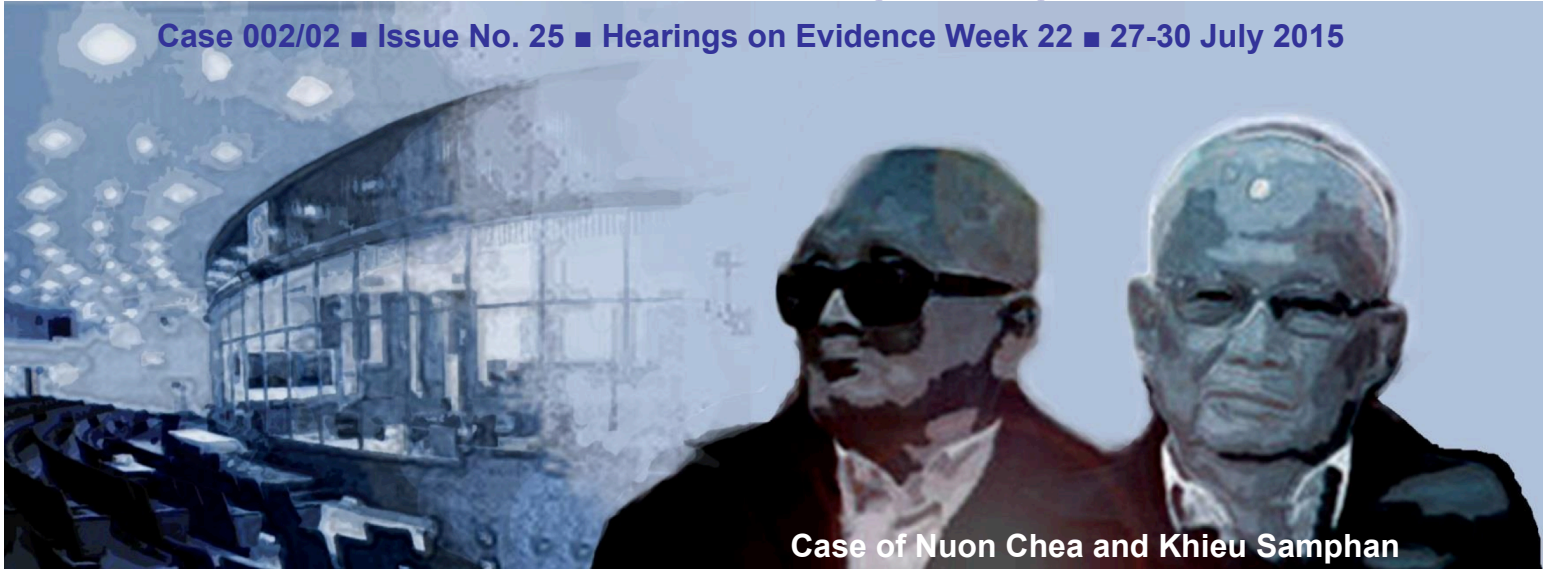


# KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 25 ■ Hearings on Evidence Week 22 ■ 27-30 July 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)

*In the Sector unit, everyone minded their own business.  
If they knew or heard something, they kept it to themselves...  
We built a principle of "Keeping the Kapok Tree,"  
meaning to keep our mouths shut.*

- Witness Mam Soeum

## I. OVERVIEW

Returning from a mid-year judicial recess this week, the Trial Chamber commenced the next segment of the proceedings in Case 002/02 with testimony from a Civil Party and a witness on the Trapeang Thma Dam worksite (**TTD**). This segment covers the last of three worksites to be discussed in the trial, and it relates to charges of crimes against humanity of enslavement, extermination, murder, and persecution on political grounds, as well as other inhumane acts, through enforced disappearances and forced marriage.<sup>1</sup> TTD was located in Sector 5 of DK's Northwest Zone and, according to paragraph 324 of the Case 002 Closing Order, "It was officially described by the CPK in October 1977 as the result of a nation-wide labour offensive to fulfill the CPK's 1977 economic plan." Civil Party Sen Sophon and Witness Mam Soeum testified on their experiences working at TTD. Two subsequent witnesses, Kheun Vat and Oum Chy, provided the final testimonies related to the Kampong Chhnang Airport construction site and the First January Dam worksite, respectively. This week, the Defense Teams also raised a variety of legal and procedural issues: the OCP's late disclosure of new evidence from the Case 004 investigation related to TTD; problems with the inclusion and translation of 66 statements from the Documentation Center of Cambodia (**DC-Cam**); improper questioning practices when citing written records of interviews; and, objections related to the trial's scope of the trial. The Trial Chamber concluded the testimony of four people this week, but it decided to cancel next week's proceedings to provide additional time for the Parties to review the newly disclosed evidence from Case 004.

## II. SUMMARY OF WITNESS TESTIMONY

This week, the Trial Chamber heard the testimony of one Civil Party and three witnesses. Although the Chamber decided to postpone next week's hearings on TTD due to the late introduction of new documentary evidence, the Civil Party and one witness provided the first

testimonies in relation to the Dam worksite in DK's Northwest Zone. The two witnesses who each appeared on 29 and 30 July testified about the Kampong Chhnang Airport construction site and the First January Dam worksite, respectively.

