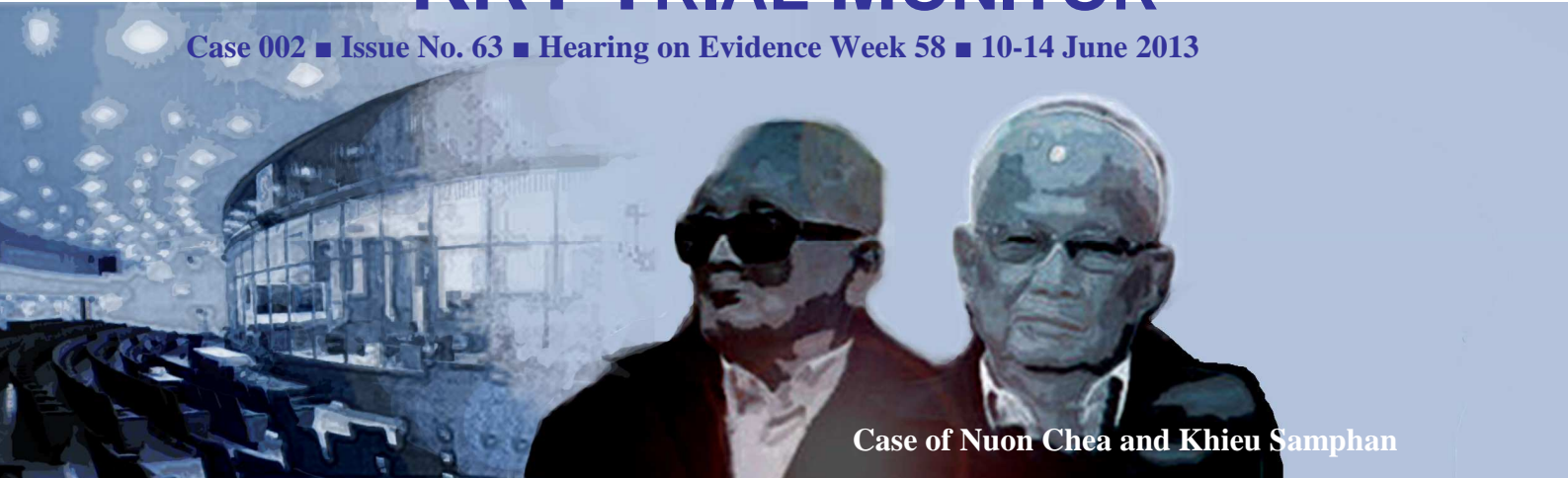


KRT TRIAL MONITOR

Case 002 ■ Issue No. 63 ■ Hearing on Evidence Week 58 ■ 10-14 June 2013



Case of Nuon Chea and Khieu Samphan

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

If your honors don't believe in my statement or the prosecution did not believe in it [...] then I don't need to testify here anymore.

- Witness So Socheat¹

I. OVERVIEW

This week, the Trial Chamber heard testimony from three witnesses: Tun Soeun, So Socheat and Sim Hao. Proceedings commenced on Monday to hear testimony from Tun Soeun, the son-in-law of Khieu Samphan followed by Khieu Samphan's wife, So Socheat. On Wednesday and Thursday, Witness Sim Hao described his work as a soldier prior to the evacuation of Phnom Penh and his work as a laborer with the Ministry of Commerce during DK. His testimony focused on KR purges and orders allegedly given by Khieu Samphan towards the end of the DK era. The week ended with the ECCC's first public Trial Management Meeting (TMM), during which all parties presented arguments in relation to the final documentary hearings, questioning of the Accused, closing briefs and closing statements, future trials, reparations, and pending translations.

II. SUMMARY OF WITNESS TESTIMONIES

This week, the Chamber heard the testimony of Witnesses Tun Soeun, So Socheat, and Sim Hao. Both Tun Soeun (Khieu Samphan's son-in-law) and So Socheat (Khieu Samphan's wife) were questioned about the character of the Accused Khieu Samphan. Lastly, a soldier during Phnom Penh's evacuation in 1975, Sim Hao recounted working in a battalion and later as a laborer within the DK's Ministry of Commerce.

A. Tun Soeun's Testimony (TCW-742)

Character Witness Tun Soeun² is the Accused Khieu Samphan's son-in-law. He testified before the chamber on Monday morning, detailing his education as a child in DK, his activities on behalf of the KR in the 1980s and the early 1990s, and his father-in-law's character.

1. Work and Studies at K-3 and K-5 during DK

The Witness was 11 years old and was working in a KR Children's Unit when he was sent to Phnom Penh for education in July or August of 1976. He initially stayed at the K-8

agricultural office, and attended Sothearos School to study Khmer literature under the supervision of “Uncle Phang.” 18 months later, he moved to K-3 to study typing.

