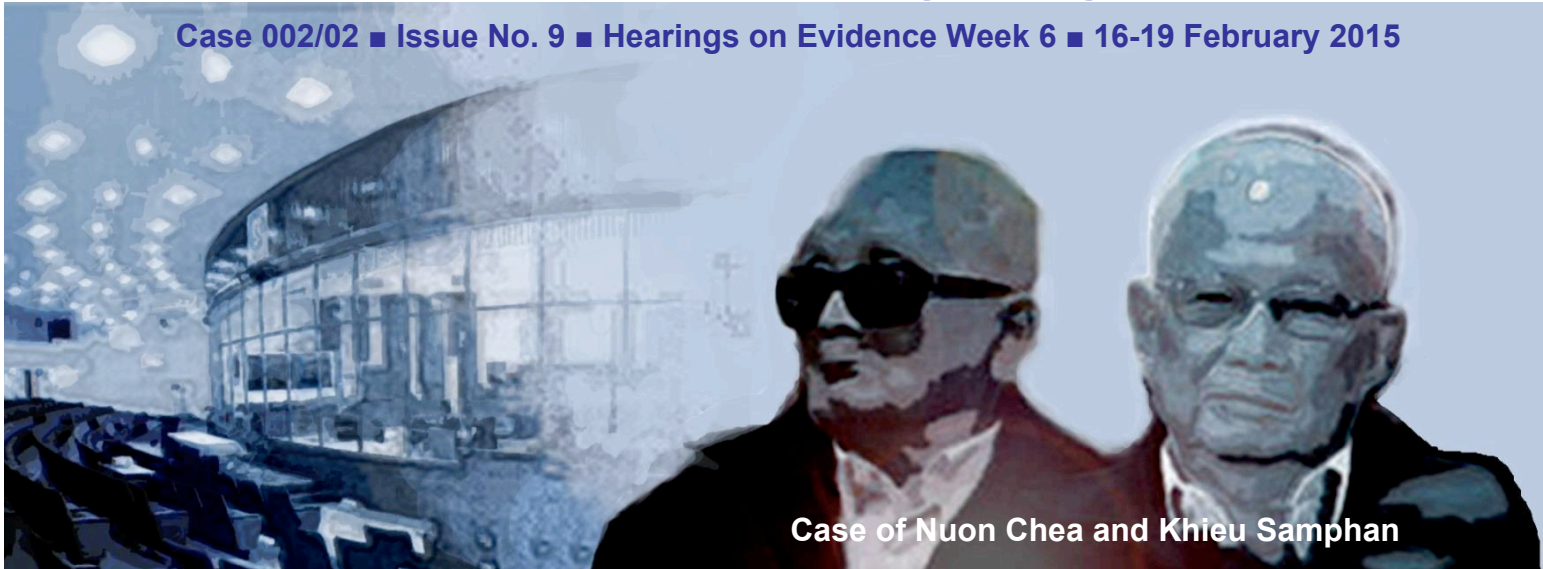


KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 9 ■ Hearings on Evidence Week 6 ■ 16-19 February 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)

There would be no longer any Buddhism in Cambodia, because they said that Buddhist religion would lead to no progress at all...Such culture would no longer exist, and only the culture of engaging in labor would follow.

- Witness, Reverence Em Phoeung

I. OVERVIEW

This week, the Trial Chamber moved efficiently in completing the examination of three witnesses and commencing the questioning of a fourth, even as procedural hurdles threatened the continued progress of Case 002/02. The OCP began to insert newly released confidential statements from the Case 004 investigation into the Case 002/02 dossier, as they include both inculpatory and exculpatory material relevant to the ongoing trial. Both the Defense Teams, with the tacit support of the Civil Parties, sought postponement of trial so the new statements could be reviewed for impact upon witness testimony in the current trial segment on Tram Kak District and Kraing Ta Chan Security Center (**KTC**). The Trial Chamber declined to postpone this week, moving forward with the four witnesses after determining the new statements were not relevant to their particular examinations. However, the Court did announce modifications to the hearing schedule for the next two weeks to provide more time for the parties to review the new Case 004 statements. With the threat of postponement effectively addressed, the Chamber successfully heard testimony from a monk who was defrocked and forced to labor under the Khmer Rouge, and from two 'base' people who described life in their Tram Kak cooperatives. In its brief session on Thursday, 19 February, the Chamber began to hear testimony from a former prison guard at Kraing Ta Chan previously identified as 'Little Duch'. This report summarizes the testimony of the four witnesses, analyzes the inclusion of Case 004 statements in evidence, and briefly discusses other procedural and trial management issues that arose this week.

II. SUMMARY OF WITNESS TESTIMONY

The Trial Chamber proceeded with the testimony of four different witnesses this week. First, it heard the testimony of a monk who had been disrobed under the DK regime, His Reverence Em Phoeung, who initially began his testimony in the fourth week of the Case 002/02 hearings on evidence, but had been interrupted. Following the monk's testimony, the Court heard from

two different men, Mr. Phnov Yav and Mr. Sao Hean, who described their work in Tram Kak District cooperatives and their treatment as 'base' people according to the DK system of classifications. Lastly, the OCP began its examination of Witness Mr. Srei Thorn, a former guard at Kraing Ta Chan Security Center who agreed to testify only under certain protective measures agreed upon by the Chamber and parties.

