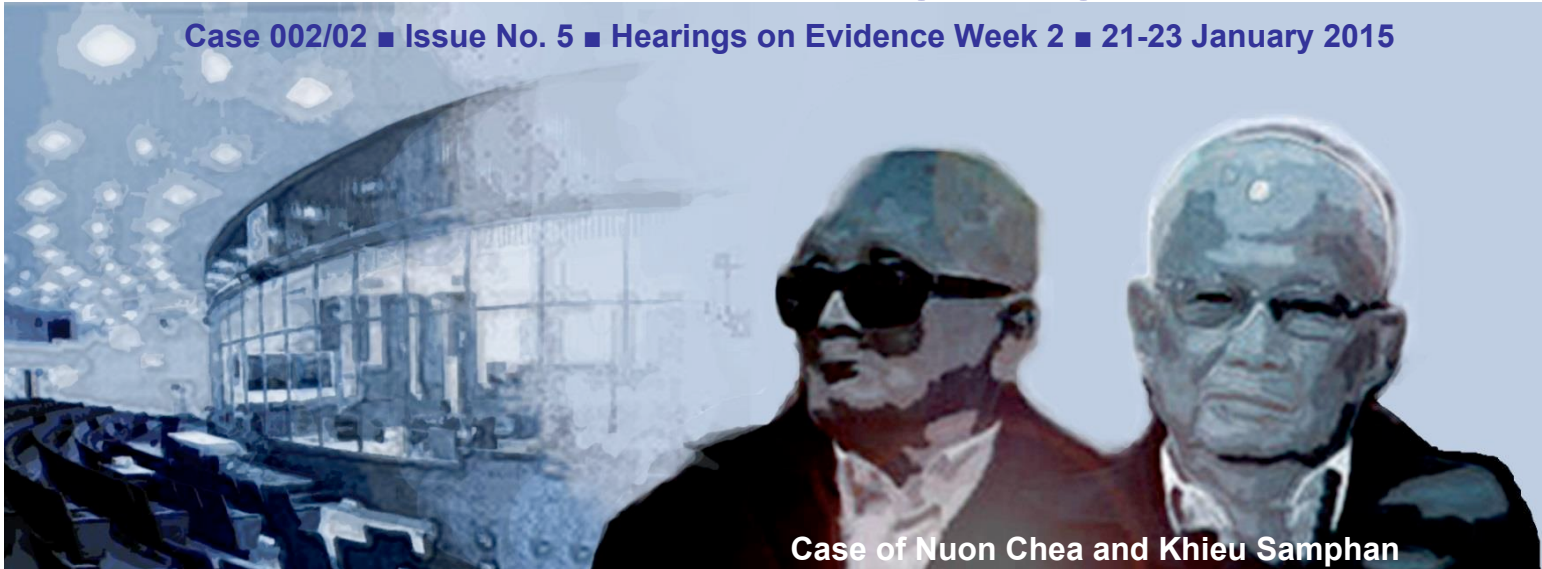


KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 5 ■ Hearings on Evidence Week 2 ■ 21-23 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)

" Go out, go out, Phnom Penh, I left you. I had sufferings in my mind, in my heart. I know that we have no freedoms in the times we leave you. Hold, hold, hold. Digging the canal and make the dykes. We are so worried. We do not need to learn from schools. I am standing on the model farms to feel relieved. However, I am very suffering, I am very suffer, because I depart from my family members. Request, request, request. Cooperatives ask us to do the work and if we disappear, it means that we die. Poor Khmer people."

- Oum Suphany, Civil Party,
reciting a song she wrote
in her diary in 1975¹

I. OVERVIEW

This week marked the first full week of hearings in Case 002/02 to proceed without significant disruption to the Court schedule. The Chamber successfully concluded the testimony of Mr. Meas Sokha, the first witness in the trial and a former prisoner at Kraing Ta Chan Security Center in the Southwest Zone. The Witness testified at length about his observations at the prison, including allegations of torture and killings, and the Defense Teams questioned him in an intensive attempt to undermine his claims. The Chamber also began the examination of the first Civil Party to testify in Case 002/02, Ms. Oum Suphany. Her lawyer and the prosecutors questioned the Civil Party on her experiences living and working in a rural Tram Kok District cooperative in Democratic Kampuchea. Through efficient time management, the Chamber heard these testimonies in addition to the previously scheduled hearing of the medical experts, who were called to examine the physical and mental fitness of the Co-Accused to stand trial. This report includes a summary of their findings, as well as legal analysis of objections or submissions raised during this week of proceedings. Lastly, the report summarizes recent changes that the Tribunal announced regarding a ninth revision to its internal rules.

II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

On 21 and 22 January, Mr. Meas Sokha concluded his testimony as the first witness in the adversarial hearings of Case 002/02 before the ECCC Trial Chamber.² The Parties' examination of the Witness this week focused mainly on his experiences as a prisoner at Kraing Ta Chan Security Center. After concluding the Witness' testimony on Thursday, 22 January,

the Trial Chamber heard the testimony of Ms. Oum Suphany, the first Civil Party to testify in Case 002/02. In her testimony on the afternoons of 22 and 23 January, the Civil Party discussed her experiences living in a rural cooperative in Tram Kok District.

