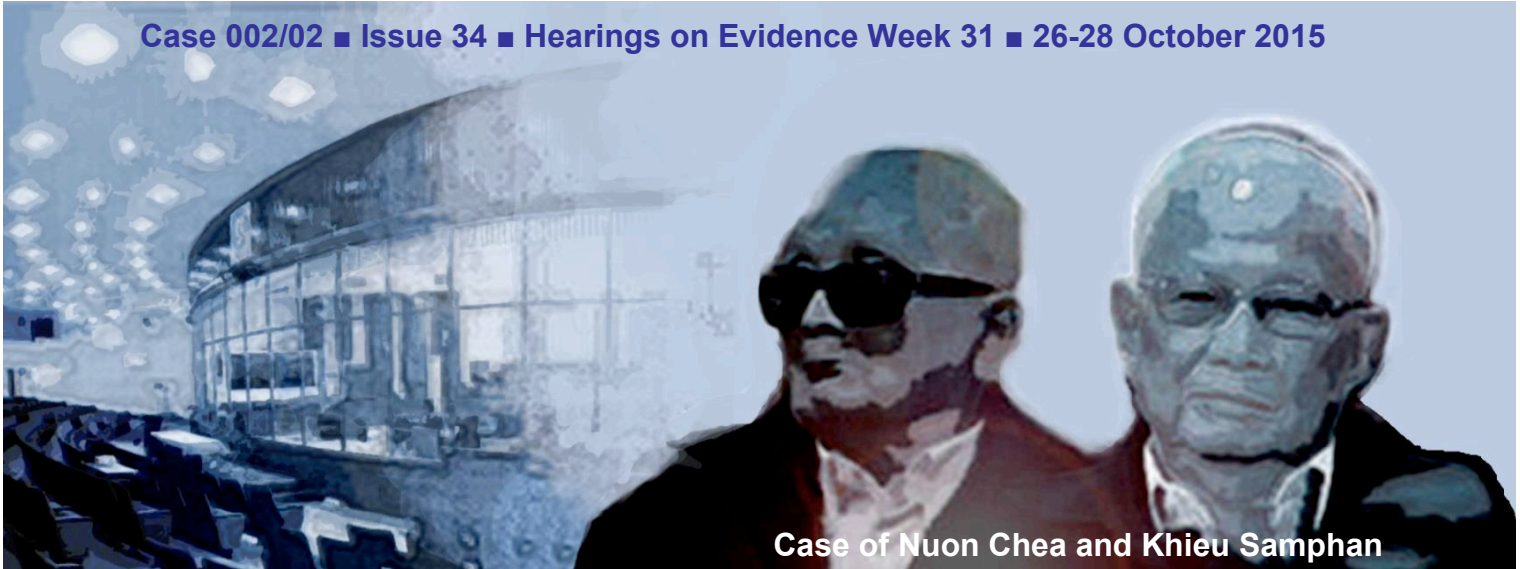


# KRT TRIAL MONITOR

Case 002/02 ■ Issue 34 ■ Hearings on Evidence Week 31 ■ 26-28 October 2015



## Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANDA Center for Human Rights and International Justice at Standard University  
(previously known as the UC Berkeley War Crimes Studies Center)

*“The victims were interviewed whether they were Chinese or Vietnamese.  
...When people said they were Vietnamese,  
they were killed at the pit.”*

