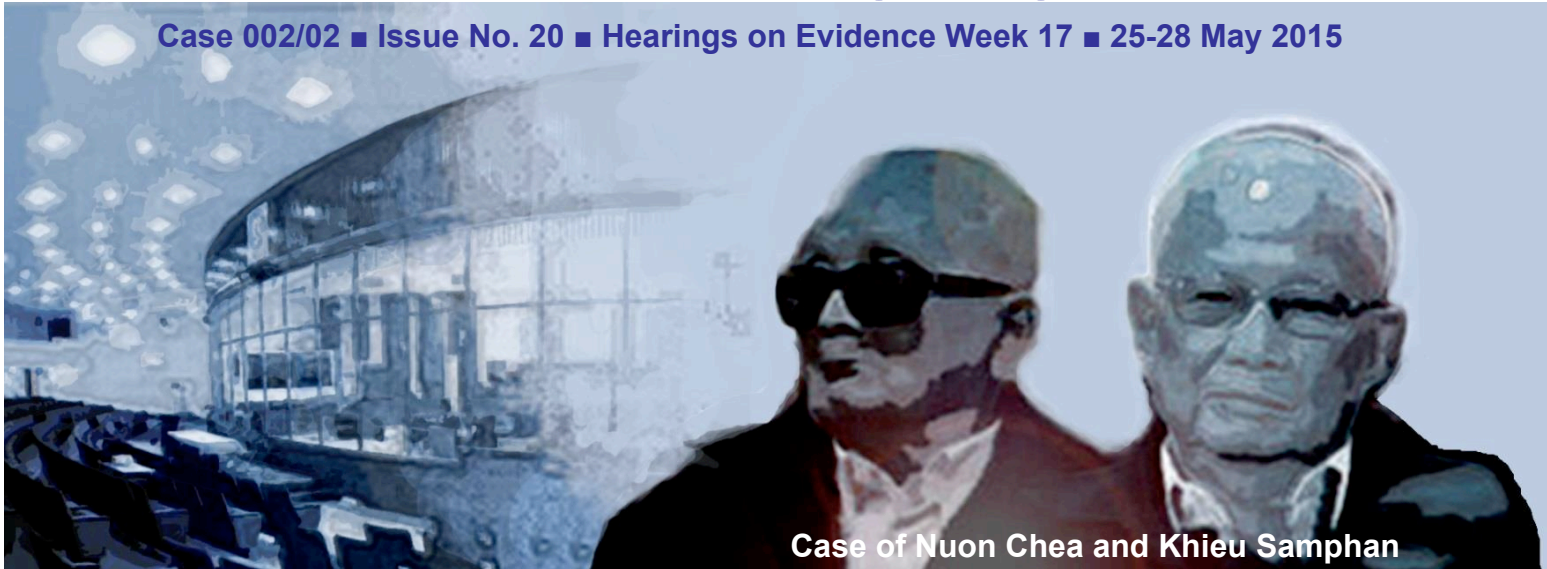


# KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 20 ■ Hearings on Evidence Week 17 ■ 25-28 May 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 used to live in a happy life with my family.  
When the regime came into power, we lost everything.  
We lost what we had in the previous time.*

- Civil Party Hun Sothany

## I. OVERVIEW

The Trial Chamber this week continued to hear testimony regarding the experiences of workers at the First January Dam construction site in Baray District, Kampong Thom Province. One witness and two Civil Parties appeared to testify on their experiences at the Dam. Ms. Meas Layhou, Ms. Hun Sothany, and Ms. Un Ron all spoke about the poor living conditions and burdensome working regimen at the site. They discussed their fear and suffering at the time, and they also provided examples of maltreatment by the Khmer Rouge authorities as they sought out “enemies” of the regime. The Chamber also provided the Parties with the opportunity to make oral arguments on the proper use of evidence obtained under torture. It also announced a ruling on the inclusion of the Khmer Krom as a targeted group in the allegations in Case 002/02. These legal questions, as well as the week’s three testimonies, are summarized and discussed in the following report.

## II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

This week, the Trial Chamber heard the testimony of one witness, Ms. Meas Layhou, and two Civil Parties, Ms. Hun Sothany and Ms. Un Ron, all of whom worked at the First January Dam worksite, in present-day Kampong Thom Province, under the DK regime.

### A. Summary of Testimony by Witness Meas Layhou

The first witness to testify this week was 57-year-old Meas Layhou, a grocery seller living in Baray District, Kampong Thom Province. Prior to 1975, she was a rice farmer, but, under the Khmer Rouge, she was placed in a special mobile unit working at the First January Dam and Sixth January Dam sites from 1977 onwards. She testified at length about these worksites.<sup>1</sup>

## **1. Working and Living Conditions at the Dam Worksites**

Meas Layhou testified that she was assigned to a mobile unit that worked at both the First January and Sixth January Dams. She explained that units at the worksites were made up of 50 people from each village in Ballangk Commune, Baray District. At meetings, workers were told that "all the people from the North Zone came to work at the First January Dam worksite." She confirmed that not only "new", but also "base" and Cham people worked at the Dam. The Witness stated, "We had to work hard, we were hungry, and we were tired." Each worker had to carry one cubic meter of dirt per day to satisfy the official quota set by the unit chief. Meas Layhou emphasized that everyone had the same quota, but she observed that people were punished if they did not complete the quota, and they even had to work when sick. Workdays began at 3:00AM and continued into the night. Every ten days, workers were allowed to rest. Meas Layhou described the work pace at the nearby Sixth January Dam as "normal" compared to the First January Dam. She described the latter as a "hot battlefield" due to its busy work.

