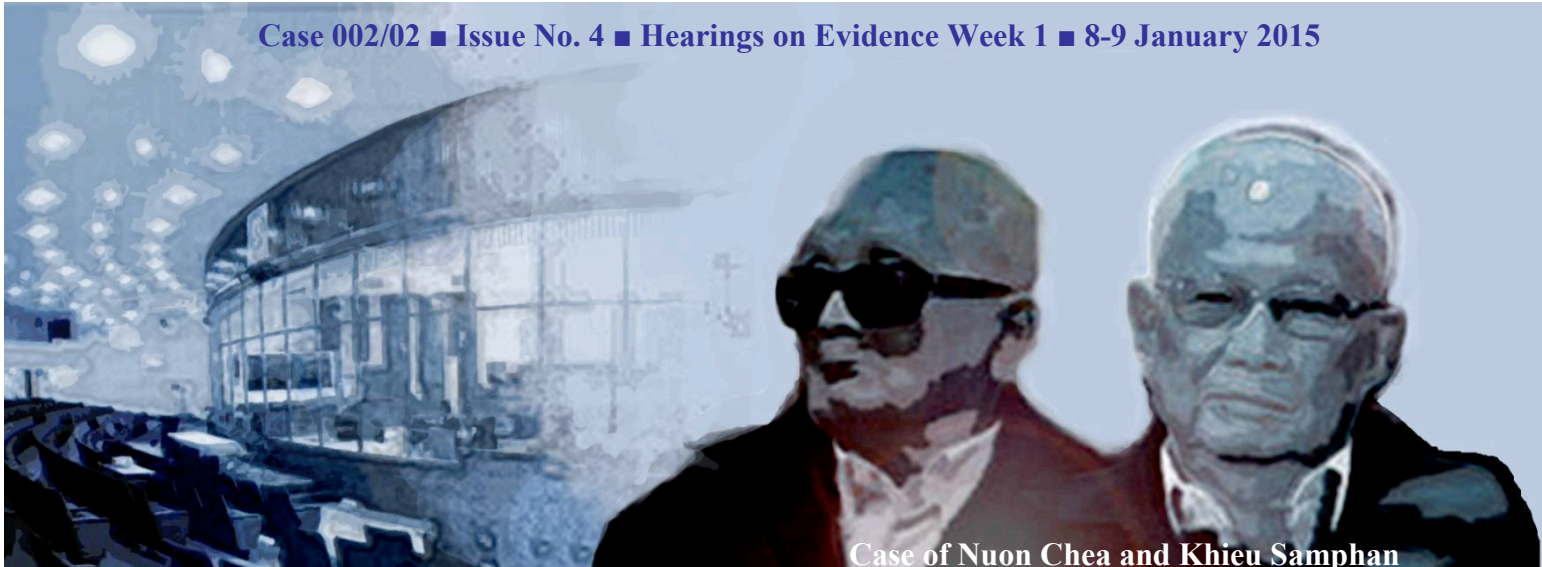


# KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 4 ■ Hearings on Evidence Week 1 ■ 8-9 January 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)

*"When I arrived in Kraing Ta Chan, I didn't see my father, and I met Yeay Sin who told me that 'Your father has been taken away and he left here only his cigarette lighter,' and he told me that he was tortured very severely before [being] taken away."*

- Meas Sokha, Witness

## I. OVERVIEW

On 8 January 2015, the Trial Chamber resumed proceedings in Case 002/02, after two months of adjournment, which had been the result of the Khieu Samphan Defense Team refusing to participate in Case 002/02 trial proceedings while they were still working on the Case 002/01 appellate briefs. After the 29 December 2014 deadline for Case 002/01 appellate filings passed, the trial resumed. The Court was set to begin hearing witnesses in Case 002/02, and, indeed, the first witness, Mr. Meas Sokha did begin testifying on the 8<sup>th</sup>, but the Trial Chamber suspended proceedings abruptly that same afternoon when Khieu Samphan fell ill and was hospitalized due to heightened blood pressure and dizziness. A hearing for the following day lasted only four minutes, as the President announced that the Accused would be hospitalized over the weekend. The President scheduled hearings to resume on 15 January, but Khieu Samphan remained in the hospital longer than expected, so proceedings were again cancelled on the 15<sup>th</sup>. The Court hopes to resume proceedings on Wednesday, 21 January. During the half day of testimony that the Court heard last week, Mr. Meas Sokha, of Srae Kru village in Tram Kok District, Takeo Province, responded to questions from the Prosecutors concerning his experiences in a children's unit in Tram Kok cooperatives, as well as his detention alongside 12 members of his family at Kraing Ta Chan Security Center.