- Witness Sean Sung

## I. OVERVIEW

This week, the Trial Chamber reconvened after two weeks of adjournment for both the Pchum Ben holiday and an additional recess to allow the Bench to consider ongoing procedural issues. The Chamber was first scheduled to hear the testimony of Witness 2-TCW-996, a witness stemming from the Case 004 investigation and requested by Nuon Chea in relation to the Trapeang Thma Dam worksite, however, after the Chamber's recent memorandum on the use of evidence from Cases 003 and 004, the Chamber decided to hear this witness entirely in closed session.<sup>1</sup> Summaries of this Witness' testimony will be included in a future report once redacted transcripts of the closed proceedings become available.<sup>2</sup> On Tuesday afternoon, the Chamber commenced hearing the first witness in a new segment of the trial covering the treatment of the ethnic Vietnamese minority, relating to charges of genocide and crimes against humanity encompassing deportation, extermination, murder, and persecution on racial grounds.<sup>3</sup> This witness, Mr. Sean Sung, primarily provided testimony about his observations of a massacre of ethnic Vietnamese people in Chi Kraeng District, Siem Reap Province in 1978. In addition, he recalled seeing the execution of the only Vietnamese woman from his mobile unit, who he said was killed and disemboweled. As other witnesses scheduled to appear later this week were unavailable, Sean Sung was the only witness to be heard in open court this week. In response to Defense requests for extra time to prepare for the 16-18 November appeals hearings before the Supreme Court Chamber in Case 002/01, the Trial Chamber adjourned Case 002/02 hearings from this Wednesday until 30 November.

## II. SUMMARY OF WITNESS TESTIMONY

Due to the Trial Chamber's decision to hear Witness 2-TCW-996 in closed session, the only witness to be heard in public hearings this week was Sean Sung. This witness was the first to appear in the trial segment on the treatment of ethnic Vietnamese during the Democratic Kampuchea (DK) regime.

## **A. Summary of Testimony by Witness Sean Sung**

Sean Sung, originally from Kampong Khleang Commune, Sout Nikum District, in Siem Reap Province, testified over four sessions on 27 and 28 October. He was the first person to appear in Case 002/02's trial segment on the treatment of the Vietnamese during the DK regime,<sup>4</sup> He testified about observing a massacre of ethnic Vietnamese people at Wat Khsach from a hiding place 30 meters away, and he gave specific evidence about the fate of Chantha, an ethnic Vietnamese woman from his unit, who was brutally killed in a separate but nearby location.

### **1. Mobile Unit and Experiences in DK prior to 1978**

Witness Sean Sung stated that, during the DK regime, he worked in a village mobile unit that harvested rice in Sangvaeuy and Yeang Communes, in present-day Siem Reap Province.<sup>5</sup> He testified that, at that time in Sangvaeuy Commune, "base" and "new" people lived freely together. He also stated that he was unaware of any targeting of former Khmer Republic servicemen or drawing up of lists of Vietnamese families living in the Commune. The sleeping quarters of his mobile unit were located close to Wat Khsach, in Yeang Commune, and he testified that the pagoda had no religious or spiritual purpose during the DK regime. Instead, it housed mobile unit workers and, later, detainees prior to execution.

### **2. Executions at Wat Khsach**

Sean Sung's testimony centered on a mass execution of Vietnamese people he claims to have witnessed during his time in the mobile unit in Sangvaeuy Commune.<sup>6</sup> He clarified that he did not see any arrests but merely witnessed people being held in Wat Khsach and heard from others that the victims had been brought there in oxcarts from other locations. The Witness described how, prior to the execution, the approximately 300 to 400 detainees were held in the pagoda's library. Anyone who admitted under questioning to being of Vietnamese background was killed, while those who identified themselves as Chinese were separated and eventually released.

The Witness testified that he and an older friend witnessed the killings while hiding in a pit about 30 meters from the execution site for approximately one hour. He said that a nearby kerosene lantern enabled he and his friend to clearly observe the killings. According to the Witness, those carrying out the executions were soldiers, armed with AK-47 guns<sup>7</sup> and wearing black clothing. He estimated that the soldiers were adolescents of approximately 15 years of age, with one older soldier overseeing the events. He stated that, after confirming the victims' Vietnamese heritage, the soldiers used bamboo clubs to execute them before throwing the corpses into pits. Sean Sung testified to seeing children amongst the victims, either killed in a similar fashion to the adults, or else thrown into the air and left to die in the pit with the other victims. The Witness estimated that he observed approximately 50 to 60 killings before fear overtook him, and he followed the lead of his companion to leave their hiding place. Sean Sung initially claimed not to remember who was responsible for the killings, but after the Civil Party lawyer read out his prior OCIJ statement, the Witness confirmed having testified that the village chief, named Soy, had told him the orders for executions had come from "the upper echelon."