The Witness explained that food rations at the worksites were insufficient and could not even compare to "the gruel for pigs these days." She testified that most people dared not complain about food rations as they feared the consequences while others were arrested for food theft. She stated that those who did not work hard enough were deprived of their food ration. Workers had access to water, which one person in the mobile unit was assigned to collect and deliver. However, many people fell sick, as the accessible water was taken from the river, and was not clean. Accommodations did not have proper roofing, so people got soaked when it rained, further worsening people's health. Moreover, no mosquito nets were provided, thus cases of malaria were common. Meas Layhou testified that the poor hygienic standards amplified cases of dysentery, with several instances "where people died from dysentery." She also discussed issues with workplace safety, describing an incident of soil collapse, which led to the death of many workers. No proper medical unit was present at the site, and village-level medical staff visited only occasionally.

Meas Layhou confirmed that Ke Pauk, the Secretary of the Central Zone, and Oeun, part of the District office, came to visit the worksites. Announcements were made over the loudspeakers when such leaders came to the site. Furthermore, several female Chinese cadres visited the Sixth January worksite, and the workers were asked to work faster during these visits.

## **2. Treatment of "Enemies"**

The Witness confirmed that "new" people and the Cham were subject to specific supervision, and if they were considered "lazy," they were taken away for re-education, which meant they disappeared. Cham people were not allowed to speak their language or practice their religion, and they had to eat pork when it was served. According to Meas Layhou, anyone who could not achieve the daily work quota was punished as an "enemy." Meas Layhou emphasized the presence of many militiamen at the Dam worksites. She testified that they were instructed to guard the people and deter them from stopping their work. For example, they prevented people from staying too long in the bushes to relieve themselves. If someone was not working, he or she was considered "the enemy [who] opposed Angkar." She offered the example of Try, a man whose re-education was regarded as unsuccessful. Security forces therefore put him in a cage in the forest, and he later disappeared. "Lazy people" were put into the cage and taken back to work "if the person reformed"; otherwise, they would disappear like Try. Furthermore, the Witness confirmed that her village chief justified the purges of Khmer Rouge cadres, explaining, "they were linked to the CIA and KGB, and that is why they were taken to be killed." Southwest Zone cadres, who the people feared, replaced the purged leaders.

The Witness confirmed that the authorities used the nearby Baray Choan Dek pagoda as a killing site, and that loudspeakers often played music when she passed it, so she assumed that executions were taking place. She testified that the village chief told her that people were taken

to the pagoda in trucks during the day and in oxcarts at night. She confirmed that "these people were never seen again." She failed to explain to Defense Counsel how she knew at the time that the loudspeakers played when killings took place, but she noted that, as a "base" person, she could ask the unit or village chiefs "about what happened."

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

Meas Layhou gave clear responses to questions throughout her testimony. She indicated when a question was unclear to her, or when she had no knowledge on a certain topic. Her answers were generally very direct and provided detailed examples, underlining her credibility.

#### **B. Summary of Testimony by Civil Party Hun Sothany**

The second person to testify before the Chamber this week was Civil Party Hun Sothany. Under the DK, she was assigned to work at the First January Dam site from January 1976 until June 1977. She told the Court her experiences at the worksite, the living conditions there, and the loss of her family.<sup>2</sup>

##### **1. Working and Living Conditions at the Dam Worksite**

The Civil Party stated that upon her arrival at the First January Dam, she was assigned to a women's unit and ordered to carry earth and dig the ground. She also described the Dam site as a "hot battlefield," as work was very active there. She testified that "crowds of people" from Sectors 41, 42, and 43 worked at the site, under the supervision of group chiefs and unit chiefs. She emphasized that workers could not idle, noting that workers did what they were told in order to survive, sometimes overworking until they fainted (as she sometimes did) or died (as with a young man she discussed in her testimony). Hun Sothany confirmed that children as young as nine years old were forced to work at the Dam site in the second mobile unit; they conducted the same work as everybody else and received the same food rations. Several children fell sick, but there was no proper treatment for them or anyone, according to the Civil Party. Explosives were used to break the stones at the site, but the workers were not warned ahead of time, and they did not receive treatment for their subsequent injuries.

Hun Sothany emphasized that the food provided to the workers was insufficient, with rations consisting of only rice and a little soup. She described the large amount of flies at the site, stating, "We had to just pick the flies one by one out of the soup bowl." The only source of water was the river, leading thousands of workers to drink the same water from the river, according to the Civil Party. There was, however, no possibility to boil the water, and she sometimes had to "force [her]self to drink the water," as it was very dirty. Moreover, there was no sanitation at the work site at all, forcing the workers to relieve themselves "here and there." No sanitary pads were provided for menstruating women, so they had to work with bloody trousers, and most workers only had one set of clothing. As sleeping quarters lacked both a proper roof and actual mats, the workers slept on the hard ground and got soaked when it rained. Hun Sothany stated that men and women were not allowed to speak with each other, even if they were siblings, and sleeping quarters for men and women were separate.

