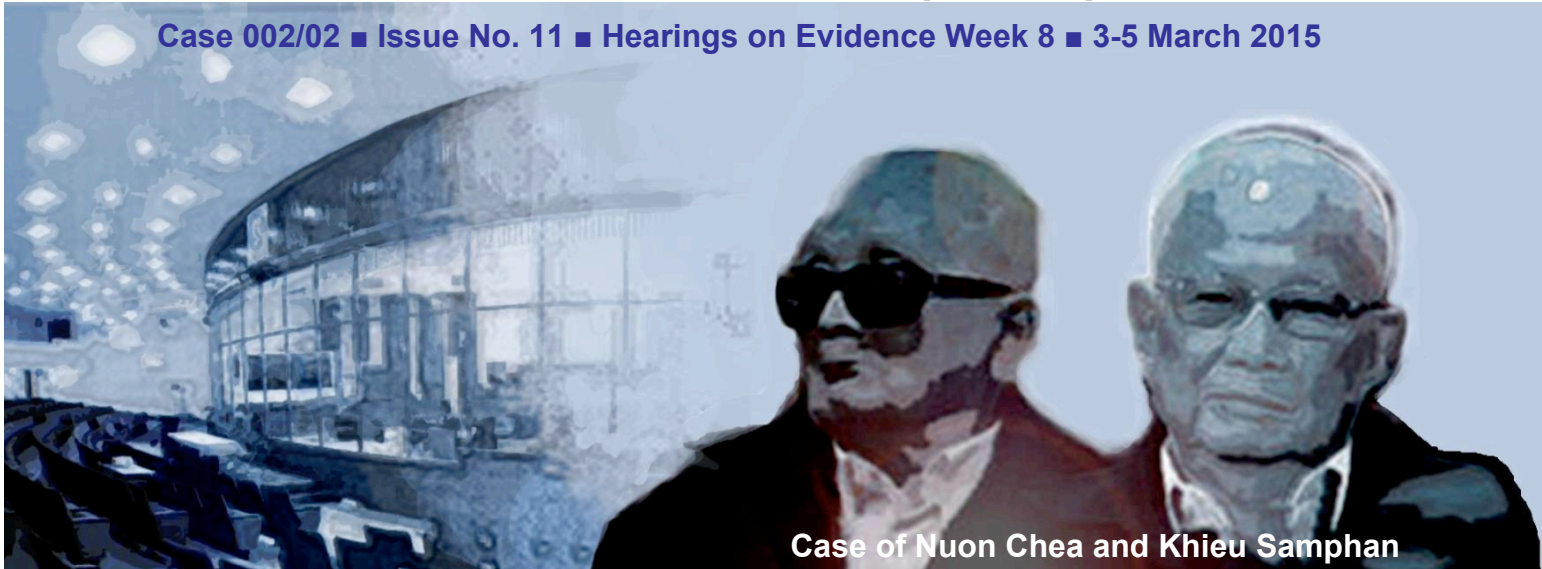


# KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 11 ■ Hearings on Evidence Week 8 ■ 3-5 March 2015



Case of Nuon Chea and Khieu Samphan

Asian International Justice Initiative (AIJI), a project of East-West Center and the WSD Handa Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center)

*I was threatened and warned not to let anything out of my mouth, and, if I talked about it, I would be in danger. I was told that when I learned any information... I should not say anything about it. Otherwise my head would fall down on the earth.*

- Witness Van Soeun

## I. OVERVIEW

In only two full days of public evidentiary hearings this week, the Trial Chamber heard the testimony of a single witness, Mr. Van Soeun, a former guard and messenger at Kraing Ta Chan Security Center. Defense motions concerning the International Co-Prosecutor's continued disclosure of documents from the OCIJ investigations of Cases 003 and 004 into the case file for Case 002/02 resulted in the shortened week of hearings. This procedural issue was coupled with the International Co-Investigating Judge's 3 March 2015 announcement of charges *in absentia* for two suspects in those cases under investigation. KRT Trial Monitor will summarize and analyze the announcement of these charges in a forthcoming separate report. This report, however, discusses the ongoing disclosures from the OCIJ investigations to Case 002/02, as the Chamber held a public trial management meeting for the Parties to note their impacts on the current trial segment and the upcoming order of the Case. Furthermore, this report summarizes the testimony of Van Soeun, *alias* Suon, who described his role at the prison, his knowledge of its administrative structure, and his observation of alleged atrocities at the Security Center. The report also analyzes the Trial Chamber's lack of coherent instructions regarding the privacy afforded to victims of sexual violence, after the issue again was raised during Defense Counsel Victor Koppe's examination of the Witness this week.