A. Summary of Testimony by Witness Meas Sokha

Mr. Meas Sokha provided a day and a half of further testimony on his experience as a prisoner at Kraing Ta Chan Security Center from June 1976 to August 1978.³ During the first part of his testimony on the morning of 21 January, the Witness again described his arrival at Kraing Ta Chan and his detention with relatives in a building with more than twenty shackled prisoners. The Defense's examination of the Witness primarily centered on inconsistent details in three incidents he had described: the suffocation of a prisoner with a plastic bag during interrogation, the killing of babies against a tree, and a single massacre of more than 100 prisoners.

1. Witness Statements on Prison Conditions at Kraing Ta Chan

Both the Prosecutor and Nuon Chea's lawyers questioned the Meas Sokha about the living conditions at Kraing Ta Chan Security Center. The Witness stated that male and female prisoners were detained in buildings where they sat on a wooden floor with their ankles shackled day and night. Mr. Suon Visal, Legal Consultant for Nuon Chea, ascertained that the prisoners were bundled into groups of five, separated by metal rings, with 1.5 meters between each prisoner. According to the Witness, mothers and their babies were kept together in a separate building, and, when the mothers were no longer able to produce milk, the babies often became skinny and died. The Witness described the insufficient food ration – some gruel and a few pieces of potato – given to the prisoners. Meas Sokha explained that thirst led him to drink dirty water stored near fertilizer, stating, "Even if I knew the water was dirty, but I had to drink it in order to survive."⁴ The Witness recalled prisoners dying almost every day from starvation or illness. He stated his younger siblings died within three months of being imprisoned at the security center due to lack of milk and food. When asked by the prosecutor what happened to prisoners when they became sick, the Witness replied that they were left without treatment until they died.

2. Witness Statements on Interrogative Techniques at the Security Center

The first subject of Meas Sokha's testimony to undergo intensive scrutiny by the Defense concerned his statements to the OCP on observing brutal interrogations at the Security Center. Meas Sokha claimed he was never interrogated as he was 15 years old at the time. He explained that his role tending to cattle allowed him to wander relatively freely in and around the prison and even observe interrogations of prisoners. In response to questions from the prosecutor, he testified that he overheard interrogations in which prisoners were asked their rank and whether they worked for the American CIA or the "Yuan" CIA.⁵ He said that interrogators beat prisoners with bamboo and used pliers to pull out their fingernails. If prisoners did not answer "truthfully," Meas Sokha stated interrogators would beat them to death. At one point, Meas Sokha told the OCP he saw a prisoner suffocated with a plastic bag to make him weak enough to confess.

Victor Koppe, international lawyer for Nuon Chea, centered his questioning regarding interrogations at Kraing Ta Chan on this particular claim by the Witness. Mr. Koppe asked Meas Sokha about the particular day when he claimed to have witnessed this prisoner's suffocation. Counsel consistently had to repeat himself to ascertain information specific to that day rather than the more general information on interrogations and torture, which he had already provided in response to questions from the OCP, Civil Parties, and Judges (see IV.B for objections to Mr. Koppe's use of repetitive questions). Multiple questions to Meas Sokha nonetheless elucidated the details of that particular day: he claimed that, on the morning of this interrogation, he was completing kitchen chores outside, when he saw a fat, male prisoner

escorted by guards to “the interrogation place,” which he estimated was about 20 meters from his own location near the kitchen hall. The Witness described this location as “that little house,”⁶ although he described it earlier as an “open place.”⁷ Meas Sokha explained that the prisoner sat down and was handcuffed upon arrival, and then the interrogation proceeded. The Witness first testified, to the OCP and initially to Mr. Koppe, that the interrogator spoke loudly enough for him to hear everything: the interrogator demanded a confession, threatened to beat the prisoner, and said, “You are stubborn, you are a colonel, you work as a CIA agent.”⁸ However, in response to the next of Mr. Koppe’s questions, Meas Sokha said he could not recall substance of the interrogation questions because he was listening from a distance.⁹ He agreed with Mr. Koppe’s suggestion that they interrogated for 15 minutes before putting the bag on the prisoner, but then he added that the interrogators kicked the prisoner first. He then testified that he left the area immediately after viewing the suffocation.

3. Witness Statements on the Nature of Killings at Kraing Ta Chan

The prosecutor raised the topic of executions at the Security Center, and the Witness provided general descriptions of killings he claimed occurred “almost every day.”¹⁰ He stated a loudspeaker playing music was used to drown out the sound of executions, which he noted ranged from 20 to more than 100 per day. Meas Sokha explained to Judge Lavergne that, after killings, the cadres drank wine infused with the internal organs of the prisoners. The Witness used to see the gallbladders laid out in the sun near the prison fence to dry.