The Civil Party acknowledged that she worked at three different locations during her time at the First January Dam. At Trapang Chrey, she confirmed that the workers were woken up by whistle at 4:00AM and worked from 5:00AM until 10:00PM. They never received breakfast and would not eat before 11:00AM. The workers had three chances to rest: a fifteen-minute mid-morning break, a two-hour lunch break, and an hour-long pause at 6:00PM, before the night shift. When she was assigned to work next to the national road, she had to wake up at 3:00AM to begin work at a location three kilometers away by 4:00AM. The workers were organized in groups of three, with one man digging the earth and two women carrying it. Hun Sothany testified that their daily quota was around 1.5-2 cubic meters per day.

She testified that "old" people had greater rights than "new" people, because the former had the opportunity to justify themselves if they made a mistake. "New" people instead were "under tremendous pressure," and they could not "make any complaints or refuse any assignment," or protest when falsely accused of wrongdoing. Hun Sothany confirmed that guards to watch over the workers and prevent them from escaping the site. Furthermore, when people went to the forest to relieve themselves, they had to do so under the watch of guards.

## **2. Civil Party's Loss of Family**

Hun Sothany gave emotional testimony when she confirmed that her father, a former teacher and opponent of Communism who was also working at the Dam site, was taken away to Baray Choan Daek pagoda and presumably killed there. She described the afternoon of her father's arrest: she herself had requested to take a rest that afternoon due to abnormal pain, and she only found out the next day about her father's fate. When her younger siblings told her about the incident, she advised them not to weep in order to avoid the same fate. She stated that, only when it rained heavily did she dare to show her pain and "get things out of [her] heart." Her younger sibling, 12- or 13-year-old Hun Sokoma, fell sick after their father's death and was hospitalized at Kampong Thmor. However, he was unable to recover and died. The Civil Party confirmed that, although the hospital facility was in poor condition, all the sick people from Baray District were nonetheless transferred there. Hun Sothany described the other patients as "skinny and boney." After her father's disappearance, her mother was called to a meeting and told that the Regime wanted her to go to the "new land." The Civil Party encouraged her mother and her siblings Sochirath and Thida, but, a few days after they left, she came across her siblings' clothes and her sister's bra, and she realized that they had, in reality, been killed. She learned from someone else that they were dropped into wells and killed at Chamkar Andoung. She remembers the date of their departure as "the 7<sup>th</sup> of the 7<sup>th</sup>, '77," or 7 July 1977.

## **3. Civil Party Statement of Suffering**

Throughout her testimony, Hun Sothany often emphasized the pain that the Khmer Rouge regime caused her, and her demeanor indicated her continual suffering from her experiences in DK. When giving her statement of impact, the Civil Party became even more emotional, underlining that she had "lost everything" under the regime, from her house and belongings to her parents and siblings. She emphasized her loneliness as she told the Chamber of her PTSD and trauma. She voiced her hope that such a regime would never recur after it had taken freedom away, persecuted people, and separated families. She concluded by putting two questions to the Co-Accused, asking them to admit their responsibility and their errors.

### **C. Summary of Testimony by Civil Party Un Ron**

The last person to testify before the Chamber this week was 62-year-old Civil Party Un Ron, a rice farmer born and living in Ta Ream, Kampong Thom province.<sup>3</sup> During the Khmer Rouge period, she was assigned to a Sector mobile unit at Kdey Sen pagoda and was subsequently ordered to work at the First January Dam. The Civil Party was sent twice to the Dam, first to clear the forest and later to dig the canal. She testified about these experiences, and although she declined to make a statement of suffering, she asked the Co-Accused one question: "I want to know about the hard labor and starvation; was this kind of policy adopted by you?"

#### **1. Working Conditions at the First January Dam Site**

At the Dam worksite, the Civil Party was part of a large women's unit consisting of 100 members between 20 and 40 years old and under the supervision of a chief named Chon. The members were subdivided into three small groups of 33 people, with work plots assigned to groups by the overall unit chief and the group chiefs and without the input of the workers. The Civil Party estimated the total number of workers at the Dam as approximately ten thousand.

Un Ron's initial task at the worksite was cutting trees, and, later, digging and carrying four cubic meters of dirt per day and one cubic meter per night. If a worker could not finish her quota, her food rations would be cut and she would have to complete it the next day, or others who had already finished their work would have to assist. At 4:00PM every afternoon, the unit chief "check[ed] if everyone could finish their quota." Un Ron further described "livelihood meetings," which the group chief chaired every three to four days. Workers were told to "actively involve in the work and not get sick too often." The Civil Party testified that the unit chief did not take part in the work, and the smaller group chiefs often carried two rounds of dirt and then disappeared. Workers were not allowed to rest and had to continue working even in the rain. She testified that she saw no heavy machinery at the Dam site. Work continued on the weekends, and people could only rest after two weeks of work when, she said, "We couldn't get up to go to work." The Civil Party also acknowledged hearing about a soil collapse incident that hurt workers, but she never saw one herself.

Un Ron explained that workers had no freedom of movement, and nobody dared to leave the site, except to go to the nearby forest to relieve oneself. Workers were threatened with arrest and refashioning if they attempted to flee, and the unit chief asked them whether they wanted to live or die, implying, according to the Civil Party, what would happen if they did not work hard enough. If a person fell ill too often, she or he would be sent for "refashioning" or "reeducation." She confirmed that other disciplinary measures were taken against workers. For example, one chronically ill person was assigned to collect human waste in the fields with his bare hands.

