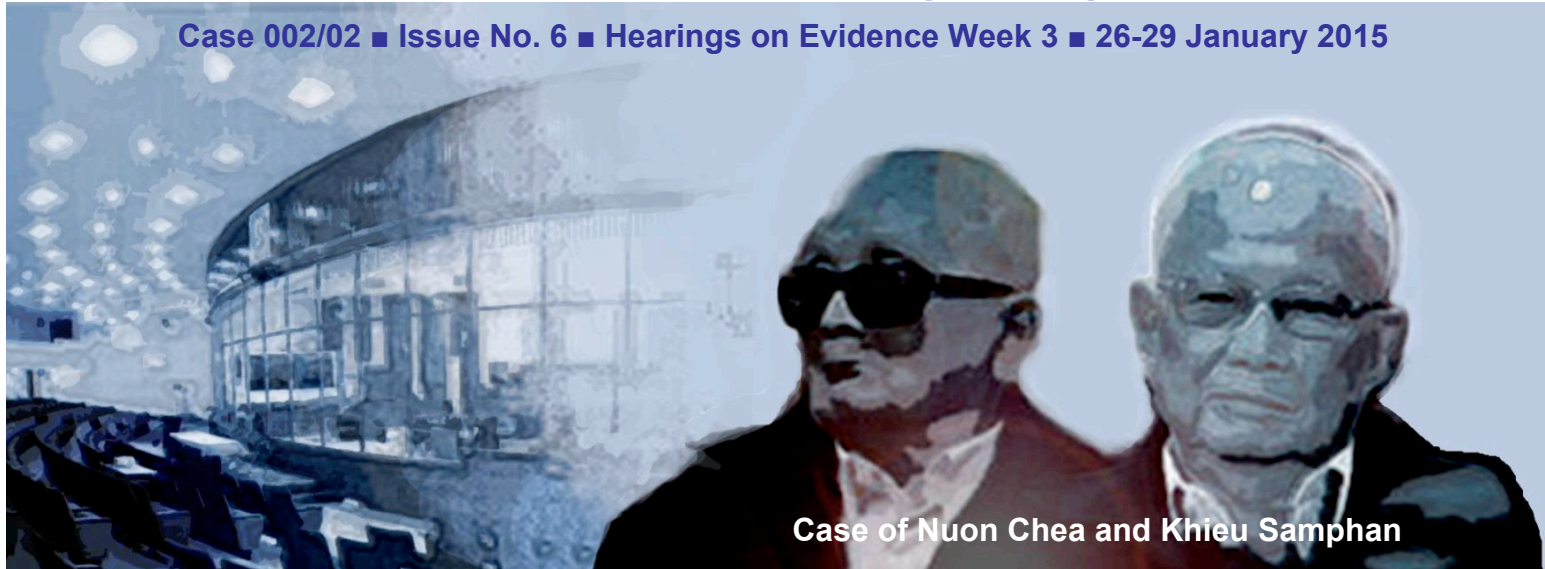


KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 6 ■ Hearings on Evidence Week 3 ■ 26-29 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)

I was asked further that, "Were you the daughter of Angkar, or were you the daughter of your parents?" and I said that I was the daughter of Angkar. After that, I was told to be ready for the marriage.

- Witness Cheang Srei Mom

I. OVERVIEW

The evidentiary hearings in Case 002/02 proceeded into their third week as the Trial Chamber completed the testimony of the first two Civil Parties to testify in the trial, Oum Suphany, who was questioned heavily about prior accounts of the DK era in her published books, and Chou Koemlân, who testified that she had personally seen the Co-Accused visiting a Tram Kak District worksite in 1977. The Court also began to hear from a non-Civil Party witness, Cheang Srei Mom, on her experiences in a forced marriage arranged by Khmer Rouge cadres in her rural cooperative. The prosecutors and Civil Party lawyers sought to utilize the three testimonies to depict the harsh life and total control by the authorities within Democratic Kampuchea's "model" Tram Kak District. Defense counsel attempted to rebut the allegations by undermining key details of the Witness and Civil Parties' statements. The lines of questioning presented by Mr. Victor Koppe, Nuon Chea's international Co-Lawyer, probed deeper than the other Defense Counsel, as he challenged even the most personal details of the Civil Parties' stated experiences, including one woman's inability to feed her dying child, and another's claims to have been forcibly married. Mr. Koppe's tactics in his examination of the Civil Parties and Witness prompted multiple objections from the OCP and Civil Party lawyers, and disagreements required the judges to intervene on a number of occasions. This report analyzes those legal and procedural issues, summarizes the week's testimonies, and reviews the Chamber's ongoing management of the trial proceedings.