### **3. Execution of an Ethnic Vietnamese Woman**

The Witness claimed to have personally known only one of the victims, a woman named Chantha, who he recalled was slightly younger than him. Sean Sung repeatedly referred to Chantha as a fellow member of his work unit; however, he also claimed that he met her because her grandparents were neighbors of his aunt in Yeang Village. It was not clear if these explanations were contradictory or complementary. The Witness testified that, although she was born in Cambodia and spoke Khmer without an accent, Chantha was known to be ethnically Vietnamese, as her grandparents had come to Cambodia from Vietnam.<sup>8</sup>

Sean Sung stated that, the day before the alleged executions, Chantha told everyone in their mobile unit that she would be transferred to study tailoring in Phnom Penh. The Witness testified that Chantha was instead transferred for execution at Wat Khsach. He described how her killing unfolded differently from the other executions. He testified that soldiers dragged her about ten meters away from the main execution pit. The soldiers then placed a scarf in Chantha's mouth, bent her head towards her legs, and cut open her back to remove her gallbladder. The soldiers then placed the gallbladder into a container of wine and consumed it at the site.<sup>9</sup> Chantha's killing was the most gruesome that the Witness could recall, and, when questioned by the Defense, he could think of no possible motive for this method.

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

Although repeatedly confirming the principal events of the alleged killings, Sean Sung's credibility was called into question when, under examination from the Defense Teams, he gave three different reasons for having been near the pagoda at the time of the executions and could provide no justification for his contradictory answers.<sup>10</sup> Sean Sung's testimony included further internal contradictions and was not always consistent with prior statements to OCIJ investigators.<sup>11</sup> The Defense Teams seized on the changes in his statements to discredit his entire testimony, especially after the Witness was unable to provide clarifications for the fuzziest details of his statements. They also pointed out apparent discrepancies between Sean Sung's testimony and the written record of interview of his older companion and fellow witness. Counsel Victor Koppe closed his examination by declaring, "Mr. Witness, I put it to you that you never yourself witnessed an execution, or the execution of Chantha." Although Sean Sung appeared neither defensive nor shaken, he firmly denied the accusation. Monitors noted that Sean Sung quickly corroborated evidence when it was presented to him to refresh his memory, whereas in other circumstances, he simply stated, "I cannot recall."

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

This week's proceedings opened with oral submissions on the continuing issue of how best to handle written records of interview (**WRIs**) from Cases 003 and 004 entering the trial. Separately, Defense Counsel Koppe objected to the presence of Witness Sean Sung's wife in the Court's public gallery on the grounds that she could potentially be called as a corroborating witness at a later time.

#### **A. Closed Sessions over Evidence Originating from Cases 003 and 004**

The Trial Chamber opened the week with submissions from all Parties on two issues: firstly, the scheduling leading up to the Case 002/01 appeals hearings (see IV.B), and secondly the continuing issue of the use of WRIs from Cases 003 and 004. Due to the sensitive nature of the second subject and a prior decision of the Trial Chamber on this matter, the Parties discussed this issue in closed session. In the afternoon, following the *in camera* submissions, the Trial Chamber announced that, in accordance with its 20 October decision on the confidentiality of WRIs originating from Cases 003 and 004, the next Witness, 2-TCW-996, would have to testify in closed session.<sup>12</sup> This prior decision had been issued in response to confusion amongst the Parties and possible violations of the Chamber's previous order on confidentiality, particularly during proceedings on 5 October 2015.<sup>13</sup>

#### **B. Victor Koppe's Objection to Presence of Sean Sung's Wife in the Public Gallery**

Early on in the testimony of Witness Sean Sung, Defense Counsel Victor Koppe made an objection regarding a woman sitting in the mostly empty public gallery of the courtroom. As she was nearly alone in the gallery (with the exception of two Court monitors), Counsel Koppe deduced she was Sean Sung's wife. He argued that the Chamber ask her to leave the public gallery, given that the OCIJ had previously interviewed the wife of Sean Sung, and it was

possible that the Defense would seek to call her to corroborate her husband’s evidence in the future.

