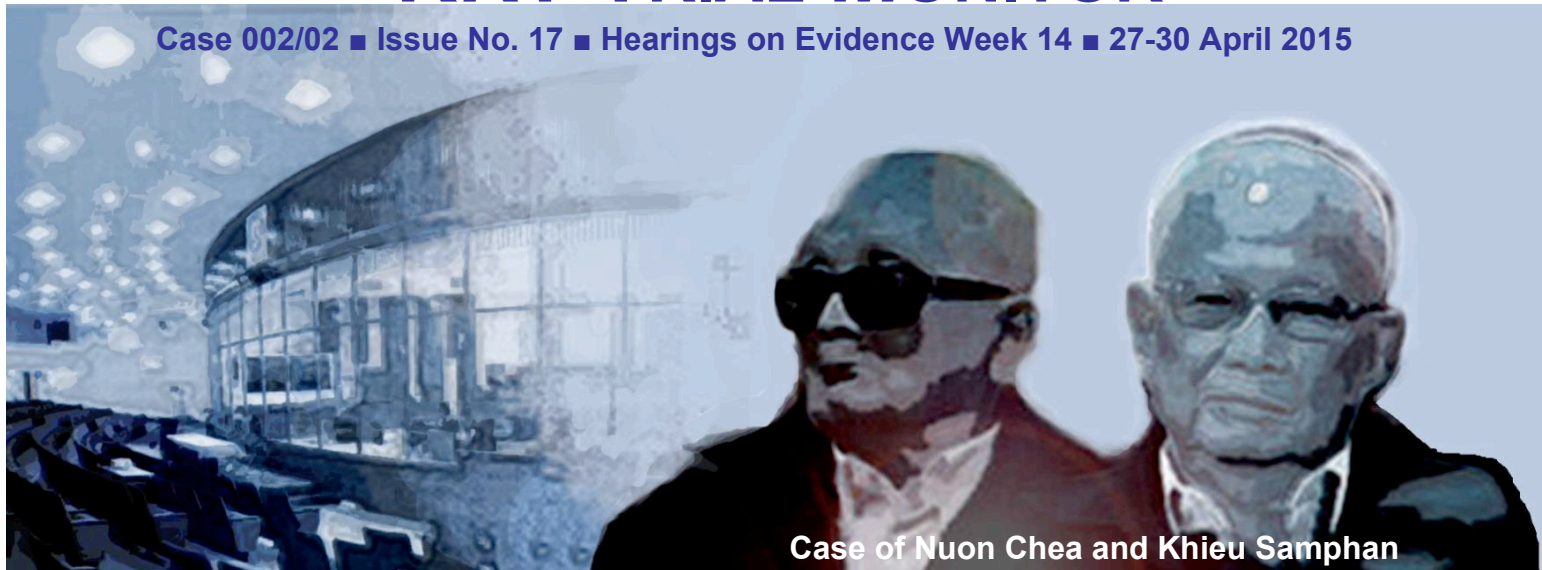


# KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 17 ■ Hearings on Evidence Week 14 ■ 27-30 April 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)

*[Defense Counsel Victor] Koppe asked you to put aside conventional wisdom and popular narrative of what happened in Democratic Kampuchea and to come with open minds... What Mr. Koppe actually asks us to put aside is common sense, logic, and reason. That is something that no one can do.*

- International Assistant Prosecutor Dale Lysak

## I. OVERVIEW

As the first segment of the trial in Case 002/02 nears its end, the Trial Chamber held documentary hearings on evidence concerning Tram Kak District cooperatives and Kraing Ta Chan Security Center. The Chamber assigned a total of two days to all of the Parties to present key documents within this scope, and it provided a third day for the Parties to make official comments on the other presentations. The OCP provided documents on the living and working conditions in rural cooperatives, the arrests and interrogations in Tram Kak District, the treatment of targeted groups there, and the DK authority structures. The Civil Party lawyers used the occasion to read out five applications from Civil Parties who would not have the opportunity to testify themselves. The Nuon Chea Defense used documents to illustrate arguments that the Khmer Rouge used re-education rather than punishment, that there were in fact no distinctions between ethnic or socioeconomic groups, and that interrogation and torture were used relatively rarely. Khieu Samphan's Defense team was interrupted as the presentation went beyond the scope of the first trial segment. Those events, as well as a renewed debate over the use of torture-tainted evidence, constitute the primary legal and procedural issues to arise in the courtroom this week, as described herein.

## II. SUMMARY OF KEY DOCUMENT PRESENTATIONS

This week, the Trial Chamber provided the OCP and Civil Parties with one day to present key documents on Tram Kak District cooperatives and Kraing Ta Chan Security Center (**KTC**). The two Defense teams were given a combined day to make their presentations as well.