In his responses to the Prosecutor’s questions, the Witness stated he saw prison guards kill babies by smashing them against trees. He referred to a Khmer Rouge aphorism, “To dig the grass, we have to dig the root out as well,” to explain why babies were generally executed along with their mothers. Defense counsel Victor Koppe, however, questioned Meas Sokha on the specific circumstances in which he witnessed prison guards kill babies against trees. The Witness again noted his role tending to cattle and explained that the place they were kept was close to the execution site, where he saw a baby smashed against a dill tree and then thrown into the pit. When asked about the mother or the child, Meas Sokha did not know any details about them. When questioned on the reason he did not ask the prison guards why they killed the baby in this way, the witness responded, “I did not go to ask information from any other guards. I would be in danger.”¹¹ He identified the guard as “Seang,”¹² however, when asked for more details on the guard’s method of killing, he stated, “I do not know how he did it. And I do not know the methods of killing.”¹³

Mr. Koppe then questioned Meas Sokha on a third incident that he claimed to have witnessed, in previous responses to the Prosecution’s questioning: an alleged massacre of more than 100 prisoners. Regarding this incident, the Witness explained to the prosecutor that, in 1977, the prison building could not hold many more people and therefore, a recently arrived group of more than 100 prisoners were sent to be killed. Meas Sokha clarified that prisoners were told they would be returned to their home cooperatives before instead being taken to execution pits at the prison’s inner compound. Meas Sokha explained to the prosecutor that, as he walked his cattle away from the compound early that afternoon, he saw the prisoners marched toward the pit, and, from his vantage point amidst the grasses near the fence, he saw most of the prisoners have their throats slit. In response to questions from Victor Koppe, however, the Witness stated that the killings began at 3:00PM, around the same time he was returning to the compound to fetch ropes with which he could corral the grazing cattle. When Counsel asked the Witness for his exact location during the executions, Meas Sokha’s responses were contradictory. First, he stated he saw them take place but walked away immediately. On follow up, he said that he only saw the incident after the killings, yet, when asked further, he again claimed he saw the killings before walking away. Mr. Koppe noted that a massacre of more than 100 people takes a long time and asked how many individuals the Witness saw killed. Meas Sokha responded that he only saw one killing and was so shocked he stopped watching. Although the Witness

could not confirm the number and only admitted seeing one person killed, he maintained that he saw many corpses in the pit when he was sent later in the evening to bury bodies.

4. Witness Demeanor and Credibility

Throughout his testimony, Witness Meas Sokha responded to questions in a prompt and succinct manner. On a few occasions, the Witness assertively complained that he had already discussed a particular issue or incident. The President warned the Witness that he could not choose the questions asked of him, and that he was required to either answer the question or say he did not know. In the first part of his testimony, under questioning from the OCP, Civil Parties, and the Judges, he admitted when he did not know or could not recall whether an incident occurred. For example, when asked about whether acts of sexual violence occurred at Kraing Ta Chan, he said that he did not know at the time because he was very young and did not know about moral offences. However, he was less clear and consistent in response to Defense questioning. Nuon Chea Defense Counsel Victor Koppe challenged the credibility of Meas Sokha's testimony, arguing that, if the Witness was unable to describe the events to which he had previously testified, he was unreliable (see IV.B). Nonetheless, the examination of the Witness by the Defense Teams exposed a number of inconsistencies in his prior statements, demonstrating the difficulty of describing events that took place nearly 40 years ago, when the Witness was 15 years old.

B. Summary of Testimony by Civil Party Oum Suphany

After concluding the Witness' testimony, the Trial Chamber heard the testimony of Ms. Oum Suphany, the first Civil Party to testify in Case 002/02.¹⁴ In her testimony on the afternoons of 22 and 23 January, the Civil Party discussed her experiences living in a rural cooperative in Trapang Tboung commune, Tram Kok District. The Defense Teams are scheduled to conclude their examination of the Civil Party on Monday, 26 January 2015, when Ms. Oum Suphany will also have the opportunity to make a statement of impact.

1. Examination of Oum Suphany by the Civil Party Lawyer and the OCP

The Civil Party Lawyer, Mr. Michael Yiqiang Liu, utilized two documents, the Civil Party's personal diary and book, "When We Will Never Meet Again," throughout his questioning in order to establish the living conditions she experienced in a Tram Kok cooperative under the DK regime. In the cooperative, Oum Suphany worked as a rice farmer. She testified that during the harvest season she was required to work almost all day and night, sleeping in the fields while others kept working. In the dry season, she stated that she carried fertilizer and earth to put in the fields, and at night she was asked to dig canals and ponds. During this period of time, the Civil Party told the Chamber that she lived communally in a hall with 'new' people. This, she stated, was a new policy of Angkar to gain better control of the people and limit them from speaking secretly. The Civil Party stated she had to remain silent and pretend to be deaf. Further, according to the Civil Party, communal meetings stressed the aphorism of Angkar, that "there is no gain in keeping you and no loss in removing you."¹⁵ When prompted by her lawyer, the Civil Party read aloud a song entitled "Inhumane," which she wrote in her diary during the DK period; its full text is included at the start of this report.