## II. SUMMARY OF TESTIMONY BY WITNESS MEAS SOKHA

On 8 January, Mr. Meas Sokha testified as the first witness in the adversarial hearings of Case 002/02 before the ECCC Trial Chamber.<sup>1</sup> The first part of his testimony, in response to questions from the Office of the Co-Prosecutors, focused on his life in Srae Kru village, a DK-era cooperative in Tram Kok District in the Southwest Zone. The witness described his experiences in a children's unit, his lack of a sustainable food supply, and his knowledge of the way Buddhist monks were disrobed. Prior to the lunchtime recess and the subsequent

adjournment of proceedings, due to Khieu Samphan's sudden decline in health, he responded to questions concerning his detention alongside his family, at Kraing Ta Chan Security Center.

#### **A. Witness' Description of Life in the Tram Kok Cooperatives**

The Witness was born in 1960 in Tram Kok District, Takeo Province. He was 15 when Phnom Penh fell and the Khmer Rouge took control of Cambodia. According to Meas Sokha, Srae Kru, his home village, was transformed into a DK cooperative, which accepted 'new people' who had been evacuated from Phnom Penh and other urban areas. Meas Sokha was assigned to a children's unit and ordered to tend to cows. Like all other children, he was not allowed to attend school; some classes were held under a tree, but the school building was used for storage of supplies and other arms. Meas Sokha explained that he worked from early in the morning until dusk, and he clarified that freedom of movement was prohibited as he was expected to watch the cattle. The witness testified that, on one occasion, after sneaking out to visit his parents' unit, he was caught by cooperative leaders and tortured. When asked about the provision of food within the cooperative, Meas Sokha remarked that residents never received full meals to satisfy their hunger. The Prosecution referred to an OCIJ interview with the Witness' mother, in which she explained that she had complained to cooperative officials about her hunger soon after giving birth to a child, and that her complaint was "noted down."

The Witness was asked about the treatment of 'new people' from urban areas in the village cooperative, as well as the treatment of Buddhists. Defense counsel, Mr. Victor Koppe, objected to these lines of questioning, arguing that the Witness was only 15 years old at the time in question and he was therefore being asked to speculate on a general pattern of treatment of which he had little to no knowledge (see III.B). However, the Chamber overruled the objection, and the Witness attempted to provide basic explanations. Meas Sokha noted that the cooperative differentiated 'old people,' like his family and other village locals, from 'new people,' who were considered "as feudalists." However, he explained that people from both categories were sometimes assigned to work together, and he noted that they got along well. The Witness' knowledge of the treatment of Buddhists and the disrobing of monks was limited to a brief description of the way in which local pagodas, starting in 1973, were emptied and turned into clinics, pigsties, and storage rooms. He also testified that he had heard that monks across the country were disrobed in 1975.

#### **B. Witness' Description of Kraing Ta Chan Security Center**

International assistant prosecutor Dale Lysak took over the examination of Meas Sokha at the end of the morning, just before the lunchtime recess. Mr. Lysak focused his questioning on the Witness' experience in detention alongside 12 members of his family at Kraing Ta Chan Security Center, in June 1976. Meas Sokha explained that his family was involved in a meeting, which called for his brother-in-law to replace the village chief, in order to make living conditions better. He testified that attendees who thumb printed the meeting's concluding report, which was sent to higher Khmer Rouge officials, were subsequently arrested. His father was the first to be arrested, on the day after the meeting, when three cadres came and told him "to go to Angkar." Five days after the arrest of his father, the Witness himself was arrested along with other family members. They were detained for one night at Ang Rokar Prison, which the Witness explained was used as a temporary detention facility, and they were then moved to Kraing Ta Chan Security Center. When he arrived at the Security Center, Meas Sokha saw an acquaintance named Yeay Sin who later gave him his father's cigarette lighter and told him his father had been beaten and taken away. Meas Sokha never saw his father, who he stated was killed prior to his family's arrival at Kraing Ta Chan.