### A. Documents Presented by the OCP

The Prosecution presented documents related to several topics within the scope of Tram Kak

District and Kraing Ta Chan Security Center, including the living and working conditions, the treatment of targeted groups, details on arrests and interrogations, and authority structures.

### **1. Living and Working Conditions Within Rural Cooperatives**

National Deputy Prosecutor Seng Bunkheang began the OCP's presentation with 14 key documents, including excerpts from scholar Ben Kiernan's book, *The Pol Pot Regime*, to outline working conditions in cooperatives. The documents touched on the insufficient food rations across Sector 13 and in Leay Bour Commune, as well as the relevant discrimination of 'new' people. The book was also used in relation to the treatment of former Lon Nol officials and Khmer Krom people who were subsequently sent to KTC.

### **2. Arrests and Interrogations in Tram Kak District**

The OCP repeatedly referred to a report from scholar Henri Locard identifying KTC as an execution site in Tram Kak District and indicating how other DK districts may have followed the "model" district's security policies. The Prosecutor also presented the archives of KTC that listed the biographies and statistics of prisoners, principally identifying: Vietnamese people, former police, urban laborers and workers classified as '*petite bourgeoisie*', medics, young students from the Lon Nol period, and children. International assistant prosecutor Dale Lysak later presented documents that demonstrated arrest, detention, and execution were ordered in Tram Kak for a range of reasons. Recorded reasons included: criticizing the Revolution, opposing the Party, opposing 'Angkar', complaining about insufficient food or overwork, stealing food to eat, attempting to escape cooperatives or units, attempting to flee the country, and specific accusations of persons moving around "too freely" or being "free-spirited and overjoyed." The OCP presented further documents in relation to the detention of youth and the elderly. KTC documents described how prisoner confessions were used as a basis for further arrests of implicated persons, and others distinguished between the use of 'hot' and 'cold' interrogation techniques.

### **3. Treatment of Targeted Groups**

The OCP used KTC notebooks, Khmer Rouge orders, and prisoner lists to illustrate the treatment of ethnic Vietnamese, Khmer Krom, former Lon Nol soldiers and officials, and Buddhist monks in Tram Kak District. Mr. Lysak discussed the purges of Lon Nol soldiers and officials at length. He used Meng Try Ea's book, *The Chain of Terror: the Khmer Rouge Southwest Zone Security System*, to describe groups considered 'enemies' by the CPK and to specifically note that "former policemen and soldiers of Lon Nol [were] considered feudalists and capitalists." The OCP presentation on the treatment of Khmer Republic officials also detailed their evacuations, the temporary security centers at repurposed pagodas and schools in which they were detained, and the sites of their alleged executions. The prosecutor used interrogation records, including a handwritten note from KTC chief Ta Ann, to indicate the large numbers of former Lon Nol 'enemies', as well as relatives or persons connected with them who were arrested, detained, and "interrogated, then smashed" at KTC. Further documents concerned the harsh treatment of Buddhists. One example outlined the arrest of a man who had suggested that Angkar should allow Buddhism, monks, schools, and teachers to remain.

### **4. Treatment and Targeting of 'New' People**

Reports from communes across the District, as well as KTC notebooks, were used to detail the basis for the arrests of 'new' people. One individual, Khou Houn, was arrested and sent to KTC after he told a cadre, who was disguised as a 'new person' like him, that he had "come [to the cooperative] only with his physical appearance, whilst [his] mind remain[ed] in Phnom Penh." The prison notebook alleged that Khou Houn had criticized the Revolution to the disguised cadre, declaring, "Nowadays, how are you boasting of the Liberation? All of our children have

died. And, how come you are boasting about progress? The program is actually nonexistent.” The OCP used its presentation to outline the reasoning behind the imprisonment of ‘new’ people. The official justifications resembled those given for targeting other groups, including claims that ‘new’ people planned to flee the country, criticized the Revolution, refused to work toward or follow the Party line, committed adultery, or stole food and communal property.

## **5. Authority Structures in Tram Kak District**

Mr. Lysak presented several examples of reporting from villages and communes up to the higher authorities of the Southwest Zone and the Center, in Phnom Penh. He sought to portray that the DK’s central administration was involved in all levels of society and aspects of daily life. A film clip documented the confrontation between a survivor and a former security chief named Karobey in the years since the fall of DK. The two met at Wat Champa, where it is alleged that evacuees from Phnom Penh were detained upon their arrival to Tram Kak, and where Khmer Rouge officials sought out the former Lon Nol officials amongst the ‘new’ people. In the OCP’s film clip, Karobey noted that fear dissuaded him from disobeying orders from “above.” He relayed his thought process at the time to a victim under his former control: “The wheel of history is turning. Anyone who dares to put his foot in it will be destroyed.” Official documents were also presented to outline reporting from the Zone to the Sector.