## **A. Summary of Testimony by Civil Party Sen Sophon**

On 27 and 28 July, the Trial Chamber heard the testimony of 55-year-old Civil Party Sen Sophon, who currently lives in Banteay Meanchey Province. For four sessions, the Civil Party testified about his experiences at the Trapeang Thma Dam worksite, specifically at Spean Sraeng and Phnom Leap, starting in 1977. He provided insight about the working and living conditions there and his escape in 1978, and he concluded with a victim impact statement.<sup>2</sup>

### **1. Experiences at the Trapeang Thma Dam Worksite**

Before April 1975, Sen Sophon lived with his parents and three younger siblings in Phnom Penh, where his father was stationed as a lieutenant. On 18 April 1975, Sen Sophon and his family were evacuated from Phnom Penh to Kandal Province, where he farmed rice until he was assigned to work in a mobile unit at TTD in May 1977. By this date, he testified, the Dam was nearly finished.

The Civil Party stated that several thousand people manually constructed the Dam, but he himself worked in a rather small unit of 70 people at a segment of TTD located in Phnom Srok District, within Sector 5 of the Northwest Zone. He testified that work began at 4:00AM when the unit chief rang a bell to wake up workers and instruct them to carry earth until the lunch break at 11:30AM. The unit chiefs assigned tasks, and Sen Sophon said he did not know one worker who dared to refuse the work. Moreover, he testified that those who did not wake up at 4:00AM were whipped and accused of being lazy. Depending on physical strength, workers had to dig between three and four cubic meters of soil per day. Together with the 10 people of his unit's subgroup, Sen Sophon had to meet a working quota of three cubic meters, which they were rarely able to achieve. As a consequence, they were not allowed to rest or eat dinner until 10:00PM. He testified that workers at TTD did not have enough time to rest, as they had to work up to 16 hours per day, starting at 4:00AM. At the worksite, the cooperative chief distinguished between 'new' people and 'base' people, with only the former, who were largely evacuees from Phnom Penh, required to work. 'New' people were given gruel, while rice was reserved for 'base' people.<sup>3</sup> Sen Sophon testified that there was no medicine available and insufficient food. He stated that he witnessed one person dying of starvation, and he also recalled that the water provided was unclean and insufficient. Sen Sophon recalled witnessing a marriage ceremony when he was working at Spean Sraeng. The unit chief selected 10 to 20 couples and forced them to marry in a group ceremony, even though they did not know each other beforehand. Despite these conditions, not one member of his group left to go home without permission. The Civil Party feared that Angkar would kill him for disobeying if he were to leave the worksite.

Sen Sophon stated that Ta Val was known as the overall leader of TTD, and the Civil Party believed that Val was chief of Sector 5.<sup>4</sup> Although the Civil Party initially said that he did not know why the Dam was constructed, he later expressed that his unit was told that TTD was completed to limit flooding.

### **2. Purges at Worksite and Fate of Civil Party's Family**

The Civil Party testified that, in 1978, cadres from the Southwest Zone began to arrive at TTD, and Yeay Chaem soon replaced Ta Val as chief of the worksite. Sen Sophon testified that she was "crueler" than Val, as he considered her responsible not only for the arrest of Val, but also for the arrest and killing of his own parents. However, he confirmed to Defense Counsel that he never personally saw Ta Val or Yeay Chaem, but only heard their names.<sup>5</sup>

In 1978, when Sen Sophon was working at Phnom Leap, he was warned that he would soon be taken away and killed. He decided to escape, even though he feared Angkar's punishment for disobeying orders. One week later, he ran into an older woman who used to live near his family; she told him that his parents were taken away and killed in late 1977 or early 1978.

### **3. Civil Party Victim Impact Statement**

Sen Sophon explained that his family had faced hardship since their evacuation from Phnom Penh in April 1975, and he stated that they lost everything and lacked food and clothes. He began to cry as he described his feelings of desperation and hopelessness following the loss of his family members. He expressed that he, like "every Cambodian," is "still in the same condition" today. Sen Sophon closed his statement by urging the Court to judge the acts of the Accused during the reign of DK, prosecute them, and sentence them to life imprisonment.<sup>6</sup>

#### **B. Summary of Testimony by Witness Mam Soeum**

The second person to testify this week was 59-year-old Mam Soeum, also known as Heng Samout, a farmer from Battambang Province. The Witness testified about his experiences at Trapeang Thma Dam, including the working conditions at the site, as well as the arrests, purges, and forced marriages that took place there.<sup>7</sup>

##### **1. Working Conditions at Trapeang Thma Dam**

The Witness testified that he was sent to work at TTD for most of the year 1977. At the worksite, laborers were required to complete a daily quota to dig two to three cubic meters of soil each. Mam Soeum testified that working hours ranged from eight to 15 hours per day. This work, he explained, was accomplished entirely through manual labor, with no excavators, tractors, or other heavy machinery provided for assistance. The Witness recalled insufficient food rations and problematic hygiene practices. For every meal, workers had to share cans of rice or eat diluted gruel. Many workers suffered from dysentery, and some died from infection. The Witness testified to a lack of medical treatment, contributing to deaths and worsening the severity of infections and diseases. Ill workers were only sent to hospitals if they received special permission from the worksite.

Mam Soeum recalled meetings held at the worksite, during which unit chiefs described work plans and criticized "inactive" workers. From these meetings and his experiences at TTD, the Witness understood that he was building the Dam in order to develop irrigation and improve agriculture. The Witness discussed the *kong karoney*, the "Special Case Unit," to which "stubborn," "inactive," and "bad" workers were sent as punishment, to work under more rigorous conditions than in their previous groups.

##### **2. Arrests and Purges at the Worksite**

Mam Soeum testified that he heard about, but did not personally witness, the arrests of three "17 April people" in his working unit at TTD. He was told that these three workers were arrested and trucked away with no justification, despite having been some of the more "active" workers in his unit. After the alleged arrests, the Witness never saw these workers again.