A. Summary of Testimony by Witness Em Phoeung

His Reverence Em Phoeung, chief monk of Kampot province and resident monk at Chum Kriel pagoda, resumed his testimony this week after having first appeared to provide basic biographic details to the President on 27 January 2015.¹ On 16 February, he discussed his experience with the evacuation from Phnom Penh, where he was living at Sampov Meas pagoda. His testimony also covered his brief stay at Ang Roka pagoda in Tram Kak District, Takeo Province, and his subsequent treatment alongside other monks.² Questioning focused on the forced defrocking he and other monks experienced at the hands of Khmer Rouge authorities, living and working conditions after he left the monkhood in 1976, and his observation of arranged marriages in his commune. He testified that he left the monkhood in fear of "Angkar's order," which he said no one dared to refuse. However, he also confirmed that he succeeded in rejecting a marriage arranged by Angkar.

1. Defrocking and General Treatment of Monks under the Khmer Rouge

According to His Reverence Em Phoeung, he arrived at Ang Roka pagoda with monks from Phnom Penh and Takeo provincial town following the 17 April 1975 Khmer Rouge takeover of the country. There, the monks received "Angkar's instruction" that the monkhood would no longer be allowed for anyone, and monks had to engage in labor as the lay people did. Initially, they were assigned to build a canal and dam at Trapang Anduek, Tram Kak District, while wearing their robes. The Witness testified that the monks secretly chanted sermons and held prayers quietly in their minds to avoid anyone hearing their continued dedication to Buddhist rituals. The Witness testified that monks were told to disrobe starting in 1975, so that by the start of 1977 there were no longer monks in Cambodia. He stated that he disrobed in 1976. His Reverence Em Phoeung testified that, in 1975, before monks were defrocked, he was called to attend meetings led by the commune and village chiefs, in which they were instructed to disrobe and leave the monkhood. At these meetings, they were provided black clothes and pairs of shoes. Concerning the OCP's questions on these meetings, the Witness recalled that he heard that Khmer Rouge cadres called Buddhist monks "leeches and worms." After he left the monkhood, he was treated as a 17 April person and was assigned to a mobile youth labor unit.

2. Account of Forced Marriage Policies

His Reverence Em Phoeung testified that, as a 17 April person after his defrocking, he was asked to get married to a woman of "Angkar's" choosing. The Witness told the international CPLCL that his account was rather "special" compared to other people, as he successfully refused to get married, with the local cadres' consent not to punish him, due to his background as a monk since a young age. He testified that the commune chief and village chief told him he was more mature and should get married, but he rejected them, stating "No, I did not need a wife, because Angkar was magic, the food was magic, everything was magic." He testified that, after that, they kept silent and ignored him until the 1979 fall of DK. The Witness confirmed that he knew of a friend and former monk who, unlike him, was forced to marry within a larger group of 30 couples one night without traditional Buddhist ritual. However, he also testified that Khmer Rouge cadres asked him, as a former monk, to preside over and preach for new couples to "make resolution" during marriage ceremonies in 1977 and 1978.

3. Witness Demeanor and Credibility

His Reverence Em Phoeung was forthcoming with his answers and admitted to difficulties in remembering small details either due to his age or to the lengthy amount of time since the events in question. On occasion, he misunderstood questions, but he usually provided a more suitable response on follow-up. For example, the prosecutor attempted to follow up on the Witness' statement concerning the disappearance of persons from his commune. When he said he did not "know the one who disappeared," the prosecutor provided specific reference to the Witness' OCIJ interview in which he discussed the disappearance of movie star couple Nop Nem and Kim Nova "to be re-educated." His Reverence then provided a greater amount of detail about that specific incident. In general, he provided succinct and clear answers, and the parties to the proceedings displayed a great deal of respect and courtesy to the chief monk.

B. Summary of Testimony by Witness Phnov Yav

Mr. Phnov Yav testified on the living conditions within Tram Kak cooperatives in Samraong Commune during the DK period. Specifically, his testimony discussed the organization of units, the enforcement of communal ownership, forced marriage ceremonies, and the treatment of Buddhists.³ The Witness was born in Srae Meas Village, Samraong Commune in 1947, and he was considered a 'base' person according to the Khmer Rouge classification. He described his responsibilities and experiences within the cooperative as a 'full-rights' person in Samraong.