2. Character of the Accused Khieu Samphan

The Witness was working as a telegram decoder for the KR when he first met his future father-in-law, Khieu Samphan in 1982. He did not meet Khieu Samphan again until 1989, after serving on diplomatic missions abroad. He regularly delivered messages personally to Khieu Samphan until 1990, when he was assigned to the DK mission in Beijing. After returning to Cambodia, he told the Court that in 1994, he married Khieu Samphan’s daughter and began living in Khieu Samphan’s household. The Witness described Khieu Samphan as “honest,” “gentle,” and “very much loved by other people.” He stated that his father-in-law lived modestly and was not susceptible to greed or corruption. According to the Witness, Khieu Samphan treated all people equally, and never had strong political opinions, other than his desire to faithfully serve Prince Sihanouk’s vision for Cambodia.

3. Witness Demeanor and Credibility

Tun Soeun was initially forthcoming and open with his responses when questioned by Khieu Samphan’s Counsel and appeared eager to describe his father-in-law’s personality to the Chamber. However, the Witness became evasive at several points during his cross-examination. For example, the Witness appeared reluctant to respond when Prosecutor Keith Raynor presented the Witness with testimony that alleged children at the Sothearos School he attended were trained to decode telegrams during DK. Although the Witness responded to questions calmly, at times, he was noted to give indirect responses or hesitate before answering.

B. So Socheat’s Testimony (TCW-673)

Character Witness So Socheat³ began her testimony on Monday, 10 June 2013. Over the course of her testimony, she recounted how she joined the revolutionary movement against the Lon Nol regime and met her husband Khieu Samphan while working as a cook at Stoeung Chinit. She also recalled observations she had made about the KR senior leadership.

1. Movement Prior to DK Period

When So Socheat was 18-years-old, she dropped out of school in order to assist her family with farm work. She had finished fifth grade at the time. Following the coup d’état in 1970, she joined the resistance movement and was placed into a women’s group where she worked as a village medic, treating people infected with malaria and diarrhea. By mid-1971, she had attended a number of educational sessions offered by a woman named Sin Yem. She told the Court that the educational sessions inspired her to live in the jungle with the resistance movement. After traveling to Stoeung Chinit, she recalled being courted by her future husband, Khieu Samphan while working there as a cook. So Socheat married Khieu Samphan sometime in 1972, and recalled that after the marriage, they moved every month to avoid being tracked. She told the Court they stayed at B-17, then B-20, and a few months later in Meak Office, before moving to K-1 in 1975.

2. Marriage to Khieu Samphan

Sometime after arriving at Stoeung Chinit, So Socheat met Khieu Samphan. At the time, she only knew Khieu Samphan by the name of “Hem” or “Brother Hem.” Several months later, Khieu Samphan proposed to So Socheat through a lady named Yem. The Witness told the

Court that she did not say yes immediately because she did not know Khieu Samphan well and was curious as to why he would have remained single at such an advanced age. Yem told her that Khieu Samphan was an intellectual and a clean person. After several years with no answer from So Socheat, Khieu Samphan asked Yem to confirm the proposal again. At that point, So Socheat decided to marry Khieu Samphan and believed he was “the right” man for her. She described the wedding ceremony, which she estimated took place sometime in 1972 as “happy,” though not “very festive.”

3. Experiences at K-1 during DK

The Witness stated that she and Khieu Samphan moved to K-1 (at the riverfront Tonlé Bassac) in mid to late 1975 and lived there until 1976. Although K-1 was intended to house the senior leadership, So Socheat told the Court that the living conditions were not much better than they had been in the jungle. She recalled how the family of three slept on the ground of their single room, using their clothes as pillows. The Witness worked as a cook at K-1 and said that food was “not abundant.” She told the Court how at K-1, she cooked for the Senior Leaders including Pol Pot, Nuon Chea, Ieng Sary, Son Sen, Doeun and Vorn Vet. Under questioning by the Prosecution, the Witness admitted that she was actually in charge of the kitchen at K-1, although she had denied this earlier. She told the Court that sometime in early 1976, the leaders, including her husband moved from K-1 to K-3. The Prosecution, who accused her of “concocting” the story, heavily contested this. She also claimed that she remained behind due to pregnancy and two to three months later, after giving birth to her second child, traveled to K-3 where she stayed with her family until the fall of Phnom Penh.

4. Experiences at K-3 during DK

She told the Court that when she arrived at K-3 sometime in 1976, Khieu Samphan was living in a wooden house under “inhuman” living conditions. So Socheat recalled living with the wife of Nuon Chea until Pol Pot ordered a new house to be built for their family. She added that although the living conditions in K-3 were better than in K-1, the food shortage continued, and at times they did not have enough rice to eat. The Witness stated that her main tasks at K-3 were cooking, housework, and taking care of her daughter. She told the Court how her son had been placed in a children’s unit when he was three-years-old and although both her and Khieu Samphan were not happy with the situation, they never complained officially. After four or five months at K-3, the Witness stated that the senior leaders, namely Pol Pot, Nuon Chea, Ieng Sary, Vorn Vet and Son Sen left K-3 for their respective offices. Only Khieu Samphan remained at K-3, where he occasionally left to visit K-1. The Witness told the Court that Nuon Chea also visited K-3 on occasion.