II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

The Trial Chamber concluded the testimony of Ms. Oum Suphany following her previous appearances on 22 and 23 January. The Chamber also heard the complete testimony of a second Civil Party, Ms. Chou Koemlân. Among other features of her testimony, the Civil Party stated that she witnessed a visit of Nuon Chea and Khieu Samphan to a canal worksite in Tram Kak District. On Thursday, January 29th, the Parties examined Ms. Cheang Srei Mom, who

testified as a witness on her experiences following the Khmer Rouge takeover of her Tram Kak District village in 1970, including her forced marriage to a man chosen by the local commune chief. Her testimony marked the first time that a witness has testified before the ECCC about her or his own experiences being forced to marry. Her testimony concluded on February 2nd.

A. Summary of Testimony by Civil Party Oum Suphany

On 26 January, the Trial Chamber concluded the testimony of Ms. Oum Suphany, the first Civil Party to testify in Case 002/02.¹ In their examination of the Civil Party, the Defense teams aimed to undermine some of her claims during testimony on 22 and 23 January, as well as statements she has previously made outside of the Tribunal. As a Civil Party, she also had the opportunity to make a statement of impact and put specific questions to the Accused, albeit indirectly, by way of the President.

1. Defense Examination of the Civil Party's Statements on Forced Marriage

Following a series of procedural issues concerning the examination of Civil Party Oum Suphany by international Defense counsel Victor Koppe (see III.A-B), the remainder of her testimony under questioning from the Defense primarily concerned the veracity of her publications and external statements on forced marriage. The Civil Party admitted her position as an officer with the Association of Khmer Rouge Victims in Cambodia (“the Victims Association”), stating that she sought to “find justice for victims by writing a book.”² She insisted that the book annexed on the case file, “When Will We Ever Meet Again,” was a truthful account of her own experiences in DK, but she acknowledged that another book, about which Mr. Koppe inquired, was not wholly her own experience. Mr. Koppe noted that this book, “Under the Drops of Falling Rain,” was subtitled as “a non-fiction story.” International counsel for Khieu Samphan, Anta Guissé, questioned her further about the book, which Oum Suphany referred to as a “novel” and stated was roughly 80% non-fiction and 20% fiction. The Civil Party added that some conclusions she made in her book sometimes came from listening to the news or hearing the experiences of other victims. Although he never directly quoted the book, Mr. Koppe suggested that, in “Under the Drops of Falling Rain,” and in her public statements as an officer of the Victims Association, Oum Suphany asserted she was forced to marry by the Khmer Rouge, a claim that contradicted her testimony before the ECCC, that she had married her fiancé whom she loved. The Civil Party ultimately explained that she considered her marriage forced, because, although she loved the man she was to marry, and was engaged to him, she did not wish to marry him at that time. She was ill on the day of her ceremony and her family was not present. Her mother-in-law forced them to get married to ensure that ‘Angkar’ would not separate them. Mr. Koppe responded that “there is a big difference” between a mother-in-law’s push for marriage and the allegation of a Khmer Rouge policy to force her marriage.³

2. Civil Party's Statement of Impact

Toward the end of her testimony, the Civil Party was given the opportunity to make a personal statement of impact to the Court. Oum Suphany asked, “What kind of heart does – do these two criminals [the Co-Accused] have?” before referring to the “complete destruction” of Cambodia’s human resources, infrastructure, and culture. She stated that she felt “we were already in hell,” after evacuating Phnom Penh in April 1975 and seeing dead bodies along the national road. She discussed the harsh conditions she faced when delivering her first child in a makeshift hospital without experienced medical staff, and she noted that women who died during childbirth were merely covered with a cloth, without care for the “impact [this had on] new mothers.” She noted that two elder brothers-in-law was arrested, disappeared, and later executed. Oum Suphany concluded her statement by dismissing the “Great Leap Forward,” asserting that it was “based on greed,” and that the lives, properties, and livelihoods lost in DK were “no development to the nation at all.” When given a chance to provide questions to the President that she wanted to put to the Accused, she asked three questions: “Why did you

make a revolution to destroy the good traditions and customs of this country?"; "Why did the criminals make a revolution to destroy the educational system? Did they think that you could develop a country by forsaking an educational system?"; and, "Why did your revolution separate us from our family, and force us to at and live communally?"⁴ Following the Civil Party's exit from the courtroom, national counsel for Khieu Samphan rejected her categorization of the Co-Accused as "criminals" and asked that the Chamber advise future Civil Parties not to use that "prejudicial" word.