## **2. Living Conditions at the First January Dam Site**

Un Ron testified that the workers' shelters lacked proper roofing and walls, so the rain would soak them as they slept. People slept feet to feet, and those without mats had to sleep on the floor or on a piece of cloth. The Civil Party testified that they received no mosquito nets or blankets, leading her to use an old scarf to cover her body. Workers had only two sets of clothes, but they had to sleep in wet clothes if it rained. The Civil Party kept a pair of shoes from her relatives, but she said, "almost everyone walked bare feet". She also testified that there were flies everywhere at the Dam worksite, and she recalled, "Sometimes [her] body was covered with flies from head to toe." No latrine buildings existed, and the workers had no clean water to drink, or soap for cleaning. Due to unsanitary living conditions, people fell sick with dysentery, headaches, and fevers, but they lacked effective medicine. Un Ron also testified that food rations were also insufficient, as workers received only two ladles of gruel and a bit of morning glory soup per meal. A kitchen worker who knew her provided some leftover rice, but the Civil Party noted that her friend risked her life in doing so.

## **3. Visitors to the Dam Worksite**

Un Ron confirmed that senior leaders visited the worksite, but she testified that she did not recognize the individuals herself. She stated that her colleagues told her that one of the visitors was Pol Pot. She said the workers were informed of the visit, but the leaders did not speak to the workers and simply walked around.

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

On Monday of this week, the Chamber allowed the Parties to discuss the recurring dilemma of the use of torture-tainted evidence. The Chamber also issued a long-awaited decision that day on the targeting of the Khmer Krom as related to the scope of charges in Case 002/02, and the Parties also made oral arguments on the relevant scope of a security center allegedly linked to the worksite at the First January Dam.

## A. Oral Submissions on Torture-Tainted Evidence in Case 002/02

Following the 7 May request of the International Co-Prosecutor, the Trial Chamber scheduled one morning session on Monday, 25 May for the Parties to make oral submissions concerning the proper use of evidence possibly obtained under torture. The issue was raised after three consecutive weeks in which Victor Koppe, Defense Counsel for Nuon Chea, attempted to confront witnesses with statements from S-21 confessions.<sup>4</sup> The Parties also submitted related written arguments on Thursday, 21 May.<sup>5</sup>

### 1. Co-Prosecutor's Arguments

Throughout his arguments on the usage of torture-tainted evidence in Case 002/02, International Co-Prosecutor Nicholas Koumjian continuously emphasized that the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (**CAT**) legally applies to the ECCC. He first quoted the Convention's Article 15<sup>6</sup> to explain that, although Nuon Chea and Khieu Samphan stand accused of torture, among the crimes alleged in the Case 002 Closing Order, their Defense Counsel cannot use evidence obtained under torture at DK security centers to exculpate themselves. The Co-Prosecutor insisted that the CAT's main objective, as stipulated in its preamble,<sup>7</sup> is the end of the use of torture, and therefore, he argued, statements made under such duress should not be legitimized through their usage as reference or evidence in proper judicial proceedings. As Mr. Koumjian explained, the CAT aims to preclude authorities from having an incentive to torture people. He argued that allowing the Nuon Chea Defense to use statements resulting from torture as legitimate evidence would justify the very program of torture that Nuon Chea allegedly oversaw 40 years ago and for which he is now on trial.

Secondly, Mr. Koumjian offered a counter-argument to the key points that he understood Counsel for Nuon Chea hoped to make: that the evidence allegedly obtained under torture proved that the DK regime faced enemy networks supported by Vietnam. The Co-Prosecutor argued that Counsel attempted to use torture-induced confessions (in which tortured individuals referenced CIA, KGB, and "Yvon" networks) as a basis for proving that those networks *in fact* existed. The Co-Prosecutor further argued that, on the basis of these "facts" established through torture-tainted confessions, the Defense sought to justify the DK regime's use of torture and murder to deal with such enemies. The Prosecution's response to these arguments included content reserved for closing pleadings of the trial in arguing how Nuon Chea was aware that torture was taking place under his leadership of the regime. Mr. Koumjian quoted the Accused, from his prior interview with journalist Thet Sambath, in which Nuon Chea admitted that "he was fascinated with torture," and that "he was the *de facto* head of S-21."<sup>8</sup> Relying on the same interview, the Co-Prosecutor explained that, even though Nuon Chea oversaw Duch and S-21, the Accused did not accept reports implicating Khieu Samphan as he knew that "confessions under torture were not reliable at all to prove the truth" of the matter asserted by the tortured individual. According to one source, Nuon Chea had instructed Duch to "bury it" and not "come back again with information like this."<sup>9</sup> Mr. Koumjian questioned why the Defense Team for Nuon Chea was now attempting to use S-21 confessions as "the truth of the matter" regarding the alleged existence of subversive networks even though their client had himself rejected the reliability of such statements.