5. Knowledge of Arrests and Purges

So Socheat denied having knowledge of arrests or purging while she worked at K-1 and K-3. The Witness said she had never experienced a fearful atmosphere at K-1 or at K-3. She also denied ever having attended a study session, and told the Court that she never talked with her husband about politics or his job. Although she told the Court that she had heard that they were required to be vigilant against enemies, she denied having any further knowledge. When questioned specifically in relation to “Doeun,” the Witness confirmed that she regularly cooked for Doeun, who would eat late, but he stopped coming in after a while. She stated that she never discussed Doeun’s disappearance with her husband, but later admitted she had after the Prosecution presented her with a passage from Khieu Samphan’s book that suggested they had discussed his disappearance. In relation to the arrest of her own family members, including her parents, brothers and cousins; the Witness told the Court that she only found out that they had been arrested when they were released in 1978.

6. Knowledge of Khieu Samphan's role in DK

So Socheat consistently denied having any knowledge of her husband's activities in the KR, claiming she was merely a cook, and that it was not proper for a wife to pry into her husband's activities. She claimed it was not until 1973, that she found out her husband's real name was Khieu Samphan. Throughout her testimony, she maintained she never thought her husband was an important figure in the KR leadership. She mentioned only limited knowledge of her husband's dinners with fellow KR leaders, and claimed to have no knowledge of several banquets hosted by the KR, at which her husband was present. She also claimed she had no knowledge that her sister was released from a prison in Siem Reap due to her husband's influence.

So Socheat testified that although Khieu Samphan left for work every day, she knew nothing about what his work entailed. While they were at K-3, she recalled that Khieu Samphan occasionally took their daughter, who was about one year old, to work. The Witness claimed that her daughter would imitate Khieu Samphan speaking on the phone after going to work with him, which prompted her ask about the nature of his work. Her husband informed her that his job was to order the preparation of goods for the base, but that the warehouses were situated elsewhere. She also claimed that her husband never mentioned anything regarding the "disappearances" of party leaders. She also denied having had any knowledge of her husband's interviews with the OCIJ prior to the present trial.

7. Character of the Accused Khieu Samphan

So Socheat expressed her admiration for Khieu Samphan, who she considers to be a patient, gentle, and humble person. She stated:

My husband is an honest person, and I trust him despite the charges against him. I solemnly declare as his wife that what I see is different from what other people might see ... If my husband is compared to other men, to me he is the best, a man of virtue and high morality. He never upset me by any act and is very faithful ... He is not a murderer, not the person who went around making arrests, and that's what I saw with my own eyes.

Throughout her testimony, she raised a number of examples that she considered showed Khieu Samphan's good nature, including the fact that he drove a Lambretta car while other leaders possessed expensive and luxurious cars. She also told the Court how after returning from China, Khieu Samphan spent about one month taking care of her after she gave birth to her first child. So Socheat recalled that Khieu Samphan was extremely concerned about her health and helped her wash nappies, bring food, and fetch water.

8. Witness Demeanor and Credibility

So Socheat's testimony was emotionally charged, and at a number of points over the two days she testified, both the Witness and Khieu Samphan were in tears. The Witness gave inconsistent statements on a number of occasions throughout her testimony, but particularly during cross-examination by Prosecutor, Raynor. Raynor attacked the credibility of the Witness by presenting So Socheat with material from Khieu Samphan's book that contradicted a number of earlier statements she had made.⁴ At one stage, Raynor accused her of being a "liar." Monitors noted that translation issues might have contributed to some inconsistencies in her testimony—an issue that was raised by Defense Counsel Kong Sam Onn during the proceedings (see III.F). During pointed questioning by Civil Party Lawyer, Christine Martineau, the Witness continued to deny having any knowledge about her

husband's activities in the KR. This became increasingly less plausible, particularly when she maintained that although she knew people had died during the KR regime, she only heard about the deaths afterwards and even now, 30 years on, she still did not know what her husband's duties were in DK. At one stage during her testimony, the Witness also revealed the name of a future witness despite an express warning from Judge Lavergne not to reveal the name.

C. Witness Sim Hao's Testimony (TCW-648)

Witness Sim Hao,⁵ a village chief from Kampong Thom province, was called by the prosecution to present his testimony on 12 June 2013. Over the next two days, he testified before the chamber on his background and work with the KR, the targeting of Lon Nol soldiers during the evacuation of Phnom Penh, a number of personal encounters with Khieu Samphan, and the disappearance of personnel from DK's Ministry of Commerce.

1. Background and Role of Witness

As a young man, Sim Hao told the Court how he enlisted in KR Battalion 709 in the North Zone because he was angered by American bombings and Vietnamese aggression. His unit was part of the revolutionary forces involved in the campaign that captured Phnom Penh on 17 April 1975. No longer needed for military service due to the victory of the KR, his unit was converted into a labor battalion under the DK Ministry of Commerce. Within this unit, he worked as a longshoreman in Kampong Som province, unloading agricultural equipment and supplies from Chinese merchant ships, and loading rubber, cotton, rice and other goods for export. After a year in Kampong Som, he was transferred to Phnom Penh, where he unloaded supplies at Ta Khmao.