### **C. Witness Demeanor and Credibility**

In the course of Meas Sokha's brief testimony, he was consistently responsive to questions, and his demeanor appeared credible to trial monitors, although it sometimes required additional prodding from the Prosecutor or intervention from the President. He did his best to provide answers, rarely stating that he did not know about a particular topic, and he never claimed to have forgotten anything. Occasionally, he did not understand the question put to him. For example, when he first entered the courtroom and began to answer the President's routine questions on the names of his family members, he responded by stating the year and place of his birth instead. On a few occasions, he only answered part of the question, but, when the Prosecutor rephrased it, the Witness would provide a more satisfactory response. There was one instance where he evaded a question about his mother's experiences in the cooperative, and asked that questions instead focus on his experiences at Kraing Ta Chan. The President sternly explained to Meas Sokha that witnesses are not in the position to order or instruct Parties on the subjects of their questions.

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

Despite the brief amount of time in the courtroom this week, the Defense Teams raised a number of procedural issues. Much of the morning session on 8 January was devoted to hearing complaints from the two sets of defense counsel, as well as Khieu Samphan himself, over the physical presence of the Court Appointed Standby Counsel for Khieu Samphan ("Standby Counsel"). Defense Counsel argued that this standby appointment was legally unnecessary and being used to pressure the Defense Teams to acquiesce to Court orders. Additionally, during the Prosecutors' examination of the first witness in the trial, the Defense Teams raised a number of objections to leading questions or questions that the Defense argued called for the Witness to speculate.

#### **A. Concerns Regarding the Presence of Court Appointed Standby Counsel**

The Trial Chamber opened the Thursday hearing with the introduction of the two newly appointed standby counsel for Khieu Samphan, Ms. Touch Vorleak and Mr. Calvin Saunders, both of whom were present in the courtroom. Explaining the presence of standby counsel alongside regular Defense Counsel, the President reiterated that the Chamber's 5 December decision to appoint the counsel sought to ensure a fair and expeditious trial after the two-month refusal of the Defense for Khieu Samphan to participate in Case 002/02 proceedings.<sup>2</sup>

Both of the Co-Accused, and their lawyers, immediately rose to express disappointment over the Court's decision to seat the standby counsel in the front row of the Defense's side of the courtroom. The international Counsel for Khieu Samphan, Ms. Anta Guissé, argued that the Standby Counsel were not necessary, as they lacked "procedural roles" to defend the interest of her client. She submitted that the standby counsel's presence in the proceeding negatively pressured Khieu Samphan and his counsel not to disobey the orders of the Judges again, even if an order might adversely affect the rights of her client. The Defense Counsel for Nuon Chea shared Counsel for Khieu Samphan's position that the standby counsel did not need to sit within the courtroom, as they could follow proceedings from outside the room. The Defense teams also raised concerns about limited seating space, and about how to main attorney-client confidentiality with standby counsel seated in such close proximity. The international counsel for Nuon Chea, Mr. Victor Koppe, noted that his team had been displaced by the Standby Counsel's new position, which he called "an insult" to himself, his client, Khieu Samphan, and the Defense in general.

In response to the Defense Teams' objections to the presence of standby counsel, International Co-Prosecutor Nicholas Koumjian countered with support for the Trial Chamber's decision. The Prosecutor recalled the delays caused by the Defense boycott from October through December, and asserted that, in these circumstances, appointment of standby counsel was consistent with decisions of other international tribunals that aimed "to prevent exactly what happened in this case."<sup>3</sup> The national Civil Parties Lead Co-Lawyer, Mr. Pich Ang, also submitted that the appointment of Standby Counsel was necessary. The CPLCL argued that the rights of the Accused cannot jeopardize the rights of victims, many of whom are elderly, to find justice through the expeditious continuation of proceedings.

In the end, the Trial Chamber sought to proceed with the first Witness' testimony and closed further discussion of this issue. The President noted the submissions of the Defense Teams and vowed to issue a decision in due course. On 14 January, the ECCC published an email, from the Trial Chamber Senior Legal Officer, which addressed the Defense complaints. The Chamber rejected the calls to alter the seating arrangement, finding that such arrangements "to ensure good conduct of trial" are "not normally open to such debate." The notice also called the Defense's arguments "unpersuasive."<sup>4</sup>