B. Summary of Testimony by Civil Party Chou Koemlân

On 26 and 27 January, the Chamber heard the testimony of Civil Party Chou Koemlân.⁵ The Civil Party was born in 1951 in Leay Bour Commune, Tram Kak District, Takeo Province. When she moved back there in April 1975 under the new DK regime, however, she testified she was categorized as a 'new' person because she had lived for a few years in Phnom Penh. The Civil Party was questioned on life and labor in her rural cooperative. She recalled working without breaks and not receiving food rations if she was absent from work due to sickness. The Civil Party stated her child died during this period, due to malnutrition resulting in measles. Counsel for Nuon Chea, Mr. Victor Koppe, questioned this detail, asking why she was unable to provide food for her child, and whether it was fairer to say the child died of measles. The other parties, however, focused the greatest amount of their questioning time on the Civil Party's alleged sighting of Khieu Samphan and Nuon Chea.

1. Civil Party Statements on Sighting of Senior Leaders at Canal Worksite

Ms. Chou Koemlân testified that, in 1977, when she was working at a canal construction site in Ou Chambak, Tram Kak District, she witnessed a visit by four of the "upper echelon leaders of Cambodia." She stated that the four leaders were Pol Pot, Nuon Chea, Khieu Samphan, and Ta Mok. The Civil Party told the Chamber that the commune chiefs escorted the leaders as they walked around the site, discussing the irrigation and their plan to harvest larger amounts of rice. On Monday the 26th, the Civil Party responded to questions from Civil Party Lead Co-Lawyer Marie Guiraud and Judge Claudia Fenz that she identified Khieu Samphan from a picture she had seen years earlier, in a newspaper during the *Sangkum Reastr Niyum* regime of Prince Sihanouk.⁶ The Civil Party explained that, after the leaders left, her unit chief called a meeting in which he told the group, "The upper Angkar had come to visit," and specifically named Pol Pot, Nuon Chea, Khieu Samphan, and Ta Mok. The Civil Party stated that she had not known or heard of Nuon Chea prior to this occasion.

Defense counsel, however, raised some doubt as to whether it was possible for Chou Koemlân to accurately identify these leaders at the time. Mr. Koppe asked the Civil Party whether she recalled a 1977 event in which it became known that the CPK, rather than 'Angkar,' was in charge of running Cambodia. The Civil Party could not recall this event, but she stated that, from 1975, it was common knowledge to 'base' people that Pol Pot, Nuon Chea and Khieu Samphan were the national leaders. Just prior to the President asking him to move onto a new topic, Mr. Koppe asserted that no one in the world had known of Nuon Chea before November 1977, and that the Civil Party had perhaps seen four leaders, but only attached this identification to them after the DK period, when she had learned the names of the Co-Accused.

2. Civil Party Statements on the Treatment of Ethnic Vietnamese Persons

The Civil Party told the Court that ethnic Vietnamese and Khmer Krom people lived and worked in her commune, but the commune chiefs compiled their names and announced they would be sent "back to Vietnam." However, the Civil Party told the Chamber that the commune chiefs' announcement turned out to be a lie, and these minority populations were in fact tortured and killed. The Civil Party testified, "It was a very cruel regime and they would kill these people. They did not give value to a person's life at all. They killed people like they would kill an

animal.”⁷ The accuracy of this conclusion, however, was challenged by the Defense when questioning how the Civil Party learned of the fates of these populations. The Civil Party admitted that she had no firsthand knowledge of these things. She learned of the killings secondhand from ‘base’ people, long after the ethnic Vietnamese or Khmer Krom had left.

3. Civil Party Statements on Forced Marriage and Rape

Ms. Chou Koemlân told the Trial Chamber that she witnessed two couples who were forced to make a ‘resolution’ during a marriage ceremony. She stated this occurred under instructions of Ta Mok as a representative of ‘Angkar’. She also claimed to know of approximately thirty other couples forced to make such a resolution in the K-1 “model” cooperative. One of these marriages was between the Civil Party’s nephew and a female medic. The Civil Party told the Court that her nephew had been a monk prior to the Khmer Rouge takeover, and was forced to disrobe, join the armed forces, and marry this medic. However, it was soon discovered that the Civil Party’s brother-in-law and the father of the nephew in question was a ranking medic in the Lon Nol military. As a result, Chou Koemlân testified that the authorities challenged the nephew’s new wife to disembowel her husband and remove his gall bladder in order to promote herself in the ranks. Under Defense questioning, however, the Civil Party disclosed that she had not personally witnessed the events but was later told about the killing by her aunt, the grandmother of the nephew.