2. Purging of Lon Nol soldiers

Before the fall of the KR, Sim Hao testified that his unit had only captured one or two Lon Nol soldiers. He knew that they were arrested, but he did not know what happened following their arrest. He never saw any executions of these soldiers. Battalion 709 arrived on the outskirts of Phnom Penh on 20 April 1975. Halted at a road junction some 6 kilometers from the city, Sim Hao did not personally witness the bulk of the evacuation, which he stated had taken place earlier. However, there were evacuees still leaving the city. In contrast to other former KR soldiers who testified that they had express orders to sift out Lon Nol soldiers and bureaucrats from the crowds leaving the city, Sim Hao stated he did not receive similar orders. Approximately a year after the fall of Phnom Penh, while working as a laborer in Phnom Penh, Sim Hao testified that he worked with a group of children who were the sons and daughters of former Lon Nol government workers.

3. Knowledge of Khieu Samphan's role in DK

During questioning by Counsel, Arthur Vercken, the Witness told the Court that some time in 1979, while he worked as a laborer in the Ministry of Commerce, he attended a meeting presided over by Khieu Samphan and attended by approximately 100 people from various ministries. During the meeting, Khieu Samphan had told the unit to dig trenches and be ready to oppose enemies in Phnom Penh, fearing an imminent attack from the Japanese. Comments from the Defense Counsel suggested the issue had been raised in an attempt to illustrate that Khieu Samphan had given the orders to protect the laborers themselves.

4. Arrests and Disappearance of Cadres

The Witness told the Court that he noticed many arrests and disappearances while working

with the Ministry of Commerce, adding that the arrests contributed to a “climate of fear” in the office. During a meeting, Sim Hao heard an announcement that fellow worker, Koy Thoun was part of a CIA network. Koy Thoun was later arrested and he noted that other arrests were also made on lower levels in an effort to destroy the “traitorous network,” but these arrests were not announced. The Witness also told the Court about other arrests, including his superior, Chea who was arrested at gunpoint. Later, the witness learned from a friend that there was a plan to arrest him too. To prevent his arrest, he went to his supervisor, told her he was not an enemy and spoke with her about the importance of complying with the orders of the party. His supervisor was arrested the next day.

5. Witness Demeanor & Credibility

Sim Hao appeared to respond candidly to all questions posed to him. When asked to confirm his previous OCIJ statement, he told the court frankly that he could not recall every detail, although he had reviewed the statement. He apologized repeatedly when he could not precisely recollect dates or events. He vowed to answer all questions truthfully and suggested that the Chamber could form their own judgment relating to the consistency of his accounts. He appeared to be willing to assist the Parties to elicit accurate facts and at one point, offered his assistance to Prosecutor Vincent de Wilde d’Estmael, when he had difficulty pronouncing a Khmer name.

III. LEGAL AND PROCEDURAL ISSUES

This week saw many legal and procedural issues raised before the Court. On Monday, the scope of the exception of relatives of the Accused to take an oath was discussed, concluding that a partial exemption was appropriate due to the fact that the Witnesses were obligated to tell the truth in relation to Co-Accused, Nuon Chea. During So Socheat’s testimony, National Counsel for Khieu Samphan, Kong Sam On, objected on numerous occasions to Prosecutor Raynor’s line of questioning, on grounds that the questions posed required the Witness to give testimony outside of her scope of knowledge. He also objected to the manner and form of documents Raynor presented to the Witness. Tussles between Prosecutor Raynor and Defense Counsel Kong Sam Onn escalated towards the end of the week. On Tuesday, Counsel Kong Sam Onn attempted to clarify what the Witness meant during her testimony and the following day, Prosecutor Raynor requested that the Chamber enforce lawyer misconduct provisions against him pursuant to IR 38.⁶ Several other issues were raised during the course of So Socheat’s testimony, when she mistakenly named a Witness yet to testify before the Chamber and gave additional comments on Khieu Samphan’s character following the conclusion of her testimony. On Thursday, the ECCC’s first public TMM took place. The TMM addressed a number of issues including the procedure for final document hearings, the questioning of the Accused, closing briefs and closing statements, future trials, reparations, and pending translations.

A. Partial Oath Exemption for Khieu Samphan Character Witnesses

On Monday, Witnesses Tun Soeun and So Socheat took only a partial oath (in relation to information they might provide about Nuon Chea) prior to testifying. Pursuant to IR 24.2, relatives of an Accused may testify without first taking an oath. However, the Chamber ruled that the exemption applied only partially due to the fact that Case 002 involves two Co-Accused and the Witnesses were only related to Khieu Samphan. The practical application of the partial oath exemption caused some confusion as to exactly which parts of the Witness’ testimony had been made under oath, particularly when Witness So Socheat gave testimony about events which involved both her husband, Khieu Samphan and Nuon Chea.