In addition to arrests, the Witness also testified that purges of the leadership took place after cadres from the Southwest Zone arrived at TTD and replaced previous Northwest Zone cadres and unit chiefs. According to the Witness, chiefs from various units started to disappear, never to be seen again, leaving ordinary workers afraid for their lives. The Witness recalled that the chief of his mobile unit was Ta Ngao, who worked under the overall chief of TTD, Ta Val. Ta Ngao, the Witness stated, received instructions from his superiors and relayed them to the workers during regular unit meetings. Mam Soeum described the disappearances of both Ta

Ngao and Ta Val after cadres from the Southwest Zone arrived at TTD and initiated purges in late 1977. The Witness explained: "We were afraid that when our leader was arrested, we would be next." Consequently, the Witness fled the worksite and returned to his original home.

### **3. Forced Marriage**

Mam Soeum testified that he witnessed marriages and group wedding ceremonies of people who were "mostly forced" to marry strangers or people whom they did not love. He explained that, because the wedding ceremonies took place at night, some newlyweds were not sure whom they had just married and confused random strangers for their spouses in the darkness. He recalled the dissatisfaction and unhappiness among those who had wed.

### **4. Witness Demeanor and Credibility**

The Witness gave clear responses to questions throughout his testimony. He indicated when a question was unclear to him, or when he had no knowledge on a certain topic. His answers were generally direct, and he provided detailed examples in response to most questions.

### **C. Summary of Testimony by Witness Kheun Vat**

The second witness to testify this week was 65-year-old Kheun Vat, a former member of the Communist Party of Kampuchea and, later, a worker in the rice paddies near the Kampong Chhnang Airport construction site (**KCA**). She testified about her marriage to a man who was later arrested for alleged links to the Vietnamese, her working conditions at the Airport site, and a visit by Khieu Samphan and Ta Mok to the KCA.<sup>8</sup>

#### **1. Experiences Prior to Work at Kampong Chhnang Airport**

In 1970, Kheun Vat was part of the Southwest Zone army under Division 502 – the codename of the DK Air Force. She became a member of the CPK, but she claimed she did not know anything about the Party when she joined. In 1975, her 100-woman unit was reassigned to clean Pochentong Airport in Phnom Penh, in order for Chinese experts to work at the airport and train Khmer Rouge pilots.

In 1977, Kheun Vat was sent to Kampong Chhnang to marry a man named Laot, who worked in Division 11 as a driver for the Chinese technicians who were measuring land at the KCA. She did not know her husband before the wedding and only learned his name just before the ceremony. The ceremony was held at the Kampong Chhnang town hall, and Kheun Vat and her husband were the only couple married at the time. Kheun Vat stayed in Kampong Chhnang for a week following the wedding. She worked as a cook for the Chinese guests at the Airport site during the day and stayed with her husband each night. Afterwards, the couple was instructed to return to their separate places of work. The Witness told the Court that she did not love Laot or want to marry him, but had to follow Angkar's instructions.

Only a week after her return to Pochentong Airport, a friend told Kheun Vat that her new husband had been arrested and taken away due to alleged links to the Vietnamese. The Witness' superiors did not tell her why her husband was taken away, and she did not have the courage to question her husband's disappearance, for fear of risking her own life. After her husband's arrest, "trust was removed" from her, and she was reassigned from Pochentong to the KCA. She did not receive official documentation that she was dismissed, but her rights and status as a soldier were removed.

#### **2. Experiences at the Kampong Chhnang Airport Construction Site**

Kheun Vat first arrived at the KCA in July 1977. She worked with 90 other women in a rice

paddy at the lower part of the river, approximately one kilometer from the worksite. When she arrived at the site, she witnessed soldiers pushing carts and Chinese workers installing electrical wires, laying cement, and installing explosives to break rocks in order to build a five-story building. During the day, soldier-laborers worked on the construction of the airport, and, in the evening, they grew vegetables for other units. Elderly workers who could not withstand the manual labor were instead responsible for producing fertilizer. When Kheun Vat worked at the rice fields, she was instructed by her chief to oversee a group of older, married women to produce fertilizer. She woke up each day at 5:00AM to receive her work instructions in a daily meeting led by a woman named Maly, who was a “newcomer” picked to relay orders from above. After receiving orders, she went to the rice fields at approximately 7:00AM. Dinner was served around 5:00PM, but she sometimes had to make fertilizer, so she worked after dinner until 8:00PM. Lunch food rations included small amounts of rice, sour soup with morning glory or water lily, and sometimes fish. Kheun Vat had to drink water to fill her stomach because there was not enough food. Water was not boiled, and workers usually had some kind of illness. She recalled that five to ten workers became sick each day but were only sent to the hospital if they could not work. A high number of workers fell ill and died from fatigue and malaria.

Kheun Vat testified that Met was the chief of Division 502 and of the KCA, Lvey was Met’s deputy, and Thouk was Lvey’s assistant.<sup>9</sup> She claimed that Division 502 was in charge of the construction work, together with the Chinese technicians. Kheun Vat told the Court that Sokun, a fellow member of Division 502 who was working with the Chinese surveyors, saw Khieu Samphan and Ta Mok visit the worksite in the company of Lvey and Thouk. Kheun Vat referred to Khieu Samphan as “Second Uncle,” and she clarified she did not personally witness the visit.