## II. SUMMARY OF WITNESS TESTIMONY

Following the testimony of two former cadres in the previous week of evidentiary hearings,<sup>1</sup> Witness Van Soeun completed two days of testimony on his observations as a former guard at Kraing Ta Chan Security Center (**KTC**). He explained that, as the youngest guard at the prison, he served as messenger between the prison and the District 105 (Tram Kak District) office, and he was therefore able to provide some greater insight into the administrative structure of the Security Center. The Parties also questioned him on his knowledge of alleged atrocities there.

## **A. Summary of Testimony by Witness Van Soeun**

Over the two days' worth of evidentiary hearings this week, the Trial Chamber heard the testimony of Mr. Van Soeun, alias Suon, a rice farmer who was born in 1959 and currently resides in Chrey Village, Leay Bour Commune, Tram Kak District, Takeo Province.<sup>2</sup> His testimony largely covered his assignments with a Khmer Rouge district military unit, his subsequent duties as messenger and guard at Kraing Ta Chan Security Center, his knowledge of the prison's administrative and communications structures, and his observations of atrocities that allegedly took place at the time he was stationed there, from 1976 to 1979.

### **1. Testimony on Role as Guard at Kraing Ta Chan Security Center**

The Witness testified that he was forcibly conscripted into the Khmer Rouge military in 1974, at the age of 15, as the Communists were fighting a brutal war to liberate Takeo Province from the forces of the Lon Nol regime. His unit was briefly assigned to Damrei Romiel Mountain, to look for and catch "enemies," including Prum San, who was alleged to have "betrayed the Revolution and had fled into the forest." Van Soeun claimed that, in 1976, the district military transferred his six-man unit to KTC, where he began his duty guarding the outside perimeter of the Security Center. The Witness identified the five other guards in this unit as Sim; Sang, who he identified as his cousin by blood; 'Little Duch', who has already testified, under the name Srei Thorn; Touch; and, Uok. The Witness also identified the six "Party-members," whom he alleged maintained all operational authority at the prison: Cheng, Penh, Chieng, Moeun, Chhoeun and prison chief Ta Ann. Although the Witness maintained that, because he was the youngest of all the guards, he had not been allowed to carry out certain tasks, he could confirm that executions did take place at the Security Center. He testified that the six Party-members supervised the administration of the prison and were the only people who would interrogate, beat, or execute prisoners. Van Soeun specified that prisoners were beaten with rattan whips, bamboo clubs, and hoes, and that he also saw plastic bags that were used to suffocate the prisoners during interrogations. He explained that these weapons, as well as an arsenal including other arms such as rifles, were kept inside the compound. When asked who oversaw storage of these weapons, Van Soeun asserted that Ta Ann "was in charge of everything inside the compound." He insisted that his own six-man unit was not involved in interrogations or executions, and that it was only responsible for guarding the Security Center's outer perimeter, preventing prisoner escapes, and planting vegetables. He indicated that the number of prisoners sent to the site varied, but that they arrived on a daily basis. The Witness was unable to confirm whether there was a category of prisoners that was executed on arrival. The Witness added that he "feel[s] pain" when thinking of KTC, largely due to the fact that four of his uncles and one aunt were imprisoned and died at the Security Center before his arrival.

Counsel for Nuon Chea, Mr. Victor Koppe, later questioned Van Soeun about one occasion when he was tasked with guarding trucks brought from outside to transport prisoners to "the foot" of Damrei Romiel Mountain where further executions may have taken place. This line of questioning followed Mr. Koppe's previous questioning of Witness Phann Chhen on the possibility that alleged executions of prisoners took place outside the compound of Kraing Ta Chan. Van Soeun also testified that Ta Ann instructed his unit to be "firm but gentle" with prisoners, however he admitted his own uncertainty as to whether the apparent torture at the site fell under the prison chief's definition of "firm." The Witness also recalled an "awful smell," which he believed to emanate from buried human corpses, and he claimed that his superiors insisted the smell instead came from decomposing dogs or chickens. He repeatedly denied his own attendance at meetings where executions were planned. He further denied any involvement in torturous activities. When confronted with the prior testimony of former prisoner and Civil Party Soy Sen, Van Soeun rejected allegations that members of his guard unit raped female prisoners or removed prisoners' internal organs.<sup>3</sup> Mr. Koppe also confronted the Witness with Soy Sen's statement to the OCIJ that the Witness, identified not as 'Suon' but 'Sorn', took part in killings at the prison, an allegation that the Witness denied through reference

to his occupation as a messenger often working far away from the prison.<sup>4</sup>