B. Questions outside of Witness' Scope of Knowledge

On Tuesday, the Chamber sustained an objection made by Defense Counsel for Khieu Samphan, Kong Sam Onn, in relation to speculative questions posed by Prosecutor Raynor. Raynor asked So Socheat if Khieu Samphan had ever mentioned to her that Hu Nim, an intellectual arrested in 1977, had written him a letter regarding his arrest. After the Witness responded that she never heard about the letter, Raynor then asked her why Hu Nim would write such a letter. Kong Sam Onn objected to the question, declaring that it would lead to speculative testimony. After careful deliberation by the Trial Chamber Judges, the President sustained the objection and directed the Witness not to answer the question.

Counsel Kong Sam Onn objected again in relation to questions Prosecutor Raynor posed to So Socheat about her family book, which registered the date her son was born. Defense Counsel Kong Sam Onn claimed that Raynor was asking questions relating to procedural details of how the registration process operated, which the Witness was unable to answer. Raynor clarified that he wished the Witness to explain why her son's birth date listed in the register differed from the date she provide in her statement, an issue that had been raised by Judge Lavergne but remained unresolved. Following a conference among the Trial Chamber Judges, the President overruled the objection, stating that the grounds were not appropriate.

C. Use and Identification of Documents used During Questioning

A number of objections were made by the Defense in relation to Prosecutor Raynor's use of documents during his examination of So Socheat. On Tuesday, during the Prosecution's questioning of So Socheat, Defense Counsel Kong Sam Onn objected to Prosecutor Raynor referring to documents without citing the relevant ERN numbers. Raynor responded that he did not have the ERN numbers at hand, but asked permission to use the transcript's time markers instead, adding that the practice had been adopted the week before during Witness Sydney Schanberg's testimony.⁷ President Nil Nonn allowed Raynor to proceed as he had requested, adding that the time marker identified the documents more precisely than ERN numbers. On Wednesday, Defense counsel for Khieu Samphan, Vercken objected to Prosecutor Raynor's attempt to use a telegram that was not available to the Defense. Following an apology from Raynor, the President initially allowed the Prosecution to proceed, however after Vercken pointed out that the telegram was actually a Wikileaks document; the President refused the Prosecution's request to refer to the telegram.

D. Name of Future Witness Revealed

During questioning by Judge Lavergne on Tuesday, Witness So Socheat's mistakenly gave the name of a future witness, despite being warned to answer if she knew the person who was listed in a document provided to her, but not to say the name. IR 29 provides that concealment of the identify of a witness is only required as a protection measure when deemed necessary, but the ECCC has adopted the practice of concealing the names of witnesses and civil parties from the public until they testify before the Chamber.⁸

E. Additional Witness Statement following Conclusion of Testimony

On Wednesday, after the conclusion of her testimony, So Socheat proceeded to give a further statement about Khieu Samphan's character. Raynor declared that So Socheat is not Civil Party and accordingly, is not permitted to present evidence of character that is not subject to cross examination.⁹ The Duty Counsel then defended So Socheat, pointing out that several Parties had accused her of lying and that she wanted to make a statement to address that. President Nil Nonn reproached the Duty Counsel, remarking that the role of a

Duty Counsel in the proceedings is limited to advising the Witness in relation to self-incrimination.¹⁰

F. Prosecutor's Application for Misconduct of Lawyer Pursuant to IR 38

On Wednesday, International Prosecutor Raynor submitted an application for IR 38¹¹ to be enforced against National Counsel for Khieu Samphan, Kong Sam Onn. Prosecutor Raynor argued that Counsel Kong Sam Onn's attempt to clarify what Witness So Socheat "really meant" the previous day amounted to a willful interference in the administration of justice. He requested the Chamber to formally rebuke Counsel Kong Sam Onn, report his conduct to the Cambodian Bar Association and give him a formal warning that repetitive behavior would lead to his removal from the Court. Kong Sam Onn denied that he was trying to feed information to the Witness, stating that he was "duty bound" to correct discrepancies in the transcript. Both Vercken and International Counsel for Nuon Chea, Victor Koppe criticized the Prosecutor's application. Vercken claimed that the application was merely an attempt to "intimidate." In support of the Khieu Samphan Defense team, Koppe added that the application was "unacceptable."

G. Trial Management Meeting

Final Documentary Hearing

On Thursday, the TMM began with oral submissions from the Parties regarding the plan for the last documentary hearing, which was initially scheduled for 24 June 2013. President Nil Nonn stated that the purpose of this hearing would be to provide one last opportunity for the Parties to present key documents in relation to Joint Criminal Enterprise with respect to the role of the Accused. International Prosecutor William Smith and International CPLCL Elisabeth Simonneau Fort agreed that the Co-Prosecutors would need three days and Civil Party Lawyers would need one day and a half to present documents. The Nuon Chea Defense did not wish to present any documents, but reserved a maximum of one day to respond to documents presented by other Parties.