## **B. Objections to Leading Questions and Questions that Require Speculation**

During the 8 January hearing, Nuon Chea's defense team raised several objections to the questioning approach taken by National Deputy Prosecutor Sang Leang towards witness Meas Sokha. The international defense counsel, Victor Koppe, objected to Mr. Sang's question, "You said that when you snuck out from home, you were beaten for that. What form of any punishment?" Koppe argued that this was a leading question, as the Witness had not made any prior statement about beating, but had instead used the phrase "tortured." This is not a new issue at the ECCC. Complaints about the acceptability of leading questions at the ECCC have been an ongoing controversy, arising in part from the differing approaches to witness examination in civil law versus common law systems. Use of leading questions was regularly contested throughout Case 002/01.<sup>5</sup>

As the Prosecution's questioning of Witness Meas Sokha continued, Mr. Koppe objected several more times. He argued that the Prosecutor's questions about general changes under the new DK regime, such as the distinction between 'new' people and 'old' people, required the Witness to speculate on matters of which he could not possibly have knowledge, because he was only fifteen years old in 1975. Similar objections occurred regularly during Case 002/01 as well, however the Chamber's response to these objections was not always consistent.<sup>6</sup> None of Mr. Koppe's three objections was sustained, leading Counsel to comment during his final objection, "I can stand up every time, but what's the point?"

## **IV. TRIAL MANAGEMENT**

Following the Defense Team for Khieu Samphan's late December 2014 appellate filing in Case 002/01 and the subsequent end of their two-month refusal to participate in Case 002/02 proceedings, the Trial Chamber resumed Evidentiary Hearings this week. However, the Chamber's scheduling for the new year was disrupted midday on 8 January 2015, when Khieu Samphan was hospitalized for dizziness and high blood pressure, and the Trial Chamber decided to adjourn proceedings in Case 002/02 until he recovered. Even in the less than full day of proceedings this week, however, several translation and technical problems occurred.

### **A. Attendance**

This week, both Nuon Chea and Khieu Samphan were present in the courtroom, but Khieu Samphan was sent to Khmer-Soviet Friendship Hospital for the attack of having a dizziness and high blood pressure during a lunch break on 8 January hearing.

**Civil Parties Attendance:** There were fewer than ten Civil Parties observing the hearing in the courtroom, and six Civil Parties observed the hearing from the public gallery.

**Judges Attendance:** International Reserve Judge Martin Karopkin was absent in the first session of the 8 January hearing. At the brief hearing the following morning, Judge Karopkin replaced Judge Jean-Marc Lavernege, who was absent due to sickness.

**Parties:** All Parties to the proceedings were represented in the courtroom this week. Notably, Ms. Touch Vorleak and Mr. Calvin Saunders were present as the newly appointed national and international standby counsel for Khieu Samphan, while Mr. Suon Visal, a national Legal Consultant for Nuon Chea, was newly present and allowed to speak in the courtroom.

**Attendance by the public:**

DATE	MORNING	AFTERNOON
Thursday 08/01/2015	<ul style="list-style-type: none"> <li>▪ Approximately 150 villagers from Battambang Province and 270 Cham villagers from Pursat Province</li> <li>▪ 27 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 250 villagers from Prey Veng Province</li> </ul>
Friday 09/01/2015	<ul style="list-style-type: none"> <li>▪ Approximately 220 villagers from Preah Sdach District, Prey Veng province and 480 villagers from Krakor District, Pursat Province</li> <li>▪ 10 foreign observers</li> </ul>	<i>No proceedings</i>

**B. Time Management**

The Trial Chamber demonstrated a strong desire to follow its schedule to hear the first witness this week, yet a number of procedural issues were raised by the Defense Teams. As an example of its attempt to expedite commencing the Witness’ testimony, the Chamber halted further debate over the presence of the Court-appointed standby counsel for Khieu Samphan in the courtroom. The Chamber also quickly dealt with a procedural matter concerning the Civil Parties Lawyers’ request to include a map of Tram Kok District into the case file, as a new document.

**C. Courtroom Etiquette**

The tone of President Nil Nonn’s voice when communicating with all the Parties this week sounded somewhat more aggressive and impatient than trial monitors are accustomed to hearing in the Trial Chamber. For example, he interrupted Ms. Anta Guissé, international Counsel for Khieu Samphan, for repeating the same critique of the standby counsel’s presence in the courtroom. Later, when the Witness failed to wait for the microphone to activate on five different occasions, President Nil Nonn raised his voice, abruptly directed him to wait, and ultimately asked the Court Officer to sit with the Witness for assistance. Lastly, when the Defense Teams lodged three different points as objections to national Deputy Prosecutor Sang Leang’s question, and the Prosecutor failed to provide a response to all three aspects of the objection, President Nil Nonn repeatedly asked if he was sure he was finished with his response. In a tone that sounded more zealous than is typical, the President informed the Prosecutor that he needed to respond to all of the objections, prompting international Prosecutor Dale Lysak to assist his colleague.