## **2. Testimony on Role as Messenger Between Kraing Ta Chan and District Office**

In addition to his duties as a guard at KTC, Van Soeun described that he was assigned as a courier and messenger of letters. He claimed he was ordered by Ta Ann to deliver letters between the KTC office and the Tram Kak District Commerce Office at Ang Roka. The Witness later reiterated that, any time he was tasked with duties outside of the prison site, he was threatened and warned to “shut [his] mouth” concerning any information about KTC. The Prosecutor asked the Witness to identify the various chiefs of Tram Kak District during the DK regime, and Van Soeun listed them in successive order: ‘Yeay Khom’, a daughter of Ta Mok; Ta Chhim; Ta San; and, Yeay Boeun. He also acknowledged delivering letters to other cadres, including Ta Chhay and Ta Kith, the “blood-brother” of Ta Chhim. The Witness identified Ta Duch (known through other testimony thus far as ‘Big Duch’) and Ta Phy as district-level cadre who visited Kraing Ta Chan Security Center occasionally. He identified Meng as the individual who oversaw “light-offense” detainees at the nearby Ang Roka Prison, but he denied knowledge of a letter sent from San to Chhoeun ordering the “smashing” of widows imprisoned there. However, he identified San as Ta San, the former chief of District 105 (Tram Kak District), and Chhoeun as a Party-member on the core staff at KTC. Although Van Soeun claims he never read the contents of the envelopes he carried, out of fear of the fatal consequences of doing so, he stated that he observed ‘Little Duch’ typing them and Ta Ann signing them. The Prosecutor read the OCIJ statement of former guard Sim, who explained that the letters contained lists of prisoner names, and that those names marked in red were ordered for execution. Van Soeun denied knowledge of this, but he acknowledged that, when he delivered responses from the Tram Kak District office to KTC, executions took place.

## **3. Witness Demeanor and Credibility**

Throughout his testimony, Mr. Van Soeun provided specific names of both people and places quickly and confidently. This was also the case when detailing activities and events within KTC Security Center, including particular locations, such as the arsenal and interrogation room, as well as interrogation methods and weapons used. However, the Witness’ frequent declarations that his age and his distance exempted him from the atrocities at the Security Center were undermined by his own ability to recall details of those atrocities. Questioning lawyers’ reference to prior statements by former prisoners Soy Sen and Meas Sokha, as well as former guard Sim (all of whom alleged Suon’s involvement in the crimes at the Security Center), cast further doubt on whether the Witness personally observed and was involved with these crimes.

## **III. LEGAL AND PROCEDURAL ISSUES**

The evidentiary hearings in Case 002/02 this week were complicated by controversy over the ongoing disclosure of evidence from the OCIJ investigations in Cases 003 and 004 into the current trial case file. The Trial Chamber held two sessions for the Parties to make oral submissions on the topic – a brief 20-minute debate and a nearly two-hour trial management meeting – and the Nuon Chea Defense also filed a written motion. Additionally, the Chamber dealt with a separate issue concerning the protection of privacy for possible victims of sexual violence when they are referenced during witness or Civil Party testimony.

### **A. Impact of Case 004 Evidentiary Disclosures on Proceedings in Case 002/02**

On March 4<sup>th</sup>, the Trial Chamber held a 20-minute session at the end of the hearing day as a result of the Nuon Chea Defense Team’s draft motion proposing adjournment of the proceedings after the conclusion of Mr. Van Soeun’s testimony. The Chamber specifically asked Parties to tailor their oral remarks to focus on the appearance of the two upcoming witnesses, 2-TCW-803 and 2-TCW-809. Victor Koppe, international Co-Lawyer for Nuon Chea,