Under further questioning, Oum Suphany told the Chamber that the hospital where she delivered a baby was, in fact, a makeshift hospital inside a former pagoda. She claimed most serious patients in this hospital died, and there were no toiletries or mosquito nets provided. The Civil Party explained that, in the maternity ward, the room was kept warm with firewood, however, the smoke caused her difficulty breathing. The Civil Party also recalled caring for a woman who had diarrhea but had received no treatment, while also suffering from arrhythmia herself. Ms. Oum Suphany also explained that her sister was admitted to the hospital due to a

foot infection, yet her permission to visit her sister was restricted; she did not find out about her sister's death until many days after.

The OCP questioned the Civil Party on the arrests of her brothers-in-law. Oum Suphany stated that one brother-in-law was a pilot and Lieutenant Colonel and was taken away upon arrival at Tram Kok District; another was a doctor who had returned to Phnom Penh from France before the evacuation. She later found his name among the records of those killed at Tuol Sleng.

2. Examination of the Civil Party by the Defense Teams

The Defense Teams initiated their examination of Ms. Oum Suphany on Friday afternoon and were scheduled to conclude on Monday, 26 January. The Civil Party told Mr. Suon Visal, national legal consultant for Nuon Chea, that she worked in a group of four and was not allowed to move freely but instead had to follow the group chief. Under questioning, she stated that the work was assigned based on the individual's energy and health, and that she was given lighter duties due to her weakness. Civil Party said her elder sister was able to visit her frequently in the hospital maternity ward, but her husband could not, as he was working on Farm 108. International lawyer Victor Koppe then questioned the Civil Party about the books she had written since January 1979, in an attempt to discredit her statements. His line of questioning suggested a position that the Witness has not always been consistent in sharing her experiences in DK across varied written and spoken contexts. Mr. Koppe's questions were often met with objections from opposing Parties or interruptions from the Judges (see IV.B).

III. SUMMARY OF THE HEARING OF THE MEDICAL EXPERTS

On 23 January, the Chamber heard the testimony of the Court appointed medical experts concerning both the physical and mental fitness to stand trial of the Co-Accused.¹⁶ The appointed experts were Dr. Chan Kin Ming, a Singaporean geriatrician, and Dr. Huot Lina, a Cambodian psychiatrist. During their oral report on their examination of the Co-Accused, the two doctors answered questions on their findings and also provided recommendations regarding the care provided by the Court and the Chamber's scheduling of future trial hearings..

1. Findings of the Medical Experts Regarding the Co-Accused

Pursuant to the Trial Chamber's order assigning medical experts to assess the Accused's fitness to stand trial,¹⁷ the two doctors examined Nuon Chea and Khieu Samphan on 19 and 20 January, and they provided details of their findings on the physical and mental health of each Accused in Court on Friday the 23rd. The psychiatrist, Dr. Huot Lina, submitted that the mental conditions of both Accused were good, and the quality of their memory was unchanged. The physical health of the Co-Accused was frailer, but the doctors characterized this as expected, given the advanced age of 83-year old Khieu Samphan and 88-year old Nuon Chea. Dr. Chan Kin Ming noted Nuon Chea suffers from dizziness caused by age-related degeneration of his ears, which is unlikely to go away and may worsen further with age. Dr. Chan also said that Khieu Samphan's physical condition is generally good, with the exception of chronic backache that will worsen further with age. The doctor also noted Khieu Samphan's history of two strokes, but, in response to questions from the Judges, he assured the Chamber that the Accused's high blood pressure was not "symptomatic," or serious. He believed the Accused had recovered from the health deterioration that resulted in his 8 January 2014 hospitalization.

2. Recommendations of the Medical Experts

The Medical Experts noted that the treating doctor at the ECCC detention facility provides regular examinations and reports on the physical health of the Co-Accused. The Experts recommended that the Chamber order regular reporting on the mental health of the Accused, every one to three months, to monitor any changes with age. Regarding Nuon Chea's

disposition to dizziness, due to degrading ears and equilibrium, Dr. Chan suggested that he continue with physiotherapy twice a week to maintain dexterity, muscle mass, and function. In response to questions from Judge Claudia Fenz on Khieu Samphan's health issues, which had caused the early adjournment of hearings over the preceding two days, Dr. Chan explained that the Accused's high blood pressure was unlikely to be the cause. Rather, the medical expert observed that the Accused was likely fatigued, noting that in his examination, Khieu Samphan had asked for a longer lunchtime break on hearing days, so that he could rest longer after eating. Dr. Chan Kin Ming therefore recommended that the Trial Chamber extend the daily lunch break to two hours. He also suggested, however, that the Co-Accused were fit enough to handle four days of hearings per week rather than the current three.

IV. LEGAL AND PROCEDURAL ISSUES

Legal and procedural issues raised this week primarily related to the use of documents by Counsel in questioning the Witness and Civil Party, leading questions, as well as the proper place for making arguments related to the authenticity of documents or the credibility of witnesses. In addition, the Court released the ninth revision to the ECCC Internal Rules, which contains a number of important changes discussed below.