Lastly, Mr. Koumjian sought to distinguish the OCP's use of Kraing Ta Chan interrogation notebooks thus far in Case 002/02 from the attempts of Victor Koppe to cite information in confessions as matters of fact. The Co-Prosecutor argued that his side used only interrogators' annotations or the names and demographic information included in the notebooks, rather than the substantive material of the confessions. Article 15 of the CAT, the OCP argued, in both its oral and written submissions, allows this tactic, "to prove the commission of crimes by the torturers." The Prosecutor made clear that he did not dispute the general admissibility of these statements as evidence, but the Prosecution submissions made clear that the law places clear

limits on what facts torture tainted statements may be used to prove.<sup>10</sup> However, the OCP's oral submissions diverged from its written ones when the Co-Prosecutor argued before the Trial Chamber that his side also permissibly used confessions to demonstrate the cruelty of the Khmer Rouge and the DK policies of targeting specific groups. The written submissions focused more narrowly on the fact that the interrogation records had been used "to prove knowledge and intent of the persons who received those reports or confessions."<sup>11</sup> Judge Jean-Marc Lavergne restated this latter argument, noting the CAT forbids using what he called "the veracity of the statement" without forbidding all references to such documents. Mr. Koumjian agreed, pointing out that professional judges within the civil law tradition are knowledgeable enough to distinguish when and how to use torture-tainted evidence.

## **2. Submissions of the Civil Party Lead Co-Lawyer**

International Civil Party Lead Co-Lawyer Marie Guiraud argued firstly against Counsel Koppe's prior statements that torture has not been proven in the case of every confession. She declared, "The presumption has already been established that confessions at S-21 were obtained under torture." She stated that, if a Party wishes to use the contents of a confession when questioning witnesses to establish whether the information in the confession is true, then the Party must make a formal request to the Chamber to reverse the presumption that such information was obtained via torture.<sup>12</sup> Otherwise, she argued, the CAT prohibits use of the confession. However, Judge Lavergne rebutted the argument that the S-21 documents are presumed to have been gained through torture. He stated that the principle of *res judicata* does not apply because the Co-Accused in Case 001 and Case 002 at the ECCC are different.<sup>13</sup> Judge Lavergne argued that the standard to determine whether the evidence is torture-tainted should be the "real risk" of torture, as was ruled in the European Court of Human Rights,<sup>14</sup> and Ms. Guiraud responded that 'substantial risk' would be a relevant standard in this case.

## **3. Submissions of the Defense Teams**

Victor Koppe, Defense Counsel for Nuon Chea, argued a double standard existed regarding the use of certain evidence from S-21 because the Co-Prosecutors had been able to use confessions from S-21 to demonstrate and prove the Khmer Rouge regime was cruel. Mr. Koppe noted that using the evidence from S-21 is "a slippery slope," but that the law permits him to use it to establish Nuon Chea's innocence. He also argued that the law prohibits the Prosecution from using it to establish the guilt of the Accused. Mr. Koppe then quoted expert David Chandler's *Voices from S-21*<sup>15</sup> to demonstrate support for his larger narrative that the ongoing conflict with a rebellious network rendered the regime's severity necessary. Mr. Koppe further explained that this quote demonstrated the need to ask witnesses about the same rebel network. Counsel Koppe then read from a 1990 article written by Steve Heder to show that some experts argue that some part of the confessions about an underground spy network must be true.<sup>16</sup> He asked the Chamber to permit the Defense to present evidence demonstrating Nuon Chea's narrative that there were "two equally strong opposing factions within the Khmer Rouge fighting each other." Use of the confessions, he argued, would establish whether witnesses knew about this underlying problem that justified some of the Accused's actions.

In Nuon Chea's written submissions, the Defense, using many quotations but very few citations, argued that subsequent state practice in Germany and New Zealand has confirmed that "Article 15 of CAT is intended only to exclude the use of evidence by the Prosecution against a defendant."<sup>17</sup> The Defense Team based these arguments on the predecessor document for Article 15 of the CAT: Article 12 of the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>18</sup> but the Defense submission conceded in a footnote that Article 15 of the CAT is more restrictive and allows torture-tainted evidence to be used against the torturer.<sup>19</sup> The written submission quoted but did not cite a dissenting opinion from the ICC,<sup>20</sup> in support of the argument that the Defense may use torture-tainted evidence in support of an Accused person because "value of

crime control is replaced by the value of ensuring that the innocent must not be convicted.”<sup>21</sup> Judge Lavergne asked Counsel Victor Koppe to clarify his position and reminded Counsel Koppe that the Co-Prosecutor sought to use torture-induced statements as evidence to establish circumstantial facts around the confessions rather than discussing the substance of the confessions themselves. Counsel Koppe answered that the Defense was trying to argue that cadres in Sector 13 were “crazy, radical people.”

Defense Counsel for Khieu Sampan, Anta Guissé, argued that the Chamber should not allow any Party to use any confessions because Article 15 of the CAT says that no document obtained by torture can be used as evidence in a trial. She referred to a 2010 Pre-Trial Chamber decision that the CAT should be strictly applied.<sup>22</sup> Counsel Guissé also noted the fact that the Cambodian Procedural Code is much broader than the CAT in prohibiting any use of evidence obtained by mental or physical distress in criminal trials. She also argued that the Co-Prosecutor and Nuon Chea’s Defense Counsel are arguing the same use of the evidence, and therefore, neither should be allowed to use the evidence.