argued that the Witnesses should not be heard until the Parties have had adequate time to review the OCP's evidentiary disclosures of statements from the OCIJ investigations in Cases 003 and 004. Mr. Koppe noted that the testimony of the two upcoming witnesses may relate to the administrative structure of District 105 and the Southwest Zone, and that they should not be heard when new evidence on the Zone is still entering the case file. He offered that, in the alternative, the Chamber could proceed to hear the testimony of other witnesses discussing "grassroots"-level experiences at Kraing Ta Chan and in Tram Kak District. Mr. Koppe also noted his team did not have adequate time or resources to review the extensive documents they had recently received from the OCP, and he criticized the International Co-Investigating Judge's conditions of disclosure, which permitted only the Parties and their senior legal consultants to read the statements on single, paper copies. The international CPLCL supported this latter claim, noting her own team's inability to review all the new evidence under the ICIJ's conditions. In response, however, the OCP asserted that only ten of the 110 interviews recently placed on the case file related to Tram Kak District and Kraing Ta Chan. The Prosecutor further clarified that only one of those ten interviews referred to 2-TCW-803, noting only his position as District 105 Secretary in 1978. In response to the OCP's claim that disclosures did not impact the upcoming witnesses, Mr. Koppe emphasized his team's inability to manage the burden of reviewing the extensive new evidence. He stated bluntly, "We have never said in the last two years that we have not been able to do something, but this is the first time."

On 5 March, the Defense Team for Nuon Chea filed its complete motion with several requests concerning the impact of the OCP's continued disclosure of evidence from the OCIJ investigations in Cases 003 and 004 into the case file for Case 002/02.<sup>5</sup> The Trial Chamber announced its decision to postpone the appearance of the upcoming witnesses, and, following the conclusion of Van Soeun's testimony that morning, it held a public trial management meeting (**TMM**) in the afternoon to allow the Parties to more comprehensively discuss this issue.<sup>6</sup> In its written motion and oral submissions, Nuon Chea's Defense Team maintained that the new disclosures could fundamentally affect the nature of evidence on the case file and several key arguments of the Defense's overall strategy. The Defense also pointed out that the piecemeal nature of the ongoing disclosure process violated Nuon Chea's right to a fair trial.<sup>7</sup> During the TMM, Mr. Koppe explained how the new disclosures, 80% of which were received in the past two weeks, numbered over 2,800 pages, and that the two and a half days of cancelled hearings were not adequate for his team to review the extensive new trove of evidence.<sup>8</sup> He accused the International Co-Investigating Judge and the International Co-Prosecutor of "dumping large parts of the Case 003 and 004 case files into ours," and he posited this was an effort "to ensure those investigative efforts are not in vain if those cases never go to trial."

Mr. Koppe restated the motion's discussion of these disclosures' impact not only on the current trial segment of Case 002/02 and future testimony in the case, but also on his team's appellate filing in Case 002/01. Counsel explained that the disclosures include witness statements discussing "divisive internal factions within the CPK," a fundamental argument of Nuon Chea's Defense, as well as "evidence directly relevant to the existence of policies, including forced marriage and the treatment of Cham and Vietnamese."<sup>9</sup> With reference to the OCP's prior assertion that only one disclosure related to the upcoming witness, 2-TCW-803, Mr. Koppe retorted, "Given that it is us, not the Prosecution, running our case, the Prosecution's assessments have often been inaccurate [and] unhelpful." Counsel reiterated how the overall Defense strategy informs each of his team's line of questioning, and that the disclosures have provided evidence that will modify his team's overall strategy. He also restated his request that the Chamber "quash" the ICIJ's conditions on reading the disclosures, and he requested that the OCP request further disclosures of relevant evidentiary documents other than witness and Civil Party interviews.<sup>10</sup> International CPLCL Marie Guiraud supported the Defense on this point, stating she was "shocked" by the ICIJ's conditions. She explained, "We are lawyers not acting in a disloyal manner. If you tell us that documents are confidential, it is our duty to respect such confidentiality." Mr. Koppe also presented an alternative to complete adjournment: the Chamber could hear 'ground-level' witnesses from Tram Kak District and then



proceed to the segment least impacted by the disclosures, the 1<sup>st</sup> January Dam worksite, in the Central Zone.