A. Objections to the Use of Documents in Questioning Witnesses and Civil Parties

During the 21 January hearing, Victor Koppe, international counsel for Nuon Chea, raised a number of objections in relation to the Prosecution's use of photocopied records from Kraing Ta Chan in questioning Witness Meas Sokha. Mr. Koppe argued that the document was a photocopy obtained from the Documentation Center of Cambodia (**DC-Cam**), which could not provide the original, and that "original records from Kraing Ta Chan do not exist." International Assistant Prosecutor Dale Lysak responded that this issue had already been dealt with when the Chamber decided to admit the document. Judge Claudia Fenz clarified that Defense Counsel's comments went to authenticity, and would be considered by the Chamber when evaluating the evidence. After Mr. Lysak again referred to the document in questioning the witness, Mr. Koppe objected, arguing that the Prosecution was "feeding the Witness information about the document, hoping that he can read it and confirm it" and that open questions should be used instead. The Chamber overruled the objection, stating that it wished to hear the response of the Witness to the question. Similarly, Mr. Koppe objected after Mr. Lysak read an excerpt of a document purportedly authored by the prison chief stating that the Witness's father and brother-in-law had been "smashed". Mr. Koppe argued that the prosecutor was leading the Witness. Mr. Lysak denied this, arguing that the Witness had already testified that his father and brother-in-law had been killed, and the Prosecution was merely asking the Witness whether the prison chief had informed him. Again, the Chamber overruled the objection. As mentioned in KRT Trial Monitor's report last week,¹⁸ the use of leading questions is controversial due to the divergent approaches of the civil and common law systems, and the Chamber was not always consistent in its approach in Case 002/01.¹⁹

Three document-related objections were also raised during the questioning of the Civil Party, Ms. Oum Suphany. First, Mr. Koppe objected to the use of Ms. Oum Suphany's book by her lawyer, Mr. Michael Yiqiang Liu, claiming that it was unclear whether it was fiction or non-fiction. Mr. Liu responded that Oum Suphany had already clarified the nature of the book, which was already on the case file, and the Chamber overruled the objection. Second, during Mr. Koppe's questioning of Ms. Oum Suphany, he asked her for a copy of one of her books that had not been admitted into evidence. The Civil Party Lawyer objected on the basis that any request for new evidence must be made prior to examination using a Rule 87(4) request. Mr. Koppe claimed that he merely wanted to read it, as he was "interested in the story of the Civil Party." The objection was sustained. Lastly, after Ms. Oum Suphany described marrying the man she loved, Mr. Koppe referred to the Civil Party's 2013 interview in the *Phnom Penh Post* as he asked whether she had previously claimed to have been forcibly married. Civil Party Lead Co-

Lawyer Ms. Marie Guiraud objected, claiming that Mr. Koppe was improperly relying on an article that was not in evidence, and that this contradicted the principle governing adversarial proceedings that all parties have the opportunity to scrutinize documentary evidence prior to the hearing. Mr. Koppe responded that he was not relying on the article but asking the Civil Party about an interview with a reporter. The court adjourned before ruling on the objection.

B. Objections to Defense Questioning

Mr. Victor Koppe sought to clarify three particular incidents Witness Meas Sokha described in his previous testimony – the suffocating of a man with a plastic bag during an interrogation, the killing of a baby against a tree, and the mass killing of over 100 prisoners. Mr. Koppe often repeated his questions, as the Witness would answer with information about general practices at Kraing Ta Chan Security Center, rather than the specific incident or day in question. President Nil Nonn also reiterated that the Witness needed to listen to the question. During the testimony, Mr. Lysak objected to Mr. Koppe's questions as being unclear, repetitive, or misstating the witness's previous testimony. The President sustained several objections to Defense questions to both Mr. Meas Sokha and Civil Party Ms. Oum Suphany due to repetition. Mr. Koppe took issue with some of these decisions, arguing that he was trying to clarify extremely serious allegations.

Following Meas Sokha's testimony on the man suffocated with a plastic bag at Kraing Ta Chan (see II.A.2), and prior to the Witness' entrance into the courtroom on January 22, Mr. Koppe opened his questioning with a statement that "[I]t is our position that this witness, Mr. Meas Sokha, is lying." Assistant Prosecutor Dale Lysak and Civil Party Lead Co-Lawyer Pich Ang immediately objected, arguing that this was not the time to argue the credibility of the Witness, especially without notice. Mr. Koppe responded that he was seeking three hours to examine the witness on the basis of his unreliability, and he was attempting to explain his reasoning. The President interrupted Mr. Koppe's statement, saying that he was not allowed to make conclusions that the Witness was lying during testimony, as it would undermine the Witness's confidence, and that the credibility of the Witness was a matter for the Bench to determine. International Civil Party Lead Co-Lawyer Marie Guiraud submitted that the Defense had enough time during the investigation to ask similar questions to challenge the credibility of the Witness and that allowing additional time to do the same would delay proceedings. The Chamber gave both the defense teams a total of two more hours, until noon, to question Mr. Meas Sokha.

