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KRT: when art becomes evidence

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With witnesses to the Khmer Rouge regime frail, forgetful and frequently uneasy about testifying, the work of journalists could be a key to unlocking the truth of the murderous regime and the guilt or innocence of the three accused in Case 002.

But whether those works can be used as evidence is already proving a highly contentious point for judges in the monumental case against three surviving Khmer Rouge leaders.

During opening statements, the co-prosecutors hinted that journalists' "testimony" in the form of books, art-icles, photographs and film would be a big part of their case against "Brother No. 2" Nuon Chea, former foreign affairs minister Ieng Sary and ex-president Khieu Samphan.

Describing the crime of forced marriage, Cambodian co-prosecutor Chea Leang quoted directly from American journalist Elizabeth Becker's work *When the War Was Over*.

"Family life had to be eliminated," Chea Leang read in her opening statement. "The family was the most potent – hence, most feared – of all relationships of the former society."

Later, Chea Leang used Becker's words to describe the trail of carnage caused by the alleged policies of the three leaders.

"The area was littered with human faeces and swarming with flies. There was not enough food again, and nowhere to rest but the open ground. There was little water for drinking, none for bathing. Corpses littered the area, and the stench from human and animal faeces became overwhelming."

As well as the words of Becker, the prosecution used the images of photographer Al Rockoff and scenes from Post journalist Thet Sambath's documentary *Enemies of the People*.

The use of journalistic works as evidence of the crimes committed by the trio of ex-leaders almost dominated the evidence the prosecution touched upon in opening statements.

The defence was none too pleased by what they viewed as reliance upon journalists over eyewitnesses. "How can I respond to the national co-prosecutor when most of her presentation mainly relied on the extracts from books and newspapers?" former head of state Khieu Samphan asked the court in a prepared statement.

"The journalists that you cited in your presentation are not legally bound by the law. Of course, they are entitled to be wrong, to be biased, and to be partial, and to express their opinions freely, without thinking in details on any particular issue," he said.

The prosecutors, defence and civil parties have placed 601,000 documents in the case file for Case 002. Each document represents either inculpatory or exculpatory evidence concerning the charges, which include genocide, crimes against humanity and war crimes.

For some of the journalists whose work is being used, the fact that some view their work as unreliable is lamentable.

“As an American journalist, privileged to work with our Constitutionally protected freedom of the press, I see the issue differently,” Elizabeth Becker told the Post in an email.

“Once it goes into the public domain, a journalist’s work is available to all.

“That means our articles can be used by everyone as information – in this instance, by both the prosecution and the defense at the ECCC tribunal.”

Becker’s seminal work on the Khmer Rouge, *When the War Was Over*, was first published in 1986. She was working as a journalist in Cambodia up until the fall of Phnom Penh in April, 1975 and was one of two American journalists to return with the permission of the Khmer Rouge for a brief period in 1978.

“My articles, books and archives on Cambodia have been used by novelists, playwrights . . . they have been cited in Congress by politicians pursuing policy changes or investigating lawbreaking,” Becker said.

Renowned war photographer Al Rockoff said the use of journalistic works – particularly photographs – was especially pertinent to the KR tribunal.

“This isn’t like Nuremberg or Tokyo, done immediately after the fact; this is more than 30 years later, and sometimes people need to have their memories jarred,” Rockoff told the Post.

“All the little details and colour of a photograph help that.”

Rockoff came to Phnom Penh in 1973 after being injured while shooting the Vietnam war. He was known to take tremendous risks to get his pictures at a time when any foreign journalist falling into Khmer Rouge hands could expect execution.

In April, 1975, Rockoff was one of five US newsmen to remain in Phnom Penh when the US embassy launched a helicopter evacuation of its staff.

“My photos, pictures from say ’74, may not be directly relevant to the trial, but it shows what they [the accused] were capable of beforehand,” he said. “My photos show cause and effect.

“But [photos] can be misleading sometimes,” he said, referring to the prosecution’s use of one of his photos during opening statements, which Rockoff said was heavily cropped to about one-third of the original.

Post journalist Thet Sambath similarly defended the veracity of his works, which include a book and the award-winning documentary *Enemies of the People*. The film includes footage of intimate interviews he conducted with Nuon Chea over a roughly 10-year period before his arrest in November, 2007.

Thet Sambath told the Post Nuon Chea was speaking “truthfully” during his interviews with him.

But unlike Becker or Rockoff, who said he wished the tribunal used more of his work, Thet Sambath was incensed at the use of his work by the tribunal without his permission.

Thet Sambath told the Post that Nuon Chea had the right to say anything at the tribunal, but he thought it was “not right” that the court was using his material “without approval”.

Shortly before hearings in Case 002 finished for 2011, the prosecution team placed in the case file his book *Behind the Killing Fields*, which he co-wrote with Gina Chon.

Anne Heindel, a legal analyst at the Documentation Centre of Cambodia, said the admissibility standards for parties to put things on the case file were quite low at the tribunal.

“Ideally, you would want to have the journalists whose work you are using there as a matter of authentication,” she said. “But you have to remember, it was an extremely closed society and those [journalistic works] can show a pattern [that can be used as evidence].”