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

Throughout her appearance, Kheun Vat responded to questions confidently. Her responses were consistent throughout the examination by each Party. She repeatedly confirmed her statements, and she did not evade any questions regarding her own role or responsibility during the DK period.

#### **D. Summary of Testimony of Witness Oum Chy**

For three sessions on 30 July, Oum Chy testified about his experiences as the leader of a mobile unit assigned to a section at the First January Dam worksite. He provided details about working conditions, the treatment of ethnic minorities, and forced marriages at the Dam site.<sup>10</sup>

##### **1. Experiences at First January Dam Worksite**

Oum Chy served as a mobile unit chief at the First January Dam worksite, with roughly 500 people under his command. The Witness recalled that the Dam was built in order to irrigate rice fields with a goal of three yields of rice per year. His unit specifically worked on canals connecting to the Dam, in coordination with DK policy calling for the development of irrigation networks. He noted that any extra rice produced was taken away by Angkar to help the military, although he did not know where exactly the rice was taken.

The Witness recalled that workers built shelters along the Dam’s embankment, and that they were not allowed to go home or visit their families unless there was either a resting day or a family emergency. People did not volunteer to work at the Dam, but they had to go, or else they would face being sent to the Commune for re-education. Oum Chy recalled that, every day, a whistle was blown at 4:00AM for the workers to get up and begin work, which would last until 5:00PM. The typical workday allowed for a two-hour lunch break, as well as a 15-minute break in the morning and another in the afternoon. On days with greater work assignments, laborers had to work into the night until 11:00PM. Oum Chy stated that workers in his unit were

not happy with the schedule, as they felt it was too tiring, but they did not dare voice their protests. The Witness testified that there were sometimes accidents at the worksite, when rocks fell onto workers. Those who were injured were taken away, and the Witness had no knowledge of what happened to them afterwards. Additionally, an estimated five to ten workers fell sick per day and were taken to the hospital. He recalled that medical staff was comprised of poorly trained, unqualified teenagers. Oum Chy additionally described the lack of sanitation, with people using the same water to bathe and to drink. Workers were given rice for lunch and gruel for dinner. They were normally given soup with morning glory and small fish, and they were occasionally given pork.

In corroboration with the testimony of prior witnesses related to the First January Dam worksite, Oum Chy also confirmed hearing that the nearby Baray Choan Dek pagoda was used as a security center. He testified that the security center was eventually moved to Kampong Thma market,<sup>11</sup> and that he later attended meetings at the pagoda. He recalled seeing bloodstains in the meeting and dining halls and smelling the lingering odor of corpses.

## **2. Treatment of Ethnic Minorities and Forced Marriages**

As with other testimony thus far in Case 002/02, Oum Chy's examination previewed upcoming trial segments on the treatment of targeted groups and forced marriage. He recalled that most of the "new people" evacuated from Phnom Penh and working at the Dam site were ethnically Chinese or Cham Muslims. He estimated that approximately 20 families of "new people" lived in his village, and that five of these families were purged. Cham Muslim workers who strictly adhered to their religious practices did not eat pork when it was served for meals, eating salt instead. Other Cham workers chose to eat pork due to insufficient food rations.

Oum Chy testified that marriages did not physically occur at the First January Dam worksite. Rather, they occurred in commune halls, pagodas, and other locations. Village chiefs determined marriage pairings, and Oum Chy testified that people were only assigned to marry individuals from their same social group. As such, "new people" married "new people," "base people" married "base people," and Chams married Chams.

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

Oum Chy's testimony lacked any internal contradictions. He was able to recall specific dates, as well as identify individual names. When asked about topics of which he had no knowledge, he clearly stated that he did not know rather than engage in speculation. His statements were consistent throughout his entire testimony and during examinations by all of the Parties.

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

Throughout the week's hearings, the Defense Teams raised a variety of legal and procedural issues: the OCP's late disclosure of new evidence from the Case 004 investigation related to TTD; problems with the inclusion and translation of 66 statements from DC-Cam; questioning practices when citing prior witness and Civil Party statements; and, lastly, objections related to the trial's scope of the trial.

### **A. OCP's Late Disclosure of Case 004 Documents Related to Trapeang Thma Dam**

At the outset of proceedings on Monday, 27 July 2015, the President noted the OCP's disclosure of 54 statements and Civil Party applications from the investigation in Case 004 on 24 July. Because the evidence related to TTD, the trial segment that the Chamber sought to commence this week, discussions ensued between the Parties on whether the Court should wait until the Parties had an opportunity to review the documents before commencing the segment.<sup>12</sup> Assistant prosecutor Dale Lysak stated that two types of documents had been

disclosed: firstly, five recent OCIJ interviews from Case 004 relevant to TTD, and secondly, 47 Civil Parties applications from Case 004 that contain reference to TTD. Mr. Lysak explained that, although the total number of disclosed pages exceeded 500, only one or two pages of the Civil Party applications were relevant to TTD. He also explained that many of the applications' references to TTD were rather insignificant or only mentioned hearing of the Dam instead of actually working there. The Prosecutor explained that Civil Party applications received lesser priority in evidentiary review and were therefore disclosed only now, although he recognized that the timing of the disclosure was "far from ideal." The Civil Parties made only brief comments on the disclosure, noting their desire to move forward with the trial and deferring to the Trial Chamber to make a decision.