C. Objection Concerning Overlap of Scope in Cases 002/01 and 002/02

On 23 January, international counsel for Nuon Chea, Mr. Victor Koppe, repeatedly asked Civil Party Oum Suphany why she required a month to arrive in Tram Kok District, following her 17 April 1975 evacuation from Phnom Penh. Mr. Michael Liu, the Civil Party's lawyer, objected on grounds that the capital's evacuation was an issue already adjudicated in Case 002/01, and, therefore, the Civil Party's experiences during that month prior to her arrival in a Tram Kok cooperative were outside the scope of Case 002/02. President Nil Nonn sustained the objection, stating that the questions had grown repetitive and that the Civil Party had already provided an adequate response. However, Mr. Koppe viewed the decision as one muting his ability to discuss the first months of the DK regime after April 1975, and he demanded the full Bench deliberate on the matter. The President refused and justified his decision by referring solely to the repetitiveness of the Co-Lawyer's questions rather than to Mr. Liu's mention of the severance of Case 002. Mr. Koppe sarcastically called the decision "interesting." The Co-Lawyer for Nuon Chea also predicted that situations concerning the overlap of scope in Case 002's trial segments would continue to "happen more often."

D. The 9th Revision to the Internal Rules

The ECCC closed its 11th Plenary Session on 16 January 2015 and subsequently announced a ninth revision of the Internal Rules. The revision contains a number of changes “aimed at expediting proceedings” and regulating the criteria for Civil Party counsel.²⁰ Firstly, Rule 66 *bis* allows the Co-Investigating Judges to reduce the scope of judicial investigations by excluding facts in the OCP’s Initial and Supplementary Submissions, so long as the remaining facts are representative of the scope of the Submissions.²¹ The Co-Investigating Judges will decide what impact any such decision has on Civil Parties and Civil Party applicants.²² Similarly, Rule 89 *quater* allows the Trial Chamber to reduce the scope of the trial by excluding facts set out in the indictment, so long as the remaining facts are representative of the indictment. This decision will not affect Civil Parties who have already been admitted, even if the facts included in their application are no longer included in the trial.²³ These changes coalesce the Court’s procedures with the decisions of the Supreme Court Chamber and Trial Chamber to proceed with a trial in Case 002/02 that is representative of the remaining issues covered in the Case 002 Closing Order.²⁴ Lastly, the ninth revision includes Rule 12 *bis*, which requires the Victims Support Section to manage applications from foreign lawyers seeking to represent Civil Parties and forward completed applications to the Bar Association of the Kingdom of Cambodia (BAKC) for registration.²⁵ The same Rule also inserts a list of criteria for inclusion on the list of lawyers representing Civil Parties at the ECCC.²⁶

IV. TRIAL MANAGEMENT

Following the further delay of hearings in Case 002/02 as a result of Khieu Samphan’s hospitalization on 8 January 2015, the Chamber eagerly sought to advance the proceedings this week. Even with procedural hurdles raised by the parties, the Chamber’s relatively efficient time management ensured the completion of one witness’ examination, the majority of a Civil Party’s testimony, and the hearings of the medical Experts. However, the increased pressure to advance proceedings may have contributed to the Chamber’s lack of tolerance for repetitive questioning in the week’s hearings, which were occasionally hampered by technical hitches and translation errors.

A. Attendance

Due to health concerns, Nuon Chea observed the 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 21 January hearing, due to fatigue.

Judges Attendance: National Judge You Ottara was absent on 21 January due to health issues, and National Reserve Judge Thou Mony sat on his behalf. During the 22 January hearing’s brief fourth session, International Judge Claudia Fenz was absent and replaced by International Reserve Judge Martin Karopkin.

Civil Parties Attendance: There were approximately ten Civil Parties observing the proceedings daily in this week, either in the courtroom and public gallery.

Parties: All the Parties were present in the courtroom in this week, including the newly appointed Standby Counsel, Ms. Touch Vorleak and Mr. Calvin Saunders.

Attendance by the public:

DATE	MORNING	AFTERNOON
Wednesday 21/01/2015	▪ Approximately 430 villagers, and 20 persons from the Union of Youth Federations of Cambodia, Treale Commune, Samraong District, Takeo Province ▪ 8 foreign observers	▪ Approximately 170 villagers from Rolea B'ier District and 115 Cham from Kampong Tralach District, Kampong Chhnang Province ▪ 8 foreign observers
Thursday 22/01/2015	▪ Approximately 300 Cambodian Islam from Chamkar Leu District, Kampong Cham Province. ▪ 10 foreign observers	▪ 300 Students from Hun Sen Ta Khmao High School, Ta Khmao District, Kandal Province ▪ 2 foreign observers
Friday 23/01/2015	▪ Approximately 300 High School students from Hun Sen Ta Khmao High School, Ta Khmao District, Kandal Province ▪ 3 foreign observers ▪ 5 Civil Parties from Takeo Province	▪ 5 teachers and 5 villagers from Ta Khmao, Kandal Province ▪ 3 foreign observers