### **B. Documents Presented by the Civil Party Lawyers**

The Civil Party Lawyers read out excerpts from the applications of five Civil Parties who were admitted because they suffered from crimes committed within Tram Kak, but who did not have the opportunity to testify during the trial segment. The Defense Teams objected, arguing Civil Party applications did not constitute documentary evidence, but the Trial Chamber allowed the Civil Party Lawyers to proceed with their presentation (see III.A). All five applications noted their evacuation to the District. The Civil Parties wrote about their separation from or loss of family members, and they discussed their harsh treatment in district cooperatives at length, including details on the introduction of communal eating, work tasks and labor conditions, the lack of medicine, and the limited food supply. One Civil Party wrote that people “had to live like wild animals, without sanitation or housing,” and, “Life resembled the life of a slave.”

### **C. Documents Presented by the Nuon Chea Defense**

The Co-Lawyer for Nuon Chea, Victor Koppe, presented documents concerning the living and working conditions in Tram Kak cooperatives, Kraing Ta Chan, and the arrests and interrogations of targeted groups. Mr. Koppe cited multiple documents regarding the chain of custody and provenance of official records from Tram Kak and KTC, as he repeatedly attempted to cast doubt on their veracity.

#### **1. Misconduct and Consequential Attempts to Re-Educate Offenders**

Many of Mr. Koppe’s citations included official reports from Commune and District officials describing their multiple attempts to re-educate people in order to change their “bad behavior” rather than allow a situation to escalate further. KTC notebooks described misconduct as the theft of food or the destruction of supplies, and Counsel sought to illustrate how commune and cooperative officials had first attempted to pacify situations through education prior to their use of arrest or force. Counsel specifically noted documents describing the reeducation of former Lon Nol officials and soldiers, and he also presented examples of the precautions that cadres took in order to resolve problems or difficulties.

#### **2. KTC Notebooks on Interrogations and Methods Used**

Defense Counsel used interrogation notebooks that detailed prisoner confessions to indicate

that 'hot' methods were not standard practice, but instead a rarity reserved for particularly difficult detainees. In addition, Counsel noted that many people listed in the notebooks may in fact have survived, and thus he questioned how often executions at KTC actually occurred. He also offered examples of variable uses of the words 'smash' or '*Kamtek*' beyond their general translation as 'to execute'. Mr. Koppe continually emphasized the lack of original documents from KTC, and he repeatedly described the different handwritings within individual documents, particularly in relation to the document used by the OCIJ to determine that 15,000 people were allegedly killed at the Security Center. Counsel moved beyond the scope of the documentary hearings to comment on the notebooks' probative value as he asserted they might be forgeries.

### **3. Treatment of Targeted Groups**

Counsel Koppe presented statements from higher DK authorities that minimized distinctions between 'new' and 'base' people. Additional documents outlined visits of foreign delegations to the District, in which they observed Khmer Krom and Buddhists among the populations they visited. Victor Koppe presented Ian Harris' book, *Buddhism Under Pol Pot*, which suggests other causes for the mistreatment of Buddhists under the Khmer Rouge, including American bombing of pagodas and some monks' roles as spies. Mr. Koppe cited Harris' argument that there was no official policy for the "liquidation" of Buddhist monks. He also presented a clip from "Cambodia: The Bloodiest Domino," a documentary by John Pilger, which, Counsel argued, demonstrated that Lon Nol soldiers were not merely the "hapless victims of the Khmer Rouge." He explained that "depraved humanity" was not unique to the Khmer Rouge, as Lon Nol soldiers, for instance, ate the internal organs of their enemies, in what the documentary described as "an ancient tradition of warfare" in Cambodia.<sup>1</sup>

#### **D. Documents Presented by the Khieu Samphan Defense**

Defense Counsel for Khieu Samphan, Mr. Arthur Vercken, began his team's presentation by reading out the "twelve moral commandments" of the Khmer Rouge announced before 1975, and he planned to then present documents on the formulation of cooperative policies. He also announced his plans to present documents related to the estimation of death tolls in Takeo Province and Tram Kak District, and also those concerning problems linked to local cadres. The twelve commandments were intended to demonstrate that the Khmer Rouge placed its people "in the center of all their thoughts." Mr. Vercken referred to a list of these twelve commandments published by François Ponchaud in his book, *Cambodia: Year Zero*. Counsel then presented three issues of DK's propaganda magazine, *Revolutionary Flag*, respectively published in 1975, 1976, and 1977, which emphasized the Khmer Rouge's ideals for cooperatives and other general objectives. The 1975 issue called for the people to be in good health, and to receive medicine and a decent amount of food, as a good living standard meant that the enemies would have no chance to destroy the "harmony of Revolutionary power." International CPLCL Marie Guiraud then interrupted Mr. Vercken's presentation to observe that the documents related to general policies rather than Tram Kak cooperatives. A lengthy debate then ensued regarding the scope of the documentary hearings, and the Khieu Samphan team never completed its presentation (see III.D).