1. Testimony on Tram Kak District Cooperative

Phnov Yav testified on the events of 1975, when his village, Pen Meas, was transformed into a cooperative, and the unit chief introduced communal eating, and abolished private ownership. He stated that the two Buddhist pagodas in the commune were transformed into fertilizer warehouses, monks were ordered to disrobe, and Buddha statues were thrown into a pond. He described living in fear during the ensuing DK regime, as he believed one mistake was a death sentence. Under Defense questioning, he could not recall any individuals killed for mistakes, but he clarified his fear was based on what he had heard from people at the time. To illustrate this, he spoke of a fellow unit member named Ta Vin, who complained about the inadequacy of the food ration and later "disappeared." Defense Counsel for Nuon Chea, Victor Koppe, however, stressed the importance of identifying the source of this knowledge, noting the difference between the fact that someone disappeared and the reason that person disappeared. Phnov Yav had previously admitted to the Prosecutor that he never saw people taken away by authorities, as he was busy plowing fields or collecting vegetables, but he confirmed to Mr. Koppe that he never knew the reasons for the arrests he had heard about.

According to the Witness, the division of people into units in Samraong Commune began in 1976. There were three cooperatives in the commune, each staffed with different categories of people. Unit One, located in Ang Punareay village, was comprised of 'full-rights' or 'base' people who were recognized as strong and efficient workers. Unit Two was made up of the 'candidate' people, who were 'base' people but less strong and able than Unit One. Unit Three, 'the depository unit', was made up of the 17 April evacuees from Phnom Penh and Takeo town. The Witness consistently recapitulated the organization of these units under questioning and testified that the decision-making authority for this division was situated at the commune level. He knew this, he said, because he worked closely with the unit chief. He was not sure if the same system of categorization operated in nearby communes, as "freedom of movement was prohibited," and he only knew about his own area. Phnov Yav testified that, in 1978, Units One and Two were merged into one, with all women grouped for transplanting rice and looking after children, and men gathered for carrying earth and planting vegetables. Phnov Yav recalled witnessing marriage ceremonies within his unit, during which large groups of 10 to 20 couples were instructed to "make a resolution" and "to love each other." The Witness stated that the

commune chief presided over the ceremonies, and afterwards, militiamen would listen to the couple at night to determine if they consummated their marriage.

2. Witness Demeanor and Credibility

The Witness was succinct in his responses but gave further detail when necessary. The Witness was forthcoming with all parties, and he admitted when he had been told something as opposed to experiencing it personally. If he was unable to answer part of a question, he provided an explanation. For example, he did not know whether the 17 April people had their belongings confiscated when they arrived in Samraong, because, at the time, he was “busy in the rice fields.” According to trial monitors, the questioning of this Witness grew repetitive, and, at times, questions sporadically transitioned across a range of evidentiary topics, restricting the depth of Phnov Yav’s factual narrative without repeating answers.

C. Summary of Testimony by Witness Sao Hean

The Trial Chamber began to hear the testimony of Witness Sao Hean on Tuesday afternoon. Sao Hean was a rice farmer in Tram Kak District during the DK regime. The examination of this Witness was short, as the Nuon Defense Team chose to question the Witness for only forty minutes, and the Khieu Samphan Defense Team had no questions at all.⁴

1. Formation of Cooperatives

As the Witness was living in Tram Kak District prior to the fall of Phnom Penh, he was able to provide testimony on the formation of cooperatives. The Witness told the Chamber that, in approximately 1970 or 1971, the Khmer Rouge created villages first, and then cooperatives. He explained that chiefs, deputies, and committee members were selected to supervise villages, with the support of newly assigned militia as well. The Witness stated that he had heard that this was the plan of ‘Angkar’, but he never knew where or who Angkar was. After the fall of Phnom Penh in April 1975, the Witness observed the arrival of evacuees from the city into Tram Kak District. He explained that they arrived pushing carts with few belongings. After their arrival, the Witness stated that the villagers were divided into three categories: ‘full-rights’ people, who were often selected as unit or village chiefs; ‘candidate’ people, who were those ‘base’ people with relatives connected to the Lon Nol regime; and, ‘depositories’, who were recently evacuated from Phnom Penh. The Witness was classified as a candidate person, because his brother was a Khmer Republic soldier.

2. Arrests and Disappearances

Mr. Sao Hean testified that, during the DK regime, many people from Tram Kak District disappeared after complaining about food rations or being accused of stealing. The Witness also stated that when the Khmer Rouge arrived in Tram Kak in 1970, hospitals and schools closed because teachers and doctors “were all gone.” After April 1975, the Witness’ brother was arrested after the group chief searched his home and discovered that he was a soldier under the Lon Nol regime. The Witness stated he knew there was a killing field at Kraing Ta Chan, and that his brother was taken and killed there. However, Victor Koppe pressed the Witness on how he learned what happened to people who “disappeared.” The Witness confirmed to Mr. Koppe that his use of “disappeared” meant people “went away and didn’t come back.” Sao Hean admitted that he did not know whether people were taken away for transfer elsewhere, arrest, or execution. Under Mr. Koppe’s questioning, the Witness also contradicted his earlier statement, explaining that he only heard of KTC after the 1979 Liberation, and he could not confirm whether his brother was actually taken and killed there.