International Co-Prosecutor Nicholas Koumjian began his response by recognizing the difficult situation the OCIJ disclosures have put all Parties in, but he noted that some of the Nuon Chea Defense's varied submissions were better addressed toward the Supreme Court Chamber or the ICIJ himself. Mr. Koumjian also argued that Mr. Koppe was contradicting himself when he complained that the OCP was "giving them material, that it's too much, but that they want more, that it's very relevant." He then argued that the nearly 3000 pages of added evidence is "not that great" in comparison to other cases in international criminal courts, and he explained that the Nuon Chea Defense had not given specific details of how the disclosures impacted their strategy or lines of questioning for past and future witnesses. Mr. Koumjian acknowledged that, if future disclosures would have altered questions put to a witness, Parties could motion to recall the witness as needed, but he dismissed the idea of full adjournment of proceedings, as the OCIJ investigations – and, therefore, evidentiary disclosures – were still ongoing. Mr. Koumjian directed the Defense to take up its criticism of the ICIJ's conditions on viewing the disclosures with the ICIJ himself, but he offered to support the Parties in asking "for some relaxation" of the procedures. International assistant prosecutor Dale Lysak added more details, explaining that the disclosure process was unfolding in such a way that proceeding to the segment on the 1<sup>st</sup> January Dam at this time would not insulate the trial from further disclosures, especially given the fact that the security center adjacent to that worksite is under investigation in Case 004 as well. Mr. Lysak also pushed back on the notion that the disclosures were violating Nuon Chea's fair trial rights, stating that the opposite was true, as the OCP was disclosing sometimes exculpatory evidence to the Accused. He rejected the suggestion that the OCIJ and OCP were conspiring to "dump" evidence, explaining that the piecemeal disclosure process resulted from the ongoing OCIJ investigation and the OCP's lengthy assessment of each interview.

In response to specific questions from Judge Claudia Fenz, Mr. Koppe argued that six weeks' adjournment would be adequate for the Defense to review the nearly 3,000 pages of disclosed material, given the Chamber's prior decision to delay the start of proceedings in Case 002/02 by one week after the addition of 500 pages of evidence to the case file. However, he also acknowledged Mr. Lysak's comment about the 1<sup>st</sup> January Dam as part of the Case 004 investigation and argued that the next trial segment be the subject least impacted by ongoing evidentiary disclosures from the OCIJ investigations. He suggested that the Chamber call another trial management meeting and invite International Co-Investigating Judge Mark Harmon himself, to ask him which crime sites or subjects they could proceed to.

Finally, a separate issue was raised in the Defense's written application and oral statements at the TMM with concern to the trial's examination of the experiences of the Khmer Krom in DK.<sup>11</sup> Nuon Chea's Defense noted that evidence on the experiences of the Khmer Krom has "consistently emerged in the Case 003 and Case 004 statements," and Counsel discussed Case 002's history of contention over the inclusion of Khmer Krom experiences in its investigation and trial. He noted, however, that the OCP never filed an introductory submission or supplementary submission on the Khmer Krom, so they were not included as a targeted group or alleged victim of Genocide in the eventual Case 002 Closing Order. Mr. Koppe quoted ECCC spokesman Lars Olsen's 2010 statement that the OCP decision not to file a supplementary submission was "not a mistake." Mr. Koppe explained that the "consistent focus on Khmer Krom experiences" in the disclosures currently entering the Case 002/02 case file "deeply troubles us," and he voiced his team's concern that the OCP sought to prosecute Khmer Krom experiences as a "*quasi*" targeted group or "*quasi*" victim of Genocide by including them in the experience of the Vietnamese, "despite the distinct nature of the two groups." As proof of such a fear, Mr. Koppe recalled that a recent Civil Party "stressed" that he was not Khmer Krom, but Judge Jean-Marc Lavergne "continued to press the Witness on whether he nevertheless considered himself a Khmer Krom."<sup>12</sup> As a result, the Defense asked for the Trial

Chamber's assurance that the Khmer Krom will not be included in Case 002/02.

Mr. Koumjian responded that the charges in the case "are the charges," but that evidence of harm committed against the Khmer Krom people should still be admitted as evidence in the trial, as "they were victimized for various reasons." He also rejected Mr. Larsen's statements, calling him "a spokesperson for the Court, not for the Prosecution." Ms. Guiraud referred to the Closing Order, stating that the annex of the second Case 002 severance order, which defines the scope of Case 002/02, included the Closing Order's paragraph 320, which fell under Tram Kak and treatment of specific groups, and which "mentions very clearly the issue of the Khmer Krom."<sup>13</sup> Therefore, Ms. Guiraud explained, the Chamber was, "in fact, seized of the manner in which the Khmer Krom were treated in the Tram Kak cooperatives," and it had to determine if their treatment constituted a crime against humanity, such as persecution or discrimination. Mr. Koppe asked if the Civil Party Lawyer was suggesting that the Chamber could possibly convict Nuon Chea either for Genocide or for crimes against humanity against the Khmer Krom. He explained that his client was merely seeking the Chamber's clarification if this was a possibility. The President concluded the meeting with the assurance that the Chamber would issue a decision on the various submissions as soon as possible, and that the Trial Chamber's senior legal officer would send an email regarding changes to witness scheduling the following day.