## **B. Trial Chamber’s Decision on Targeting of Khmer Krom in Scope of Case 002/02**

After a series of Defense submissions regarding the position of the Khmer Krom within the scope of Case 002/02, the Trial Chamber this week finally issued a decision on the matter. Defense Counsel Victor Koppe initially raised the question during the 12 February 2015 examination of Civil Party Ry Pov, when Mr. Koppe argued that targeting of the Khmer Krom had not been included in the Case 002 Closing Order and fell outside the scope of the trial.<sup>23</sup> At the 5 March 2015 Trial Management Meeting, Mr. Koppe noted that evidence on the experiences of the Khmer Krom consistently emerged in the Case 003 and Case 004 evidentiary disclosures entering Case 002/02. He suggested the OCP sought to treat the group as “quasi-targeted,” and he orally requested the Trial Chamber’s assurance that the Khmer Krom would not be included in Case 002/02.<sup>24</sup> This issue recurred during the 21 April examination of Civil Party Thann Thim, as Mr. Koppe objected to international prosecutor Vincent de Wilde D’Estmael’s question regarding the treatment of the Khmer Krom in Tram Kak District. International Judge Claudia Fenz announced at that juncture that the Chamber would clarify the indictment in connection with the Khmer Krom in due course.<sup>25</sup>

On 25 May, the Trial Chamber announced its oral decision on Nuon Chea’s request for clarification on the position of the Khmer Krom as a targeted group in the scope of Case 002/02. Firstly, the Chamber ruled that Case 002/02 did not include charges relating to the targeting of the Khmer Krom as a specific group, and it noted that no Parties had “requested to re-characterize any factual allegation within the scope of Case 002/02 to include counts of persecution or genocide directed at the Khmer Krom as a distinct group.” Secondly, the Chamber issued a general guideline to assess, on a case-by-case basis, any evidence related to the Khmer Krom, but it warned that it would disallow any evidence related solely to the targeting of the group in order to establish the elements of persecution as a crime against humanity or genocide. However, the Chamber emphasized that evidence pertaining to the Khmer Krom in Case 002/02 might be admissible if relevant to the “historical and political context of the Case or to other crimes which are charged,” and to victims who were Khmer Krom. The Chamber nonetheless viewed more positively any reference to victims who “happen to be Khmer Krom,” rather than evidence centered solely on membership in the group.

## **C. Debate on the Relevant Scope of the Trial Segment and Case 002/02**

During the 25 May examination of Witness Meas Layhou, Defense Counsel for Nuon Chea, Victor Koppe, objected to international prosecutor Vincent de Wilde d’Estmael’s question regarding Baray Choan Dek pagoda. Counsel raised two arguments, stating that the function of Baray Choan Dek as a security site lay outside the scope of the segment on the First January Dam worksite, and furthermore that both the Witness and the Prosecutor failed to prove a direct



link between the pagoda and the worksite existed. Mr. De Wilde d’Estmael responded to Counsel’s objection, arguing that his argument was based on an OCIJ site identification report written at the outset of the investigation. The Prosecutor instead suggested Koppe read the final document of the investigation phase – the Closing Order – which clarifies the OCIJ’s determination that the pagoda was the security center and execution site for the dam worksite. Following the Judges’ deliberation, President Nil Nonn overruled Mr. Koppe’s objections, noting that the pagoda was “at least related to certain workers” of the First January Dam worksite.

Soon thereafter, Mr. Koppe objected to the Prosecutor’s continued examination on Baray Choan Dek, this time arguing that the current segment of the trial had not reached the matter of security centers yet. Anta Guissé, Defense Counsel for Khieu Samphan, joined Mr. Koppe’s objection, adding that this pagoda was not included as one of the four security centers that the Chamber intentionally selected in its severance and scope for Case 002/02.<sup>26</sup> The Prosecutor argued that he was merely following the paragraphs of the Closing Order related to the First January Dam, and he referred to the Chamber’s ruling allowing Ang Roka security center to be discussed in the trial segment on Tram Kok cooperatives.<sup>27</sup> International Judge Jean-Marc Lavergne overruled the Defense’s objections, agreeing with the OCP that paragraph 367 of the Closing Order, which is listed in the severance decision’s annex, included reference to the pagoda’s function as a security center for the worksite.

#### IV. TRIAL MANAGEMENT

Over the course of four days this week, the Trial Chamber successfully heard the testimony of a witness and two Civil Parties. It also was able to provide the Parties with time to discuss the recurring questions regarding the use of torture-tainted evidence in trial proceedings (see III.A).

##### 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. TPO staff was also appointed to provide emotional support to the Witness and Civil Parties during their appearances throughout the week.

**Judge Attendance:** All judges of the Trial Chamber were present all week, except international reserve Judge Martin Karopkin, who was absent throughout, due to personal commitments.

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

**Parties:** All the Parties were represented in the courtroom throughout the week.

##### Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 25/05/2015	<ul style="list-style-type: none"> <li>▪ Approximately 150 villagers from Treang District, Takeo Province</li> </ul>	<ul style="list-style-type: none"> <li>▪ Approximately 150 villagers from Treang District, Takeo Province</li> </ul>
Tuesday 26/05/2015	<ul style="list-style-type: none"> <li>▪ Approximately 120 villagers from Treang District, Takeo Province</li> </ul>	<ul style="list-style-type: none"> <li>▪ Approximately 120 villagers from Treang District, Takeo Province</li> <li>▪ One foreign observer</li> </ul>

Wednesday 27/05/2015	<ul style="list-style-type: none"> <li>▪ Approximately 120 villagers from Koh Andaet District, Takeo Province</li> <li>▪ 25 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Approximately 110 villagers from Koh Andaet District, Takeo Province</li> </ul>
Thursday 28/05/2015	<ul style="list-style-type: none"> <li>▪ Approximately 170 villagers from Steung Sen City, Kampong Thom Province</li> <li>▪ Two foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ One foreign observer</li> </ul>