Defense Counsel Victor Koppe recalled that the disclosure was the thirteenth since the first one in November 2014, resulting in a total of 8,344 pages of new evidence on the case file. Counsel voiced his doubt as to why particular documents took so long to file, and he highlighted that two documents originated from 2008 and 2013. He referred to Mr. Lysak's "categorization as 'far from ideal'" as "quite the understatement." Counsel insisted that future Parties in Cases 003 and 004 deal with the Civil Party applications in those trials, as their experiences were not included in Case 002. He noted that the Judgment in Case 002/01 relied on Civil Party applications to form "a very important part of the used evidence," even though the applications cited thus far in Case 002/02 displayed a lot of defects, and he therefore urged the Chamber to recognize the necessity of reviewing such documents if they are to be entered into the case file. Counsel Koppe requested the Chamber to either dismiss the request for disclosure of new evidence or postpone the scheduled testimony on TTD. Counsel for Khieu Samphan, Anta Guissé, added that Prosecutor Lysak's claim to have reviewed all 54 documents in one afternoon takes "the work of the Defense somewhat lightly." She explained how her team had to read, crosscheck, and analyze each document, and she insisted upon her role as a defense lawyer. She requested one week to review the documents.

After an adjournment to deliberate on the matter, the Chamber decided to postpone next week's scheduled testimonies by one week, to begin on 10 August, in an effort to allow the Parties additional time to review the new documents. The President also noted that, following prior practice, none of the newly disclosed documents have been admitted to the case file but require Parties to file an application satisfying the requirements of Internal Rule 87 to do so.<sup>13</sup> The President then announced that the Chamber would proceed with this week's pre-scheduled testimony – of Civil Party Sen Sophon and Witness Mam Soeum – related to TTD worksite, as the witnesses had already traveled to Phnom Penh from "a considerable distance."

## **B. Defense Complaints About Inclusion and Translation of DC-Cam Documents**

On Tuesday, 28 July, Defense Counsel Victor Koppe sought to use a document from DC-Cam in his examination of Civil Party Sen Sophon, but he first raised concerns over the failure to translate a number of DC-Cam documents, which the OCP had placed on Zylab, the information and document management software operated by the ECCC. Counsel Koppe, with support from Counsel Anta Guissé, complained that the 66 documents were disclosed only in mid-June, even though they dated from much earlier.<sup>14</sup> Counsel Koppe explained he was not solely concerned about admissibility but even more about the delay in translation. Judge Jean-Marc Lavergne then warned Mr. Koppe to make his requests more precise if the issue was only about translation. Mr. Koppe and Ms. Guissé reiterated their concern that the ITU had not translated the majority of these documents, which, they stressed, were highly relevant to upcoming testimony on the Trapeang Thma Dam worksite. Ms. Guissé argued that her team had consistently warned that the delay in translation negatively impacted its ability to assess documents, and she noted her surprise that the Chamber had already admitted such documents as evidence if they had not yet been translated into all three official languages of the Court. Prosecutor Travis Farr notified the Trial Chamber that a summary annex of 55 of the documents was filed in June 2014 and translated, and that the Parties therefore had time

to review which documents they required. He later clarified that a total of 790 pages of DC-Cam documents still required translation. The President announced an end to this matter, thanking the OCP, and noting, “The Trial Chamber will take this into consideration and use it in the decision at a later stage.”

### **C. Proper Use of Prior Statements in Relation to Questioning Practices**

This week, there were discussions about the practice of referring to prior statements during witness and Civil Party examinations. On Monday the 27<sup>th</sup>, Counsel Victor Koppe objected to national deputy prosecutor Seng Leang’s question after he read out the Civil Party’s prior statement. Counsel noted that the Trial Chamber previously allowed such a practice, but he asked the Judges to employ the Supreme Court Chamber’s (**SCC**) guidelines, from the recent appeals hearings, which required open questions rather than “merely reading out passages of their prior statements to them and then seeking confirmation thereof.”<sup>15</sup> Mr. Koppe argued that Seng Leang read out the Civil Party’s previous statement and then put questions in order to seek confirmation. International prosecutor Joseph Andrew Boyle responded that this practice was conducted in accordance with the Trial Chamber’s guidelines and that the Trial Chamber had discretion to decide the conduct of its hearings. After the Judges deliberated, however, Judge Jean-Marc Lavergne announced the Chamber’s decision to follow the SCC’s practice to allow reading of statements only after open questions have been asked, “for limited reasons such as refreshing a Civil Party or witness’ memory or to test their credibility.”

The next day, Mr. Koppe objected to Prosecutor Travis Farr’s reading of Witness Mam Soeum’s OCIJ statement on similar grounds. Counsel Anta Guissé supported her colleague’s objection, stating, “It’s only if the witnesses do not remember what was written in previous statements that you can ask them about it. It would be preferred to ask open-ended questions before putting words in their mouth by reading what they wrote in their previous statements.” However, the Prosecutor claimed that reading the prior statement was essential to draw the Witness’ attention to the topic. The President ruled, however, “All parties are instructed to ask open questions to the witnesses and Civil Parties...and if [the responses] are contradictory to their previous statements, then follow-up questions can incorporate extracts of pieces of previous statements in order to clarify the matter.” He categorized the reading out of statements in search of confirmation as “a form of a leading question.”

On Wednesday the 29<sup>th</sup>, the OCP objected twice to Counsel Koppe’s questions to Witness Mam Soeum on similar grounds, and the President aggressively reminded Counsel to first put open questions to witnesses. On Thursday the 30<sup>th</sup>, the President and Defense Counsel interrupted prosecutors twice when they read statements without first putting open questions.