3. Life in the Cooperatives

The Witness testified that the food rations provided in the cooperatives were not enough, causing people to become weak and their bodies to swell. However he stated that no one complained about food provisions, as they feared the unit chief. The Witness alleged that those who did complain were considered internal enemies and disappeared. Victor Koppe attempted to separate the behavior of this unit chief from the intentions of higher-ranked cadres by questioning the Witness from a list of traditional descriptive words found in a 'Revolutionary Flag' propaganda magazine. The magazine was not on the courtroom interface at the time and its use was highly contested amongst the parties, but its use was allowed as an exception (see III.B). With this list of somewhat archaic Khmer words, the Witness confirmed the unit chief was 'authoritarian', 'like a Mandarin', and 'militaristic'.

The Witness also told the Chamber that, between 1975 and 1979, they were told not to practice any religion or believe in any superstition. He testified that, as a result, he saw monks defrocked, Buddhist statues taken away, and Buddhist books used to wrap tobacco. Pagodas were instead used as warehouses or places of labor.

4. Witness Demeanor and Credibility

Throughout the examination of Sao Hean, he remained calm and answered questions clearly. When he did not know the answer to a question or did not understand the question itself, he clearly stated so. This gave the Defense few issues to raise in their examination. Throughout the Prosecution's questioning, however the witness had his body turned in the opposite direction to assistant prosecutor Travis Farr without making eye contact. This could suggest that the Witness was nervous, intimidated, or more simply focusing on the translation of the questions.

D. Summary of Testimony by Witness Srei Thorn

On 19 February, the Trial Chamber held a closed *in camera* hearing for the Court to hear arguments from the Parties on Witness 2-TCW-944's request for protective measures during his testimony (see IV.E). The Chamber granted measures for the testimony, including non-disclosure of the Witness' home address and not making his image available to the public.⁵ The witness, Mr. Srei Thorn, then entered the courtroom and commenced his testimony, the first from a former Khmer Rouge cadre in the DK period to testify in Case 002/02.⁶ The Prosecution began questioning the Witness on his experiences in Tram Kak District and his assignment as a guard at Kraing Ta Chan Security Center. Due to a separate procedural matter (see III.A), the Chamber adjourned early, and the Witness' testimony is scheduled to resume on 23 February 2015.

1. Experiences as a Khmer Rouge Cadre and Guard at Kraing Ta Chan

Under questioning from international Assistant Prosecutor Dale Lysak, Witness Srei Thorn first described his experiences in the years between 1973 and 1976. He testified that he became a Khmer Rouge soldier in 1973 and joined the civil war against the Lon Nol regime in Tram Kak District. He testified that Khmer Republic soldiers who surrendered at Takeo town were sent to the District's rural cooperatives. The Prosecution asked the Witness about 'Office 204' in Prey Kduch, in the same district, but the Witness claimed he did not know of its existence. Srei Thorn recalled that he was assigned to Regiment 13, which operated in various locations in the Southwest Zone, before he and five others were transferred to work at KTC in late 1976. The Witness testified that villagers told him that KTC was a 're-education office', and a "killing site at the time." Srei Thorn confirmed there were two detention buildings at the site when he arrived, and he told the Prosecutor that between three and 20 new prisoners would arrive on any given day, under the supervision of commune militias. The Prosecutor confronted the Witness with a

monthly report on prisoner numbers for November 1977 detailing the number of prisoners who arrived, were purged, died of illness, or were “moved to sector by Angkar.” Although Srei Thorn claimed to know nothing of such a report, he recognized the handwriting as that of ‘Duch’, the deputy of the prison chief, An. Prosecutor Lysak clarified that the Witness himself was one of two cadres at KTC with the alias or name ‘Duch’. Srei Thorn also specifically confirmed that a Civil Party who previously testified in the trial, Mr. Soy Sen, was detained at KTC.⁷ Prior to the day’s adjournment, the Prosecutor turned to the topic of interrogations at KTC. The Witness stated that he worked approximately 50 meters from the ‘interrogation room’, which he claimed was located in a different area than on the OCIJ map shown to him.

2. Witness Demeanor and Credibility

Although Srei Thorn’s physical appearance was distorted under protective measures, it did not affect his apparent demeanor as he provided forthright answers to most questions. He acknowledged that he could not recall some details or did not know about others that he was asked about. However, some responses contradicted other evidence in the trial. His memory of the physical layout of Kraing Ta Chan Security Center notably challenged that which the OCIJ had determined in its map, which Civil Party Soy Sen largely confirmed in his previous testimony. He also denied using the name ‘Sok Chantha’ as an alias, even though it was used to identify a former guard and typist at KTC nicknamed ‘Little Duch’ in the research work of Meng-Try Ea (an admitted Expert yet to testify in Case 002, TCE-44).

III. LEGAL AND PROCEDURAL ISSUES

Although there were few objections or submissions from parties during proceedings this week, the Chamber’s expeditious hearing of testimony from the four witnesses was nearly derailed by the OCP’s decision to insert numerous new statements from the Case 004 investigation into the Case 002/02 case file. The parties discussed the matter, and the Chamber provided a way forward that would avoid significant delay of proceedings. Another incident interfered with the flow of the 19 February hearing, when multiple parties objected to Counsel Victor Koppe’s failure to use the courtroom’s computer interface to disclose documents to be used during his examination of Witness Sao Hean.