### **III. LEGAL AND PROCEDURAL ISSUES RAISED DURING PRESENTATIONS**

The documentary presentations prompted a number of objections and arguments from all sides even before Thursday, which the Court had scheduled for Parties to make their responses.

#### **A. Objections to Civil Parties' Citation of Civil Party Applications**

When CPLCL Guiraud announced her team's intention to read out five Civil Party applications for their documentary presentation, Defense Counsel Koppe, objected that these Parties will never appear before the Court and the Defense would therefore never have the opportunity to

examine them. Counsel explained that the documentary hearing should “focus on contemporaneous documents to highlight the case file.” He objected to the method of reading out the written records, describing it as “*quasi*-testimony” that precluded the fair trial rights of the Accused to fully examine the evidence against them. Marie Guiraud reminded her colleague that she was following how the Chamber operated in the last trial. She noted that the Civil Party applications are written documents that constitute part of the case file, and she called their presentation “essential.” She noted that the Civil Parties and their applications were admitted into the case file in the investigative phase of Case 002.<sup>2</sup>

## **B. Statements Resembling Closing Pleadings**

On 28 April, Defense Counsel Victor Koppe argued that several of his documents contradicted the statements of others, and he also presented others that he repeatedly suggested were potential forgeries used by the Vietnamese forces occupying Cambodia after 1979 to construct a particular narrative of the DK regime. On separate occasions, Prosecutor Lysak and CPLCL Guiraud objected to Counsel’s methods and phrasing, arguing that Counsel was making final pleadings instead of presenting documents. The Trial Chamber noted that this issue has come before, due to the “fine line in this kind of hearing,” and it encouraged Counsel to avoid evaluative statements even as it allowed him the discretion to present whatever documents he deemed were key. However, the Chamber never provided a clear ruling on this issue throughout the hearings. On some occasions, Judges pushed back on Mr. Koppe’s choices of documents, as well as his particular phrasing. However, in the instance of Ms. Guiraud’s objection, the Chamber allowed Mr. Koppe to continue without intervening at all.

## **C. Continued Debate Over the Use of Torture-Tainted Evidence**

The documentary hearings this week again raised arguments on the fundamental legal question concerning the use of torture-tainted evidence in the trial. The debate this week ensued even as the Parties await the Chamber’s reasoned decision in response to the 24 April arguments concerning Defense Counsel Victor Koppe’s attempt to quote an S-21 confession for a question to Witness Pech Chim.<sup>3</sup>

On Monday, 27 April, Counsel Koppe objected to the OCP’s use of a Kraing Ta Chan notebook to identify prisoners who were purged due to their positions in the Lon Nol regime. Counsel argued that there was no difference between his line of questioning the Friday before and the OCP’s citation of the Security Center notes on confessions obtained under torture.<sup>4</sup> Prosecutor Dale Lysak reacted that there was “an enormous difference” between his use of the records for the purpose of identifying prisoners, and Mr. Koppe’s prior use of confessions “for the truth of the content.” The Chamber supported Mr. Lysak’s defense of his use of the confessions and promised to issue its ruling shortly. During Counsel Koppe’s presentation the next day, however, he attempted to present the S-21 confession of Chou Chet, *alias* Sy, the former chief of DK’s West Zone. Judge Lavergne interrupted him and asked, “What is the objective of using this document?” and, “Are you aware of the fact that the crimes of torture are part of the accusations against the Accused, the torture at S-21?” Mr. Koppe responded that he intended “to do the exact same thing” as the OCP the day before in using the confession to establish links between Chou Chet and Ta Khiev, Ta Saom and Ta Penh, cadres in Sector 13 and District 105 that he implicated. Prosecutor Lysak reiterated that identifying prisoners with the KTC interrogator notebooks differed sharply from connecting persons based on the content of confessions under torture. The Prosecutor flatly accused Nuon Chea’s Counsel of defying the very purpose of the UN Convention Against Torture (**CAT**):

Nuon Chea, in this courtroom, wants to justify killing people by the confessions his people obtained by torture back in the 70s. Nothing could be more barred by the Torture Convention than that. That is exactly the purpose of the Torture Convention, to prevent people relying

on confessions obtained by torture to prove the guilt of that person. To say you're doing the same thing, I could not disagree more.