The Civil Party also told the Court about the fate of two of her friends who complained about the lack of food. She asserted they were strong women who contributed greatly to her unit’s work, but that they were transferred from her cooperative after making complaints. Her unit later learned in a public message that the two women had been brought to Leay Bour commune office, and they were raped by “all male comrades there.” The Civil Party testified that the two friends disappeared after she heard about this event. Her unit was warned that women who “made a mistake in the village” would be sent to this office and raped as well.⁸

4. Civil Party Statement of Impact

On Tuesday afternoon, the Court heard the Civil Party’s statement of impact. Ms. Chou Koemlân began her statement by describing the evacuation of Phnom Penh on 17 April 1975. She stated she travelled with her aging parents, siblings, children, and other family members to her home commune in Tram Kak District. On the road, her father suffered from hypertension, and they ran out of rice, so some days, they could not eat. When they arrived in Tram Kak, the Civil Party’s husband was soon arrested for his connections to the previous regime, and she was sent out of the village “since they saw me weeping almost every day.” She then stated that she “could not describe” the sufferings she experienced, as she was required to continue working in the rice fields just 27 days after giving birth. She stated that she sometimes had to scavenge for food and, while walking past the forest, she could see decomposing bodies. During this time, one of the Civil Party’s relatives was killed after stating they missed their parents. Ms. Chou Koemlân then became emotional as she asked how the leaders of Democratic Kampuchea “could carry out a revolution,” and she asked how “they dare say they did not know about the killing.”

C. Summary of Testimony by Witness Cheang Srei Mom

Ms. Cheang Srei Mom, a rice farmer from Nhaeng Nhang Commune, Tram Kak District, Takeo Province, testified as a witness, on her experiences following the Khmer Rouge takeover of her village in 1970.⁹ Both her initial testimony under questioning from the OCP and her examination by the other parties centered on the treatment of people in her rural cooperative, the disappearance and death of her father, and the details of her allegedly forced marriage. The Witness’ testimony also touched on the treatment of Buddhists and the search for ethnic Vietnamese people in Tram Kak District. However, it was her experiences in a forced marriage

that became the focus of her testimony; Ms. Cheang Srei Mom's testimony marked the first time that the ECCC has heard a witness testify on her or his forced marriage under the regime of Democratic Kampuchea during trial.

1. Structure of Control and Life in the Tram Kak Cooperative

Under examination by the National Co-Prosecutor, Witness Cheang Srey Mom described the organizational structure enforced on her village from the time the Khmer Rouge took control of the area. She told the court that people were divided into two categories, 'full-rights peoples' and 'candidate peoples'. Due to her biography of familial ties to the previous regime and her Chinese ancestry, the Witness said she fell within the latter group, even as a native of the rural Nhaeng Nhang commune. She discussed the composition of the women's unit, noting in particular that, while 'full-rights' and 'candidate' people worked together, women were further categorized into 'vigorous' and 'slow' working groups depending on the activeness of the woman. The Witness described the arrest and disappearance of her father, which she heard about from her sister and mother, and how she recently found his name on a list of records at Kraing Ta Chan Security Center. International Assistant Prosecutor Dale Lysak raised the treatment of ethnic Vietnamese within her cooperative and any discussion of their deportation to Vietnam. The Witness clarified that she did not know any "real Vietnamese ethnics," but that many pretended to be Vietnamese so that they could be sent there from the cooperative. She believed most were '17 April' people posing as Vietnamese, who she heard were not sent to Vietnam but instead put in trucks and sent to the mountains or towards Kraing Ta Chan to be killed. Similarly, she recalled unit chiefs questioning villagers on their biographies, employment histories and previous places of residence, in an attempt to identify former Lon Nol officials.

2. Forced Marriage

The majority of questions put to Ms. Cheang Srei Mom during her Thursday testimony concerned her forced marriage to Try Touch, a man selected by the commune chief. She recalled that she was urgently summoned one evening to the commune office. Upon arrival, she stated that the chief of the women's unit, OI, notified her to prepare for marriage later that evening. When the Witness asked to get her parents' blessing for the marriage, OI replied, "Are you the daughter of Angkar or are you the daughter of your parents?" She responded that she was the daughter of Angkar. The Prosecution sought to distinguish between her own will and that of the Khmer Rouge authorities. The Witness confirmed that she was asked to declare her marriage "voluntarily," even though she felt immense pressure to do so. She also described the first night of sharing a bed with her husband and the presence of a "militiaman" eavesdropping below to make sure they consummated their marriage. The Witness articulated numerous times, that consummation as husband and wife was expected. She feared that if she did not engage in sexual intercourse she could be viewed as "opposing the Party," and subsequently criticized in group meetings, punished with forced labor, or accused of refusing the orders of 'Angkar'. In response to questions from the OCP, Civil Parties, and judges, Ms. Cheang Srei Mom explained how she initially "hated" her selected husband, and that he was in love with another woman at the time of their abrupt ceremony. Nonetheless, she testified that their similar biographies, as ethnic Chinese "candidate" people, led to their pairing as a couple. Over time, however, she explained that has grown to love him, and they are still married today.