A. Additional Evidence from Case 004 Impacts Proceedings in Case 002/02

On Monday, February 16th, prior to the commencement of witness testimony this week, Counsel Koppe noted that the OCP had recently added a number of confidential statements from the international Co-Investigating Judge’s Case 004 investigation that were relevant to Case 002/02 to the ongoing case’s dossier. This development in Case 002/02 followed on several months of prior submissions by the OCP, explaining both the context for this new addition of evidence to the case file and the confidential procedures necessary to inform the parties of statements from an ongoing OCIJ investigation.⁸ Mr. Koppe raised concerns in light of the scope of the disclosure, referring to a prior question for clarification that he had put to the OCP concerning the 22 January disclosure of four Case 004 statements relevant to the first trial segment of Case 002/02.⁹ He quoted from the 26 January transcript, noting that prosecutor Dale Lysak had stated that the disclosed statements “do not relate to trial witnesses,” and are “a pretty small number.” Mr. Koppe explained that they were recently informed that another 20 statements from Case 004 would soon be disclosed. Counsel also referred to “a strong rumor” that “there are, in fact, hundreds of statements coming from Case 004.” Anta Guissé, Counsel for Khieu Samphan, supported her colleague’s subsequent suggestion that a postponement of trial proceedings might be necessary to review all the new statements. Prosecutor Vincent de Wilde D’Estmael refuted any suggestion that OCP’s actions were “a matter of tactics,” and explained that it was simply a matter of “due diligence” for the OCP to disclose such evidence to the case file as it became available. However, international CPLCL Marie Guiraud agreed with the Defense that time was needed to read the new documents without overly impacting

continued progress of the trial. Judge Fenz recognized that the situation was “obviously unusual and fluent, and potentially problematic.” She confirmed that the new statements would not impact the testimony of Em Phoeung, the witness who was scheduled to appear next, but she asked the OCP for an assessment of how many more documents were expected to come.

At the close of Em Phoeung’s testimony later that afternoon, Victor Koppe raised the issue again, with the aim of settling a firmer resolution before the commencement of the next Witness’ testimony. Mr. Koppe called news of further batches of incoming documents “astounding” and “very disturbing,” as it meant over 300 documents from Case 004 would be added to the case file. Counsel listed the number of statements that a cursory review had revealed as relevant to the first segment of Case 002/02, and he reiterated the need for a postponement of trial for their immediate review “to estimate what the relevance is.” Counsel for Khieu Samphan, Anta Guissé and Kong Sam Onn, supported their colleague, with the latter noting the difficulty in familiarizing themselves with the dossiers of Cases 003 and 004 due to confidentiality restraints. Vincent de Wilde D’Estmael assured the Chamber that, of the 89 statements in the first of the incoming batches, none related to witnesses on the parties’ list for the first trial segment. Judge Fenz noted that the OCP planned to provide greater clarification on these questions on the following Monday, 23 February 2015. The Civil Parties asked that any decision on postponement be delayed until the OCP’s submission that day. Although Counsel Koppe argued, “Waiting until Monday is too late,” Judge Fenz received confirmation from the Defense Teams that they did not feel the new statements impacted the next Witness, 2-TCW-934, so Mr. Phnov Yav was subsequently ushered into the courtroom to begin his testimony.

Before the Defense began to question Phnov Yav the following afternoon, however, Mr. Koppe renewed his complaint, calling the Court’s attention to the two new Case 004 statements his team had just received from OCP. He noted, “One statement seems to be a very important statement for our case, [and] it contains, as we briefly saw, 128 pages.” He again asked for a postponement of the hearings. Mr. De Wilde D’Estmael argued, however, that the questioning of the witness should proceed, because the statements in question were “not proven” to impact Mr. Phnov Yav’s testimony or that of the next Witness, 2-TCW-804 (Mr. Sao Hean). He argued that the only witness in the first trial segment that these disclosures would impact was 2-TCW-809.¹⁰ Ms. Guissé explained that, although she was not suggesting the OCP was “laying traps,” the system was biased toward the OCP, which had access to the documents prior to other parties. The international CPLCL appeared to tacitly agree that the Parties needed a postponement when she noted that the recent disclosures arrived in “a rather thick, loose folder that is difficult to read,” and stated that the CPLCLs were “in the exact same situation” as Defense Counsel. Responding to the renewed debate, Judge Fenz announced that the Chamber would send an email to the parties later that day, outlining the Chamber’s plans for future hearings, to “give time to the parties to familiarize themselves with the documents.” Nonetheless, she announced that the Chamber had determined that witness testimony for the current week could proceed, and that, if new documents impacted their statements, the Chamber could recall them. The contents of the Court’s email were published on the Court website on Thursday, 19 February. The announcement detailed changes to the trial schedule, to provide greater time to the parties to review the Case 004 documents, namely through two midday adjournments on 19 and 25 February, and through the cancellation of two hearings, on 26 February and 2 March.¹¹