## **B. Privacy Afforded to Victims of Sexual Violence**

On the morning of Thursday the 5<sup>th</sup>, Defense Counsel Victor Koppe's asked Witness Van Soeun about Civil Party Soy Sen's prior testimony about a particular female prisoner's alleged rape, referring to her by her full name and with reference to her relatives. International CPLCL Marie Guiraud took issue with Mr. Koppe's public use of this alleged victim's name in the courtroom. Ms. Guiraud referred to the Chamber's ruling in response to Defense Counsel's initial examination of this allegation during his questioning of Soy Sen.<sup>14</sup> At that hearing, Judge Claudia Fenz announced the Chamber's ruling that names of possible victims of sexual violence should be anonymously passed to a Witness on a piece of paper, but she also acknowledged that the victim in question had already been publicly named, so she allowed Mr. Koppe to continue using her name in his questioning of Soy Sen. On 5 March, however, Ms. Guiraud asserted that the Court's directive not to publicly reveal names of alleged victims applied during the examination of Van Soeun, even if it was in reference to the same female prisoner whose name had been used openly at a previous hearing.

Notwithstanding the considerable body of statutory recognition of the distinctive nature of harm with respect to sexual and gender-based violence, and the particular need for specialized procedures to support this class of victim in criminal trial proceedings,<sup>15</sup> Counsel Koppe questioned why such precautions must be taken for victims of sexual violence and not for victims of other crimes against humanity. Mr. Koppe requested a closed session if the Chamber did not want him to continue using the alleged victim's name in public. The Trial Chamber deliberated for nearly ten minutes before Judge Fenz announced that the Chamber had decided to order a delay to Mr. Koppe's line of questioning. The Judge also responded directly to Mr. Koppe's insinuations about sexual assault victims: "Firstly, and generally, the general order issued by the Chamber concerning the protection of privacy of victims of sexual assault stands, full stop." At the end of both Defense Teams' examinations of Van Soeun, the President announced that, before the adjournment of the morning hearings and the conclusion of the Witness' testimony, the Chamber would accept Mr. Koppe's request for a closed session to discuss the alleged sexual assault of the female prisoner. The President cited Article 316 of the Code of Criminal Procedure of the Kingdom of Cambodia.<sup>16</sup> With that announcement, the audio-video feed was cut, the public gallery was emptied, and public evidentiary hearings were concluded for the remainder of the week.

#### IV. TRIAL MANAGEMENT

With the week already shortened to two and a half days of evidentiary hearings to allow the Parties more time to review new documents from the Case 004 investigation, the issue of continued disclosures forced the Chamber to modify its time management, allowing it to hear the testimony of only a single witness.<sup>17</sup>

##### A. Attendance

Nuon Chea waived his right to be present in the courtroom and observed proceedings from the holding cell, while Khieu Samphan was present in the courtroom during all sessions throughout the week.

**Judge Attendance:** All judges of the Trial Chamber were present in the courtroom throughout this week, excluding national Judge You Ottara who was absent and replaced by national reserve Judge Thou Mony at the 3 and 4 March hearings.

**Civil Parties Attendance:** There were approximately ten Civil Parties observing the proceedings each day this week from inside the courtroom.

**Parties:** Due to health issues, neither Anta Guissé nor Arthur Vercken, international Defense Counsel for Khieu Samphan, were present in the courtroom this week. Ms. Touch Vorleak, national Court-Appointed Standby Counsel for Khieu Samphan, also informed the Chamber of her late arrival on the morning on March 5. However, all of the other Parties were present in the courtroom throughout the week.

##### Attendance by the public:

DATE	MORNING	AFTERNOON
Tuesday 03/03/2015	<i>No proceedings</i>	<ul style="list-style-type: none"><li>▪ Approximately 180 students from Hun Sen Chum Pu Vorn High School, Phnom Penh</li><li>▪ Five foreign observers</li></ul>
Wednesday 04/03/2015	<ul style="list-style-type: none"><li>▪ Approximately 200 students and four teachers from Preaek Lieb High School, Khan Russey Keo, Phnom Penh</li><li>▪ Approximately 25 university students from Royal University of Phnom Penh, Phnom Penh</li><li>▪ Five foreign observers</li></ul>	<ul style="list-style-type: none"><li>▪ Approximately 200 students and four teachers from Preaek Lieb High School, Khan Russey Keo, Phnom Penh</li><li>▪ Seven foreign observers</li></ul>
Thursday 25/02/2015	<ul style="list-style-type: none"><li>▪ Approximately 160 students, including five Cham students, from Chea Sim Chamroeun Rath High School, Khan Russey Keo, Phnom Penh</li><li>▪ Six foreign observers</li></ul>	<i>No public attendance</i>

## B. Time Management

This week, the Trial Chamber completed the two-day testimony of Witness Van Soeun, but it failed to begin hearing another witness, 2-TCW-803, as planned in its schedule. The Chamber, however, accommodated the Nuon Chea Defense Team's request for a closed hearing to discuss the alleged rape of a female prisoner (see III.B). Although it delayed further witness testimony for the week, the Chamber decided to hold a trial management meeting, and it effectively oversaw the efficient use of the meeting's time.