The Khieu Samphan Defense reiterated their allegation that the documentary hearings have so far deprived their client of the right to a fair and adversarial trial, and requested that admissibility hearings be held.¹² Counsel Vercken argued that the Defense should have an opportunity to challenge all documents presented in an adversarial setting, highlighting that the Chamber's approach had prevented the Khieu Samphan Defense from commenting on the weight and probative value of documents during the previous three document hearings.¹³

The President explained that the admissibility of the documents had already been determined during prior hearings, and highlighted that the purpose of the hearings was to highlight key documents already admitted into evidence to the Court and the public. The President stressed that it was not appropriate for the Defense to reargue admissibility. However, it was open for them to submit arguments in relation the probative value of the documents presented. Vercken argued that this was contrary to previous practice. However, Prosecutor Smith dismissed Vercken's accusation, reminding the Khieu Samphan Defense that they had been provided with an opportunity to challenge the admissibility and probative value concerning all documents, but had failed to participate.¹⁴

Questioning of the Co-Accused

The Chamber informed the Parties that the Co-Accused had elected to respond to questions and each of the Accused would be questioned for six days. Prosecutor Smith objected to two requests made by the Khieu Samphan Defense team in relation to the questioning of the

Co-Accused. Firstly, Smith argued that the Khieu Samphan Defense request to receive a list of documents or topics that would be used to confront the Accused prior to questioning was not supported by IR 90.¹⁵ He added that all Parties were in the same position to present their evidence as required by IR 35. Moreover, it would be unfair if Khieu Samphan were given documents or topics in advance because the Defense team has never provided any such list to the OCP when cross-examining witnesses. Prosecutor Smith advised the Chamber to direct the Defense teams to refer to the numbers of the relevant paragraphs in the Closing Order to identify the topics for questioning.

Secondly, Smith objected to the Khieu Samphan's Defense's request for three additional weeks break after the conclusion of evidentiary hearings before questioning of the Co-Accused could take place, highlighting that they have had more than five years to prepare. The Khieu Samphan Defense argued that they required additional time to prepare as a result of the health concerns of their client, combined with the fact they have been unable to visit their client in the detention center on weekends.

Closing Briefs and Closing Statements

All Parties requested the Chamber to extend the page limit for closing briefs. Both the OCP and the Khieu Samphan additionally requested an extension of the date to file the closing briefs. Vercken also requested additional time (two weeks) to detect translation issues in the transcripts and submitted that the time allotted to the Defense to prepare its' closing brief should be calculated from the time they receive the OCP final brief in Khmer or French, not English. The Chamber denied the requests and confirmed that Parties would have six weeks to file their closing briefs within the page limits previously decided, and Closing Statements would be held 30 days following the submissions of final briefs.¹⁶

Future Trials and Res Judicata

In response to the CPLCLs request for clarification on future trials, the President advised that the Chamber could not schedule future trials at the time. He explained that the possibility of having future trials relied on the health of the Accused, which remained unpredictable and beyond the Chamber's control. When Simonneau Fort sought the Chamber's position concerning *res judicata* for Case 002 and subsequent trials, Judge Cartwright said that it was still premature to discuss the matter until the Supreme Court Chamber had issued a decision on severance. She added that the Chamber intended to hold a TMM to allow Parties to debate *res judicata* after the Closing Statements.

Reparations

The Chamber indicated that it did not expect the CPLCLs to give final submissions on reparations "imminently" and this would be dealt with later in the year.

Pending Translations

President Nil Non reminded the Chamber that on 5 March 2013, the OCP and CPLCLs announced that they could not meet the deadline to complete the all pending translations and inquired whether the pending translations could be completed before the closing statements, likely to be held in early October 2013. Prosecutor Dale Lysak and CPLCL Simmoneau Fort both informed the Court that the translation was progressing and would likely be completed in one to two months.

IV. TRIAL MANAGEMENT

Despite a number of objections raised by Parties this week, the Trial Chamber managed to hear complete testimonies from three witnesses and hold the last TMM. The Chamber endeavoured to run the proceedings expeditiously, however, did show some flexibility on Wednesday, when they allowed the OCP to question Witness So Socheat beyond the allotted time.

A. Attendance

Nuon Chea participated in the proceedings remotely from his holding cell due to ill health. Khieu Samphan was present in the courtroom for most of the week, but was absent during the TMM and the last session on Thursday afternoon.

Judges Attendance: Reserve Judge Claudia Fenz was absent throughout the week.

Civil Party Attendance: Monitors observed 10 Civil Parties following the live proceedings in the courtroom, and approximately 20 Civil Parties who observed from the public gallery.