B. Victor Koppe’s Failure to Use the Courtroom Interface for Documents

On Wednesday the 19th, Defense Counsel Victor Koppe requested that the Chamber allow him to use a document not placed on the courtroom’s computer interface prior to the hearing session. He sought to present Witness Sao Hean with a page from a July 1978 issue of the DK propaganda magazine, “Revolutionary Flag,” as it contained archaic Khmer words that he claimed could allow for a more accurate description of the attitudes and character of a cooperative unit chief in question. He stressed that the propaganda magazine was “not

unknown” to the parties and that the document should be allowed. International CPLCL Marie Guiraud objected on procedural grounds that the Chamber has established practices for all parties to upload documents to the interface prior to any examination if they wish to refer to them during their questioning of witnesses. She noted that the Chamber had previously recognized documents as “exceptions” for the Defense, but she argued to the Court that the exception should not be permitted to totally undermine the rule. She stated, “If we are to allow exceptions every day, the existence [of a procedure] thereof makes no sense.” Prosecutor Dale Lysak also rejected Defense Counsel’s suggestion that the document “is so well-known that everyone in the courtroom will immediately be familiar with it,” and he shared the CPLCL’s arguments in support of respecting established procedural rules. In response, Mr. Koppe claimed that he had suddenly thought of a possible line of questioning upon hearing the Witness’ testimony and “had no intention to surprise anyone.” He offered to wait until after the lunch break to utilize the document, so that the parties would have time to review the magazine’s issue. After the lunch break, in further discussions, however, both Mr. Koppe and Ms. Guiraud asked the Chamber for a ruling with regard to this issue. Ms. Guiraud repeatedly referred to “the principles of adversarial debate,” to argue for prior notification of any use of documents during witness examination. Judge Fenz agreed that the Chamber would issue a “directive” on the use of the interface for the remainder of the trial, and she allowed this particular document to be used by Mr. Koppe “on an exceptional basis.” Counsel then continued with his questioning.

IV. TRIAL MANAGEMENT

This week, monitors witnessed the Trial Chamber’s efforts to proceed expeditiously with hearings in Case 002/02. When Witnesses completed their testimony early, the Chamber proceeded with the next witness on reserve, to avoid early adjournment. The Chamber also decided to move forward with witness testimony that was not impacted by the new Case 004 documents rather than granting the Defense request for a full postponement (see III.A).

A. Attendance

Nuon Chea waived his right to be present in the main 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 of the Trial Chamber were present throughout the week, with the exception of reserve international Judge Martin Karopkin on 19 February 2015, due to a health-related concern.

Civil Parties Attendance: Approximately eight or nine Civil Parties were directly present in the courtroom each day this week, with one or two indigenous ethnic minority persons represented among them. One Civil Party fainted during the 16 February hearing, and the President asked security to remove her from the courtroom for medical assistance as needed.

Parties: On the afternoon of Monday, 16 February, legal consultant to Nuon Chea, Mr. Suon Visal, was absent without providing any prior notice. The next day, the national Co-Lawyer for Nuon Chea, Mr. Son Arun, was not present. On the same day, February 17th, Mr. Ven Pov, the officially designated stand-in for national Civil Party Lead Co-Lawyer Pich Ang, was not present, and Civil Party Lawyer Mr. Lor Chunthy sat in his stead. All other parties were present to the proceedings throughout the week.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 16/02/2015	<ul style="list-style-type: none"> ▪ Approximately 200 youth students from different sites of Union of Youth Federation of Cambodia (UYFC), Phnom Penh ▪ 6 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 120 youth students from different sites of Union of Youth Ederation of Cambodia (UYFC), Phnom Penh ▪ 5 students from IIC University of Technology, Phnom Penh ▪ 6 foreign observers
Tuesday 17/02/2015	<ul style="list-style-type: none"> ▪ Approximately 140 youth students from different sites of Union of Youth Federation of Cambodia (UYFC), Phnom Penh ▪ Approximately 10 students from Kambol Secondary School, Phnom Penh ▪ 5 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 140 youth students from different sites of Union of Youth Federation of Cambodia (UYFC), Phnom Penh ▪ Approximately 10 students from Kambol Secondary School, Phnom Penh ▪ 14 foreign observers
Wednesday 18/02/2015	<ul style="list-style-type: none"> ▪ 200 villagers from Koh Andaet District, Takeo Province, including five Khmer Muslims ▪ 10 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 130 students from Pong Teok High School, Dangkor District, Phnom Penh
Thursday 19/02/2015	<ul style="list-style-type: none"> ▪ 150 Grade 11 students from Pong Teok High School, Dangkor District, Phnom Penh ▪ 6 foreign observers 	<i>No proceedings</i>

B. Time Management

The Trial Chamber worked to strike a balance between time allocations for all Parties, ensuring that hearings ran smoothly even as a few unexpected issues forced it to modify its management of proceedings. Parties have adjusted to the new daily schedule allowing for a two-hour lunch break and an early morning adjournment at 11:30AM, which stems from the report of the medical experts on 25 January 2015. However, the parties required greater time to review new additions to the case file, and the Court quickly adjusted its hearing schedule to allow for cancellation of some hearings and early adjournment of others (see III.A). The half-day hearing on Thursday the 19th was one such example. The Chamber also was forced to delay its commencement of the examination of Mr. Srei Thorn, as it was seized of his request for protective measures, which the parties discussed in an *in camera* session on Thursday the 19th, in the first morning session (see IV.E).

