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## KR Tribunal Lawyers Tussle Over Evidence

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With the memory of the aging defendants and witnesses at the Khmer Rouge tribunal proving less than reliable, lawyers for the prosecution and defense yesterday sparred over whether documents in the case were any better.

What appears undisputed is that the half-million pages of documents in the case file will play a major role in the fate of the three accused: Brother Number Two Nuon Chea, former head of state Khieu Samphan and ex-Foreign Minister Ieng Sary.

As Deputy Co-Prosecutor William Smith put it, “documents produced at the time of the alleged criminal events are able to capture important information about those events permanently, like a photograph that does not fade like a memory.”

Even documents produced later, he said, will help the judges “see a more complete picture of the events and their context.”

What the defense and prosecution disagree on—and have regularly fought over from the start of the trial last year—is where to set the bar on the authenticity, reliability and relevance of the evidence.

“The defense seeks to set the threshold for admissibility unduly high in requiring the prosecution...to positively establish the authenticity of

the documents when the international jurisprudence has established that there is in fact no such burden upon any of the parties,” Mr. Smith said.

But Andrew Ianuzzi, a member of Nuon Chea’s defense team, argued that any rules for using documents ought to draw on Cambodia’s own criminal procedure codes first.

Instead of “slavishly follow[ing] the jurisprudence of other international tribunals,” he said, “the starting point for any consideration of the use of documentary evidence must be, must be referenced to the Cambodian criminal procedure code.”

That code, he added, suggested that copies of documents should only stand if the originals were available and verified.

Over the past week, Nuon Chea has repeatedly refused to answer questions about documents presented by the prosecution because they were only copies and demanded the originals. The Trial Chamber judges reminded him that they had already ruled that the copies were enough, and took his refusal to answer those questions as a decision to remain silent.

Defense lawyers took special issue with the evidence supplied by the Documentation Center of Cambodia (DC-Cam), and its director, Youk Chhang.

“Let’s face it, DC-Cam is an advocate” for the regime’s victims, said

Michael Karnavas, co-lawyer for Ieng Sary.

With Mr. Chhang’s “inherent prejudice” toward the accused, he added, “anything that has DC-Cam on it must be considered suspect to begin with.”

With that, and key questions about how exactly DC-Cam came upon documents, their chain of custody, and the evidence the center gathered on its own, he said Mr. Chhang’s testimony about those documents was “crucial.” Defense lawyers also urged the judges to refuse any books and media reports unless their authors could be summoned as well.

Asked about his own sought-after testimony, Mr. Chhang called the lawyers’ request “just sad.” As for his alleged bias, the DC-Cam director said the regime’s guilt was all but settled.

“To most observers, the [Communist Party of Kampuchea’s] responsibility for widespread atrocities is accepted as fact,” he said.

“The real value of criminal trials, or any accountability process, will not be to restate that broad historical conclusion and send the aging defendants to die in prison. The greatest contributions of an accountability process will be to establish the truth as clearly as possible and to promote the successful resurrection of law and order in Cambodia.”