### **D. Defense Objections Related to the Scope of Case 002/02**

Early on in Witness Oum Chy’s examination, Defense Counsel Victor Koppe raised a procedural question concerning his testimony’s relevance to the scope of the segment on the First January Dam. After Oum Chy explained that he had technically worked on the neighboring Sixth January Dam, Mr. Koppe argued that the two dams were in fact two different worksites, since the First January Dam had already been completed by the time work began on the Sixth January Dam in early 1978. After the international prosecutor noted that this issue had already been discussed and that the Case 002 Closing Order specifically notes the linkages between the two dams, the President referred to paragraph 352 of the Closing Order as he overruled Counsel Koppe’s objection.<sup>16</sup> Since the two dams were connected, the President explained that they are both considered part of the same worksite, along with the linked canals, since they were constructed for the same purpose of irrigating nearby rice fields. Soon thereafter during the OCP’s examination of Oum Chy, Mr. Koppe again raised an objection related to scope. When international prosecutor Vincent De Wilde D’Estmael asked the Witness about a security center at the nearby Baray Choan Dek pagoda, Counsel Koppe



objected and argued, “There is no connection between the First January Dam and the pagoda. It is outside the scope of this trial segment. Also considering the time, I think the Prosecution should move on.” The Prosecutor responded clearly that the issue had already been discussed and that the Chamber had already determined questions on the security center were related to the Dam worksite.<sup>17</sup> The President confirmed the Prosecutor’s reasoning and overruled the objection.

#### IV. TRIAL MANAGEMENT

This week, the Trial Chamber successfully heard the testimonies of one Civil Party and three witnesses throughout the four days of proceedings. While there were few distractions and translation errors, there were delays in hearing testimonies because of lengthy exchanges between the Parties regarding the introduction of documents and subsequent deliberation by the Bench. The Judges decided to cancel next week’s hearings to give Parties time to review the new documents.

##### A. Attendance

Nuon Chea waived his right to be present in the courtroom and observed proceedings from the holding cell. Although he arrived late during proceedings on Monday, Khieu Samphan was present in the courtroom during all sessions throughout the week.

**Judge Attendance:** All judges were present throughout this week, with the exception of Judge Claudia Fenz, who was unavailable due to “urgent personal matters.” The Bench deliberated beforehand and selected Judge Martin Karopkin to replace Judge Fenz until her return.

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

**Parties:** All Parties were properly represented in the courtroom throughout this week. National Civil Party Lead Co-Lawyer Pich Ang returned to the courtroom after a long absence, since February of this year.

##### Attendance by the public:

| DATE                    | MORNING  | AFTERNOON  |
|-------------------------|--|--|
| Monday<br>27/07/2015    | <ul style="list-style-type: none"> <li>▪ 79 villagers from Bati District, Takeo Province</li> <li>▪ 20 students from Paññāsāstra University of Cambodia, Phnom Penh</li> <li>▪ 10 foreign observers</li> </ul> | <ul style="list-style-type: none"> <li>▪ 137 villagers from Kaoh Andaet District, Takeo Province</li> <li>▪ Three foreign observers</li> </ul> |
| Tuesday<br>28/07/2015   | <ul style="list-style-type: none"> <li>▪ 85 villagers from Treang District, Takeo Province</li> <li>▪ 25 foreign observers from Star Kampuchea Organization</li> </ul>   | <ul style="list-style-type: none"> <li>▪ 75 villagers from Treang District, Takeo Province</li> <li>▪ Three foreign observers</li> </ul>       |
| Wednesday<br>29/07/2015 | <ul style="list-style-type: none"> <li>▪ 125 students from Royal University of Law and Economics, Phnom Penh</li> <li>▪ Eight foreign observers</li> </ul>   | <ul style="list-style-type: none"> <li>▪ 104 villagers from Treang District, Takeo Province</li> <li>▪ Four foreign observers</li> </ul>       |

|                        |   |  |
|------------------------|---|--|
| Thursday<br>30/07/2015 | <ul style="list-style-type: none"> <li>▪ Approximately 150 students from Royal University of Law and Economics, Phnom Penh</li> <li>▪ Nine foreign observers</li> </ul> | <ul style="list-style-type: none"> <li>▪ Approximately 140 Villagers from Treang District, Takeo Province</li> <li>▪ One foreign observer</li> </ul> |
|------------------------|---|--|

## B. Time Management

This week, the Trial Chamber completed its planned schedule to hear the testimonies of one Civil Party and three witnesses, yet the introduction of documents from the Case 004 investigation interrupted normally scheduled sessions (see III.A). On Monday, 27 July, lengthy discussion – mainly between assistant prosecutor Dale Lysak, Defense Counsel Victor Koppe, and Judge Jean-Marc Lavergne – regarding the new documents lasted nearly one hour. The Judges spent the full morning deliberating on the matter. When proceedings resumed in the afternoon, President Nil Nonn announced that the Chamber would proceed to hear from 2-TCCP-220 and 2-TCW-858 on the Trapeang Thma Dam worksite, considering the “significant practical difficulties” the Chamber would experience if it had to reschedule their appearances. The President also announced that, given the number of recent disclosures, the Court would cancel hearings next week to provide time for the Parties to review the documents. Hearings will therefore resume on Monday, 10 August. Nonetheless, the Chamber sought to move efficiently through the four witness appearances this week. For example, during examination of Witness Mam Soeum, the President refused Civil Party lawyer Sin Soworn’s request for additional time, and it granted just five minutes of extra time to Civil Party Lawyer Lor Chunthy to conclude his examination of Witness Oum Chy. The President especially emphasized the need for the Parties to shorten and focus their examinations of Witness Oum Chy on Thursday, 30 August. To ensure completion of this witness’ testimony, which only commenced at 11:00AM on Thursday, the Chamber shortened the day’s lunch break and began the afternoon session a half-hour early, at 1:00PM.