C. Courtroom Etiquette

Concerning the contentious nature of a suggested postponement to review Case 004 statements recently added to the Case 002/02 case file, the discourse between the parties was markedly civil and respectful in tone. However, on 18 February, the Defense repeatedly objected to prosecutor Travis Farr’s examination of Mr. Sao Hean, arguing that questions about

the health effects of insufficient food rations or the reasonability of DK rice production goals were matters for experts and beyond the knowledge of the Witness. In general, the parties conducted the exchange of objections and responses normally, but the President addressed Mr. Victor Koppe and Ms. Anta Guissé more aggressively when they attempted to respond to the Prosecutor’s response to their original objections. Lastly, trial monitors continued to note judges and other parties using personal mobile phones or falling asleep during proceedings throughout the week.

D. Translation and Technical Issues

President Nil Nonn repeatedly asked the parties to slow down their speech, and he also noted that there was less translation support available this week, presumably due to Chinese New Year, an unofficial holiday in Cambodia. During the lengthy discussion of procedural matters concerning the Case 004 documents, monitors noted that multiple translators provided paraphrasing of the parties’ statements, rather than complete translations. Translators also occasionally made false translations that resulted in confusion. In two other examples caught and pointed out by the parties, “militaristic” was translated as “materialistic,” and “workshop” was translated as “warehouse.” Only one notable technical issue occurred this week, when Mr. Suon Visal’s questioning of Witness Em Phoeung on 16 February was interrupted briefly due to malfunction of the transcription machine.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 16/02/2015	9:07	10:18 – 10:35	11:31 – 13:20	14:42 – 15:00	15:59	4 hours and 28 minutes
Tuesday 17/02/2015	9:01	10:12 – 10:31	11:30 – 13:33	14:41 – 15:04	16:04	4 hours and 18 minutes
Wednesday 18/02/2015	9:02	10:11 – 10:35	11:34 – 13:42	14:11 – 14:30	14:40	2 hours and 47 minutes
Thursday 19/02/2015	9:07* <i>(*in Closed Session*)</i>	10:00 – 10:28	--	--	11:44	2 hours and 9 minutes
Average number of hours in session				3 hours and 25 minutes		
Total number of hours this week				13 hours and 42 minutes		
Total number of hours, day, weeks at trial				78 hours and 52 minutes		
23 TRIAL DAYS OVER NINE WEEKS						

*This report was authored by Johanna Hamark Kindborg, Nget Lonh, Daniel Mattes, Claire McMullen, Lina Tay, Phoebe Sabin, 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	Royal Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ See CASE 002/02 KRT TRIAL MONITOR, Issue 6, Hearings on Evidence Week 4 (2-6 February 2015), p. 9.

² His Reverence EM Phoeung (2-TCW-954) was questioned in the following order: national assistant deputy

² His Reverence EM Phoeung (2-TCW-954) was questioned in the following order: national assistant deputy prosecutor SREA Rattanak; international senior assistant prosecutor Vincent DE WILDE D'ESTMAEL; national Civil Party Lawyer VEN Pov; international Civil Party Lead Co-Lawyer Marie GUIRAUD; national legal consultant for Nuon Chea, SUON Visal; international Co-Lawyer for Nuon Chea, Victor KOPPE; national Co-Lawyer for Khieu Samphan, KONG Sam Onn.

³ Mr. PHNOV Yav (2-TCW-934) was questioned in the following order: international senior assistant prosecutor Vincent DE WILDE D'ESTMAEL; national Civil Party Lawyer LOR Chunthy; national legal consultant for Nuon Chea, SUON Visal; international Co-Lawyer for Nuon Chea, Victor KOPPE; national Co-Lawyer for Khieu Samphan, KONG Sam Onn.

⁴ Mr. SAO Hean (2-TCW-807) was questioned in the following order: President NIL Nonn; international assistant prosecutor Travis FARR; national senior deputy prosecutor SONG Chorvoin; national Civil Party Lawyer TY Srinna; international Civil Party Lead Co-Lawyer Marie GUIRAUD; international Co-Lawyer for Nuon Chea, Victor KOPPE.