After the Chamber established that the woman was indeed the wife of Sean Sung, Judge Claudia Fenz asked whether the woman was on any Party’s list of requested witnesses. When it became clear that she was not, Judge Fenz firmly explained that the Trial was a public affair, and that no one should be prevented from viewing proceedings unless they were expected to testify and the content of the present hearings directly compromised their future testimony. The OCP added that the couple had not been married at the time of the events in question, and that any knowledge that Sean Sung’s wife had of these events would therefore come from her husband anyways. After deliberating briefly, the Chamber overruled Counsel’s objection.

**IV. TRIAL MANAGEMENT**

After returning from two weeks of judicial recess, the Trial Chamber resumed its hearings in Case 002/02 this week by dealing with submissions regarding Defense requests for adjournment and the management of closed sessions to protect the confidentiality of the ongoing investigations in Cases 003 and 004. The Chamber also decided on upcoming scheduling leading up to the appeals hearings for Case 002/01.

**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.

**Judges Attendance:** All Judges were present in the courtroom throughout the week with the exception of national Judge You Ottara, who was replaced by national reserve Judge Thou Mony.

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

**Parties Attendance:** All Parties were properly represented in the courtroom this week. International Counsel for Khieu Samphan, Arthur Vercken, was absent on 26 October for personal reasons. National Civil Party Lead Co-Lawyer Pich Ang was absent in the afternoon session on 27 October.

**Attendance by the Public:** Due to the late notice regarding closed sessions on Monday, there were a large number of high school students waiting outside the public gallery throughout the day in case public hearings resumed. Furthermore, due to the lack of clarity regarding the expected length of Witness 2-TCW-996’s testimony, members of the public and the media were uncertain about the resumption of public proceedings on 27 October. Communication from the Public Affairs Section about the schedule of proceedings this week was lacking.

DATE	MORNING	AFTERNOON
Monday 26/10/2015	<ul style="list-style-type: none"> <li>▪ Approximately 150 high school students from Beltei International School, Phnom Penh</li> </ul>	<i>Closed proceedings</i>
Tuesday 27/10/2015	<i>Closed proceedings</i>	<ul style="list-style-type: none"> <li>▪ Approximately 100 villagers from Bourei Cholsar District, Takeo Province<sup>14</sup></li> </ul>

Wednesday 28/10/2015	<ul style="list-style-type: none"> <li>▪ Approximately 150 villagers from Treang District, Takeo Province</li> <li>▪ 155 students from Royal University of Law and Economics, Phnom Penh</li> <li>▪ One foreign observer</li> </ul>	<i>No public attendance</i>
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## B. Time Management

Due to the unexpected unavailability of some witnesses, the Trial Chamber only sat for three days this week. As noted above, the Court held *in camera* sessions for most of Monday and Tuesday's hearings, due to issues of confidentiality. On Monday morning Khieu Samphan's Defense Counsel made two submissions. Counsel first requested additional time to prepare for the upcoming appeals hearings in Case 002/01, scheduled for the week of November 16<sup>th</sup>. Counsel secondly requested a postponement in hearing witnesses related to the treatment of the Vietnamese, to give them more time for the Defense to prepare. After hearing the submissions of all Parties, the Trial Chamber dismissed Khieu Samphan's request for postponement of the trial segment on the grounds that sufficient time had been provided to prepare for these witnesses; it therefore continued with Witness Sean Sung's testimony on Tuesday afternoon. However, the Chamber granted Counsel's request for additional time before the appeals hearings. The Chamber accordingly announced it would postpone trial proceedings in Case 002/02 until 30 November 2015, after the appeals hearings and one week of pre-scheduled judicial recess for the Water Festival holiday.