Trial Monitors also observed that national Reserve Judge Thou Mony appeared to be asleep

for approximately 15 minutes during the Witness’ testimony in the late morning on 8 January.

**D. Translation and Technical Issues**

This week, a few translation problems occurred throughout the proceedings. When the Mr. Pich Ang, Civil Party Lead Co-Lawyer was granted time to explain about his team’s request to insert a new document into the case file, there was initially no translation from Khmer, and the President instructed the Lawyer to wait. The translation was cut briefly when the Co-Prosecutor Sang Leang was responding to the President later in the day, as well. During President Nil Nonn’s announcement at the brief 9 January hearing, there was also an error in translation with regard to the day of the next hearing. When the President announced that hearings would resume on Thursday, 15 January 2015, it was translated into English as Tuesday, 15 January 2015. Judge Claudia Fenz intervened to catch the discrepancy right away, and the President clarified that hearings would resume on Thursday, the 15<sup>th</sup>.

Several technical issues were noted throughout the proceedings. During the Witness’ testimony, the power was cut for five minutes, and the Judges conferred briefly. The President noted a “small technical problem” and announced the morning adjournment in order to allocate time to resolve the issue.

**E. Time Table**

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Thursday 08/01/2015	9:03	10:24 – 10:49	12:07-13:52	---	13:55	2 hours and 42 minutes
Friday 09/01/2015	9:12	---	---	---	9:16	4 minutes
Average number of hours in session				1 hour and 23 minutes		
Total number of hours this week				2 hours and 46 minutes		
Total number of hours, day, weeks at trial				7 hours and 16 minutes		
<b>FIVE TRIAL DAYS OVER FOUR WEEKS</b>						

\*This report was authored by Vanessa Hager, Sambor Huy, Nget Lonh, Daniel Mattes, Claire McMullen, Lina Tay, Lucy Sullivan, Penelope Van Tuyl, and Oudom Vong as part of AIJI’s KRT Trial Monitoring and Community Outreach Program. AIJI is a collaborative project between the East-West Center, in Honolulu, and the WSD Handa Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in Southeast Asia.



**Unless specified otherwise,**

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

**Glossary of Terms**

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

<sup>1</sup> Meas Sokha (2-TCW-936) was examined in the following order: national Deputy Prosecutor Mr. SANG Leang; international Assistant Prosecutor Dale LYSAK.

<sup>2</sup> Trial Chamber. “Decision on the Appointment of Court Appointed Standby Counsel for Khieu Samphan” (5 December 2014). E321/2.

<sup>3</sup> For more on the international jurisprudence on the appointment of standby counsel, see CASE 002/02 KRT TRIAL MONITOR, Special Report, Defense Teams’ Boycott (31 October 2014).

<sup>4</sup> Kenneth Roberts, Trial Chamber Senior Legal Officer. “Scheduling, Seating” (13 January 2015). E-mail. E328/1.

<sup>5</sup> In Week 13 of Case 002/01, for example, international Judge Silvia Cartwright reminded Mr. Michael Karnavas, international lawyer for Ieng Sary, that leading questions were not permitted, as the procedural system that the ECCC follows does not allow lawyers to a cross-examination of witnesses. See CASE 002 KRT TRIAL MONITOR, Issue 18, Hearing on Evidence Week 13 (9-10 April 2012), pp. 7-8. In Week 29 of the case, President Nil Nonn reinforced Judge Cartwright’s opinion, when he stated that leading questions are prohibited in the ECCC and “are not allowed, indeed, in the civil law tradition.” See CASE 002 KRT TRIAL MONITOR, Issue 44, Hearing on Evidence Week 39 (22-23 November 2012), p. 10.

<sup>6</sup> For example, in Week 11 of Case 002/01, several objections to questioning leading to Witness speculation were raised, of which some were dismissed and others sustained without clear reasoning from the Trial Chamber. See CASE 002 KRT TRIAL MONITOR, Issue 16, (26-29 March 2012), p. 11.