## C. Courtroom Etiquette

There was slight tension in the courtroom during the week regarding the newly disclosed documents as well as concerns over proper modes of questioning. On Tuesday, 28 July, Judge Lavergne was scrupulous in following up on the Defense’s requests to use certain documents during questioning, telling Victor Koppe, “My ears must be hallucinating...in the future you need to be clearer in your requests,” in response to confusion over an already translated and admitted piece of evidence. During the same morning, Victor Koppe asked Civil Party Sen Sophon a particularly controversial question concerning reparations in regard to his application’s statement that King Sihanouk was responsible for his family’s suffering. In response, Civil Party Lead Co-Lawyer Marie Guiraud called for more seriousness and claimed that Victor Koppe’s “only purpose is to put on a show.” President Nil Nonn grew visibly irritated and raised his voice first with Defense Counsel Victor Koppe when he failed to adhere to the ruling on questioning practices (see III.C), and, later, with national deputy Co-Prosecutor Seng Leang when he repeatedly asked hypothetical questions to Witness Oum Chy during Thursday’s hearing. Otherwise, the temperament within the courtroom was relatively orderly for the remainder of the week.

## D. Translation and Technical Issues

Several mistranslations from Khmer to English occurred throughout the week. For example, on Tuesday, the Civil Party explained that he worked at “Spean Reap.” He grew agitated as Defense Counsel Anta Guissé repeatedly asked the Civil Party the name of a bridge at his location, presumably because Counsel did not realize *spean* means “bridge” in Khmer, and because the interpretation did not clarify the matter. Also on Tuesday, the President had to restate the Chamber’s ruling to prohibit a question after the interpreters incorrectly translated

the ruling as, “The Trial Chamber needs to hear the response,” rather than, “The Trial Chamber *does not need to* hear the response.” On Thursday, the translator interpreted “natural herbs” in Khmer as “rabbit drops” in English, and the translator also stated “1970,” instead of “1977,” leading to some confusion. There were no significant technical errors this week, although an alarm bell started ringing and briefly interrupted proceedings during Monday’s fourth session.

**E. Time Table**

| DATE                                       | START | MORNING BREAK | LUNCH         | AFTERNOON BREAK          | RECESS | TOTAL HOURS            |
|--|-------|---------------|---------------|--------------------------|--------|------------------------|
| Monday<br>27/07/2015                       | 9:02  | 10:07 – 11:04 | 11:06 – 13:10 | 14:42 – 14:59            | 15:53  | 3 hours and 33 minutes |
| Tuesday<br>28/07/2015                      | 9:00  | 10:14 – 10:31 | 11:17 – 13:35 | 14:43 – 15:02            | 16:07  | 4 hours and 13 minutes |
| Wednesday<br>29/07/2015                    | 9:04  | 10:15 – 10:32 | 11:32 – 13:33 | 14:40 – 15:03            | 15:52  | 4 hours and 17 minutes |
| Thursday<br>30/07/2015                     | 9:12  | 10:13 – 10:31 | 11:45 – 13:00 | 14:17 – 14:27            | 15:59  | 5 hours and 4 minutes  |
| Average number of hours in session         |       |               |               | 4 hours and 14 minute    |        |                        |
| Total number of hours this week            |       |               |               | 16 hours and 57 minutes  |        |                        |
| Total number of hours, day, weeks at trial |       |               |               | 314 hours and 24 minutes |        |                        |
| <b>83 TRIAL DAYS OVER 25 WEEKS</b>         |       |               |               |                          |        |                        |

\*This report was authored by Davis Chhoa, Lillian Gill, Melanie Hyde, Judith Kaiser, Hout Pheng Ly, Daniel Mattes, Joy Scott, Lina Tay, Kenneth Tea, Vichheka Thorng, 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> Paragraphs 323 to 349 of the Case 002 Closing Order present the allegations regarding the Trapeang Thma Dam worksite.

<sup>2</sup> Civil Party SEN Sophon (2-TCCP-220) was questioned in the following order: President NIL Nonn; national Civil Party lawyer HONG Kimsuon; national deputy prosecutor SENG Leang; international assistant prosecutor Joseph Andrew BOYLE; international co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>3</sup> Sen Sophon explained to Defense Counsel Victor Koppe that the authorities could distinguish 'new' people from 'base' people by their accent, as the urban evacuees spoke Khmer in a noticeably different manner.

<sup>4</sup> In fact, the Case 002 Closing Order finds that Val, *alias* Aok Haun, was a Sector 5 CPK cadre who was chief of the Sector's mobile work unit and oversaw the Dam's construction. Sector 5 secretary, however, was Man Chun, *alias* Hoeng. See Closing Order paragraphs 329-331.

<sup>5</sup> "Yeay Chaem" refers to Ms. IM Chaem, who was first a cadre in the Southwest Zone's Tram Kak District before she moved to the Northwest Zone and allegedly oversaw purges of cadres there after she took over as chief of Preah Net Preah District, which encompassed the Trapeang Thma Dam Worksite. In March 2015, amid his investigation of Case 004, International Co-Investigating Judge Mark Harmon charged IM Chaem *in absentia* with crimes against humanity and violations of the 1956 Cambodian Penal Code.

