Khmer) 00000926 (English).

<sup>vii</sup> The ERNs are 00613204 (French), 00347037 (Khmer) 00000929 (English).

<sup>viii</sup> The ERNs are 00613205 (French), 00347039 (Khmer) 00000929 and -0930 (English).

<sup>ix</sup> The ERNs are 00613208 (French), 00347042 to 43 (French) 00000932 (English).

<sup>x</sup> The ERNs are 00613210 (French), 00347046 (Khmer) 00000933 (English).

<sup>xi</sup> Document E3/204.

<sup>xii</sup> The ERNs are 00656178 (French), 00424211 (Khmer) 00680033 (English).

<sup>xiii</sup> The ERNs are 00656179 (French), 00424212 (Khmer) and 00680034 (English).

<sup>xiv</sup> Document number D22/289. The name of this civil party applicant was unclear in the English translation.

<sup>xv</sup> The exact nature of this request was unclear in the English translation.

<sup>xvi</sup> Document number D22/289.21.

<sup>xvii</sup> Document number D22/289.1. The ERNs are 00481462 to 63 (French); 00806052 (English) 00797532 to 33 (Khmer).

<sup>xviii</sup> The Documentation Center of Cambodia (DC-Cam) is a sponsor of the Cambodia Tribunal Monitor, and its director, Youk Chhang, serves as co-managing editor.

<sup>xix</sup> Document number D22/289.14.

<sup>xx</sup> Document number D22/44.

<sup>xxi</sup> Document number D22/44.11.

<sup>xxii</sup> The ERNs are 00338993 (French), 00281227 (Khmer) and 00326564 (English).

<sup>xxiii</sup> Document number D22/44.13 The ERNs are 00339169 (French), 00281230 (Khmer) and 00328268 (English).

<sup>xxiv</sup> Document number D22/289.17.

<sup>xxv</sup> Ong Thong Hoeung testified in Case 002 at the ECCC in August 2012.

<sup>xxvi</sup> Document number E3/200.

<sup>xxvii</sup> The ERNs are 00612165 (French), 00292804 (Khmer) and S00004164 (English).

<sup>xxviii</sup> Document number E119.1.3.

<sup>xxix</sup> Document E/9. Though the book was not named in court, it is likely a reference to *Pol Pot: Anatomy of a Nightmare*, by Philip Short.

<sup>xxx</sup> Document numbers E190.1.398, E3/1568 and E3/9.

<sup>xxxi</sup> Document number E3/1568. Chea Sim is the current Cambodian Senate President and Heng Samrin the current Cambodian National Assembly President.

<sup>xxxii</sup> The exact spelling of this name was unclear.

<sup>xxxiii</sup> The exact spelling of these names was unclear.

<sup>xxxiv</sup> The ERNs are 00651878 – 80 (English), 00713945 – 48 (Khmer) and 00743349 – 51 (French).

<sup>xxxv</sup> Mr. Ianuzzi said he assumed these two phrases were English transliterations of Khmer words.

<sup>xxxvi</sup> The ERNs are Eng 00651884 (English), 00713955 (Khmer), and 00743356 (French).

<sup>xxxvii</sup> Document numbers E3/724 and E3/731.

<sup>xxxviii</sup> Document number E3/89.

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<sup>xxxix</sup> Mr. Ianuzzi later objected to this characterization.

<sup>xl</sup> The English translation was unclear in Ms. Sovann's response about Phnom Penh.

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

<sup>xlii</sup> O'Bekaom is a commune in Phnom Penh.

<sup>xliii</sup> Koh Thom is a district in Kandal province, near Sa'ang district.

<sup>xliv</sup> The English translation was unclear in Ms. Sovann's response.

<sup>xlv</sup> There was some uncertainty over the dates that Ms. Sovann was at Village 5. Ms. Simmoneau Fort subsequently stated in the English translation that Ms. Sovann was at that location for six months from May 1976 to November 1976. It was unclear which dates are correct.

<sup>xlvi</sup> Sections of Ms. Sovann's testimony in which she details the events surrounding the death of her father were unclear in the English testimony.

<sup>xlvii</sup> The English translation was unclear in Ms. Sovann's response.

<sup>xlviii</sup> Sections of Ms. Sovann's testimony in which she describes Tuol Po Chrey were unclear in the English testimony.