The Defense drew the Chamber's attention to the statements of OI, chief of the women's Unit, to the OCIJ, in which she denied that any forced marriages or coercion in this context took place within her unit or her cooperative. However, the Witness attempted to refute this by comparing her marriage under the regime to a hypothetical marriage in present-day Cambodia. She declared that, if she did not want to marry a man today, she would not do so, but under the regime, she had no choice, "as a child of Angkar." Defense Counsel also asked whether there was anyone else beside herself who could confirm her marriage as involuntary. The Witness

seemed to misunderstand the question a few times before responding that only she could confirm that.

3. **Witness Demeanor and Credibility**

Ms. Chang Srei Mom remained composed throughout her testimony, and spoke clearly with detailed answers even as she was questioned on very personal subject matter. She displayed no reluctance to answer questions, and she interacted with parties and the Chamber in a constructive manner. When she did not understand a question or could not recall a detail, she was quick to notify the questioning party. The Witness effectively qualified her responses where necessary by utilizing open phrases such as “to my knowledge.” This gave the parties a clear indication of the extent of her knowledge of the facts in relation to the specific event under scrutiny. The cogency of her answers as a result seemed to strengthen her overall testimony. For example, in response to a question from the Civil Parties, she recalled the name of one unit chief who committed a moral offence and lost his position, yet she acknowledged she could not remember the name of the second perpetrator. This tendency not to overstate her experiences made her responses appear more sincere to the AIJI trial monitors observing this week’s proceedings.

However, a discrepancy within Cheang Srei Mom’s narrative did arise during questioning by the National Co-Prosecutor on her forced marriage. The Witness initially stated that, at the time she was forced to marry, “she did not realize” her father had passed away. However, for the rest of her testimony, she testified that she did not dare refuse the marriage because her father had just been killed two days earlier, and she was fearful that something bad would also happen to her. Later in the day, during questioning by counsel for Nuon Chea, she reiterated the facts of the second statement. No parties appeared to notice or question her on this inconsistency in her narrative, however. Although this inconsistency diminished the clarity of her account somewhat, her consistent emphasis on the involuntary nature of her marriage, her fear of refusal, her remorse, and her initial “hate” for her husband all appeared to substantiate her testimony that her marriage was not consensual and arguably of a forced nature.

III. **LEGAL AND PROCEDURAL ISSUES**

Legal questions and procedural disputes this week generally concerned the tactics of international defense counsel Victor Koppe. Objections from the OCP and Civil Parties to his use of documents in questioning Ms. Oum Suphany required the Chamber to clarify proper procedures. His examination of the same Civil Party prompted debate on the recurring theme of the role of Civil Parties and the probative value given to their testimony. Mr. Koppe himself also objected to the OCP’s questions on multiple occasions, often regarding specific language and documents used to examine witnesses and Civil Parties.

A. **Defense Use of Documents in Questioning of Civil Party Oum Suphany**

Prior to the adjournment of last week’s proceedings, international counsel for Nuon Chea, Mr. Victor Koppe, asked Civil Party Oum Suphany whether she had told a reporter from the *Phnom Penh Post* that she had been forcibly married during the DK period even though she had just detailed how she had married the man she loved. International Civil Party Lead Co-Lawyer Marie Guiraud objected on the basis that Mr. Koppe was relying on a document not in the case file or shared with the parties in advance. The proceedings adjourned before the Chamber ruled on the issue.¹⁰ Upon the opening of hearings this week, the Chamber ruled against the Nuon Chea Defense, reminding parties of the previous practice of placing documents on the shared drive accompanied by a request addressing certain criteria,¹¹ at least 48 hours before a particular hearing where the Party intends to employ the document in questioning. Mr. Koppe argued that he was not referring to a document, but asking about the Civil Party’s conversation with a journalist. Assistant prosecutor Dale Lysak disagreed, saying that his questions

originated from reading the *Phnom Penh Post* article. “All we ask for,” said Mr. Lysak, “is that this not be trial by ambush, that they give notice when they find a piece of evidence they want to use.”¹² Judge Claudia Fenz ruled that, given the questions related to a document, this line of questioning was barred until the document was put on the case file.

Mr. Koppe named four documents, which were not on the case file, in which the Civil Party had claimed she was forced to marry. When asked whether he was aware of the requirement to place documents to be used at trial on the case file in advance, Mr. Koppe responded, “Of course I know...if I want to prevent this Witness being coached, I’m not going to do it like that.”¹³ The international Lead Co-Lawyer for the Civil Parties objected, arguing that Mr. Koppe was deliberately breaking the Court’s rules with the stated intent to avoid giving notice to adverse Parties, and Judge Fenz noted her concern that Defense counsel was willfully ignoring procedures. The Chamber ruled that questions related to documents not on the case file would be prohibited for the time being, however the Defense could put the documents on the shared drive following the Civil Party’s testimony, and if necessary, Ms. Oum Suphany would be recalled to answer questions. Judge Fenz stressed that the option to recall the Civil Party was an exceptional ruling, as the Court was at the beginning of Case 002/002 and “some Parties may have forgotten the relevant procedures.”¹⁴ On 28 January, the Nuon Chea team followed these instructions, filing a Rule 87(4) request to admit five new documents including statements by Ms. Oum Suphany to the case file.¹⁵