## C. Courtroom Etiquette

This week, Parties were noticeably cordial and respectful towards each other, even when debating the contentious issue of a possible adjournment of proceedings. Separately, Trial monitors observed national Judge Ya Sokhan using his iPad electronic device during the examination of Witness Van Soeun.

## D. Translation and Technical Issues

There were a few minor translation issues and technical interruptions throughout the week's proceeding. However, at the start of the March 4 hearing, President Nil Nonn reminded all Parties to take serious consideration in speaking slowly and in organizing clear and simple questions that would aid accurate interpretation. There were fewer technical interruptions with the audiovisual resources of the Chamber this week.

## E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Tuesday 03/03/2015	13:31	–	–	14:41 – 15:00	16:01	2 hours and 11 minutes
Wednesday 04/03/2015	9:02	10:12 – 10:32	11:41 – 13:32	14:39 – 15:00	16:06	4 hours and 32 minutes
Thursday 05/03/2015	9:01	10:13 – 10:39	11:30 – * (*Court entered TMM; monitors not present*)	(*TMM; monitors not present*)	(*TMM; monitors not present*)	2 hours and 3 minutes
Average number of hours in session				2 hours and 55 minutes		
Total number of hours this week				8 hours and 46 minutes		
Total number of hours, day, weeks at trial				100 hours and 49 minutes		
<b>29 TRIAL DAYS OVER 11 WEEKS</b>						

\*This report was authored by Johanna Hamark Kindborg, Huy Sambor, Nget Lonh, Daniel Mattes, Lina Tay, Phoebe Sabin, Penelope Van Tuyl, and Oudom Vong as part of AIJI's KRT Trial Monitoring and Community Outreach Program. AIJI is a collaborative project between the East-West Center, in Honolulu, and the WSD Handa Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). 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 Southeast Asia.



**Unless specified otherwise,**

- § the documents cited in this report pertain to *The Case of Nuon Chea 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 made by AIJI staff; 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	Democratic Kampuchea
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	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Royal Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

<sup>1</sup> See CASE 002/02 KRT TRIAL MONITOR, Issue 10, Hearings on Evidence Week 7 (23-25 February 2015), pp. 1-4.

<sup>2</sup> Mr. Van Soeun (2-TCW-847) was questioned in the following order: President NIL Nonn; international senior assistant prosecutor Vincent DE WILDE D’ESTMAEL; national Civil Party Lawyer CHET Vanly; international Civil Party Lead Co-Lawyer Marie GUIRAUD; Judge Jean-Marc LAVERGNE; international Co-Lawyer for Nuon Chea, Victor KOPPE; national legal consultant for Nuon Chea, SUON Visal; national Co-Lawyer for Khieu Samphan, KONG Sam Onn.

<sup>3</sup> See CASE 002/02 KRT TRIAL MONITOR, Issue 7, Hearings on Evidence Week 4 (2-6 February 2015), pp. 4-6.

<sup>4</sup> Civil Party Soy Sen’s statement identified ‘Sorn’ as the “blood-brother” of another prison guard, Sang. The Witness Van Soeun testified that he and Sang were cousins “by blood,” but not siblings.

<sup>5</sup> See Nuon Chea Defense Team, ‘Nuon Chea’s Motion in Relation to Disclosures from Case 003 and 004 and Response to the International Co-Prosecutor’s Filing Providing Information in this Regard’, (5 March 2015), E319/16 [hereinafter **NUON CHEA’S MOTION**].

<sup>6</sup> The President initially announced that the trial management meeting would be held *in camera*, and he ordered the Public Affairs Section and the Audiovisual Unit to close the public gallery and cut the audiovisual feed. At the outset of the TMM, however, the President announced that the Chamber had accepted the two defense teams’ request that the meeting be held publicly, and the Court posted video recordings of the meeting on its website the next day, March 6<sup>th</sup>. However, trial monitors believed the TMM would be held privately, so they left the ECCC at the midday lunch break and were not present at the Court for the afternoon meeting. As such, notes on this TMM were

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drawn from viewing the video recording on the Court website instead. See ECCC, Trial Management Meeting (5 March 2015), <<http://www.eccc.gov.kh/en/case-002-02/hearings/trial-management-meeting>>.