Parties Attendance: All Parties were properly represented during the week, with the exception of National CPLCL, Pich Ang, who was absent on Tuesday morning due to personal reasons.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 10/6/2013	<ul style="list-style-type: none">550 people including students from Phnom Penh and villagers and Cham ethnics from Prey Veng Province15 foreign observers	<ul style="list-style-type: none">200 students from Phnom Penh250 villagers from Takeo Province
Tuesday 11/6/2013	<ul style="list-style-type: none">550 students from high school, Kampong Thom Province5 foreign observers	<ul style="list-style-type: none">250 youths from Cambodia Youth Association4 foreign observers
Wednesday 12/6/2013	<ul style="list-style-type: none">500 students from Phnom Penh and Cambodia University of Specialties, Kampong Cham Province50 monks1 foreign observer	<ul style="list-style-type: none">400 students from Phnom Penh and Kampong Cham Province5 monks2 foreign observers
Thursday 13/6/2012	<ul style="list-style-type: none">500 students from Phnom Penh and Kampong Cham Province8 foreign observers	<ul style="list-style-type: none">500 students from Kampong Cham Province and Phnom Penh

B. Time Management

This week, the Chamber held proceedings from Monday to Thursday, concluding the testimony of three witnesses and the TMM according to schedule. Witness So Socheat's testimony went beyond the allocated time, however this did not pose a problem as the testimony of the other two witnesses was concluded earlier than the time allotted.

C. Courtroom Etiquette

Several courtroom etiquette issues were raised throughout the week, involving heated exchanges between Prosecutor Raynor and the Khieu Samphan Defense. On Tuesday, during the OCP's questioning of Witness So Socheat, Kong Sam Onn offered his own interpretation of what the Witness had stated. Raynor claimed that Kong Sam Onn's conduct amounted to "a gross violation of ethics," and the following day, made an application to the Chamber for misconduct provisions to be applied against the Defense Counsel (See III.F). At another point during the OCPs cross-examination of the Witness, Vercken objected to the Prosecution's use of an extensive quotation, which prompted Raynor to accuse the Khieu Samphan Defense of interrupting his cross-examination "with unmeritorious and wholly irrelevant comments." Prosecutor Raynor's cross-examination methods were also criticized by the Khieu Samphan Defense, who claimed that calling the Witness a "liar," was disrespectful and improper.

D. Translation and Technical Issues

This week, a number of complaints were raised in relation to the quality or lack of translation. On a number of occasions, Vercken informed the Court that there was either no translation into French, or that statements had been shortened. The Translation Unit responded that Vercken had not provided sufficient pause to allow for his words to be translated. Monitors observed that Parties did speak quickly throughout the week, with the exception of Prosecutor Raynor who was observed to speak clearly and slowly.

E. Time Table

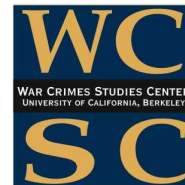
DATE	MORNING SESSION 1	MORNING SESSION 2	AFTERNOON SESSION 1	AFTERNOON SESSION 2	TOTAL HOURS IN SESSION
Monday 10/06/13	9:06-10:31	10:51-11:59	13:45-14:48	15:14-16:00	4 hours and 22 minutes
Tuesday 11/06/13	9:04-10:30	10:51-12:00	13:32-14:40	15:02-16:12	4 hours and 53 minutes
Wednesday 12/06/13	9:02-10:53	11:21-12:05	13:32-14:40	15:00-16:06	4 hours and 49 minutes
Thursday 13/06/13	9:06-10:47	11:06-12:16	13:31-14:54	15:13-15:54	4 hours and 55 minutes
Average number of hours in session			4 hours 45 minutes		
Total number of hours this week			18 hours 59 minutes		
Total number of hours, days, weeks at trial			834 hours 18 minutes		
188 TRIAL DAYS OVER 58 WEEKS					

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	DK
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	KR
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

This issue of **KRT TRIAL MONITOR** was authored by Stephanie Fung, Melanie Hyde, Anne Lang, John Reiss, Kimsan Soy, and Penelope, Van Tuyl as part of AIJI's KRT Trial Monitoring and Community Outreach Program. KRT TRIAL MONITOR reports on Case 002 are available at <www.krtmonitor.org>, and at the websites of the [East-West Center](#) and the [War Crimes Studies Center](#).

¹ Trial Chamber. Transcript of Trial Proceedings (11 June 2013). E1/149.1 [hereinafter **11 JUNE TRANSCRIPT**]. Lines 16-17. 28.

² Tun Soeun was examined in the following order: President Nil Nonn; National Co-Lawyer for Khieu Samphan Kong Sam Onn; International Prosecutor Keith Raynor; National Civil Party Lead Co-Lawyer Pich Ang.

³ So Socheat was examined in the following order: President of the Trial Chamber Nil Nonn; International Co-Lawyer for Khieu Samphan Arthur Vercken; Judge Jean-Marc Lavergne; International Prosecutor Keith Raynor; National Civil Party Co-Lawyer Hong Kim Suon; International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort.

⁴ For example, during questioning by Prosecutor Keith Raynor, the Witness was noted to provide the following inconsistent testimony: the Witness denied being the head of the kitchen at K-1 but later admitted it after being presented with an excerpt from Khieu Samphan's book; the Witness provided inconsistent facts regarding the birth date of her son; and the Witness admitted to having discussed the disappearance of "Doeun" with Khieu Samphan despite denying it earlier.