B. Civil Parties, Witnesses, and the “Right to Remain Silent”

During the 26 January hearing, the special status of Civil Parties once again became the source of debate. Following the controversy around the *Phnom Penh Post* article and forced marriage, Mr. Koppe asked Civil Party Oum Suphany about the officers of the Association of Khmer Rouge victims. Ms Suphany refused to answer and invoked her “right to remain silent.” Mr. Koppe argued that she could invoke such a right only if answering would incriminate herself. CPLCL Marie Giraud disagreed, arguing that whilst that would be true of witnesses, Civil Parties were not witnesses, but rather Parties, akin to the Accused. There was nothing expressly permitting or forbidding them from remaining silent in response to questions.¹⁶ The distinction between testimony from Civil Parties and witnesses is particularly interesting and has been raised several times before the ECCC. The Court has previously held that, although Civil Parties do not take an oath, they “may testify and have their statements put before the Chamber and assessed as evidence where relevant and probative,” and that the “weight given to Civil Party testimony will be assessed on a case-by-case basis in light of the credibility of the testimony.”¹⁷ Both the Case 001 and Case 002/01 Judgments relied on civil party testimony to support particular findings not only of harm but also of fact. Nuon Chea’s Defense has argued against this practice in its appeal of the Trial Chamber’s Judgment in Case 002/01.¹⁸

The President acknowledged the distinction between Civil Parties and witnesses, confirming that only witnesses are regarded to take an oath, however the Chamber ruled that Ms. Oum Suphany was in fact “required to respond to the questions, because we are here to hear your testimony. If you decline to answer, the Chamber can assess that your testimony may not be credible.”¹⁹ Ms. Suphany ultimately answered, but her initial refusal to answer questions may have adversely impacted her credibility.

C. Repetitive Objections

At regular points in the proceedings over the last two weeks, International Defense Counsel for Nuon Chea, Mr. Victor Koppe has objected to the use of Office of Co-Investigating Judges documents in questioning witnesses and to the term “Khmer Rouge regime” instead of “Democratic Kampuchea” regime. During the 21 January hearing, Mr. Koppe objected to the prosecutor’s use of photocopied documents from Kraing Ta Chan in questioning witnesses, as “original records from Kraing Ta Chan do not exist”. The Chamber ruled that the fact that the

document was not an original went to authenticity and would be considered by the Chamber when evaluating the evidence.²⁰ Mr. Koppe also objected to the term “Khmer Rouge” as it is a generic term without any meaning and was not widely used until after 7 January 1979; he argued that the regime should instead be referred to as “Democratic Kampuchea.” During the 29 January proceedings, Mr. Koppe raised the same objections and sought clarification on whether he needed to re-raise objections that had been previously ruled upon. The Chamber overruled the objections and stated, “Counsel need not repeat objections on which the Chamber has already ruled,” but may re-raise objections if there new grounds, circumstances, or information arise.

IV. TRIAL MANAGEMENT

The Trial Chamber continued to advance Case 002/02 efficiently this week, successfully completing the testimonies of two Civil Parties and the large majority of a third Witness. It also made efforts to hasten proceedings in the long run, with a change in scheduling for the lunchtime recess that would allow four hearing days per week, and with the President’s continued warnings to the parties to stay within parameters of questioning and avert delays.

A. Attendance

Due to backache, Nuon Chea waived his right to be present in the courtroom, and observed proceedings from the holding cell throughout the week. Khieu Samphan was present in the courtroom during all sessions, but he retired to the holding cell towards the end of the 26 January hearing, due to poor health.

Judges Attendance: National Judge You Ottara was absent from the 26 January proceedings due to a personal commitment and was replaced by national Reserve Judge Thou Mony.

Civil Parties Attendance: There were approximately ten Civil Parties observing the proceedings each day this week in the courtroom.