## **B. Time Management**

The Trial Chamber successfully completed the examination of one Witness and two Civil Parties this week, as it strictly implemented its own time allocation for the Parties. For example, on 27 May, when Defense Counsel Victor Koppe suggested it was the appropriate time for the afternoon break, President Nil Nonn looked at the clock and instead instructed Counsel to continue his examination of Civil Party Hun Sothany, for another ten minutes rather than adjourning for break nine minutes early. Even as it adhered to the scheduling order, however, the Chamber remained flexible. After Judge Lavergne overruled a series of Defense objections during the OCP's examination of Witness Meas Layhou on 25 May (see III.C), he also allocated the Prosecutor an additional 15 minutes to make up for lost time.

## **C. Courtroom Etiquette**

This week, there were several moments when the Civil Parties broke down sobbing as they recalled working at the First January Dam, but their examinations ran smoothly and all Parties treated them with respect. On 28 May, during examination of Civil Party Un Ron, Kong Sam Onn, Counsel for Khieu Samphan, repeatedly sought to clarify when the Civil Party left to work at the dam. When the Civil Party voiced her confusion, President Nil Nonn reproached Mr. Counsel, telling him, "Your question was very confusing. We give you one more chance to ask the question." When Counsel's line of questioning continued to befuddle the Civil Party, she reacted angrily, and President Nil Nonn interrupted her to calm her down and ask her to attempt some response to the questions. Also that day, the President confused the Civil Party for a witness and began to adjourn the hearing, but international Judge Claudia Fenz gestured to the President to correct his error and allow the Civil Party to make her statement of suffering.

## **D. Translation and Technical Issues**

Several translation issues recurred throughout the proceedings this week, prompting concerns from all the Parties on the accuracy of communications. For example, on 27 May, there was a short debate between international assistant prosecutor Dale Lysak and Ms. Anta Guissé on interpretation errors from French to English. On 28 May, international Judge Claudia Fenz repeatedly raised concerns over flawed translation during her questioning of Civil Party Un Ron. Khmer monitors noted a few errors throughout the week. On 27 May, the interpreter incorrectly translated the word "tile roof" in Khmer to "leaf roof" in English. On 28 May, when the Prosecutor asked in English, "Did the Civil Party see men, women, or children at the worksite?" the interpreter did not include the word "children" put in the Khmer translation. On the other hand, technical systems functioned this week without issue.

**E. Time Table**

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 25/05/2015	9:06	9:52 – 10:46	11:35 – 13:30	14:39 – 14:59	16:03	3 hours and 48 minutes
Tuesday 26/05/2015	9:00	10:08 – 10:29	11:31 – 13:29	14:39 – 14:59	15:39	4 hours
Wednesday 27/05/2015	8:58	10:08 – 10:31	11:32 – 13:29	14:43 – 14:59	15:39	4 hours and 05 minutes
Thursday 28/05/2015	9:00	10:09 – 10:29	11:25 – 13:28	14:45 – 15:04	15:39	3 hours and 57 minutes
Average number of hours in session				3 hours and 57 minutes		
Total number of hours this week				15 hours and 50 minutes		
Total number of hours, day, weeks at trial				235 hours and 54 minutes		
<b>64 TRIAL DAYS OVER 20 WEEKS</b>						

\*This report was authored by Lea Huber, Hout Pheng Ly, Daniel Mattes, Lina Tay, Vichheka Thorng, Penelope Van Tuyt, Katherine Vessels, 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**

Case001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case002	<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> Ms. MEAS Layhou (2-TCW-851) was questioned in the following order: President NIL Nonn; national deputy Co-Prosecutor SREA Rattanak; international senior assistant prosecutor Vincent DE WILDE D’ESTMAEL; international Civil Party Lead Co-Lawyer Marie GUIRAUD; international co-lawyer for Nuon Chea, Victor KOPPE; national lawyer for Nuon Chea, LIV Sovanna; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>2</sup> Ms. HUN Sothany (2-TCCP-255) was questioned in the following order: President NIL Nonn; national Civil Party Lawyer MOCH Sovannary; international Civil Party Lead Co-Lawyer Marie GUIRAUD; national senior deputy Co-Prosecutor SONG Chorvoin; international assistant prosecutor Dale LYSAK; international co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISSÉ.

<sup>3</sup> Ms. UN Ron (2-TCCP-230) was questioned in the following order: President NIL Nonn; national Civil Party Lawyer MOCH Sovannary; international assistant prosecutor Joseph Andrew BOYLE; Judge Claudia FENZ; Judge Jean-Marc LAVERGNE; international co-lawyer for Nuon Chea, Victor KOPPE; national lawyer for Nuon Chea, LIV Sovanna; national co-lawyer for Khieu Samphan, KONG Sam Onn; international co-lawyer for Khieu Samphan, Anta GUISSÉ.

<sup>4</sup> CASE 002/02 KRT TRIAL MONITOR, Issue 16, Hearings on Evidence Week 13 (21-24 April 2015), pp. 7-8; CASE 002/02 KRT TRIAL MONITOR, Issue 17, Hearings on Evidence Week 14 (27-30 April 2015), pp. 5-6; CASE 002/02 KRT TRIAL MONITOR, Issue 18, Hearings on Evidence Week 15 (4-8 May 2015), pp. 7, 9.