## C. Courtroom Etiquette

During the public proceedings this week, there was only one moment of notable tension, which occurred as Judge Lavergne asked questions to Witness Sean Sung. Counsel Koppe intervened to observe, "I would appreciate it, Judge Lavergne, if you would at least use the word 'alleged executions' instead of 'executions.'" The Judge swiftly and sternly responded, "No. Listen. I am referring to what the Witness said himself. I don't see why I should talk of alleged executions whereas he talked of the existence of executions."

## D. Translation and Technical Issues

There were a few translation issues during the examination of Witness Sean Sung. Trial monitors noted poor translation in the Khmer-to-English interpretation. On one occasion, the interpreter translated the slang Khmer phrase, "*anlong kong*," to "the well," in English; however, it later became clear from further testimony that the Witness was referring to a "pit." In another example, the interpreter translated the Khmer words for "kerosene lamps" ("*chongkeang mangsung*") into the outdated English term, "gas mantle." There were no substantial technical issues this week.

## E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS (PUBLIC)
Monday 26/10/2015	9:09	<i>Closed session begins at 9:38</i>	<i>*Court resumes briefly in public at 13:34*</i>	<i>*Closed session resumes at 13:43*</i>	–	38 minutes

Tuesday 27/10/2015	*Closed session*	*Closed session*	*Closed session*	*Court resumes briefly in public at 14:48*	16:04	1 hour and 16 minutes
Wednesday 28/10/2015	9:00	10:01– 10:20	11:31–13:30	–	14:46	3 hours and 28 minutes
Average number of hours in session				1 hour and 47 minutes		
Total number of hours this week				5 hours and 22 minutes		
Total number of hours, day, weeks at trial				430 hours and 19 minutes		
115 TRIAL DAYS OVER 34 WEEKS						

\* This report was authored by Alexander Benz, Borakmony Chea, Caitlin McCaffrie, Daniel Mattes, Sotharoth Nom, Lina Tay, Penelope Van Tuyl, and Talisa Zur Hausen as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor 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,**

- § documents cited in this report pertain to the *Case of Nuon Chea and Khieu Samphan* before the ECCC;
- § quotes are based on the personal notes of the trial monitors during the proceedings;
- § figures in the *Public Attendance* section of the report are only approximations made by KRT Trial Monitor staff; and
- § photographs are courtesy of the ECCC.

**Glossary of Terms**

Case 001	<i>The Case of Kaing Guek Eav alias “Duch” (Case No.001/18-07-2007-ECCC)</i>
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan (Case No.002/19-09-2007-ECCC)</i>
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
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
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

<sup>1</sup> Trial Chamber, “Amended Guidelines on the Use of Case 003 and 004 WRIs” (20 October 2015), E319/7/3.

<sup>2</sup> 2-TCW-996 testified on 26 and 27 October 2015. For the Nuon Chea Defense’s oral submissions in requesting the hearing of this witness, see CASE 002 KRT TRIAL MONITOR, Issue 32, Hearings on Evidence Week 29 (28-30 September 2015), p. 7. On 7 October, Nuon Chea Defense Counsel, Victor Koppe, emphasized the importance of hearing this Witness’ testimony prior to the upcoming Supreme Court Chamber hearings on the appeals in Case 002/01. See CASE 002 KRT TRIAL MONITOR, Issue 33, Hearings on Evidence Week 30 (5-7 October 2015), p. 6. As of this report’s publication on 19 November 2015, the Trial Chamber had not yet published the redacted transcript of those hearing dates.