Parties: All the Parties alongside the newly appointed Standby Counsel, Ms. Touch Vorleak and Mr. Calvin Saunders were represented in the courtroom in this week. Prosecutor Joseph Andrew Boyle made his first appearance during questioning of Civil Party Chou Koemlân.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 26/01/2015	<ul style="list-style-type: none"> ▪ Approximately 230 villagers from Baribour District, Kampong Chhnang Province ▪ 8 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 250 villagers from Phnum Kravanh District, Pursat Province ▪ 30 foreign observers
Tuesday 27/01/2015	<ul style="list-style-type: none"> ▪ Approximately 259 students and 10 teachers from different sites of Beltei International School, Phnom Penh ▪ 5 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 278 students and 10 teachers from different sites of Beltei International School, Phnom Penh ▪ 4 foreign observers

Thursday 29/01/2015	<ul style="list-style-type: none"> ▪ Approximately 280 students and 7 teachers from different sites of Beltei International School, Phnom Penh ▪ 11 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 180 students and 8 teachers from different sites of Beltei International School, Phnom Penh ▪ 10 foreign observers
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B. Time Management

This week, the Trial Chamber slightly adjusted the Court's schedule in order to prevent Khieu Samphan's poor health or a Civil Party's personal commitments from delaying the trial proceedings any further. Following the medical experts' assessment from the week prior,²¹ the Chamber made an oral ruling to allocate 30 additional minutes to the daily lunchtime recess. Although the Chamber discovered the witness it called on Tuesday afternoon, Em Phoeung (2-TCW-954), could not attend hearings on Thursday the 29th or during the following week, due to his commitments as chief monk of Kampot Province, the Chamber successfully summoned a new witness Ms. Cheang Srei Mom to testify. Her testimony was scheduled to finish on the morning of Monday, 2 February 2015.

During the proceedings themselves, the Trial Chamber also strictly enforced time allocation for the Parties, especially reminding all the Parties to use their time more effectively. For instance, when the Civil Party Lead Co-Lawyer Marie Guiraud objected late to a statement by international defense counsel Victor Koppe, the President warned the CPLCL reminded her to make any objections together with the Prosecution to minimize time spent making oral submissions. The Chamber also refused to cede extra time to the OCP and Civil Parties to put questions to Witness Cheang Srei Mom, even though the morning session had been cut by half an hour in the new daily schedule, to expand the lunchtime recess to two hours.

C. Courtroom Etiquette

A few moments of improper etiquette occurred in the courtroom throughout the week's proceedings, including suffering reaction of the Civil Party. On 27 January, the President raised his voice and sharply directed National Counsel for Nuon Chea, Son Arun, to assist his counterpart, Mr. Koppe, to read a location name in Khmer, as Mr. Koppe repeatedly pronounced the name incorrectly, leaving the witness unable to comprehend the question. Whereas last week the President appeared more agitated with the errors of Witness Meas Sokha during testimony, this week the President reacted more negatively to parties that appeared to be delaying proceedings. Trial monitors also noted Judge You Ottara appeared to be texting on his cellphone during afternoon proceedings on 29 January.

D. Translation and Technical Issues

This week saw several translation and technical issues recur throughout the proceedings, prompting complaints from all the parties on the accuracy of communication. In multiple instances on 27 and 29 January, all parties complained of transition lags and errors during examinations of Civil Party Chou Koemlân and Witness Cheang Srei Mom. During international prosecutor Dale Lysak's question to Cheang Srei Mom on the possible repercussions of not consummating her marriage, an error in interpretation from the English word, 'if', to the Khmer word, 'when', prompted national counsel for Khieu Samphan, Kong Sam Onn, to make an objection to a leading question. There were also several technical interruptions during the proceedings. For example, one technical interruption occurred during Victor Koppe's questioning Witness Chou Koemlân, and the President asked the Counsel to patiently wait and repeat his questions when the microphone reactivated.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 26/01/2015	9:05	10:43 – 11:01	12:00 – 13:33	14:47 – 15:10	15:14	3 hours and 55 minutes
Tuesday 27/01/2015	9:04	10:10 – 10:32	11:33 – 13:29	14:42 – 15:00	15:47	4 hours and 7 minutes
Thursday 29/01/2015	9:01	10:11 – 10:32	11:34 – 13:32	14:33 – 14:53	16:03	4 hours and 23 minutes
Average number of hours in session				4 hours and 8 minutes		
Total number of hours this week				12 hours and 25 minutes		
Total number of hours, day, weeks at trial				32 hours and 13 minutes		
11 TRIAL DAYS OVER SIX WEEKS						

*This report was authored by Mayuri Anupindi, 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

¹ Ms. OUM Suphany (2-TCCP-296) was questioned in the following order: international Co-Lawyer for Nuon Trial Chamber, Transcript of Trial Proceedings (26 January 2015), E1/252.1 [hereinafter **26 JANUARY TRANSCRIPT**], lines 19-20. p. 20.

³ 26 JANUARY TRANSCRIPT, line 5. p. 22. For more on the international jurisprudence of this criminal allegation in Case 002/02, the Special Court of Sierra Leone defined the crime as a perpetrator compelling a person by force or threat of force, into a forced conjugal association with another person resulting in great suffering, or serious physical or mental injury on the part of the victim. *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu*, Case No. SCSL-2004-16-A, Judgment (Appeals Chamber), 22 February 2008, para 195. International courts have taken differing approaches to forced marriage as a crime against humanity. For a fuller discussion, see: Neha Jain, *Forced Marriage as a Crime against Humanity: Problems of Definition and Prosecution*, Journal of International Criminal Justice vol.6, issue 5, 1013-1032.