The President of the Chamber clearly explained that the OCP used annotated parts of confessions whereas Counsel sought to read out the content of confessions in his document presentation, which was prohibited. Counsel Koppe moved on with his presentation but the issue came up again on Thursday, in his commentary on the OCP presentation. He argued that the OCP had used the content of a Kraing Ta Chan notebook, and he alleged that the OCP and the Trial Chamber were trying to implement “double standards” on the use of torture-tainted evidence. He reminded the Chamber that his team has written a specific ground of appeal concerning the uneven enforcement of its rulings on such evidence in Case 002/01. However, Mr. Koppe was incorrect in his assessment of the OCP’s use of those two specific documents. The OCP had used interrogation notes that demonstrate how the Khmer Rouge targeted, jailed, and interrogated prisoners specifically for their Vietnamese ethnicity. One interrogator had noted, for example, that a prisoner said he wanted to go back to Vietnam because he heard “they still had private occupations and money.” The OCP’s use of such a document only aims to prove that crimes were committed and the role that interrogation and torture played in those crimes. This adheres to the single exception within Article 15 of the CAT.

#### **D. Arguments Concerning the Khieu Samphan Defense’s Documentary Presentation**

When Khieu Samphan’s Counsel, Arthur Vercken, presented his team’s documents at the third hearing on Tuesday afternoon (see II.D), an observation from the international CPLCL sparked a heated debate on whether the documents fell within the scope of the first trial segment. Civil Party Lead Co-Lawyer Marie Guiraud noted, “for the record,” that Khieu Samphan’s Defense was presenting documents on the CPK’s general policies rather than focusing on policies within the cooperatives of Tram Kak District. She explained that the Chamber’s senior legal officer had set out provisions for the documentary hearing, which the Defense was thereby violating. After deliberation, Judge Jean-Marc Lavergne asked the Defense to focus on issues directly related to Tram Kak and Kraing Ta Chan, as the national policies would be addressed in the trial’s final segment, on the Role of the Accused.

Defense Counsel Arthur Vercken argued that his client had neither been involved in nor present at the District’s cooperatives or KTC, and that the documents he presented were the only ones relevant to the defense of his client concerning the crimes allegedly committed there. Counsel alleged the Trial Chamber was challenging his duty to defend his client, who he suggested might pass away before the trial reached a point when he would be able to discuss these issues. Counsel declared, “Maybe you [the Trial Chamber] don’t want me to bring up these points now. Well, I won’t do so...if God gives a long life to Khieu Samphan [and] to his defense team, well, I or others someday will bring up these issues before you.” After a lengthy back-and-forth, as well as deliberation among the judges, the Trial Chamber decided to grant the floor to the Defense to continue their documentary presentation. However, when the Chamber noted it would still determine if the Defense’s documents related to the scope of the current trial segment on a case-by-case basis, Mr. Vercken refused to continue, stating, “I apologize, but you know, speaking again or being interrupted again, because this does not meet the Chamber’s needs, it’s exasperating...I think this is a bit of a waste of time.” After Counsel noted the loss of his time since the debate had ensued, Judge Lavergne accused him of not being prepared. The President reacted, “The Chamber is of the view that the Counsel is not performing his duty as a professional Counsel.”

Mr. Khieu Samphan, who at the outset of Case 002/02 had invoked his right to remain silent, and refused to answer the questions put to him by Civil Parties thus far in the trial,<sup>5</sup> took the floor twice during this debate, therefore breaking his silence. At 1:52PM, he gesticulated intensely as he underlined that he was never aware of anything that had happened at KTC or in Tram Kak District, and he asked the Chamber to allow his Counsel to present their documents

to that effect. The Prosecutor, who until this point had remained uninvolved in the arguments, stood to ask, "I'd like to know whether [the Accused is] waiving his right to remain silent and subjecting himself to questioning on whether he knows anything about Tram Kak and these policies." There was no direct response from the Defense, but Khieu Samphan broke his silence a second time at 2:45PM that day, after his Counsel had sat down a final time, in the face of Judge Lavergne's comment. The President recognized the Accused once more, but with a query: "Mr. Khieu Samphan, it seems that you are now changing your position in relation to your rights to stay silent. Please specify that." The Accused announced he intended to reserve his right to remain silent but began to criticize the Chamber for accusing his team of not having adequately prepared for the hearing. He continued to gesture wildly and shout, even after the President cut his microphone and again instructed the Accused to sit down.

#### **IV. PARTIES' COMMENTARY ON DOCUMENTARY PRESENTATIONS**

On Thursday, the Parties had the opportunity to respond to each other's documentary presentations. Proceedings adjourned before lunchtime, as the Civil Party Lead Co-Lawyers declined to make any comments, and the other Parties were concise in their statements.