<sup>6</sup> Defense Counsel Victor Koppe quoted a portion of Sen Sophon's Civil Party application in which the Civil Party had listed the late King Norodom Sihanouk as someone responsible for the sufferings listed in his application. When asked about it at the 28 July 2015 hearing, Sen Sophon clarified his opinion, as his father had once taught him that King Sihanouk had introduced the CPK and communism to the country in order to overthrow the Lon Nol regime. See section IV.C for more on the Parties' exchange of objections regarding Counsel's follow-up questions.

<sup>7</sup> Mr. MAM Soeum (2-TCW-858) was questioned in the following order: President NIL Nonn; international senior assistant prosecutor Travis FARR; national senior deputy Co-Prosecutor SONG Chorvoin; national Civil Party lawyer SIN Soworn; international co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>8</sup> Ms. KHEUN Vat (2-TCW-866) was questioned in the following order: President NIL Nonn; international senior assistant prosecutor Travis FARR; national Civil Party lawyer VEN Pov; Judge Jean-Marc LAVERGNE; international co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

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<sup>9</sup> Mr. SOU Met, *alias* SOU Samet, was formerly a suspect in the ongoing investigations in Case 003, prior to his death in October 2013. Following the March 2015 charging of MEAS Muth, another suspect in that case, the Court definitively confirmed Sou Met's prior status as an additional suspect in the case. However, the Co-Investigating Judges also announced that his death "ha[d] the effect of extinguishing any criminal and civil action against him in Case 003 before the ECCC," and they therefore decided to dismiss the allegations against him. Nonetheless, the OCIJ can still make determinations on Sou Met's criminal responsibility for the crimes alleged in the OCP's Introductory Submission when it issues a closing order in Case 003. See Office of the Co-Investigating Judges, "Public Redacted Dismissal of Allegations Against Sou Met" (2 June 2015), D86/3.

<sup>10</sup> Mr. OUM Chy (2-TCW-926) was questioned in the following order: President NIL Nonn; national deputy Co-Prosecutor SENG Leang; international senior assistant prosecutor Vincent DE WILDE D'ESTMAEL; national Civil Party lawyer LOR Chunthy; international co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>11</sup> Defense Counsel Anta Guissé confronted Oum Chy with the testimony of Witness MEAS Layhou, who had previously stated that the security center had remained at Baray Choan Dek pagoda until the end of the DK regime. Oum Chy responded, "I am not evading the question. What I say is true. The security center was moved to Kampong Thma market. Some people may not have had knowledge of the security center." See CASE 002/02 KRT TRIAL MONITOR, Issue 20, Hearings on Evidence Week 17 (25-28 May 2015), pp. 1-3.

<sup>12</sup> See CASE 002/02 KRT TRIAL MONITOR, Issue 9, Hearings on Evidence Week 6 (16-19 February 2015), pp. 6-7; CASE 002/02 KRT TRIAL MONITOR, Issue 11, Hearings on Evidence Week 8 (3-5 March 2015), pp. 3-6; CASE 002/02 KRT TRIAL MONITOR, Issue 13, Hearings on Evidence Week 10 (16-19 March 2015), p. 5; CASE 002/02 KRT TRIAL MONITOR, Issue 15, Hearings on Evidence Week 12 (30 March - 3 April 2015), p. 1, p. 7; *and*, CASE 002/02 KRT TRIAL MONITOR, Issue 21, Hearings on Evidence Week 18 (2-5 June 2015), pp. 6-7.

<sup>13</sup> Internal Rule 87 governs the admissibility of evidence, with Rule 87(4) specifically detailing how Parties can add evidence to the case file during the trial phase. The President's comment therefore indicates that Parties wishing to utilize evidence from the recent Case 004 disclosures will have to file Rule 87(4) admissibility requests. Rule 87(4), in the 9<sup>th</sup> Revision of the ECCC Internal Rules (January 2015), reads: "During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial."

<sup>14</sup> Mr. Koppe also asserted that the 66 documents had already received E3 reference numbers, which signify admissibility before the Trial Chamber. International assistant prosecutor Joseph Andrew Boyle was initially unable to confirm the admissibility of the documents but pushed back on the Defense's concerns, noting that DC-Cam documents have always been publicly available. The Trial Chamber decided to allow Counsel Koppe's request to use one of the DC-Cam documents in examining Civil Party Sen Sophon, as it already had an E3 number and was therefore, presumably, admitted.

<sup>15</sup> Supreme Court Chamber, "Directions on the Conduct of the Hearing" (17 June 2015), F26, p. 4, para. 2. See CASE 002/01 APPEALS KRT TRIAL MONITOR, Issue 1, First Set of Appeal Hearings (2-6 July 2015).

<sup>16</sup> Paragraph 352 of the Case 002 Closing Order states: "A series of canals were dug to irrigate the rice fields. The main artery was 20 metres wide leading to smaller canals of two to three metres wide. The 1st January Dam was linked by the main artery to a second dam known as the '6th January Dam'. The construction of the 1st January Dam started in late 1976 or early 1977 and was completed by the time the construction of the 6th January Dam started in early 1978."

<sup>17</sup> During the 25 May examination of Witness Meas Layhou, Counsel Koppe made a similar objection regarding Prosecutor Vincent de Wilde D'Estmael's question on Baray Choan Dek. At the time, the Prosecutor suggested that Mr. Koppe read the Case 002 Closing Order, which clarifies the OCIJ's determination that the pagoda was the security center and execution site for the dam worksite. 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 Case 002 severance decision's annex, included reference to the pagoda's function as a security center for the First January Dam worksite. See CASE 002/02 KRT TRIAL MONITOR, Issue 20, Hearings on Evidence Week 17 (25-28 May 2015), pp. 8-9.