⁵ Article 33 new of the ECCC Law specifies, "The Court shall provide for the protection of victims and witnesses. Such protection measures shall include, but not be limited to, the conduct of in camera proceedings and the protection of the victim's identity." IR 29, entitled "Protective Measures," puts the legal exception permitted for in the ECCC Law, into place. IR 29(3) allows for the Trial Chamber to "order appropriate measures to protect victims and witnesses whose appearance before them is liable to place their life or health or that of their family members or close relatives in serious danger." They are supposed to order any necessary protective measures far in advance of the testimony, but they are allowed to consider later applications on an exceptional basis. To determine this level of liability, the TC should consult with Victims Support Section (VSS) and Witnesses/Experts Support Unit (WESU). Then, the TC must make a reasoned decision on the matter. If the reasoned decision of the Chamber regarding a life-threatening situation results in the decision to issue protective measures for the witness or Civil Party's testimony, Rule 29(4)(d) specifically notes that "technical means may be used that allow remote participation or distortion of the person's voice and/or physical features." IR 29 also states that any appeals to Decisions issued by the Trial Chamber on this matter shall be subject to appeal to the Supreme Court Chamber.

⁶ Mr. SREI Thorn (2-TCW-944) was questioned in the following order: President NIL Nonn; assistant prosecutor Dale Lysak.

⁷ Civil Party Soy Sen testified on 4-6 February 2015 on his detention at Kraing Ta Chan. He specifically noted that two cadres there were named 'Duch', and that 'Big Duch' was the deputy chief of the prison. Mr. Soy Sen testified that 'Little Duch', presumably Witness Srei Thorn, was one of the cruelest of the guards at the Security Center. The Civil Party detailed a particular incident in which 'Little Duch' directed him to collect the bodies of two women who he had just raped and killed. Soy Sen testified that he found two corpses with M-79 bulletheads inserted into their vaginas, and that, when he encountered 'Little Duch' upon his return to the prison compound, the cadre was laughing. The Civil Party also identified 'Little Duch' as one of the guards who he witnessed brutally kill two young children. He testified that 'Little Duch' was one of the "most wicked" of all the prison guards. Soy Sen also confirmed that 'Little Duch' was still alive and living in Takeo Province, whereas 'Big Duch' died at some point since the end of DK. See CASE 002/02 KRT TRIAL MONITOR, Issue 6, Hearings on Evidence Week 4 (2-6 February 2015), pp. 4-6.

⁸ On 17 October 2014, at the outset of proceedings in Case 002/02, International Co-Prosecutor Nicholas Koumjian submitted that he had received permission from International Co-Investigating Judge Mark Harmon to confidentially disclose 27 witness statements from the Case 004 investigation which had previously been classified as "strictly confidential." The submission noted that the evidence therein included both inculpatory and exculpatory information. The submission proposed a procedure for the confidential disclosure of these statements gradually to the parties to ensure their continued secrecy, as the investigation is ongoing (see International Co-Prosecutor, "International Co-Prosecutor's Disclosure of Statements from Case 004" (17 October 2014), E319). Subsequently, on 24 December 2014, the Trial Chamber issued a decision to admit 30 written records of interview from 25 of these individuals into evidence for Case 002/02's first trial segment, on the Tram Kak Cooperatives and Kraing Ta Chan Security Center. The Trial Chamber referenced Internal Rule 87, which governs the admission of evidence after the investigative phase, and it adopted the OCP's proposed outline of procedures for preserving the documents' confidentiality (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).

⁹ On 22 January 2015, the OCP followed the Chamber's December decision with the disclosure of four statements from the Case 004 investigation, "which are relevant to the first segment of the trial in Case 002/02." This submission also noted that the OCP has requested the OCIJ disclose further statements relevant to the trial's first segment from both Case 003 and Case 004 (see International Co-Prosecutor, "International Co-Prosecutor's Disclosure of Statements from Case File 004 Relevant to 1st Segment of Case 002/02 Trial" (22 January 2015), E319/8). The International Co-Prosecutor disclosed another 20 statements and three related documents from Case 004 on 11 February 2015. The submission maintained that all the documents are relevant to Case 002/02, and that some of the documents have been identified by the Nuon Chea Defense as "potentially exculpatory" (see International Co-Prosecutor, "International Co-Prosecutor's Disclosure of Documents from Case File 004 Relevant to Case 002" (11 February 2015), E319/12).

¹⁰ The Prosecutor argued that a greater number of the Case 004 statements were relevant to the next segment of the trial, which concerns three worksites around the country. That segment will include discussion of Trapeang Thma Dam worksite in Preah Net Preah District of Sector 5 of the Northwest Zone. This is the same district in which a suspect in Case 004 was alleged to have led a purge to become District Secretary in 1977. As such, it is likely that statements relevant to that suspect's case are also relevant to events and crimes that allegedly transpired at the Preah Net Preah District worksite, for the purposes of Case 002/02. With Cases 003 and 004 expected to conclude their investigations by the end of 2015 and the outlook for their Closing Orders unclear (see Revised ECCC Completion Plan, Revision 3 (31 December 2014), <<http://www.eccc.gov.kh/sites/default/files/ECCC%20Completion%20Plan%204th%20quarter%2014.pdf>>), it appears the OCP and OCIJ will be able to utilize some of the evidence-gathering of the Case 004 investigation in Case 002/02, should Case 004 not proceed to trial with an indictment.

¹¹ ECCC, Changes to the Case 002/02 Hearing Schedule (19 February 2015), <<http://www.eccc.gov.kh/en/articles/changes-case-00202-hearing-schedule>>.