##### **A. OCP Comments on the Defense Presentations**

International prosecutor Dale Lysak opened the day with general comments criticizing both Defense Teams for their failure to present any documents or surviving records from Tram Kak District actually "helpful to their case." He noted that Tram Kak was one of only three "model districts" in all of Democratic Kampuchea, and that Nuon Chea and Khieu Samphan were involved in recognizing its status. Furthermore, he claimed that Nuon Chea's Defense relied on documents that only "serve to prove the security apparatus through which enemies of the CPK were arrested and sent to reeducation offices for torture and executions." Mr. Lysak also criticized several of the Defense's key documents concerning the use of the word 'smash', which, the OCP countered, has different meanings depending on the context. The Prosecutor explained the same is true of the term in English, offering the clear distinction between 'smashing the revolution' and 'smashing people' as one such example. He further criticized the Defense for concluding that 'hot' interrogation methods were used rarely simply because they were rarely noted down in surviving KTC records, and he also criticized Counsel Koppe for his use of Khmer Rouge propaganda as a means of justifying the crimes committed in Democratic Kampuchea. Such propaganda, for example, included the DK radio broadcast discussing the foreign delegation that allegedly met a "staged" group of Khmer Krom. The Prosecutor summarized Mr. Koppe's presentation as, at best, showing "Tram Kak was not universally brutal," and he dismissed Counsel's emphasis on reeducation, as he explained, "For those who couldn't forget how hungry they were, and who kept looking for food to survive, their ultimate fate was Kraing Ta Chan."

Mr. Lysak defended his side's presentation at length from Mr. Koppe's critiques of the documents' reliability. The Prosecutor accused Counsel Koppe of a "crazy conspiracy theory" regarding his numerous allegations of forgeries. In response to specific comments from the Defense alleging that at least one of former District chief Ta San's signed documents was forged, Mr. Lysak asked who would take the time to make such a methodical forgery, and he asserted that all of Ta San's notes on the case file "look the same." To prove this, the Prosecutor noted how the Ta San uniquely wrote an exclamation point when addressing people with honorifics at the start of his handwritten notes. The OCP also criticized the Defense claim that records from Tram Kak District and Kraing Ta Chan – the only surviving documents of any district in Democratic Kampuchea – were fraudulent simply because one prison document noted the execution of a prisoner on 8 January 1979, the day after the fall of Phnom Penh to the Vietnamese. Mr. Lysak argued that it was possible the cadres at KTC were not aware of the fall of DK, continued to execute prisoners, and then did not have enough time to destroy the records before fleeing to the mountains. He noted that such a scenario resembled what took

place at S-21 in the days and hours prior to the Vietnamese forces' arrival in Phnom Penh. Mr. Lysak emphasized that the Prosecution has "gone to trouble" when questioning Witnesses to corroborate testimonies and documentary evidence and establish new links between them.

### **B. Nuon Chea Defense's Comments on the OCP and Civil Parties' Presentations**

Counsel for Nuon Chea, Victor Koppe, continued to argue that many Tram Kak and Kraing Ta Chan records were unreliable and possibly forged. Defense Counsel made several comments concerning the reliability of two OCP documents that seemed to be part of a single, sequential list. Mr. Koppe claimed that, as long as the Chamber was unable to obtain the original documents or the other 334 Tram Kak District records, it could only assign them limited probative value. Counsel criticized the OCP's key documents as lists lacking concrete evidence of what happened to the people on those lists, and he objected to the OCP drawing conclusions with such a lack of detail. Mr. Koppe argued that further investigation of Tram Kak District must be carried out before relying on its alleged records. He noted, however, that one document from mid-1977 appeared to mark the first time former Lon Nol officials and soldiers were targeted in Tram Kak, a chronology that Counsel presented as corroboration of the testimony of Pech Chim and others. Mr. Koppe emphasized Pech Chim's credibility as superior to the Tram Kak records, noting that the Chamber relied on his prior statements in the Case 002/01 Judgment 16 times. Counsel responded to the OCP's argument regarding the term 'smash', suggesting the Chamber utilize Pech Chim's definition that it may have signified transfer to another education center rather than execution.<sup>6</sup>