⁵ Sim Hao was examined in the following order: President Nil Nonn; International Prosecutor Vincent de Wilde d'Estmael; National Civil Party Co-Lawyer Chet Vanly; International Civil Party Co-Lawyer Christine Martineau; Judge Jean-Marc Lavergne; National Co-Lawyer for Khieu Samphan Kong Sam Onn; International Co-Lawyer for Khieu Samphan Arthur Vercken; International Co-Lawyer for Nuon Chea Victor Koppe.

⁶ IR 38. Misconduct of a Lawyer states: "1. The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement. 2. The Co-Investigating Judges or the Chambers may also refer such misconduct to the appropriate professional body. 3. Any foreign lawyer practising before the ECCC who is subject to disciplinary action by the BAKC may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the BAKC. Such appeal shall suspend enforcement of the decision unless the Pre-Trial Chamber decides otherwise. The decision of the Pre-Trial Chamber shall not be subject to appeal. 4. Where, as a result of any such disciplinary action, a person is struck off the list of lawyers approved to appear before the ECCC, the lawyer shall transmit all related material to the appropriate unit within the Office of Administration, so that it may ensure continuity of representation."

⁷ See CASE 002 KRT TRIAL MONITOR. Issue No. 62. Hearing on Evidence Week 57 (3-7 June 2013).

⁸ IR 29 states: "3. The Co-Investigating Judges and the Chambers may, on their own motion or on request, and after having consulted with the Victims Support Section or the Witnesses/Experts Support Unit, order appropriate measures to protect victims and witnesses whose appearance before them is liable to place their life or health or that of their family members or close relatives in serious danger. The Co-Investigating Judges or the Chambers may issue such an order on their own motion where there are indications in the case file of such risk. Protective measures for victims shall be requested no later than 15 days after the indictment becomes final. Protective measures for witnesses shall be requested no later than the date for the filing of the witness list referred to in Rule 80. On an exceptional basis, late applications may be considered by the Chamber. 4. In this respect, the Co-Investigating Judges and the Chambers may make a reasoned order adopting measures to protect the identity of such persons, including: a) declaring their contact address to be that of their lawyers or their Victims' Association, as appropriate, or of the ECCC; b) using a pseudonym when referring to the protected person..."

⁹ IR 23.1 states: "1. The purpose of Civil Party action before the ECCC is to: a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and b) Seek collective and moral reparations, as provided in Rule 23quinquies."

¹⁰ The President previously confirmed the limited role of the Duty Counsel pursuant to IR 28.9 during the testimony of Oeun Tan who had sought to consult with the Duty Counsel because he was having difficulty answering questions. See CASE 002 KRT TRIAL MONITOR. Issue No. 26. Hearing on Evidence Week 21 (11-14 June 2013).

¹¹ IR 38. Misconduct of a Lawyer states: "1. The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement. 2. The Co-Investigating Judges or the Chambers may also refer such misconduct to the appropriate professional body. 3. Any foreign lawyer practicing before the ECCC who is subject to disciplinary action by the BAKC may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the BAKC. Such appeal shall suspend enforcement of the decision unless the Pre-Trial Chamber decides otherwise. The decision of the Pre-Trial Chamber shall not be subject to appeal. 4. Where, as a result of any such disciplinary action, a person is struck off the list of lawyers approved to appear before the ECCC, the lawyer shall transmit all related material to the appropriate unit within the Office of Administration, so that it may ensure continuity of representation."

¹² Khieu Samphan Defense. "Mr Khieu Samphan's Motion Reasserting His Right to a Fair and Adversarial Trial" (11 February 2013). Document E263.

¹³ International counsel for Nuon Chea, Mr. Arthur Vercken, referred to the Trial Chamber's comments made 19 October 2012 stating, "[W]e cannot assess the weight and probative value of the documents and evidentiary material. The parties will be limited in talking about these documents because this will wait for the end of the trial."

¹⁴ Khieu Samphan Defense. "Mr Khieu Samphan's Motion Reasserting His Right to a Fair and Adversarial Trial" (11 February 2013). Document E263. Para 11.

¹⁵ IR 90 states: “1. The President of the Chamber shall inform the Accused of his or her rights under Rule 21(1)(d) and shall conduct the hearing. The judges have a duty to raise all pertinent questions, whether these would tend to prove or disprove the guilt of the Accused. 2. The Co-Prosecutors and all the other parties and their lawyers shall also have the right to question the Accused. All questions shall be asked with the permission of the President. Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber and in the order as determined by him.

¹⁶ The Office of the Co-Prosecutors. “Co-Prosecutors’ Notification of the Time Required to Question the Accused” (6 June 2013), Document E288; and Trial Chamber. “Trial Chamber Memorandum – Further Notification of Modalities for Closing Briefs” (26 November 2012) Document E163/5/4.