B. Time Management

This week, the Trial Chamber strictly enforced time management, in order to successfully hear the testimony of the Witness, Civil Party and Medical Experts. For example, the Trial Chamber rejected a request from Nuon Chea's Defense to allocate three additional hours to question Witness Meas Sokha. Although proceedings began an hour late on 22 January due to a medical examination of Khieu Samphan, the Trial Chamber sought to complete the testimony of Witness Meas Sokha before the lunch break, so it allowed questioning to continue past the usual Noon adjournment. However, the Chamber was forced to adjourn that day's proceedings after the afternoon break due to Khieu Samphan's complaints of fatigue. With Friday morning's sessions scheduled for the testimony of the Medical Experts, Civil Party Oum Suphany was only able to testify in three afternoon sessions during the 22 and 23 January hearings. She is scheduled to complete her testimony on the morning of Monday, 26 January 2015.

C. Courtroom Etiquette

Several tense exchanges and instances of apparent frustration occurred throughout the trial proceedings this week, including several heated exchanges between the President and Mr. Victor Koppe, international counsel for Nuon Chea. On 22 January, international assistant prosecutor Dale Lysak objected that Mr. Koppe was asking repetitive questions concerning Meas Sokha's statement that he had witnessed the execution of more than 100 prisoners. After the President sustained the objection, Mr. Victor Koppe called it "disgraceful." The following day, Mr. Koppe took issue with President Nil Nonn's decision that he move on from questions to Civil Party Oum Suphany on her travel from Phnom Penh to Tram Kok District (see IV.C). After the Co-Lawyer responded sarcastically to the President's initial decision, calling it "interesting," Nil Nonn slowed his speech and sharpened his tone as he stated, "Of course it was repetitive and you are not allowed to ask repetitive questions, and it will lead to delayed proceedings and lead to contradictions within responses." On this final note, the President's tone was especially

forceful, yet Mr. Koppe again responded, “Very interesting, Mr. President,” before moving on.

D. Translation and Technical Issues

This week saw several translation and technical issues occur throughout the proceedings, prompting complaints from all parties on the accuracy of communication. In multiple instances on 21 January, assistant prosecutor Dale Lysak complained of translation lags and errors during Witness Meas Sokha’s examination. There were a few key errors in interpretation from English to Khmer. The English word “gallbladder” was translated as “human liver” in Khmer, “mental health” was abridged to “health” in Khmer, and “mother-in-law” in English was simplified to “mother” in Khmer. Concerning technical interruptions, the President’s microphone failed midway through morning proceedings on 21 January, and he adjourned for the morning break early so the A/V unit could address the issue. On 22 January, Counsel Kong Sam Onn’s questioning of Meas Sokha was interrupted when his microphone failed to work for four minutes. Similar issues recurred during the 23 January hearing.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Wednesday 21/01/2015	9:01	9:23 – 9:59	12:06 – 13:34	14:35 – 14:57	16:02	4 hours and 35 minutes
Thursday 22/01/2015	10:04	---	12:21 – 13:33	14:45 – 15:15	15:18	3 hours and 32 minutes
Friday 23/01/2015	9:08	10:36 – 10:54	11:42 – 3:30	14:32 – 14:54	16:01	4 hours and 25 minutes
Average number of hours in session				4 hours and 18 minutes		
Total number of hours this week				12 hours and 32 minutes		
Total number of hours, day, weeks at trial				19 hours and 48 minutes		
EIGHT TRIAL DAYS OVER FIVE 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 Trial Chamber, Transcript of Trial Proceedings (22 January 2015), E1/250.1 [hereinafter **22 JANUARY TRANSCRIPT**], line 25, p. 65; lines 1-13, p. 66.

² For more on the first part of Mr. Meas Sokha’s testimony, from the hearing on 8 January 2015, see CASE 002/02 KRT TRIAL MONITOR, Issue 4, Hearings on Evidence Week 1 (8-9 January 2015), pp. 1-3.

³ Mr. MEAS Sokha (2-TCW-936) was questioned in the following order: international Assistant Prosecutor Dale LYSACK; Judge Claudia Fenz; Judge Jean-Marc Lavergne; national Civil Party Lead Co-Lawyer PICH Ang; national Legal Consultant to Nuon Chea Defense Team, SUON Visal; international Co-Lawyer for Nuon Chea, Victor KOPPE; national Co-Lawyer for Khieu Samphan, KONG Sam Onn; international Co-Lawyer for Khieu Samphan, Anta GUISSÉ.

⁴ Trial Chamber, Transcript of Trial Proceedings (21 January 2015), E1/249.1 [hereinafter **21 JANUARY TRANSCRIPT**], lines 21-22, p. 10.

⁵ The word “Yuo” is a derogatory racial slur in Khmer language for “Vietnam” or “Vietnamese,” and it was utilized in a variety of DK documents and speeches. The term continues to be used in Cambodia today by members of the public and political leaders alike.

⁶ 21 JANUARY TRANSCRIPT, line 21, p. 89.

⁷ 21 JANUARY TRANSCRIPT, line 8, p. 16.