<sup>3</sup> For allegations regarding the treatment of the Vietnamese, including the allegations of genocide and crimes against humanity including deportation, extermination, murder and persecution, see the Case 002 Closing Order, paras. 205-207, 213-215, 791-831,

<sup>4</sup> Witness Mr. SEAN Sung (2-TCW-868) was questioned in the following order: President NIL Nonn; international senior assistant prosecutor Vincent DE WILDE D’ESTMAEL; national Civil Party lawyer HONG Kimsuon; international Judge Jean-Marc LAVERGNE; international co-lawyer for Nuon Chea, Victor KOPPE; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>5</sup> Although the allegations in the Case 002 Closing Order relevant to the treatment of the Vietnamese primarily center on events in Sectors 20, 22, 23, and 24 of the East Zone (present-day Prey Veng and Svay Rieng Provinces), Paragraphs 802 to 804 fall under a subsection entitled, “Killings of Vietnamese Civilians Outside of Prey Veng and Svay Rieng.” Specifically, Paragraph 802 summarizes the witness testimony related to the alleged events at Wat Khsach, in Siem Reap Province.

<sup>6</sup> Although unsure of the exact date, the Witness recalled the executions occurred during the rainy or harvest season of 1978, which the Trial Chamber surmised to be around November.

<sup>7</sup> SEAN Sung explained, “In the regime, besides soldiers, nobody could carry a gun.”

<sup>8</sup> Defense Counsel for Nuon Chea suggested that Chantha’s grandparents could not have been born in Vietnam, as there was no country by that name at the estimated time of their birth. This interesting Defense strategy did not progress very far however, as the Witness was not able to follow the logic of the questioning.

<sup>9</sup> The Khmer word “*sraa*” was interchangeably translated as both “wine” and “alcohol” in English.

<sup>10</sup> SEAN Sung gave three distinct reasons for happening upon the killing site: that he had heard screams and gone to investigate, that he had been given permission to visit his home and happened upon the event, and that he had gone home to collect a chicken for his mobile unit. In each case, he gave no reason for changing his story and was unclear on details, such as who granted him permission to leave the mobile unit, and whether he eventually obtained a chicken.

<sup>11</sup> For example, SEAN Sung gave estimates fluctuating between one and three hours for the length of time he spent in the pit, and he changed his estimate of the number of victims during that time from 60 to 80. As explored briefly above, the Witness’ relationship with Chantha was cause for some confusion. Initially, SEAN Sung appeared to suggest they had a close relationship, even with linkages between their families. However, he subsequently stated he had merely overheard her name and details of her heritage. The Defense raised doubts about the probability that, during the one-hour period the Witness claimed to have been hiding in the pit, he happened to see the one person who he knew be murdered in such a brutal fashion and separately from the other alleged victims.

<sup>12</sup> Trial Chamber, “Amended Guidelines on the Use of Case 003 and 004 WRIs” (20 October 2015), E319/7/3, para. 2a.

<sup>13</sup> The Trial Chamber has since redacted portions of the official 5 October 2015 transcript, during the OCP’s examination of Witness BAN Siek, in relation to the trial segment on the treatment of the Cham. For the Trial Chamber’s original order to protect the confidentiality of the ongoing investigations in Cases 003 and 004, see: Trial Chamber, “Decision on International Co-Prosecutor’s Request to Admit Documents Relevant to Tram Kok Cooperatives and Kraing Ta Chan Security Center and Order on Use of Written Records of Interview from Case Files 003 and 004” (24 December 2014), E319/7.

<sup>14</sup> The 100 villagers from Bourei Cholsar District were present for the third session of the 27 October hearings (approximately 1:30PM to 2:45PM), however, proceedings were still *in camera* at that time for the examination of 2-TCW-996, and so villagers did not see any hearings. By the time that proceedings were opened for the testimony of SEAN Sung, at approximately 2:48PM in the day’s fourth session, the villagers had already left the Court. For the fourth session that day, only two regular trial monitors and the wife of Sean Sung were present in the public gallery.