⁴ 26 JANUARY TRANSCRIPT, lines 9-25, p. 33; lines 1-25, pp. 34-36; lines 4-15, p. 40.

⁵ Ms. CHOU Koemlân (2-TCCP-238) was questioned in the following order: President NIL Nonn; international Civil Party Lead Co-Lawyer Marie GUIRAUD; national deputy prosecutor SONG Chorvoin; international assistant prosecutor Joseph Andrew BOYLE; Judge Claudia FENZ; Judge Jean-Marc LAVERGNE; national legal consultant to Nuon Chea, SUON Visal; 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

⁶ The *Sangkum Reastr Niyum*, or the “People’s Socialist Community,” was the political party and movement organized by Prince Norodom Sihanouk following Cambodia’s independence from France in 1953. After two years as monarchical rule, Sihanouk abdicated as King, took on the title of Prince, and formed the *Sangkum* in 1955. The *Sangkum* effectively ran the country as a one-party state, with Prince Sihanouk as its leader, until the bloodless 1970 coup by Lon Nol and Prince Sirik Matak. As the *Sangkum* constituted the single party, it sought to appease leftists unhappy with its traditionally rightist base. To achieve this, Sihanouk invited Khieu Samphan, a prominent communist intellectual, to join the *Sangkum*. He gained a name for himself, but he was accused of instigating a peasant uprising in 1966 and summoned to appear before a military tribunal. He fled Phnom Penh in April 1967 and found refuge first under the protection of Ta Mok in the forests of Kampong Speu Province, amidst the growing ‘Khmer Rouge’ insurgency. See paragraphs 1126-28 of the Case 002 Closing Order (15 September 2010, D427).

⁷ 26 JANUARY TRANSCRIPT, lines 3-6. p. 89. This incident relates to separate allegations concerning the treatment of targeted groups, including ethnic Vietnamese, as per paragraphs 1343-1349 of the Case 002 Closing Order (15 September 2010, D427). The Co-Accused have been charged with the crime of Genocide for these matters, however, there is no charge listed for the Genocide of the Khmer Krom, or ethnic Khmers born in Southern Vietnam.

⁸ 26 JANUARY TRANSCRIPT, line 24, p. 72; line 3, p. 73.

⁹ Ms. CHEANG Srei Mom (2-TCW-834) was questioned in the following order: President NIL Nonn; national deputy prosecutor SONG Chorvoin; international assistant prosecutor Dale LYSAK; national Civil Party Lawyer CHET Vanly; international Civil Party Lead Co-Lawyer Marie GUIRAUD; Judge Claudia FENZ; Judge Jean-Marc LAVERGNE; national legal consultant to Nuon Chea, SUON Visal; international Co-Lawyer for Nuon Chea, Victor KOPPE.

¹⁰ See CASE 002/02 KRT TRIAL MONITOR, Issue 5, Hearings on Evidence Week 2 (21-23 January 2015), pp. 6-7.

¹¹ ECCC Internal Rule 87(4): "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." (*ECCC Internal Rules*, 9th Revision, as revised on 16 January 2015).

¹² 26 JANUARY TRANSCRIPT, lines 10-11. p. 7.

¹³ 26 JANUARY TRANSCRIPT, lines 4-9, p. 10.

¹⁴ 26 JANUARY TRANSCRIPT, lines 16-17, p. 13.

¹⁵ Nuon Chea Defense Team, Nuon Chea's Rule 87(4) Request to Admit Documents in Respect of Civil Party Oum Suphany (28 January 2015), E337.

¹⁶ ECCC Internal Rule 28 provides that witnesses have the right against self-incrimination. Civil Parties are not specifically mentioned in the provision. ECCC Internal Rule 21(d) provides that the Accused has the right to remain silent. (*ECCC Internal Rules*, 9th Revision, as revised on 16 January 2015)

¹⁷ Trial Chamber, Decision on Request to Recall Civil Party and Related Requests (02 May 2013), E267/3, paras. 21-22.

¹⁸ Nuon Chea Defense Team, Nuon Chea's Appeal against the Judgment in Case 002/01 (29 December 2014), "Ground 34," F16, section VI.H.

¹⁹ 26 JANUARY TRANSCRIPT, lines 12-15, p. 19.

²⁰ See CASE 002/02 KRT TRIAL MONITOR, Issue 5, Hearings on Evidence Week 2 (21-23 January 2015), p. 6.

²¹ See CASE 002/02 KRT TRIAL MONITOR, Issue 5, Hearings on Evidence Week 2 (21-23 January 2015), p. 6.