⁸ 21 JANUARY TRANSCRIPT, lines 2-7, p. 92.

⁹ 21 JANUARY TRANSCRIPT, lines 11-14, p. 92.

¹⁰ 21 JANUARY TRANSCRIPT, line 20, p. 35.

¹¹ 22 JANUARY TRANSCRIPT, lines 13-14, p. 14.

¹² 22 JANUARY TRANSCRIPT, line 22, p. 15.

¹³ 22 JANUARY TRANSCRIPT, lines 24-25, p. 15.

¹⁴ Ms. OUM Suphany (2-TCCP-296) was questioned in the following order: President NIL Nonn, international Civil Party Lawyer Michael Yiqiang LIU; national assistant prosecutor SENG Leang; international assistant prosecutor Dale LYSACK; national Legal Consultant to Nuon Chea Defense Team, SUON Visal; international Co-Lawyer for Nuon Chea, Victor KOPPE.

¹⁵ 22 JANUARY TRANSCRIPT, line 25, p. 70.

¹⁶ The Trial Chamber's order for medical experts to examine the fitness of the Accused is pursuant to Internal Rule 23, which reads, in part, "The Chambers may, for the purpose of determining whether a Charged Person or Accused is physically and mentally fit to stand trial, or for any other reasons, or at the request of a party, order that they undergo a medical, psychiatric or psychological examination by an expert. The reasons for such order, and the report of the expert, shall be recorded in the case file. For more on the standards concerning an Accused's fitness to stand trial, specifically within the context of the case against Ieng Thirith, see CASE 002 KRT TRIAL MONITOR, Special Report: Ieng Thirith's Fitness to Stand Trial (November 2012).

¹⁷ Trial Chamber, "Order Assigning Experts to Assess the Accused's Fitness to Stand Trial" (18 December 2014), E329. The previous medical examination and report of the Co-Accused took place in March 2014. See Expert Medical Report, NUON Chea (27 March 2014), E301/10/6; Expert Medical Report, KHIEU Samphan (27 March 2014), E301/10/7.

¹⁸ See CASE 002/02 KRT TRIAL MONITOR, Issue 4, Hearings on Evidence Week 1 (8-9 January 2015), p. 4.

¹⁹ 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.

²⁰ Public Affairs Section, "11th ECCC Plenary adopts amendments to Internal Rules," Extraordinary Chambers in the Courts of Cambodia (16 January 2015), <http://www.eccc.gov.kh/en/articles/11th-eccc-plenary-adopts-amendments-internal-rules>. The newly revised Internal Rules are available here: http://www.eccc.gov.kh/sites/default/files/legal-documents/Internal_Rules_Rev_9_Eng.pdf.

²¹ The grounds for pre-trial appeals were also expanded to include a decision to reduce the scope of the judicial investigation. See Rules 74 (3)(j) and (4)(i).

²² See Rule 66 *bis* (3).

²³ See Rule 89 *quater* (4).

²⁴ A number of decisions on the severance of Case 002 have led to the formulation of Case 002/02 in its current scope, starting with an 8 February 2013 decision of the Supreme Court Chamber (E163/5/1/13). On 26 April 2013, the Trial Chamber responded to this Decision with a renewal of its severance to leave the scope of Case 002/01 unchanged (E284). The SCC published a decision on appeals of this second decision on severance on 25 November 2013 (E284/4/8), reiterating its 8 February 2013 decision. However, the new Decision recognized the time and cost of continued proceedings and therefore required that the Trial Chamber formulate a new segment of Case 002 that would be representative of the whole of the Case 002 Closing Order. The Trial Chamber issued a 4 April 2014 decision (E301/9/1) formulating scope of Case 002/02 as representative of the remaining charges in the indictment, in accordance with the SCC's 25 November 2013 decision. This severance and scope for Case 002/02 was upheld on appeal by the Supreme Court Chamber on 29 July 2014 (E301/9/1/1/3), one week prior to the announcement of the Judgment in Case 002/01 and less than two months before the opening of proceedings in Case 002/02. For more summary of the formulation and scope of Case 002/02, see CASE 002/02 KRT TRIAL MONITOR, Issue 1, Initial Hearing, (30 July 2014). See also KRT Trial Monitor's summary of the decisions that were issued before and during proceedings in Case 002/01 here: <http://krtmonitor.org/2013/10/15/case-00201-highlights-severance-order>.

²⁵ See Rule 12 *bis* (1) (d).

²⁶ See Rule 12 *bis* (2). The rule includes the following criteria: Rule 12 *bis* (2)(c) ensures national lawyers wishing to represent civil parties are only required to be a member of BAKC and have established competence in criminal law and procedure at the national or international level; Rule 12 *bis* (2)(d) deals with foreign applicants, who are required to be a member of a recognized association of lawyers, have a degree in law or equivalent qualification, be fluent in a language of the court, have established competence in criminal law and procedure, and have relevant experience in criminal proceedings; and Rule 12 *bis* (2)(b) requires that both foreign and national applicants not have been convicted of a serious criminal or disciplinary offence considered by their professional association to be incompatible with representing victims.