Mr. Koppe also brought up the issue of torture-tainted evidence, which was raised the week before, and he continued unsuccessfully to contest this week (see III.C). Furthermore, he opposed the inclusion of documents related to the Khmer Krom into the scope of Case 002/02, as he argued their treatment was not specifically included as a charge in the Closing Order. He took issue with Prosecutor Lysak's rhetorical style reminiscent of closing pleadings earlier in the morning, and he reiterated that multiple former cadres had testified that stealing food or criticizing the work conditions only resulted in re-education, not arrest or detention. Moreover, Mr. Koppe accused the OCP of relying on scholar Henri Locard's "tired clichés" in quoting a passage from his work, that the killings of 'new people' were not simply "revenge killings" but centrally planned and comparable to the regimes of Stalin or Hitler. Victor Koppe criticized the OCP's reliance on the conclusions of Ben Kiernan, Henri Locard, and Meng Try Ea, all of whom he noted held biases against the Accused, and none of whom are set to appear in Case 002/02. Counsel concluded his responses with criticism of the Civil Party Lawyers for reading out the statements of six Civil Parties who will not appear before the Court. He said that this allows the "Civil Parties to *quasi*-testify," yet prevents the Defense from following up with its own examination. As he argued, "Such practice can have no such place in this Court."

### **C. Khieu Samphan Defense's Comments on the OCP and Civil Parties' Presentations**

National Counsel for Khieu Samphan, Kong Sam Onn, objected to several documents presented by the OCP and CPLCLs. Firstly, regarding the OCP's documents, Counsel referred to the extract of Ben Kiernan's book and supported Mr. Koppe's earlier argument that, because Kiernan was not going to appear as a witness before this trial, "the probative value of the document by this individual is in question." Kong Sam Onn also noted that Kiernan's work included contradictory facts regarding the different food rations. Counsel also dismissed OCP documents on treatment of the Khmer Krom as falling outside the scope of the current trial segment on Tram Kak District and that of Case 002/02. He incorrectly claimed that Meng Try Ea's work on the purges of former Lon Nol officials was relevant to Prey Kabbas and Bati, two other districts in the Southwest Zone, and outside the scope of the trial segment on Tram Kak District. Although some of the OCP references discussed those two other districts, multiple citations of Meng Try Ea's book dealt with events in Tram Kak District, including discussion of District chief Khom and an interview with a former cadre in Popel, a commune of Tram Kak. In



response to the OCP's emphasis on the allegedly fatal consequences for food theft, Kong Sam Onn raised Pech Chim's testimony, which stated that minor offenders were in fact re-educated rather than sent to KTC. In response to the presentation given by the CPLCLs, Kong Sam Onn reiterated Counsel Koppe's objections that none of these individuals would ever appear before the Chamber. Thus, he argued, their written statements could not be used for "probative value or evidence in the court or proceeding." He also criticized Counsel Guiraud for calling herself a "spokesperson" for the Civil Parties in this criminal proceeding, noting she could only act as spokesperson of their claims for moral and collective reparations.

Kong Sam Onn referred to the November 1976 edition of the *Revolutionary Flag* magazine, which stated that the "13 tons food ration had to be implemented fully." He then moved to present another edition of the magazine, but Prosecutor Lysak interrupted to note that neither of these documents had been presented by the OCP but were instead documents from the document list of Khieu Samphan's team. Mr. Lysak explained he had no opposition to the Defense using this opportunity to present the documents it wanted to present on Tuesday. Counsel responded that it was necessary for him to raise issues regarding CPK policies to show that "my client has nothing to do with the practice on the ground." He went on to object to the Prosecution's claim that the population was divided into three categories – 'candidate', 'reserve', and 'depositee' – and he used the *Revolutionary Flag* magazine to show such categorization was not the intention of CPK policy.

**IV. TRIAL MANAGEMENT**

This week, the Trial Chamber effectively oversaw two days of key documentary presentations as well as a third day it allotted for the Parties to provide commentary.

**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 were present in the courtroom throughout the week.

**Civil Parties Attendance:** Approximately ten Civil Parties observed the proceedings each day this week from inside in the courtroom.

**Parties:** Mr. Son Arun, national Defense Counsel for Nuon Chea, was absent on 27 and 28 April. On 30 April, he appeared in order to introduce Mr. Liv Sovanna as the Nuon Chea Defense team's new national counsel before the Chamber. All other Parties were properly represented in the courtroom throughout the week.

**Attendance by the public:**

DATE	MORNING	AFTERNOON
Monday 27/04/2015	<ul style="list-style-type: none"> <li>▪ Approximately 250 villagers from Preah Sdach District, Prey Veng Province</li> <li>▪ 18 foreign students from University of Redlands, California, United States</li> </ul>	<ul style="list-style-type: none"> <li>▪ Approximately 200 students from Phnom Penh Thmey High School, Phnom Penh</li> <li>▪ Two foreign observers</li> </ul>