<sup>5</sup> The three published written submissions are: Nuon Chea Defense Team, “Nuon Chea’s Submissions Regarding the Use of ‘Torture-Tainted Evidence’ in the Case 002/02 Trial” (21 May 2015), E350 [hereinafter, **NUON CHEA SUBMISSION**]; Office of the Co-Prosecutors, “Co-Prosecutors’ Submission Regarding the Application of the Torture Convention to S-21 Confessions and Other Records Relating to Interrogations of Prisoners” (21 May 2015), E350/1 [hereinafter, **OCP SUBMISSION**]; and, Civil Party Lead Co-Lawyers, “Civil Party Lead Co-Lawyers’ Submissions Relating to the Admissibility and Permissible Uses of Evidence Obtained Through Torture” (21 May 2015), E350/3.

<sup>6</sup> Article 15 states, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

<sup>7</sup> The Preamble establishes, in part the CAT’s desire “to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.”

<sup>8</sup> Thet Sambath, “Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims” (2010), p. 85.

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<sup>9</sup> Thet Sambath, “Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims” (2010), p. 82.

<sup>10</sup> OCP SUBMISSION, para. 7, p. 3.

<sup>11</sup> OCP SUBMISSION, para. 5, p. 3.

<sup>12</sup> The OCP argues that it is impractical to hold hearings to determine whether evidence that will be presented was derived from torture and is therefore inadmissible. See OCP SUBMISSION, para. 21, p. 9.

<sup>13</sup> *Res judicata* is the legal doctrine that prevents relitigation of issues or claims that have already received final judgment if the issues and claims involve the same parties and/or transactions.

<sup>14</sup> European Court of Human Rights, *El Haski v. Belgium*, Application no. 649/08, “Judgment” (25 September 2012), paras. 88-89 reads, “[I]f the exclusionary rule is to be invoked on the basis of Article 6§1 of the Convention, to show that there is a “real risk” that the impugned statement was thus obtained. It would be unfair to impose any higher burden of proof on him. The domestic court may not then admit the impugned evidence without having first examined the defendant’s arguments concerning it and without being satisfied that, notwithstanding those arguments, no such risk remains. This is inherent in a court’s responsibility to ensure that those appearing before it are guaranteed a fair hearing, and in particular to verify that the fairness of the proceedings is not undermined by the conditions in which the evidence on which it relies has been obtained.”

<sup>15</sup> Chandler, David. *Voices from S-21*. 1<sup>st</sup> ed. California. Berkeley Press (2000). Part of Victor Koppe’s citation states, “It will be wrong to label all the prisoners at S-21 of involvement in conspiracy because their confessions contained absurdities because the regime was evil or because they were also cruelly treated.”

<sup>16</sup> Mr. Koppe noted that this document was not in the case file, and KRT Trial Monitors were unable to find this article in their own research of the topic. Part of the quote read out by Mr. Koppe reads, “Some things said [in confessions] appear to be undisputedly simple and straightforward statements of facts which may be taken at face value. At the other end of the spectrum are statements which can be judged with as almost as much certainty as being utterly false and fantastic fabrication. However most of what is said, seems to fall somewhere in between.”

<sup>17</sup> NUON CHEA SUBMISSION, para. 21, p. 6.

<sup>18</sup> United Nations General Assembly, *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. (09 December 1975), New York: United Nations.

<sup>19</sup> NUON CHEA SUBMISSION, footnote 27, p. 6.

<sup>20</sup> *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3436-AnxI, ICC Trial Chamber II, “Minority Opinion of Judge Christine Van den Wyngaert” (03 March 2014), para. 311, pp. 166-167.

<sup>21</sup> NUON CHEA SUBMISSION, para. 26, p. 8.

<sup>22</sup> Pre-Trial Chamber, ECCC, “Decision on Admissibility Of The Appeal Against Co-Investigating Judges’ Order on Use of Statements Which Were or May Have Been Obtained By Torture” (27 January 2010), D130/10/12. Para. 28 reads, “There is no room for a determination of the truth or for use otherwise of any statement obtained through torture.”

<sup>23</sup> CASE 002/02 KRT TRIAL MONITOR, Issue 8, Hearings on Evidence Week 5 (9-12 February 2015), p. 10.

<sup>24</sup> CASE 002/02 KRT TRIAL MONITOR, Issue 11, Hearings on Evidence Week 8 (3-5 March 2015), p. 5-6.

<sup>25</sup> CASE 002/02 KRT TRIAL MONITOR, Issue 16, Hearings on Evidence Week 13 (21-24 April 2015), p. 6.

<sup>26</sup> The four security centers to be examined in Case 002/02 are Kraing Ta Chan (Takeo Province); Au Kanseng (Ratanakiri Province); Phnom Kraol (Mondulakiri Province); and, S-21 (Phnom Penh). See Trial Chamber. “Decision on Additional Severance of Case 002/02 and Scope of Case 002/02.” (4 April 2014). E301/9. See also CASE 002/02 KRT TRIAL MONITOR, Issue 1, Initial Hearing, (30 July 2014), I and II.C.

<sup>27</sup> CASE 002/02 KRT TRIAL MONITOR, Issue 16, Hearings on Evidence Week 13 (21-24 April 2015), p. 6.