<sup>7</sup> NUON CHEA'S MOTION, paras. 17-18.

<sup>8</sup> The Chamber had cancelled the hearings of Thursday, 26 February, and Monday, 2 March, and it also shortened the hearing of Tuesday, 3 March, to a half-day session. See CASE 002/02 KRT TRIAL MONITOR, Issue 10, Hearings on Evidence Week 7 (23-25 February 2015), p. 6.

<sup>9</sup> NUON CHEA'S MOTION, paras. 5a-5b. Mr. Koppe explained in the TMM, "There is testimony that there were four internal factions within the CPK: those affiliated with the Viet Minh, the nationalistic Khmer Rouge, the Sihanoukist Khmer Rouge, and Khmer Rouge from China, including Pol Pot. There's information in the new evidence on factions especially in the Northwest and Eastern Zones, and information identifying Sao Phim as leader of one faction plotting revolt against Pol Pot. Witnesses also detail acts and conducts of several CPK leaders, including our client, Nuon Chea, and also Ta Mok, Sao Phim, and Ruos Nhim."

<sup>10</sup> These statements relate to NUON CHEA'S MOTION, paras. 12-16.

<sup>11</sup> These statements relate to NUON CHEA'S MOTION, paras. 9-10.

<sup>12</sup> See CASE 002/02 KRT TRIAL MONITOR, Issue 8, Hearings on Evidence Week 5 (9-12 February 2015), pp. 7-8.

<sup>13</sup> Paragraph 320 of the Closing Order deals with treatment of Cham and Vietnamese in Tram Kak District. It states, in part: "Several District 105 documents record the arrest of ethnic Vietnamese. A report from the Ang Ta Soam Subdistrict dated 26 April 1977 requests guidance from "Angkar" on what to do about the registration of Khmer Krom people. It appears that in several couples, only one person was Vietnamese, but both asked to be sent to Vietnam. Another report records that pursuant to a decision of "Angkar", seven Khmer Kraom persons were sent back to Vietnam."

<sup>14</sup> See CASE 002/02 KRT TRIAL MONITOR, Issue 7, Hearings on Evidence Week 4 (2-6 February 2015), pp. 5, 8.

<sup>15</sup> Article 68 of the Rome Statute, entitled "Protection of the victims and witnesses and their participation in the proceedings" states, among other things: "The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses...in particular, but not limited to, where the crime involves sexual or gender violence...The Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings *in camera*...In particular, such measures shall be implemented in the case of a victim of sexual violence." Pages 6-7 of UN Women's 2012 report, "A Window of Opportunity: Making Transitional Justice Work for Women," notes difficulties in protection of victims and witnesses before international and hybrid courts, including, "The insensitivity with which victims are often treated...and the general neglect with which crimes of a sexual nature are treated." In the Cambodian context, Page 12 of the VSS' 2012 "ECCC Baseline Study on Gender Sensitivity in Transitional Justice Processes in Cambodia" finds: "As a national Cambodian Court, the ECCC follows its own Internal Rules of Procedure (IRs). These rules have not obstructed the provision of the same protections of witnesses to the ECCC as those available to witnesses to the ICC. Respondents report that judges are responsive to special protection measures, including in regards to gender based violence. Independent Civil Party lawyers have proposed amendments to the Internal Rules to include specific protection measures and safeguards for victims/witnesses of sexual violence. These have not been adopted by the Plenary. Special gender-sensitive measures, including but limited to witness collaboration, witness examination or cross examination are not specified in the IRs." Other reports by the ECCC or Cambodian civil society organizations consistently underline the need for greater gender sensitivity training for the Parties and staff of the ECCC.

<sup>16</sup> Article 316 of the CCP states: "Confrontations shall be conducted in public hearings. However, if the Court finds that publicity poses danger to public order or customs, the Court, based on a decision with reasons, may order the whole or part of the confrontations be conducted confidentially. The Court shall decide by a judgment different from a judgment on the merits or by a special arrangement of the judgment on the merits. The decision of the Court to conduct the confidential confrontations cannot be appealed."

<sup>17</sup> See CASE 002/02 KRT TRIAL MONITOR, Issue 10, Hearings on Evidence Week 7 (23-25 February 2015), p. 6.