Tuesday 28/04/2015	<ul style="list-style-type: none"> <li>▪ Approximately 200 villagers from Kanhchriech District, Prey Veng Province</li> <li>▪ Five foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Approximately 200 students from Hun Sen Borei Muy Rouy Knong High School, Phnom Penh</li> <li>▪ Three foreign observers</li> </ul>
Thursday 30/04/2015	<ul style="list-style-type: none"> <li>▪ Approximately 75 villagers from Samroang District, Takeo Province</li> <li>▪ Two foreign observers</li> </ul>	<i>No proceeding</i>

## B. Time Management

This week marked the conclusion of the first documentary hearings in Case 002/02. The Court originally planned to hold documentary presentations with the day allocated for commentary on three consecutive days from 27 to 29 April. Nuon Chea's Defense asked the Chamber to push back the hearing date for them to respond to the OCP and Civil Parties' documentary presentation. With no objections from the other Parties, the Trial Chamber slightly adjusted the schedule by moving the hearing on commentary from 29 April to 30 April.

## C. Courtroom Etiquette

The documentary hearings, including the hearing on Parties' commentary, generally proceeded smoothly, and Parties largely treated each other with respect. The notable exception occurred when the Trial Chamber prevented Counsel for Khieu Samphan, Arthur Vercken, from completing his team's documentary presentation on 28 April (see II.D and III.D).

## D. Translation and Technical Issue

There were no substantial translation errors or technical interruptions throughout the week.

## E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 27/04/2015	9:04	10:11 – 10:28	11:37 – 13:30	14:42 – 15:03	15:36	4 hours and 1 minutes
Tuesday 28/04/2015	8:58	10:12 – 10:29	11:17 – 13:28	14:13 – 14:27	14:46	3 hours and 6 minutes
Thursday 30/04/2015	8:59	10:11 – 10:28	–	–	11:37	2 hours and 21 minutes
Average number of hours in session				3 hours and 09 minutes		
Total number of hours this week				9 hours and 28 minutes		
Total number of hours, day, weeks at trial				188 hours and 39 minutes		
<b>52 TRIAL DAYS OVER 17 WEEKS</b>						

\*This report was authored by Johanna Hamark Kindborg, Lea Huber, 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> Mr. Koppe was permitted to make these additional pronouncements after Judge Fenz asked for the relevance of the video clip prior to its presentation. He explained that he wanted to use the video clip in order to contextualize the testimony of Civil Party Soy Sen, who described how KTC guards made wine with the gallbladders of executed prisoners. Following Counsel's explanation of the video's relevance, Judge Fenz announced the Chamber's ruling: "The Chamber hopes the idea is not to support an argument that whatever somebody's done before he's potentially been killed justifies this killing. So, for the very limited purpose to put the practice of eating livers and forms of cannibalism which have been broadly discussed in this trial, and in the press, into context, we're allowing the viewing of this video that the Party wants to show us." For more on Civil Party Soy Sen's testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue 7, Hearings on Evidence Week 4 (2-6 February 2015), pp. 4-6.

<sup>2</sup> Ms. Guiraud has repeatedly emphasized this point in the face of continual arguments from the Defense on the admissibility of Civil Party statements. This argument also relates to the Trial Chamber's January 2012 decision on

---

evidence. That decision notes Internal Rule 67(3) as placing the onus of assessing evidence on the OCIJ, subject to the Pre-Trial Chamber. The Trial Chamber explains it has therefore “accorded the documents cited in the Closing Order a presumption of relevance and reliability (including authenticity) and has given them an E3 number.” All six of the documents presented by the Civil Parties on 27 April 2015 had E3 numbers. See Trial Chamber, ‘Trial Chamber Response to Portions of E114, E114/1, E131/1/9, E131/6, E136 and E158’ (31 January 2012), E162, para. 3.

<sup>3</sup> See CASE 002/02 KRT TRIAL MONITOR, Issue 16, Hearings on Evidence Week 16 (21-24 April 2015), pp. 7-8.

<sup>4</sup> The Case 002 Closing Order in Case 002 finds that prisoners were tortured in DK security centers, including at Kraing Ta Chan Security Center (para. 1408) and S-21 (para. 1498).

<sup>5</sup> ECCC Internal Rule (Rev. 9) 21(d) reads: “Every person suspected or prosecuted shall be presumed innocent as long as his/her guilt has not been established...and at every stage of the proceedings shall be informed of his/her right to remain silent.”

<sup>6</sup> Although Pech Chim admitted under Victor Koppe’s questioning that ‘smash’ held variable meanings, he consistently had testified to other Parties that ‘smash’ meant to kill. He specifically confirmed this meaning in the context of Sector 13 chief Ta Prak’s use of the term in relation to prisoners in a letter sent to KTC chief Ta Ann. See CASE 002/02 KRT TRIAL MONITOR, Issue 16, Hearings on Evidence Week 16 (21-24 April 2015), p. 3.